

Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill and recommends that it be passed with the amendments shown.

Introduction

The Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill introduces changes to many areas of the current tax laws. The bill provides for the reform of the international tax rules, among other measures introducing a tax exemption for the foreign active income of controlled foreign companies¹ (CFCs), and exempting most foreign dividends received by New Zealand companies from tax. This reform aims to allow New Zealand residents with active

¹ A controlled foreign company is a foreign company controlled by New Zealand residents.

businesses in overseas markets to compete on an equal footing with their competitors.

The bill would align life insurance taxation rules more closely with the actual profits of term life insurance business, and extend portfolio investment entity rules to life insurers' savings products. It includes changes to the income tax rules for petroleum mining, such as ring-fencing deductions for petroleum mining undertaken in a foreign country through a branch, removing the distinction between onshore and offshore development, and introducing a reserve depletion method for deductions.

The bill would introduce a voluntary payroll giving scheme, which would allow employees to make regular payroll donations from their pay and to enjoy the relevant tax benefit immediately rather than at the end of the tax year. It contains specific tax rules for the treatment of honoraria and payments to reimburse expenditure incurred in voluntary activities. It would also clarify the tax treatment of relocation payments and overtime meal allowances for employees.

This bill would amend the Goods and Services Tax Act 1985 so that loyalty programme operators could defer the imposition of Goods and Services Tax (GST) until loyalty points were redeemed. The amendments to the Goods and Services Tax Act 1985 would also allow certain exported second-hand goods, which were not to be re-imported into New Zealand, to be zero-rated if the exporter had claimed a second-hand goods deduction.

The bill includes remedial amendments to the tax pooling rules in the Income Tax Act 2007, the tax rules for portfolio investment entities (PIEs), and the tax rules for offshore portfolio investment in shares. They aim to ensure that the legislation reflects the original intent of the rules.

Numerous other changes are also proposed in this bill. For example, the bill would reform the definitions of "associated persons" in the Income Tax Act, and provide for the taxation of emission units arising under the Climate Change Response Act 2002 and of grants made from the Screen Production Incentive Fund announced in Budget 2008.

In addition to these changes, the Minister of Revenue released Supplementary Order Paper 224 to the bill and asked us to consider it. Supplementary Order Paper 224 provides for new rules relating to

stapled debt securities' tax treatment, which would not apply to debt securities stapled before 25 February 2008. We agreed to consider this supplementary order paper alongside the main bill, and have incorporated in our recommended amendments those portions of the supplementary order paper with which we agree.

The depth and breadth of the bill

The proposals contained in the bill are significant and complex, and cover a wide range of taxation issues. The size of the bill, and the depth and breadth of the material it covers, have made our consideration more difficult than it might have been otherwise. In trying to meet the report due date for the bill, we and our committee consideration processes have been put under considerable pressure. We do not consider it desirable to put a number of very distinct and significant proposals into one bill simply because they relate to one area of law. In future, we would prefer to see such proposals introduced to the House as separate, more manageable bills. If such proposals are not divided sensibly, the House might wish to accord significantly more than the usual consideration time to committees charged with considering such bills. Ministers should remain mindful that if departmental advisers are appointed to advise committees on such bills, they will need to meet committee deadlines and information needs under pressure.

We wish to thank our independent specialist advisers for the significant role they have played in our consideration. We have relied heavily upon them for assurance about certain aspects of the bill and the amendments we are proposing.

Technical amendments and focus of our commentary

The bill proposes a raft of technical amendments, on which we make no comment in this report. We understand that tax practitioners and Inland Revenue Department field staff frequently propose such amendments as they recognise the need for them in the course of using tax legislation.

This commentary sets out only the key amendments we propose and addresses the main issues that we considered. It does not cover minor or technical amendments.

Application dates

We recommend amendments to change the application dates for provisions proposed in the bill. The bill as introduced sets dates that do not allow sufficiently for the progress of the bill through Parliament.

We considered this matter very carefully. We received communications from the Minister of Revenue, and sought advice and options from advisers on appropriate application dates for various provisions. We appreciate that there are trade-offs between the various options. On balance, we agree with the recommendations from the department.

The key changes we recommend to the application dates of specific provisions in the bill are set out below.

International taxation provisions

We recommend that the new international tax rules apply to all taxpayers from the 2010–2011 income year. We also recommend that, for the 2009–2010 income year, the new international tax rules apply to taxpayers with balance dates on or after 30 June, while the existing international tax rules continue to apply to taxpayers with balance dates before 30 June.

Our recommended application date for the new international tax rules would provide certainty for all taxpayers for the 2009–2010 income year, while allowing at least some taxpayers to benefit from the new rules at the earliest opportunity.

Life insurance

We recommend that the new rules on the taxation of life insurance business apply from 1 July 2010 generally. This application date is intended to allow all life insurers sufficient time to develop adequate systems to comply with the new rules.

We recommend that life insurers be given the option of applying the new rules on the taxation of life insurance business from the beginning of their income year, if that year includes 1 July 2010. This flexible arrangement would allow life insurers with balance dates earlier than 30 June 2010 to provide extended PIE benefits to their policyholders at an earlier date. It might also reduce the compliance costs for such life insurers.

To complement the previous recommendation, we recommend that a life insurer who elects to apply the new rules on the taxation of life insurance business from the beginning of their income year be permitted to choose to apply the new grandparenting provisions from the beginning of the same income year rather than from 1 July 2010.

Associated persons

To ensure that the amendments to the definitions of “associated persons” would not have a retrospective effect, we recommend that the general application date for these amendments (excluding those in the land provisions) be deferred to the 2010–2011 income year and the subsequent years. We recommend that the amendments in the land provisions, except for section CB 11, apply to land acquired on or after the date of enactment. We recommend that the amendments in section CB 11, which relates to disposal of land within 10 years of completing improvements, apply to land on which improvements started on or after the date of enactment.

Portfolio investment entity rules

We recommend amending clause 2 to defer the application date for the rewritten PIE rules from 1 April 2009 to 1 April 2010 generally. This would prevent these rules from being applied retrospectively.

Film production and Government funding

We recommend that amendments be made to defer the application date of the proposed changes to the tax treatment of the Large Budget Screen Production Grant payment. We recommend providing that the proposed changes apply if the final application for the grant is made on or after 1 October 2009, except when the project incurred at least \$3 million of film-related expenditure by 1 July 2008. We believe that deferring the application date would give the film industry sufficient notice of the proposed changes, and would prevent an unnecessary erosion of the revenue base of film projects that have already incurred significant expenditure.

We recommend amending clause 2(18) to defer the application date of the scheme for deducting Screen Production Incentive Fund payments to 1 January 2010. This deferred application date would prevent existing film productions that have received such payments from

being caught by the new tax deduction rules, giving them certainty about their tax treatment.

We recommend that the application date of the proposed information-sharing and secrecy provisions between the Inland Revenue Department and the New Zealand Film Commission be deferred from 1 July 2008 to the date of the enactment of this bill. We consider it inappropriate to apply these provisions retrospectively.

Payroll giving

We recommend that the application date for the proposed provisions for the payroll giving scheme be postponed from 1 April 2009 to three months after the enactment of the bill. We believe this would give employers and the Inland Revenue Department sufficient time to roll out the systems for implementing the scheme.

Other commencement dates

We recommend amendments to change the proposed commencement dates of other provisions in the bill, such as those relating to Kiwi-Saver, Niue development, recognised seasonal workers, tax pooling, and transitional ICA penalties, to ensure that these provisions would operate effectively and be applied appropriately. Most would come into effect on the date of Royal assent. We have not recommended changes to the commencement dates of provisions relating to stapled stock, petroleum mining, emissions trading, general insurance, banking continuity, charitable donee status, tax recovery arrangements, tax depreciation rules, relocation payments and overtime meal allowances, reimbursements and honoraria paid to volunteers, research and development tax credits, and GST and remedial amendments. We consider that the application dates contained in the bill as introduced are appropriate in respect of these provisions.

Raising certain tax thresholds

We recommend deleting provisions regarding changes to tax thresholds for small and medium-sized enterprises (SMEs) from this bill. We examined these provisions when considering the Taxation (Business Tax Measures) Bill, which was subsequently enacted in March 2009. The Taxation (Business Tax Measures) Act 2009 has rendered the similar provisions in this bill redundant.

Income Tax Act definitions of “associated persons”

The bill proposes changes to the definitions of “associated persons” in the Income Tax Act. The changes introduced in this bill are intended to address weaknesses in the current definition (which is used mainly in an anti-avoidance capacity), which primarily affect its application to land sales. The bill proposes the implementation of a tripartite test, which would associate two persons if they were each associated with the same third person. It also introduces new tests for the application of the definition in relation to trusts, and sets out new rules for aggregating the interests of associates to prevent the tests for associating two companies and a company and a person other than a company being circumvented by the fragmentation of interests and their distribution among close associates.

We recommend a number of amendments to reduce uncertainty and narrow the scope of the proposed tests. We are concerned that the tests contained in the bill as introduced could inadvertently capture those involved in truly arm’s-length transactions. The amendments we propose are meant to give effect to the policy intention of capturing non-arm’s-length transactions, whilst not applying more widely than necessary to protect the tax base. We examined these amendments in detail, and tested examples against the proposed amendments, to ensure that the policy intent of the provisions is being given effect without capturing circumstances or individuals that are not intended to be captured. The amendments we recommend would ensure, for example, that person A and person B would not automatically be associated persons where person B was a property developer and they both held a 50 percent interest in a company, but each person would be associated with the company itself (new section YB 14 in clause 414). An adult child would not be associated with a parent’s spouse or the spouse’s company under compliance cost savings provisions (new sections YB 3 and YB 4 in clause 414). The key amendments we recommend are described below.

Limitation of tripartite test

We recommend narrowing the scope of the tripartite test in proposed section YB 14 of the Income Tax Act (clause 414) to make it apply to two persons only if they are each associated with the same third person under different associated persons tests in clause 414. Furthermore, we recommend amendments to ensure that the tripartite test

would not apply if two persons were both associated with the same third person under any of the companies-related associated persons tests in proposed section YB 2 or YB 3.

We note that narrowing the scope of the tripartite test would complement amendments we recommend to proposed sections YB 2, YB 3, YB 5, and YB 6 of the Income Tax Act (clause 414).

Limitation of the test associating relatives

We recommend amending proposed section YB 4(4) (in clause 414) to ensure that a person would not be associated with another person where that person could not be reasonably expected to have knowledge of the existence of the other party and/or their relationship to that party. We consider it undesirable for such people to be captured by the definition of “associated persons”.

Companies as associated persons

We recommend creating an additional exception to the test in proposed section YB 2 of the Income Tax Act (clause 414), which determines whether two companies are associated persons. This exception would provide that the test would not apply to a company that is a PIE or that is eligible to become one, for the purposes of the land provisions in the Income Tax Act. This amendment would prevent a widely held fund from being adversely affected by the test in proposed section YB 2 because of the personal land dealings of the directors of the fund.

Trustee-for-relative test

We recommend that the associated persons test in proposed section YB 5 of the Income Tax Act (clause 414), known as the “trustee-for-relative test”, not apply for the purposes of the land provisions. This would align it with the other beneficiary-related associated persons tests in proposed sections YB 6 and YB 9, neither of which would apply for the purposes of the land provisions.

We recommend that energy consumer trusts established under the Energy Companies Act 1992 and unit trusts administering bonus bonds be excluded from the trustee-for-relative test in proposed section YB 5 of the Income Tax Act (clause 414), and the trustee-and-beneficiary test in proposed section YB 6 (clause 414). These trusts are public

in nature and do not pose a risk to the tax base. The tests in proposed sections YB 5 and YB 6 are aimed at private rather than public trusts.

Charitable purposes

We recommend not treating “charitable organisations” (as defined in section YA 1 of the Income Tax Act) as beneficiaries for the purposes of proposed sections YB 6 and YB 9 (section YB 16(2) in clause 414). This would ensure that trustees and settlors of trusts would not be treated as associated persons simply because the same charity was a beneficiary of their trusts. We recommend that proposed section YB 7 of the Income Tax Act (clause 414) be amended to treat two persons who are in a marriage, a civil union, or a de facto relationship as the same person for the purpose of identifying a common settlor. We consider this amendment necessary to preclude the possibility of circumventing the proposed definition of “associated persons” by the use of “mirror trusts”. A “mirror trust” is a family trust settled by one spouse for the benefit of his or her spouse while the latter settles another family trust for the former.

We recommend that an exception be created exempting charitable trusts from the associated persons test for a trustee and a settlor in proposed section YB 8 of the Income Tax Act (section YB 8(2) in clause 414). This would prevent donors to charitable trusts from being treated as being associated with each other. We consider such an assumption of association would be impractical and inappropriate, and do not consider that excluding charitable trusts from the test would pose a risk to the tax base.

Employee trusts

For consistency, we recommend amending proposed section YB 15 of the Income Tax Act (clause 414) so that the test in proposed section YB 11, which provides that a trustee of a trust and a person who has the power of appointment or removal of the trustee are associated persons, is subject to an exception for certain employee trusts. We note that the other trust-related associated persons tests in clause 414 are subject to similar exceptions.

Partnerships

We recommend that proposed section YB 13 of the Income Tax Act in clause 414 be deleted to ensure that, in general, a partner could not be associated with the associates of the other partners in the partnership. However, we note that an associate of a partner, such as the spouse of a partner, would still be associated with the partnership under the tripartite test in proposed section YB 14 (clause 414), which associates two persons if both of them are associated with the same third person. For example, a partner's spouse, who was associated with the partner under the proposed section YB 4, and the partnership, which was associated with the partner under YB 12, would be associated under the tripartite test.

We recommend that proposed section YB 12(2) of the Income Tax Act (clause 414), which creates an exception to the primary test for associating a partnership and a partner in proposed subsection (1), be amended to limit the exception to limited partners only and not general partners in a limited partnership. We consider that this would render proposed section YB 12(2) consistent with current section YB 16(1B) of the Income Tax Act.

We recommend that the proposed removal of the associated persons requirement from the dividend and fringe benefit tax rules, as set out mainly in clauses 11, 41, and 183 of the bill as introduced, not proceed. We are concerned that such a removal could have far-reaching consequences for various arrangements that are neither shareholding nor employment relationships, such as an agreement between a plumber and a bricklayer to use each other's tools without making payments. Under existing rules, if a person is not a shareholder or associated with a shareholder, he or she does not need to be concerned with the dividend rules. Conversely, the proposed amendment in clause 11 would make it uncertain whether a person would have tax obligations in relation to dividends if he or she received free services from an unassociated person. We consider that this uncertainty outweighs the potential advantages of the proposed amendment.

International tax rules

The bill introduces a new approach to taxing foreign companies that are controlled by New Zealand residents. The key features of the new approach include an active income exemption for controlled foreign

companies (CFCs), interest allocation rules for CFCs, repeal of the grey list exemption, and repeal of the conduit rules, which exempt from tax the proportion of a CFC's income that is attributable to foreign shareholders.

Signposting provision

We recommend the inclusion of new clause 116B, which would insert new section EX 18A into the Income Tax Act. Our recommended amendment would ensure that key provisions relating to the CFC rules (including the application of formulae for the calculation of "attributable CFC income" and of "attributed CFC income or loss", and the rules for determining whether a CFC is a "non-attributing active CFC") were set out clearly in one place in the legislation.

The provisions in the bill relating to CFCs are complex, and would be contained in a number of separate sections in the Income Tax Act. Our amendment is intended to make the CFC rules more accessible by providing clear guidance on where relevant rules can be found. We encourage the use of such "sign-posting" provisions in any legislation that proposes the introduction of a complex set of rules located in multiple provisions.

Exemptions from requirement to attribute (active business test)

We recommend some technical amendments to the accounting-based active business test for CFCs in proposed section EX 21E of the Income Tax Act (clause 123), to reduce the cost of applying the test. We note that accounting information would have to be adjusted before it could be used in the test proposed in the bill as introduced, and are concerned that such adjustments might not be straightforward in certain circumstances. In our view, if our recommended amendments were made, taxpayers would be able to make more use of unadjusted summary financial reporting information when applying the test.

We recommend amendments to sections EX 21C(9) and EX 21E(13) (clause 123) to ensure that taxpayers are able to rely upon detailed information taken from a financial report prepared in accordance with International Financial Reporting Standards (IFRS) or their equivalent (IFRSE) or Generally Accepted Accounting Principles (GAAP) as correct for the purposes of the accounting-based active income test. We recommend that an unqualified audit opinion be taken as

evidence of compliance with the applicable accounting standards, unless there is a reasonable suspicion of fraud, intent to mislead, auditor incompetence, or lack of auditor independence. We also recommend that the accounting-based active business test be allowed to be used only for accounts that have received an unqualified audit opinion. The combined effect of these recommendations would be that taxpayers using the accounting-based active business test should normally be able to rely on accounting information that had been used to prepare audited financial reports. These recommendations are intended to reduce the compliance costs for taxpayers who use the accounting-based active business test, as they would not normally have to undertake detailed calculations to ensure that detailed information taken from the audited accounts indeed complied with the applicable accounting standards.

We recommend that an anti-avoidance rule be introduced and apply only to prevent taxpayers from manipulating the accounting-based active business test. We recommend that this rule apply only when an arrangement was entered into with a purpose, not merely incidental, of enabling a CFC to satisfy the accounting-based active business test (section EX 21E of the Income Tax Act (clause 123)). The proposed amendment reflects language linked (through the definition of “tax avoidance arrangement”) to the general anti-avoidance provisions in section BG 1 of the Income Tax Act. The amendment we propose is general and would capture, for example, situations where taxpayers use loans (or make financial arrangements) between related parties with different functional currencies to shelter passive income.

Consolidation in the active business test

Under proposed section EX 21D of the Income Tax Act (clause 123), taxpayers would be allowed to consolidate certain CFCs for the purpose of the tax-based active business test. In the bill as introduced, consolidation would be permitted only when the taxpayer had a voting interest of more than 50 percent in each of the CFCs that were to be consolidated. However, we consider that the term “income interest” would be more appropriate than “voting interest” in this context because it is income interest that gives rise to attribution of CFC income, not voting interest. We therefore recommend that, for the purpose of the tax-based active business test, consolidation be permitted only when the taxpayer has an income interest of more than

50 percent in each of the CFCs to be consolidated (section EX 21D of the Income Tax Act (clause 123)).

We recommend that proposed sections EX 21D(1)(a)(ii) and EX 21E(2)(b)(ii) of the Income Tax Act (clause 123) be removed. This amendment would ensure that consolidation for the purposes of the active business test would be allowed only for CFCs that were liable to tax in the same jurisdiction.

We also recommend amending proposed section EX 21D(1)(c) of the Income Tax Act (clause 123) to clarify that taxpayers would not be required to produce consolidated financial accounts in order to group CFCs for the purpose of the tax-based active business test.

Personal services income

We recommend amendments that provide that income from personal services which are not essential support for a product supplied by the CFC are attributed, but then disregarded for the purposes of the active business test (clauses 25, 66, 119, and 123). These amendments would ensure that entities that were set up to shelter personal services income earned by New Zealand residents from New Zealand taxation would always be subject to attribution on that income, but would still be able to qualify as a non-attributing active CFC in respect of their other income. We considered recommending that a CFC fail to pass the active business test if it received any income from personal services, but considered that the cost for businesses to comply with such a measure would be too great.

Currency rules for the active business test

We recommend that proposed section EX 21 of the Income Tax Act (clause 122) be amended so that the currency conversion rules in existing section EX 21(4) would also apply to section EX 21D. The effect of this recommendation would be that, for the purposes of the tax-based active business test, taxpayers would be given the option of calculating the gain in a foreign currency and converting it into New Zealand dollars in accordance with the rules applicable to section EX 21. In the bill as introduced, taxpayers would instead be required to use the functional currency of the CFC concerned, but we consider that more flexibility is desirable. This amendment would also reduce fiscal risk and ensure more consistency between the calculation of

passive income in the tax-based active business test and in attribution of income.

Attributable income

Under the proposed rules, if a CFC failed the active business test, its passive income must be attributed to the New Zealand shareholders. We recommend that a royalty payment received by an upper-tier CFC from a lower-tier CFC be treated as active income, as long as the royalty payment was derived from a non-related third party (section EX 20B(5)(d), clause 119). We acknowledge that there might be valid commercial reasons for using a CFC as a vehicle for repatriating the third-party royalty payments to the New Zealand resident company, for example, where a company had structured itself in such a way that its intellectual property was held in a separate subsidiary.

We recommend amending proposed sections EX 20B(5)(c), (7)(c), and (12)(a) of the Income Tax Act (clause 119) and the definition of “associated non-attributing active CFC” under proposed section YA 1 (clause 408). These amendments would allow an active CFC to pay royalties, interest, and rent to an associated CFC (such as a holding company) without the associated CFC having to recognise any passive income only if the CFC and the associated CFC were liable for tax in the same jurisdiction. This would prevent the possibility that income of an active business might not be taxed in any jurisdiction. For the same reason, we recommend amending proposed section EX 20B(7)(a) and paragraph (b) of the Income Tax Act (clause 119) to ensure that the exemption for rent from property in the CFC’s jurisdiction would be available only to CFCs that were liable to tax in the same jurisdiction.

We recommend amending proposed section EX 20B(3)(k) of the Income Tax Act (clause 119) to clarify the policy intent, which is that passive income should include income derived from the disposal of revenue account property held by a CFC that is used to derive attributable income.

We recommend amending proposed section EX 20B(3) so that income from the disposal of share options held on revenue account would be treated as an attributable CFC amount. We note that this would be consistent with the treatment of income from the disposal

of shares held on revenue account, as provided for in proposed section EX 20B(3)(i).

Net attributable CFC income or loss

We recommend allowing a full deduction for the interest paid by a CFC for a loan that is on-lent to associated CFCs (clause 119). Without this amendment, the rules on interest expenditure incurred by CFCs (sections EX 20C to EX 20E) would mean that multinational companies controlled from New Zealand could be liable for more tax if they borrowed loans for the group and on-lent them to operating subsidiaries than if their operating subsidiaries borrowed directly.

We recommend amendments to the rules for excessively debt-funded CFCs in clause 119 (proposed sections EX 20D and EX 20E of the Income Tax Act), to reflect the policy intent of these provisions. It is intended that, when a CFC is excessively debt-funded, its interest deductions should be capped at the amount that would be determined by apportionment by reference to the assets of all the CFCs of the interest holder. Therefore, if a CFC with mainly attributable assets were excessively debt-funded, interest deductions would be limited by reference to the offshore asset mix of the group as a whole.

Interest allocation rules

In the bill as introduced, the proposed interest allocation rules have features intended to mitigate any adverse effects of the provisions on SMEs. For example, there is a minimum threshold of \$250,000 for interest deductions, below which the interest allocation provisions would not apply (proposed section FE 5(1B)(b)(i) of the Income Tax Act, clause 158).

We recommend that the minimum threshold for interest deductions be raised to \$1 million. We also recommend that the impact of the interest allocation rules be mitigated for firms that breach the 75-per-cent-debt-percentage safe harbour and have interest deductions of between \$1 million and \$2 million. These changes would be achieved by the proposed amendments to section FE 6 (clause 159). These extensions of the concessions are recommended as a result of discussions between our specialist advisers, the Inland Revenue Department, and accounting firms. We understand that they are designed to

mitigate much of the adverse effect of the interest allocation provisions on SMEs as they expand overseas.

Foreign dividend exemption

We recommend that fixed-rate foreign dividends and deductible foreign dividends be treated as non-exempt dividends (clause 32), rather than as interest or financial arrangement income, as proposed in the bill as introduced. We consider that, if our recommendation is not adopted, compliance costs could be increased and existing commercial arrangements jeopardised.

Transitional and consequential matters

To reduce compliance costs and make the rules easier to apply, we recommend that the transitional rules for historical losses and historical foreign tax credits (clauses 220, 220B, and 253) be amended.

To reduce complexity, we recommend that there be no requirement for historical losses and historical foreign tax credits to be used first against non-attributable income or notional tax on such income. To reduce compliance costs, taxpayers would be allowed to elect to convert all historical losses and historical foreign tax credits into new losses and credits, using figures from the two preceding years, subject to certain constraints. Such an election would be irrevocable, would be made on a jurisdiction-by-jurisdiction basis, and would apply to all New Zealand companies in the same wholly-owned group. At any time, a taxpayer would be allowed to elect not to carry forward historical losses and credits from a particular jurisdiction.

In addition, taxpayers would be able to use information from CFC accounts for the purposes of calculating the appropriate reduction in historical losses and credits, rather than being required to calculate the old measure of branch equivalent income for entities covered by the active income exemption. This would further reduce compliance costs.

Repeal of the grey list exemption

We support the repeal of the grey list exemption. We considered carefully whether this exemption should be retained, as on its face it is a simple and straightforward way of dealing with the passive income of

CFCs. However, New Zealand and the eight grey-list countries all have different tax treatments for passive income. We are therefore concerned that, if the grey list exemption were retained, there would be a high risk of taxpayers using various structures or instruments to avoid tax on passive income. We do not consider it feasible for the Inland Revenue Department to allocate resources to keeping continuous watch on the tax arrangements of these other jurisdictions.

Regarding the repeal of the grey list exemption, we recommend only one minor amendment, to correct a drafting error in clause 425.

Taxation of life insurance business

This bill would introduce new rules for the taxation of life insurance business in New Zealand. These new rules are designed to tax life-risk business on actual profits in a manner similar to the way that other businesses are taxed, and extend the tax benefits of the PIE rules to all savers in life insurance products. Under the proposed new rules, life insurers would be taxed on two bases: a shareholder base (representing income derived for the benefit of shareholders), and a policyholder base (representing income derived for the benefit of policyholders).

We have considered issues arising from the proposed provisions for the taxation of life insurance business, such as the appropriateness of the application date, the allocation of life-insurance income and expenditure between shareholder and policyholder bases, the calculation of various reserves, the allocation of income in relation to participating policies, the use of actuarial concepts (particularly for the application of the premium smoothing reserve), and the coverage of the transitional rules. In view of these issues, we recommend a number of amendments to make the proposed provisions clearer and more flexible.

Bases of taxation

We recommend an amendment to section EY 20 of the Income Tax Act (clause 143) and the inclusion of new section DR 2 (clause 68) to clarify that all direct and indirect expenditure incurred by a life insurer would be deductible in the shareholder base. In our view, new section EY 20 as introduced could be taken to imply that some expenditure incurred by the life insurer but not directly incurred in

relation to the gross income on the shareholder base might not be deductible. This would be contrary to the policy intent.

Reserves

We recommend amendments to proposed sections CR 4 and DW 4 of the Income Tax Act (clauses 29 and 79 respectively) to provide that, in relation to non-life insurance policies (such as insurance policies for disability income protection), life insurers are able to claim a deduction for movements in the outstanding claims reserve. Under the bill as introduced, life insurers could make such a deduction in relation to life insurance policies, and general insurers could also do so in relation to general insurance policies. Our recommended amendment would ensure consistent tax treatment of all life insurance and general insurance policies.

Transitional rules

We recommend amendments to ensure that, under section OA 7(1) of the Income Tax Act, where a life insurer has overpaid tax on the life office base under the existing rules, the overpayments would be carried into the new rules and could be used to satisfy tax liabilities arising on both shareholder and policyholder bases, whether or not there was a balance in the company's imputation credit account. In particular, we recommend amendments to clause 225 to provide that the new rules would not apply to old credit balances; to clause 372 to ensure that policyholder credits would be brought forward correctly (as imputation credits) into the new rules; and to the transitional part-year rules contained in clause 140. In our view, it would be equitable to allow these overpayments to be used to satisfy both shareholder-base and policyholder-base tax liabilities. These amendments are also intended to address concerns raised by some members of the industry.

We recommend an amendment to clause 143 to ensure that the rules for the transitional tax treatment of term insurance products, as contained in section EY 30 of the Income Tax Act, apply to life insurance policies that are reinstated after the application date of the proposed life insurance provisions, provided that they were originally entered into before that date, had lapsed for no more than 90 days before their reinstatement, and the insurer concerned did not treat the reinstated

policy as a new policy. We consider that such reinstated policies should not be treated differently from policies that were entered into before the application date of the proposed life insurance provisions and had never lapsed. In addition, we recommend an amendment to section EY 30 (clause 143) which provides that transitional rules would apply to master policies on a look through basis, as they apply to other policies.

General insurance and risk margins

The bill introduced amendments to clarify that general insurers could claim a tax deduction for movements in the outstanding claims reserves calculated under the New Zealand International Financial Reporting Standards (IFRS). We recommend further amendments to make the provisions in question clearer and more taxpayer-friendly. We recommend amendments to clauses 29(2) and 79(2) to allow an insurer to opt not to apply the proposed provisions for movements in its general insurer's outstanding claims reserve retrospectively from the 2009 income year. The bill as introduced does not provide such a choice. We were advised by the Inland Revenue Department that allowing these provisions to be applied retrospectively is intended to benefit the taxpayers, as they clarify that movement in reserves calculated for the purposes of IFRS could be deducted for tax purposes. However, we are concerned that applying these provisions retrospectively might not be taxpayer-friendly where a general insurer has filed income tax returns adopting a different approach for tax purposes than for accounting purposes. Therefore, we consider it desirable to allow taxpayers to choose whether to apply these provisions retrospectively.

Payroll giving

We recommend an amendment to clause 447 to make it clear that payroll donations would be held in trust for employees until those donations were transferred to the relevant recipient organisations. This amendment addresses our concern about the risk that employers might fail to transfer employees' payroll donations for any reason. Our recommended amendment would give employees the right to claim compensation or redress from their employer for any payroll donations that had not been transferred.

Tax treatment of petroleum mining

The bill includes provisions to amend the tax treatment of petroleum mining. They seek to ensure that New Zealand receives its proper share of the benefits from New Zealand petroleum resources, and to remove disincentives to investment in oil and gas exploration and development in New Zealand. We recommend some amendments to clarify the new rules, such as an amendment to new section DT 1A(2) of the Income Tax Act in clause 71 to clarify that petroleum mining losses incurred through a foreign branch could be offset against petroleum mining income from any country other than New Zealand.

Issues not leading to amendments

We considered whether there should be any change to the law for offshore branch operations of petroleum mining companies, especially when such a change would compromise the operations of existing offshore branches. In the bill as introduced, the proposal to ring-fence foreign branch expenditure would apply only to expenditure incurred on or after 4 March 2008, so the tax treatment for expenditure incurred before that date would not be changed.

However, we understand that the proposal would affect the tax treatment of future foreign branch expenditure incurred pursuant to binding contracts entered into before 4 March 2008. While grandparenting provisions could be introduced to exempt such expenditure from the proposed tax rules, we were advised that this would not be desirable, as the fiscal costs involved could be very large since contracts for petroleum exploration are often open-ended.

We therefore recommend that the proposal to ring-fence foreign branch expenditure proceed without exempting future foreign branch expenditure incurred pursuant to binding contracts entered into before 4 March 2008. We note that some petroleum mining companies might have difficulty fulfilling their obligations under these binding contracts when this bill is enacted, but emphasise that this should be an issue only where expenditure is incurred pursuant to a binding contract entered into before 4 March 2008. The Inland Revenue Department has assured us that it intends to monitor this situation, and may consider recommending legislation in future to remedy any unintended consequences.

Tax pooling rules

The bill introduces changes that would extend the tax pooling regime to additional tax payable as a result of a reassessment for all types of tax. We recommend some amendments regarding access to funds in tax pooling accounts, the depositing of funds, the transfer of funds, interest on deposits, and the application date of the tax pooling provisions.

We recommend that proposed section RP 17B of the Income Tax Act in clause 405 be amended so that a taxpayer who owed additional tax as a result of the resolution of his or her dispute with the Commissioner of Inland Revenue could access funds from a tax pooling intermediary within 60 days of the date of the resolution. We believe this would provide sufficient time for taxpayers who initiated dispute proceedings against the Inland Revenue Department to make financial arrangements for any additional tax payable as a result of the resolution of their disputes.

We recommend amending new section RP 17B(1) of the Income Tax Act in clause 405 to reflect the extension of the tax pooling rules to reassessments of all taxes, and to enable any person, not just provisional taxpayers, to deposit money into a tax pooling account. We also recommend amending proposed section RB 17B(1) of the same Act to clarify that the amount held in a tax pooling account on behalf of a person might be refunded to the person, or used to satisfy the person's liability for terminal tax, provisional tax, or an increased amount of tax resulting from a reassessment, voluntary disclosure, or the resolution of a dispute.

We recommend that clause 406 be amended to enable an intermediary to instigate the transfer of tax pooling funds between intermediaries when one of them starts or ceases its business. The clause as drafted would incur an unnecessary compliance cost because intermediaries would have to arrange for each taxpayer who had money invested in the pool to request separately a transfer to another intermediary. For clarification, we recommend that section 120 OE(1) of the Tax Administration Act 1994 be amended to specify that interest is payable on deposits in a tax pooling intermediary's account from the date on which the deposits were made to the date on which the amount is refunded or transferred.

Issues not leading to amendments

We considered at length whether taxpayers should be allowed to access tax pooling funds to make tax payments, such as regular GST payments, other than provisional tax payments. We concluded that taxpayers should not be allowed to access tax pooling funds to make regular tax payments, where the amount of tax payable is certain. We consider that if tax pooling were allowed in these circumstances, the Crown would have to bear all the risk of taxpayers defaulting on tax payments. Under the tax pooling regime, if a taxpayer failed to pay the tax pooling intermediary concerned within a certain period, the intermediary would be entitled to withdraw from the tax pool the amount of tax payable on behalf of the taxpayer, and therefore would not bear the risk of the taxpayer's default. The Inland Revenue Department would then have to begin recovery action for the overdue amount. In our view, it would not be prudent for the Government to carry all the risks of non-payment of tax.

Income tax treatment of emissions trading units

The bill contains provisions for the income tax treatment of transactions under the Emissions Trading Scheme, which was introduced by the Climate Change Response (Emissions Trading) Amendment Act 2008. We recommend some changes to improve the operation of these provisions.

Issues not leading to amendments

We considered whether the legislation should be amended to provide expressly for deductions for emissions liability accruals. We were advised that it is clear that a properly calculated amount for an emissions liability at the end of an income year is deductible, even when the requirement to surrender the relevant emissions units arises in a subsequent year. While we accept, on advice, that the legislation does not need to be amended to clarify this point, we believe it would be useful for the Inland Revenue Department to give taxpayers some guidance on deductibility for emissions liability accruals. We expect the Inland Revenue Department to issue guidance to taxpayers on this matter, and have received assurance that it will be addressed in a Tax Information Bulletin shortly after this bill is passed.

GST treatment of transactions relating to emissions units

We recommend deleting provisions regarding the GST treatment of transactions relating to emissions units (clause 524). These provisions have been superseded by the GST amendments introduced by the Climate Change Response (Emissions Trading) Amendment Act 2008.

GST treatment for non-Kyoto emissions units

We recommend that the existing zero-rating GST treatment of Kyoto emissions units be extended to include non-Kyoto emissions units with effect from 1 April 2010. We consider that it would be confusing to apply different GST treatments to different types of emissions units.

Non-disclosure right

We recommend amendments to clauses 437 to 441 to provide that the new provisions for non-disclosure rights would apply to current disputes that had not advanced to the first conference required under the High Court rules or the Taxation Review Authority regulations as at the date of Royal assent, as well as future disputes as provided for in the bill as introduced. We consider that, where a challenge has not yet advanced to conference stage, the non-disclosure right can be applied effectively, regardless of the date upon which the challenge was filed. We see no reason that the new non-disclosure right should not be applied in these conditions.

However, we consider it desirable for taxpayers to be subject to similar non-disclosure rights in similar circumstances. We therefore recommend amendments to clauses 437 to 441 to provide that the non-disclosure right will not apply to challenges that raise substantially similar issues already being considered by the courts.

Tax treatment of reimbursements and honoraria paid to volunteers

Proposed section CW 62B of the Income Tax Act in clause 39 provides that reimbursement payments that are based on actual expenses incurred by volunteers in undertaking voluntary activities will be

treated as exempt income, if they are made separately from honoraria, which are treated as schedular payments subject to the PAYE rules.

We recommend amending proposed section CW 62B of the Income Tax Act (clause 39) to provide that, where a payer makes a combined payment of reimbursement and honorarium to a volunteer, the payer is not required to treat the whole payment as a schedular payment and withhold tax, as long as the payer can identify clearly which portion of the payment is honorarium and which portion is reimbursement. In this case, the portion of the payment that is reimbursement would be treated as exempt income, while the portion of the payment that is honorarium would be treated as a schedular payment and subject to withholding tax. The volunteer would have to include the honorarium in their tax return. We consider that this amendment would reduce the compliance costs for both the volunteers and the organisations that pay them, as it would allow organisations to arrange payments to volunteers more flexibly.

We recommend that the requirement for a “volunteer” to be a New Zealand resident, as defined in section CW 62B(4) of the Income Tax Act (clause 39), be removed.

We asked the Inland Revenue Department to clarify the tax status of people who are in New Zealand subject to the conditions of a temporary entry class visa. The department advised us that non-residents² who earn New Zealand-sourced income are required to furnish a return of income for a tax year (sections 33A(2) and 33A(3) of the Tax Administration Act). At present, if a non-resident receives a reimbursement for voluntary services, the payment must be declared as income and the expenditure incurred claimed as a deduction. The amendment that we recommend would ensure that filing a tax return is no longer necessary in such circumstances, unless there is other income.

² For tax purposes, a non-resident is a person who stays in New Zealand for 183 days or fewer in any 12-month period.

General recommendations regarding the bill

Special bulletin and Tax Information Bulletin

We consider it vital that tax law be clear and accessible for taxpayers, and considered whether further amendment for certainty and clarity would be desirable in particular areas of the bill. We were advised that, in some areas, it would not be possible to recommend amendments for clarity or certainty without posing a risk to the tax base.

We sought assurance from the Inland Revenue Department that it would provide clear guidance to taxpayers in these areas. The department assured us that it would publish a special report explaining some of the new rules introduced by this bill as soon as practicable after the bill is passed, and that this information would also be set out in a Tax Information Bulletin by the end of this year. The special report and the Tax Information Bulletin will be free and available on the department's website.

We have asked the department to explain the following issues in the special report and upcoming bulletin as comprehensively as possible:

- active income exemption for royalties
- the interest allocation rules, particularly in relation to the measurement of debt and assets of associated persons
- the non-prescriptive and voluntary nature of the payroll giving scheme
- the donee organisation list for the administration of the payroll giving scheme
- record-keeping requirements for payroll giving
- the definition of “regularly engaged” in relation to the exemption for the development of intellectual property by a CFC
- the definition of “linked to New Zealand” in relation to intellectual property acquired by a CFC
- the definition of “person” in the context of partnerships
- deductibility of emissions liability accruals
- tax treatment of non-resident partners
- process for correcting error in PAYE resulting from the extinguishment of the payroll giving tax credit
- the application of the penalty and use-of-money interest rules to payroll giving

- the new design costs rule for the research and development tax credits
- corroborating material for the purposes of claiming overpaid tax on past allowances

We encourage the Inland Revenue Department to publish this explanatory material as quickly as possible, and expect the material to include working examples to demonstrate the operation of the new rules wherever possible.

Review of the PIE rules rewrite

We note that the bill would make remedial amendments to the tax rules for PIEs to ensure that they reflect the intended policy. It also rewrites the PIE rules in the plain-language drafting style that has been adopted for other parts of the Income Tax Act. As most of the amendments in the bill are technical in nature, we do not make any comment on them, but comment only on the general application date of the rewritten PIE rules.

However, we are concerned that unintended consequences could result from this rewrite of the PIE provisions. Such consequences occurred when most of the income tax legislation was rewritten in plain-language drafting style in the Income Tax Act. As a result, the Rewrite Advisory Panel was given the tasks of considering submissions on the unintended legislative changes, and recommending amendments to remedy them. We recommend that the panel be given the same tasks in relation to the PIE provisions contained in this bill.

Inland Revenue Department website

We note that the payroll giving scheme requires donations to be given to donee organisations. When we tested the accessibility of information about donee organisations, we were disappointed that this information did not appear to be readily available or easily accessible to the public.

We understand that changes are to be made to the Inland Revenue Department's website to make this information more accessible. We encourage the department to complete this work as soon as possible, and to communicate the changes to employers and employees. We would like to see information on these changes also set out in the

special report and the Tax Information Bulletin that the department has assured us it will be publishing regarding this bill.

Appendix

Committee process

The Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill was referred to the previous committee on 6 August 2008. The closing date for submissions was 15 January 2009. We received and considered 78 submissions from interested groups and individuals. We heard 51 submissions.

We received advice from the Inland Revenue Department, the Treasury, our independent specialist adviser on tax issues, Therese Turner (Chartered Accountant), and an independent specialist adviser on legislative drafting, David McLay (Barrister). We would like to extend our thanks to all who provided assistance to us in our considerations on this bill.

Committee membership

Craig Foss (Chairperson)

Amy Adams

David Bennett

John Boscawen

Brendon Burns

Hon David Cunliffe

Raymond Huo

Rahui Katene

Peseta Sam Lotu-Iiga

Stuart Nash

Dr Russel Norman

Chris Tremain

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peter Dunne

Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill

Government Bill

Contents

		Page
1	Title	38
2	Commencement	42
Part 1		
Amendments to Income Tax Act 2007		
3	Income Tax Act 2007	48
4	Income tax liability of person with schedular income	48
5	Withholding liabilities	48
6	Other obligations	49
7	Disposal: land used for landfill, if notice of election	49
8	Section CB 26 replaced	49
	CB 26 Disposal of certain shares by portfolio investment entities	50
8B	Section CB 27 repealed	51
9	Heading and section CB 36 replaced	52
Emissions units under Climate Change Response Act 2002		
	CB 36 Disposal of emissions units	52
9B	New section CC 8B inserted	54
	CC 8B Certain commercial bills: non-resident holders	54
10B	What is a transfer of value?	55
11	When is a transfer caused by a shareholding relationship?	56
12	Returns of capital: off-market share cancellations	56

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

12B	Treasury stock acquisitions	56
13	Property made available intra-group	57
14	Employee benefits	57
15	Foreign investment fund income	58
17	Available subscribed capital (ASC) amount	59
18	Available capital distribution amount	60
18B	Heading and sections CD 45 to CD 52 repealed	61
19	Prevention of double taxation of share cancellation dividends	61
20	Amounts derived in connection with employment	62
21	Meaning of expenditure on account of an employee	62
22	Benefits, pensions, compensation, and government grants	63
23	New subpart CO inserted	63
	Subpart CO—Income from voluntary activities	
	CO 1 Income from voluntary activities	63
24	Section CP 1 replaced	64
	CP 1 Attributed income of investors in multi-rate PIEs	64
25	When attributed CFC income arises	64
26	When FIF income arises	66
26B	Section CQ 7 repealed	66
27	Heading to subpart CR replaced	66
28	Sections CR 1 and CR 2 replaced	66
	CR 1 Policyholder base income of life insurer	67
	CR 2 Shareholder base income of life insurer	67
29	New section CR 4 added	69
	CR 4 Income for general insurance outstanding claims reserve	69
29B	Withdrawals	70
29C	Exclusions of withdrawals of various kinds	71
29D	Exclusion of withdrawal on partial retirement	71
29E	Exclusion of withdrawal when member ends employment	71
30	Section CV 10 repealed	71
31	Section CW 3B repealed	72
32	Dividend derived by company from overseas	73
	CW 9 Dividend derived from foreign company	73
33	Proceeds of share disposal by qualifying foreign equity investor	75
33B	Dividends paid by qualifying companies	78
34	Expenditure on account, and reimbursement, of employees	78
35	New sections CW 17B and CW 17C inserted	79

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

	CW 17B Relocation payments	79
	CW 17C Payments for overtime meals and certain other allowances	81
36	Section CW 37 repealed	83
37	Local and regional promotion bodies	83
38	Charities: business income	83
38B	New section CW 59C inserted	83
	CW 59C Life reinsurance outside New Zealand	83
39	New section CW 62B inserted	84
	CW 62B Voluntary activities	84
40	Meaning of fringe benefit	86
40B	Contributions to superannuation schemes	86
42	Benefits provided instead of allowances	87
43	Section CX 28 replaced	87
	CX 28 Accommodation	88
44	Section CX 39 repealed	88
45	Government grants to businesses	88
45B	Section CX 48B repealed	89
46	New heading and section CX 48C inserted	89
	<i>Government funding of film and television</i>	
	CX 48C Government funding additional to government screen production payments	89
47	New heading and section CX 48D inserted	90
	<i>Research and development</i>	
	CX 48D Tax credits for expenditure on research and development	90
48	New heading and section CX 51B inserted	91
	<i>Emissions units under Climate Change Response Act 2002</i>	
	CX 51B Disposal of pre-1990 forest land emissions units	91
49	Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund	91
50	Section CX 55 replaced	91
	CX 55 Proceeds from disposal of investment shares	92
50B	Portfolio investor allocated income and distributions of income by portfolio investment entities	94
51	Section CX 56 replaced	94
	CX 56 Attributed income of certain investors in multi-rate PIEs	94
	CX 56B Distributions to investors in multi-rate PIEs	95

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

	CX 56C Distributions to investors by listed PIEs	95
52	Section CX 57 replaced	96
	CX 57 Credits for investment fees	96
52B	New section CZ 9B inserted	96
	CZ 9B Available capital distribution amount: 1988 to 2010	96
52C	Determining tax liabilities	98
53	Interest: not capital expenditure	99
54	Interest: most companies need no nexus with income	99
55	Interest: money borrowed to acquire shares in group companies	99
55B	New section DB 10B inserted	99
	DB 10B Interest or expenditure connected to stapled debt security	100
56	Cost of revenue account property	100
56B	Charitable or other public benefit gifts by company	100
57	Property misappropriated by employees or service providers	101
57B	Portfolio investment entities: zero-rated portfolio investors and allocated losses	101
58	Section DB 53 replaced	102
	DB 53 Attributed PIE losses of certain investors	102
59	Section DB 54 replaced	102
	DB 54 Treatment of credits for investment fees	103
60	Expenditure incurred in deriving exempt dividend	103
61	Heading and section DB 60 replaced	104
	<i>Emissions units and liabilities under Climate Change Response Act 2002</i>	
	DB 60 Acquisition of emissions units	104
61B	New section DB 61 added	105
	DB 61 Liabilities for emissions	105
61C	Contributions to employees' superannuation schemes	105
61D	Criteria for approval of share purchase schemes: before period of restriction ends	105
61E	Employment-related activities	106
61F	Interpretation: reimbursement and apportionment	106
62	Heading to subpart DF	106
63	Government grants to businesses	106
64	Payments for social rehabilitation	107
65	New section DF 5 added	107

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

	DF 5 Government funding additional to government screen production payments	107
66	When attributed CFC loss arises	108
67	When FIF loss arises	109
67B	Section DO 11B repealed	110
67C	Forestry business on land bought from the Crown, Maori owners, or holding company: no deduction	110
68	Sections DR 1 to DR 3 replaced	110
	DR 1 Policyholder base allowable deduction of life insurer	112
	DR 2 Shareholder base income of life insurer	112
	DR 3 Life reinsurance outside New Zealand	113
	DR 4 Life insurers' claims reserves	113
69	Film production expenditure	114
70	Meaning of film reimbursement scheme	114
71	New section DT 1A inserted	115
	DT 1A Ring-fenced allocations	115
72	Arrangement for petroleum exploration expenditure and sale of property	116
73	Petroleum development expenditure	118
74	Disposal of petroleum mining asset to associate	118
75	Amount written off by holding company	119
76	Transfer of expenditure to master fund	119
77	Carry forward of expenditure	121
77B	New section DV 4B inserted and replaced	122
	DV 4B Carry forward of expenditure by member funds investing in portfolio investment entities	122
	DV 4B Carry forward of expenditure by member funds investing in portfolio investment entities	122
78	Investment funds: transfer of expenditure to master funds	123
78B	Formula for calculating maximum deduction	124
78C	Carry forward of expenditure	125
78D	Maori authorities: donations	125
79	New section DW 4 added	127
	DW 4 Deduction for general insurance outstanding claims reserve	127
80	Section DX 2 repealed	129
80B	Prepayments	129
81	Meaning of trading stock	129
82	Low-turnover valuation	130
83B	New heading and section EC 26B inserted	130

***Partnerships: cost price and national standard
cost scheme***

	EC 26B Entering partners' cost base	130
84	Valuation of excepted financial arrangements	133
85	New section ED 1B inserted	134
	ED 1B Valuation of emissions units issued for zero price	136
85B	Pool method: calculating amount of depreciation	139
86	Economic rate for plant, equipment, or building, with high residual value	139
87	Annual rate for item acquired in person's 1995–96 or later income year	139
87B	Meaning of adjusted tax value	140
87C	Employer's superannuation contribution tax	140
88	Section EG 3 repealed	140
89	Expenditure incurred in acquiring film rights in feature films	140
90	Expenditure incurred in acquiring film rights in films other than feature films	140
91	Film production expenditure for New Zealand films having no large budget screen production grant	141
92	Film production expenditure for other films having no large budget screen production grant	141
93	Section EJ 12 replaced	141
	EJ 12 Petroleum development expenditure: default allocation rule	144
	EJ 12B Petroleum development expenditure: reserve depletion method	144
94	Relinquishing petroleum mining permit	146
95	New sections EJ 13B and EJ 13C inserted	146
	EJ 13B Dry well drilled	146
	EJ 13C Well not producing	147
96	Disposal of petroleum mining asset	147
97	Sections EJ 19 and EJ 20 replaced	148
	EJ 20 Meaning of petroleum mining development	148
98	What is an excepted financial arrangement?	148
99B	What spreading methods do	150
99C	Applying IFRSs to financial arrangements	150
100	IFRS financial reporting method	151
101	Determination alternatives	151
102	Expected value method	153
103	Modified fair value method	154
103B	Mandatory use of some determinations	155

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

104	Mandatory use of yield to maturity method for some arrangements	155
105B	New section EW 21 inserted	156
	EW 21 Financial reporting method	156
105C	Default method	156
105D	Failure to use method for financial reporting purposes	156
106B	Consistency of use of IFRS method	157
107	Change of spreading method	157
108	When calculation of base price adjustment required	158
108B	Base price adjustment formula	158
115	Meaning of controlled foreign company	160
115B	Direct control interests	160
115C	Direct income interests	161
116	Associates and 10% threshold	161
116B	New section EX 18A inserted	161
	EX 18A Scheme for finding person's attributed CFC income or loss	161
117	Formula for calculating attributed CFC income or loss	163
118	Taxable distribution from non-complying trust	163
119	New heading and sections EX 20B to EX 20E inserted	176
	<i>Attributable CFC amount and net attributable CFC income or loss</i>	
	EX 20B Attributable CFC amount	176
	EX 20C Net attributable CFC income or loss	185
	EX 20D Adjustment of fraction for excessively debt funded CFC	188
	EX 20E Relative debt-asset ratio for CFC	191
120	Attributable CFC amount	193
121	Heading repealed	193
122	Branch equivalent income or loss: calculation rules	194
123	New heading and sections EX 21B to EX 21E inserted	197
	<i>Non-attributing active CFCs</i>	
	EX 21B Non-attributing active CFCs	198
	<i>Tests for non-attributing active CFCs</i>	
	EX 21C Applicable accounting standards for section EX 21E	199
	EX 21D Non-attributing active CFC: default test	206
	EX 21E Non-attributing active CFC: test based on accounting standard	212
124	Heading and section EX 22 replaced	227

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

Non-attributing Australian CFCs

	EX 22 Non-attributing Australian CFCs	227
125	Section EX 23 repealed	228
126	Change of CFC's balance date	229
127	Attributing interests in FIFs	229
127B	Direct income interests in FIFs	229
128	Exemption for ASX-listed Australian companies	229
128B	Exemption for Australian unit trusts with adequate turnover or distributions	230
129	CFC rules exemption	230
130	Grey list company owning New Zealand venture capital company: 10-year exemption	230
131	Exemption for employee share purchase scheme of grey list company	230
132	Limits on choice of calculation methods	231
133	Section EX 47 replaced	232
	EX 47 Method required for certain non-ordinary shares	232
133B	Branch equivalent method	233
134	Comparative value method	233
135	Fair dividend rate method: usual method	234
136	Fair dividend rate method for unit-valuing funds and others by choice	236
137	Cost method	238
138	Additional FIF income or loss if CFC owns FIF	238
139	Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method	239
139B	Limits on changes of method	240
139C	Changes in application of FIF exemptions	241
139D	New section EX 66B inserted	241
	EX 66B Entities ceasing to be FIFs	241
140	Sections EY 1 to EY 5 replaced	242
	EY 1 What this subpart does	245
	EY 2 Policyholder base	246
	EY 3 Shareholder base	247
	EY 4 Apportionment of income of particular source or nature, and of tax credits	248
	EY 5 Part-year tax calculations	249
141	Section EY 6 replaced	251
	EY 6 Actuarial advice and guidance	251
141B	Meaning of claim	251
141C	Superannuation schemes providing life insurance	252
142	Meaning of life reinsurance	252

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

143	Sections EY 15 to EY 47 replaced	274
	<i>Policyholder base</i>	
	<i>Non-participation policies</i>	
EY 15	Policyholder base income: non-participation policies	274
EY 16	Policyholder base allowable deductions: non-participation policies	275
	<i>Profit participation policies</i>	
EY 17	Policyholder base income: profit participation policies	276
EY 18	Policyholder base allowable deductions: profit participation policies	277
	<i>Shareholder base</i>	
	<i>Non-participation policies</i>	
EY 19	Shareholder base income: non-participation policies	278
EY 20	Shareholder base allowable deductions: non-participation policies	279
	<i>Profit participation policies</i>	
EY 21	Shareholder base income: profit participation policies	280
EY 22	Shareholder base allowable deductions: profit participation policies	281
	<i>Non-participation policies: reserves</i>	
EY 23	Reserving amounts for life insurers: non-participation policies	282
EY 24	Outstanding claims reserving amount: non-participation policies not annuities	283
EY 25	Premium smoothing reserving amount: non-participation policies not annuities	285
EY 26	Unearned premium reserving amount: non-participation policies not annuities	287
EY 27	Capital guarantee reserving amount: non-participation policies not annuities	288
	<i>Shareholder base other profit: profit participation policies</i>	

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

	EY 28 Shareholder base other profit: profit participation policies that are existing business	289
	EY 29 Shareholder base other profit: profit participation policies that are new business	292
	<i>Transitional adjustments and annuities</i>	
	EY 30 Transitional adjustments: life risk	295
	EY 31 Annuities	300
144	Policyholder income formula: FDR adjustment	301
145	Policyholder income formula: PILF adjustment	302
146	Non-resident life insurers with life insurance policies in New Zealand	303
147	Section EZ 31 repealed	304
148	Section EZ 32B repealed	304
148B	Income and expenditure where financial arrangement redeemed or disposed of	304
148C	New section EZ 52B added	304
	EZ 52B Consistency of use of IFRS method: <i>Determination G3</i> and 2009–10 income year	304
149	New headings and sections EZ 53 to EZ 62 added	304
	<i>Life insurance transitional adjustment: expected death strain</i>	
	<i>Expected death strain formulas</i>	
	EZ 53 How expected death strain is calculated	305
	EZ 54 Expected death strain formulas	305
	EZ 55 Expected death strain formulas: option when more than 1 life insured	307
	EZ 56 Expected death strain formula (life): when annuity payable on death	307
	EZ 57 Expected death strain formulas: when annuity payable on survival to date or age specified in policy	308
	EZ 58 Expected death strain formula (life): when partial reinsurance exists	309
	<i>Actuarial reserves</i>	
	EZ 59 Meaning of actuarial reserves	309
	EZ 60 Actuarial reserves: calculation	310
	<i>Entry to new life insurance regime: transitional and miscellaneous provisions</i>	
	EZ 61 Allowance for cancelled amount: spreading	312

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

	EZ 62 Reinsurance transition: life financial reinsurance may be life reinsurance	313
150	New section EZ 63 inserted	316
	EZ 63 Disposal and acquisition upon entry	316
151	Recharacterisation of certain debentures	317
151B	New section FA 2B inserted	318
	FA 2B Stapled debt securities	318
151C	Financial arrangements rules	320
153	Transfer at market value	321
153B	Property transferred to charities or to close relatives and others	321
154	What this subpart does	321
155	When this subpart applies	322
156	Section FE 3 replaced	323
	FE 3 Interest apportionment for individuals	323
157	Some definitions	324
158	Thresholds for application of interest apportionment rules	325
159	Apportionment of interest by excess debt entity	326
160	Calculation of debt percentages	328
161	Financial arrangements entered into with persons outside group	329
162	Consolidation of debts and assets	330
163	Total group debt	331
164	Total group assets	333
165	Measurement of debts and assets of worldwide group	334
166	Banking group's New Zealand net equity	335
167	New Zealand group for excess debt entity that is a company	337
168	Identifying New Zealand parent	338
169	Section FE 28 replaced	340
	FE 28 Identifying members of New Zealand group	340
170	Section FE 29 replaced	342
	FE 29 Combining New Zealand groups owned by natural persons and trustees	342
171	Ownership interests in companies outside New Zealand group	342
172	Worldwide group for corporate excess debt entity	343
173	New sections FE 31B and FE 31C inserted	344
	FE 31B Worldwide group for excess debt outbound companies	344
	FE 31C CFCs in worldwide group for natural persons or trustees described in section FE 2(1)(g)	345

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

174	Section FE 32 replaced	345
	FE 32 Joint venture parties	345
174B	Identifying members of New Zealand banking group	346
175	Subpart FF repealed	347
176	Consolidation rules	347
177	Some general rules for treatment of consolidated groups	348
178	Heading and sections FM 24 to FM 26 repealed	348
178B	Eligibility rules	349
179	Imputation rules	349
179B	Trans-Tasman imputation groups and resident imputation subgroups	349
179C	Amortising property	350
180	Treatment of interest payable under debentures issued before certain date	350
180B	New sections GB 15B and GB 15C inserted	350
	GB 15B Supplies affecting default test for non-attributing active CFC	350
	GB 15C Arrangements related to accounting test for non-attributing active CFC	351
181	Attribution rule for income from personal services	352
182	Interpretation of terms used in section GB 27	352
184	Section GB 39 repealed	353
185	Arrangements involving money not at risk	354
186	Defined terms for sections GB 45 and GB 46	354
186B	Disposals of trading stock at below market value	354
187	Section GC 4B repealed	355
188	Leases for inadequate rent	355
189	Insufficient amount receivable by person	355
190	Compensating arrangement: person receiving more than arm's length amount	356
191	Requests for matching treatment	356
192	Section GC 12 replaced	356
	GC 12 Effect on person's withholding obligations	357
193	New section GZ 2 inserted	357
	GZ 2 Arrangements involving cancellation of conduit tax relief credits	357
194	Shareholding requirements	358
195	New section HA 8B inserted	358
	HA 8B No CFC income interests or FIF direct income interests of 10% or more	358
195B	Limit on foreign non-dividend income	359
195C	When requirements no longer met	359

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

195D	Dividends paid by qualifying companies	360
196	Fully imputed distributions	360
197	Section HA 16 replaced	360
	HA 16 Dividends paid by qualifying companies to trustee shareholders	361
198	Credit accounts and dividend statements	361
199	Calculating qualifying company election tax	361
200	Corpus of trust	362
200B	Trustee income	362
201	Taxable distributions from non-complying and foreign trusts	362
201B	Distributions from community trusts	363
202	Who is a settlor?	363
202B	Liability of trustee as agent	364
202C	Beneficiary income of minors	364
203	Trusts and minor beneficiary rule	364
203B	Companies issuing debentures	364
203C	General provisions relating to disposals	365
203D	Disposal upon final dissolution	365
	HG 4 Disposal upon final dissolution	365
203E	Disposal of partner's interests	366
203F	Disposal of trading stock	367
203G	Disposal of depreciable property	367
203H	Disposal of financial arrangements and certain excepted financial arrangements	368
203I	Disposal of short-term agreements for the sale and purchase of property or services	368
203J	Section HG 10 replaced	369
	HG 10 Disposal of livestock	369
204	Limitation on deductions by partners in limited partnerships	370
204B	Scheme of subpart	370
205	Eligibility requirements for entities	370
206	Effect of failure to meet eligibility requirements for entities	370
206B	Meaning of investor and portfolio investor class	371
207	Investor membership requirement	371
207B	Investor return adjustment requirement: portfolio tax rate entity	372
208	Investor interest size requirement	372
209	Further eligibility requirements relating to investments	375

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

210	Unlisted company choosing to become portfolio listed company	375
211	Becoming portfolio investment entity	375
211B	Treatment of income from interest when entitlement conditional or lacking	375
212	Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period	376
213	Credits received by portfolio tax rate entity or portfolio investor proxy	376
213B	Portfolio entity formation loss	376
214	Subpart HL replaced by subpart HM	376
	Subpart HM—Portfolio investment entities	
	<i>Introductory provisions</i>	
HM 1	Outline of subpart and relationship with other Parts	376
HM 2	What is a portfolio investment entity?	378
HM 3	Foreign PIE equivalents	378
HM 4	Who is an investor?	379
HM 5	What is an investor class?	380
HM 6	Intended effects for multi-rate PIEs and investors	381
	<i>Entry rules</i>	
HM 7	Requirements	382
	<i>Requirements</i>	
HM 8	Residence in New Zealand	382
HM 9	Collective schemes	382
HM 10	Exclusion: life insurance business	383
HM 11	Investment types	383
HM 12	Income sources	383
HM 13	Maximum shareholdings in investments	384
HM 14	Minimum number of investors	385
HM 15	Maximum investors' interests	386
HM 16	Associates combined	386
HM 17	Same rights to all investment proceeds	386
HM 18	Requirements for listed PIEs: unlisted companies	387
HM 19	Requirements for listed PIEs: fully crediting distributions	388
HM 20	Re-entering as PIE: 5-year rule	388
	<i>Exceptions</i>	
HM 21	Exceptions for certain investors	388

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

HM 22	Exceptions for certain funds	390
HM 23	Exceptions for foreign PIE equivalents	391

Exit rules

HM 24	Ending of New Zealand residence	391
HM 25	When entity no longer meets investment or investor requirements	392
HM 26	Starting life insurance business	393
HM 27	When multi-rate PIE no longer meets investor interest adjustment requirements	393
HM 28	When listed PIE no longer meets crediting requirement	393
HM 29	Choosing to cancel status	393
HM 30	When foreign PIE equivalent no longer meets requirements	393

Rules for multi-rate PIEs

Introductory provisions

HM 31	Rules for multi-rate PIEs	394
HM 32	Rules for and treatment of investors in multi-rate PIEs	395
HM 33	Proxies for PIE investors	395

Attributing income to investors

HM 34	Attribution periods	396
HM 35	Determining net amounts and taxable amounts	397
HM 36	Calculating amounts attributed to investors	399
HM 37	When income cannot be attributed	400
HM 38	When superannuation fund investor has conditional entitlement	401
HM 39	New investors in existing investor classes	402
HM 40	Deductions for attributed PIE losses for zero-rated and exiting investors	402

Calculating and paying tax liability

HM 41	Options for calculation and payment of tax	403
HM 42	Exit calculation option	404
HM 43	Quarterly calculation option	405
HM 44	Provisional tax calculation option	406
HM 45	Voluntary payments	407
HM 46	Calculation process	408
HM 47	Calculation of tax liability or tax credit of multi-rate PIEs	408

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

<i>Adjusting investors' interests</i>		
HM 48	Adjustments to investors' interests or to distributions	409
<i>Using tax credits</i>		
HM 49	Tax credits: when sections HM 50 to HM 55 apply	410
HM 50	Attributing credits to investors	411
HM 51	Use of foreign tax credits by PIEs	412
HM 52	Use of foreign tax credits by zero-rated and certain exiting investors	414
HM 53	Use of tax credits other than foreign tax credits by PIEs	415
HM 54	Use of tax credits other than foreign tax credits by investors	416
HM 55	Tax credits for losses	416
<i>Prescribed and notified rates for investors in multi-rate PIEs</i>		
HM 56	Prescribed investor rates for investors generally	417
HM 57	Prescribed investor rates for certain natural person investors: 19.5%	417
HM 57B	Optional investor rates for trustees: 30%, 19.5%	418
HM 58	Prescribed investor rates for certain investors: 0%	418
HM 59	Notified rates	419
HM 60	Certain exiting investors zero-rated	421
<i>Exit levels and periods</i>		
HM 61	Exit levels for investors	421
HM 62	Exit periods	422
<i>Treatment of losses by PIEs</i>		
<i>Losses of certain multi-rate PIEs</i>		
HM 63	Use of investor classes' losses	422
HM 64	Use of land losses of investor classes	423
<i>Formation losses</i>		
HM 65	Formation losses carried forward to tax year	424
HM 66	Formation losses carried forward to first quarter	424
HM 67	When formation losses carried forward are less than 5% of formation investment value	425

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

HM 68	When formation losses carried forward are 5% or more of formation investment value: 3 year spread	425
HM 69	Maximum amount of formation losses allocated by multi-rate PIEs to investor classes	426
<i>Elections and consequences</i>		
HM 70	Choosing to become PIE	427
HM 71	When elections take effect	427
HM 72	Transition: provisional tax	428
HM 73	Transition: entities with non-standard income years	429
HM 74	Transition: treatment of shares held in certain companies	429
HM 75	Transition: FDPA companies	431
214B	Transitional residents	431
214C	New sections HZ 5 and HZ 6 added	432
HZ 5	Transitional provisions for PIE rules	433
HZ 6	Saving of binding rules relating to portfolio investment entities	433
216	Restrictions relating to ring-fenced tax losses	435
217	Restrictions relating to schedular income	436
218	Common ownership: group of companies	436
219	New section IC 13 added	437
IC 13	Variation of requirements for development companies in Niue	437
219B	Pre-consolidation losses: use by group companies	438
219C	When this subpart applies	439
220	Ring-fencing cap on attributed CFC net losses	439
220B	New section IQ 2B inserted	441
IQ 2B	Attributed CFC net loss from tax year before first affected year	441
220C	Ring-fencing cap on FIF net losses	447
221	Group companies using attributed CFC net losses	447
221B	Group companies using FIF net losses	448
222	Subpart IT replaced	448
	Subpart IT—Cancellation of life insurer's losses	
IT 1	Cancellation of life insurer's policyholder net losses	450
IT 2	Cancellation of life insurer's tax loss when allowed into policyholder base	451

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

223	Remaining refundable credits: PAYE, RWT, and certain other items	451
224	Remaining refundable credits: tax credits for families	452
225	New section LA 8B inserted	452
	LA 8B General rules particular to life insurers	453
226	Use of tax credits	455
227	Section LB 1 replaced	455
	LB 1 Tax credits for PAYE income payments	455
228	Tax credits for resident withholding tax	456
228B	Tax credits for families	456
229	Tax credits related to personal service rehabilitation payments: providers	457
230	Tax credits related to personal service rehabilitation payments: payers	457
230B	Tax credits for transitional circumstances	458
231	Tax credits for housekeeping	458
232	Subpart LD heading replaced	458
233	New heading inserted	458
234	Tax credits for charitable or other public benefit gifts	458
235	Exclusions	459
236	New heading and sections LD 4 to LD 7 added	459
	<i>Payroll donations</i>	
	LD 4 Tax credits for payroll donations	459
	LD 5 Calculating amount of tax credit and filing particulars	461
	LD 6 When donation is paid to ineligible recipient	462
	LD 7 When donation returned to person	463
	LD 8 Meaning and ranking of payroll donation	463
237	Tax credits for imputation credits	464
238	Use of remaining credits by companies and trustees	465
239	New section LE 2B inserted	465
	LE 2B Use of remaining credits by life insurer on policyholder base	466
240	Use of remaining credits by others	467
241	Tax credits for FDP credits	467
242	Subpart LH—Tax credits for expenditure on research and development	468
243	Who this subpart applies to	468
244	Tax credits relating to expenditure on research and development	469
245	Requirements	470
245B	Adjustments to eligible expenditure	470

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

247	New section LH 14B inserted	473
	LH 14B Recovery of overpaid tax credit	473
248	What this subpart does	473
249	Tax credits for foreign income tax	474
249B	Section LJ 3 replaced	475
	LJ 3 Meaning of foreign income tax	475
249C	Calculation of New Zealand tax	475
250	Section LJ 7 replaced by new sections LJ 7 and LJ 8	476
	LJ 7 Repaid foreign tax: effect on income tax liability	476
	LJ 8 Repaid foreign tax: effect on FDP liability	477
251	Tax credits relating to attributed CFC income	479
252	Calculation of amount of credit	482
253	New section LK 5B inserted	484
	LK 5B Credits from tax year before first affected year	484
254	Subpart LL repealed	488
254B	Use of remaining credits	488
254C	Continuity rules for carrying credits forward	488
255	Sections LQ 1 to LQ 4 repealed	489
255B	Tax credits for certain investors in portfolio tax rate entities	489
256	Subpart LS replaced	489
	Subpart LS—Tax credits for multi-rate PIEs and investors	
	LS 1 Tax credits for multi-rate PIEs	489
	LS 2 Tax credits for investors in multi-rate PIEs	490
	LS 3 Tax credits for zero-rated investors	491
	LS 4 Tax credits for certain exiting investors	492
256B	Meaning of full-time earner for family scheme	493
256C	Some definitions for family scheme	493
257	Adjustments for calculation of family scheme income	493
257B	Family scheme income of major shareholders in close companies	494
257C	What this subpart does	494
257D	Third requirement: residence	494
257E	When person does not qualify	495
257F	Continuing requirements	495
257G	Principal caregiver	495
257H	Second requirement: principal care	495
257I	Third requirement: residence	496
257J	Fifth requirement: full-time earner	496
257K	Calculation of in-work tax credit	497

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

257L	Meaning of employment for this subpart	497
257M	Meaning of net family scheme income	497
257N	Recovery of overpaid tax credit	498
257O	Section MF 6 replaced	498
	MF 6 Overpayment or underpayment of tax credit	498
258	Tax credits for superannuation contributions	499
259	Eligibility requirements	500
260B	When short payment and unpaid compulsory employer contributions found after tax credit used	501
262	What this subpart does	502
263	Section ML 2 replaced	502
	ML 2 Tax credit for redundancy payments	502
263B	New section MZ 3 added	503
	MZ 3 Exclusions from determination of family scheme income	503
264	Memorandum accounts	503
265	Credits	504
266	Debits	504
267	Opening balances of memorandum accounts	505
268	Shareholder continuity requirements for memorandum accounts	505
269	Section OA 12 repealed	506
271	General rules for companies with imputation credit accounts	506
271B	Australian companies with imputation credit accounts	507
272	New section OB 3B inserted	507
	OB 3B General rule for life insurer's policyholder base	507
273	ICA payment of tax	508
274	ICA resident withholding tax withheld	509
275	New section OB 9B inserted	509
	OB 9B ICA company allocated imputation credit with income from PTRE	509
276	Section OB 9B replaced	510
	OB 9B ICA attributed PIE income with imputation credit	510
277	Section OB 11 repealed	510
278	Section OB 17 repealed	511
278B	ICA transfer to master fund	511
279	ICA refund of income tax	511
280	ICA amount applied to pay other taxes	512
281	ICA refund from tax pooling account	512
282	ICA transfer within tax pooling account	514
283	New section OB 35B inserted	514

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

	OB 35B ICA debit for transfer from tax pooling account for policyholder base liability	514
284	ICA refund of tax credit	515
284B	ICA transfer for net foreign attributed income	516
285	Section OB 47 replaced	516
	OB 47 Debit for policyholder base imputation credits	516
285B	ICA benchmark dividend rules	516
285C	Imputation additional tax on leaving wholly-owned group	517
286	Table O1: imputation credits	517
287	Table O2: imputation debits	518
288	General rules for companies with FDP accounts	519
289	New section OC 2B inserted	519
	OC 2B General rule for life insurer's policyholder base	520
290	When company chooses to stop being FDPA company	520
291	When company emigrates	520
292	Section OC 6 repealed	521
293	Section OC 8 repealed	521
294	Section OC 9 repealed	521
295	Section OC 10 repealed	521
296	FDPA refund of tax credit	522
297	Section OC 20 replaced	522
	OC 20 Debit for policyholder base FDP credits	522
298	Section OC 23 repealed	523
299	Heading before section OC 30 replaced	523
300	Payment of further FDP for closing debit balance	523
301	Payment of further FDP when company no longer New Zealand resident	524
302	Reduction of further FDP	525
303	Section OC 33 replaced	525
	OC 33 Income tax paid satisfying liability for further income tax	525
304	Section OC 34 replaced	526
	OC 34 Further income tax paid satisfying liability for income tax	526
305	Heading and sections OC 35 to OC 39 repealed	527
306	Table O3: FDP credits	527
307	Table O4: FDP debits	527
308	General rules for companies with CTR accounts	528
308B	Choosing to become CTR company	528
308C	When company stops being CTR company	529
309	Section OD 5 repealed	529
310	Section OD 8 repealed	530

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

311	Section OD 11 repealed	530
311B	CTRA increase in resident shareholding	530
312	Section OD 23 repealed	530
313	Section OD 24 repealed	530
314	Table O5: conduit tax relief credits	531
315	Table O6: conduit tax relief debits	531
316	Branch equivalent tax accounts of companies	531
317	Section OE 6 repealed	532
319	Heading and sections OE 12 and OE 13 repealed	533
319B	Sections OE 14 to OE 16 repealed	533
320	New heading and section OE 16B inserted	533
	<i>Debit if credit balance at beginning of first affected tax year</i>	
	OE 16B Company with credit balance at beginning of first affected tax year	534
321	Table O7: branch equivalent tax credits	534
322	Table O8 repealed	534
323	General rules for companies with ASC accounts	535
324	Subpart OJ repealed	535
325	MACA payment of tax	535
326	MACA refund of income tax	535
327	MACA payment of other taxes	536
328	New section OK 14B inserted	536
	OK 14B MACA refund of tax credit	536
329	Table O18: Maori authority debits	537
330	When credits and debits arise only in consolidated imputation group accounts	537
330B	Provisions applying to consolidated imputation groups	538
331	Consolidated ICA payment of tax	539
332	Section OP 14 repealed	540
333	Consolidated ICA resident withholding tax withheld	541
334	Section OP 20 repealed	541
335	Section OP 21 repealed	541
336	Consolidated ICA refund of income tax	542
337	Consolidated ICA amount applied to pay other taxes	543
338	New section OP 33B inserted	543
	OP 33B Consolidated ICA debit for transfer from tax pooling account for policyholder base liability	543
339	Consolidated ICA refund of tax credit	544
340	Section OP 38 repealed	545
340B	Consolidated ICA transfer to policyholder credit account	545
341	Section OP 44 replaced	546

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

	OP 44 Consolidated ICA debit for policyholder base imputation credits	547
342	Table O19: imputation credits of consolidated imputation groups	547
343	Table O20: imputation debits of consolidated imputation groups	548
344	When credits and debits arise only in consolidated FDP group accounts	549
345	Section OP 56 repealed	550
346	Section OP 57 repealed	550
347	Section OP 61 repealed	550
348	Section OP 62 repealed	550
349	Consolidated FDPA refund of tax credit	551
351	Section OP 74 replaced	551
	OP 74 Consolidated FDPA debit for policyholder base FDP credits	551
352	Table O21: FDP credits of consolidated FDP groups	552
353	Table O22: FDP debits of consolidated FDP groups	552
353B	CTR accounts of consolidated groups	553
354	When credits and debits arise only in CTR group accounts	553
355	Section OP 81 repealed	553
356	Section OP 82 repealed	554
357	Section OP 88 repealed	554
358	Section OP 95 repealed	554
359	Table O23: conduit tax relief credits of consolidated groups	554
360	Table O24: conduit tax relief debits of consolidated groups	555
361	Section OP 99 repealed	555
362	Section OP 100 repealed	555
364	Heading and sections OP 105 to OP 108 repealed	556
365	New heading and section OP 108B inserted	556
	<i>Debit if credit balance at beginning of first affected tax year</i>	
	OP 108B Consolidated BETA group with credit balance at beginning of first affected tax year	557
366	Table O25: branch equivalent tax credits of consolidated BETA groups	557
367	Table O26 repealed	557
368	Headings and sections OP 109 to OP 116 repealed	558
369	Tables O27 and O28 repealed	558
370	ASCA lost excess available subscribed capital	558

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

371	Modifying ratios for imputation credits and FDP credits	559
372	New section OZ 18 added	559
	OZ 18 Credit-back of PCA balance	559
373	What this Part does	560
373B	Tax obligations for employment-related taxes	560
374	Withholding and payment obligations for passive income	561
375	When obligations not met	561
376	Payment dates for interim and other tax payments	562
376B	Amalgamation of companies	563
376C	Regulations	563
377	Application of other provisions for purposes of ESCT rules and NRWT rules	563
377B	Payment of terminal tax	564
377C	Schedular income tax liability for filing taxpayers for non-resident passive income	564
378	Who is required to pay provisional tax?	564
378B	Attribution rule for income from personal services	564
379	PAYE rules and their application	566
379B	PAYE income payments	566
380	Salary or wages	567
381	Certain benefits and payments	568
382	Schedular payments	568
382B	Reduction in certain circumstances	569
383	Multiple payments of salary or wages	569
383B	Advance payments of salary or wages	569
384	New section RD 13B inserted	570
	RD 13B Adjustments for payroll donations	570
384B	Payments of extra pay with other PAYE income payments	570
385	Schedular payments without notification	570
386	Schedular payments to non-resident entertainers	571
387	PAYE income payment forms for amounts of tax paid to Commissioner	571
388	Calculation of all-inclusive pay	573
388B	Value of and payments towards fringe benefits	573
389	Close company option	573
390	Small business option	574
390B	Employer's superannuation contributions	574
390C	Calculating amounts of tax for employer's superannuation contributions	576
390D	Choosing to have amount treated as salary or wages	577
390E	Choosing different rates for employer's superannuation contributions	577

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

390F	Calculating amounts on failure to withhold	577
390G	Amounts of tax treated as paid to and received by superannuation funds	578
390H	Resident passive income	578
390I	Obligation to withhold RWT	579
391	Persons who have withholding obligations	579
392	Agents' or trustees' obligations in relation to certain dividends	579
392B	Notification by companies	580
392C	Interest	580
393	Non-resident passive income	580
393B	Certain dividends	581
393C	When dividends fully imputed or fully credited	581
394	Non-cash dividends	581
395	Dividends paid to companies under control of non-residents	582
395B	Section RF 12 replaced by sections RF 12 to RF 12C	583
	RF 12 Interest paid by approved issuers or transitional residents	583
	RF 12B Interest derived jointly with residents	584
	RF 12C Amount derived from non-resident life insurer becoming resident	585
395C	Credit balance in branch equivalent tax account	585
395D	Using loss balances	585
395E	Reduction of payments for conduit tax relief	585
396	Subpart RG repealed	586
397	Retirement scheme contributors	586
399	Refunds for overpaid tax	586
400	Overpayment on income statements	586
401	Using refund to satisfy tax liability	587
401B	Operation of PAYE intermediaries' trust accounts	587
401C	General responsibility of employers	588
402	Information required from employers	588
402B	Employer's superannuation contributions	588
402C	General responsibilities of PAYE intermediaries	588
403	Collection, payment, and information requirements	589
404	Tax pooling intermediaries	589
405	New section RP 17B inserted	589
	RP 17B Tax pooling accounts and their use	589
406	Deposits in tax pooling accounts	591
407	Transfers from tax pooling accounts	592
407B	Standard method: 2008–09 and 2009–10 income years	593

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

407C	GST ratio method: 2008–09 and 2009–10 income years	593
408	Definitions	593
409	Meaning of income tax varied	638
410	Treatment of qualifying company election tax, FBT, FDP penalty tax, imputation penalty tax, and withdrawal tax	638
411	Two companies with common control	638
412	Two companies with common control: 1988 version provisions	638
413	Some definitions	639
414	Table, heading, and sections YB 1 to YB 20 replaced	639
	<i>Associated persons</i>	
YB 1	What this subpart does	639
YB 2	Two companies	641
YB 3	Company and person other than company	642
YB 4	Two relatives	644
YB 5	Person and trustee for relative	645
YB 6	Trustee and beneficiary	645
YB 7	Two trustees with common settlor	645
YB 8	Trustee and settlor	646
YB 9	Settlor and beneficiary	646
YB 10	Who is a settlor?	646
YB 11	Trustee and person with power of appointment or removal	647
YB 12	Partnership and partner	647
YB 14	Tripartite relationship	648
YB 15	Exceptions for employee trusts	649
YB 16	Exceptions for certain trusts and charitable organisations	650
414B	Transparency of nominees	651
414C	Heading for subpart YC	651
415	Heading and section YC 1 repealed	651
415B	Look-through rule for corporate shareholders	651
415C	Disregarding certain securities	651
415D	Reverse takeovers	651
416	New section YC 18B inserted	652
	YC 18B Corporate reorganisations not affecting economic ownership	654
417	Residence of natural persons	655
417B	Country of residence of foreign companies	656
418	Classes of income treated as having New Zealand source	656
419	Apportionment of income derived partly in New Zealand	656
420	General rules for currency conversion	657

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

420B	New section YZ 2 inserted	657
	YZ 2 Saving of effect of section 394L(4A) of Income Tax Act 1976	657
421	Schedule 1—Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits	657
422	Schedule 2—Basic tax rates for PAYE income payments	658
422B	Schedule 4—Rates of tax for schedular payments	659
422C	Schedule 5—Fringe benefit values for motor vehicles	660
423	Schedule 13—Depreciable land improvements	660
423B	Schedule 20—Expenditure on farming, horticultural, aquacultural, and forestry improvements	661
424	Schedule 21—Expenditure and activities related to research and development	661
425	Schedule 24—International tax rules: grey list countries	662
425B	Schedule 25—Foreign investment funds	662
426	Schedule 27—Countries and types of income with unrecognised tax	663
426B	Schedule 28—Requirements for complying fund rules	663
426C	New schedule 29—Portfolio investment entities: excepted investors	663
427	Schedule 32—Recipients of charitable or other public benefit gifts	664
428	Schedule 49—Enactments amended	665
429	Schedule 50—Amendments to Tax Administration Act 1994	665
429B	Schedule 51—Identified changes in legislation	665
430	Schedule 52—Comparative tables of old and rewritten provisions	665
431	Consequential amendments: associated person and list of defined terms	668

Part 2

Amendments to Tax Administration Act 1994

432	Tax Administration Act 1994	668
433	Interpretation	668
434	Construction of certain provisions	670
435	Part 2B replaced	679

Part 2B

**Intermediaries for PAYE, provisional tax, and
resident passive income**

PAYE intermediaries

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

15C	PAYE intermediaries and listed PAYE intermediaries	679
15D	Application for approval as PAYE intermediary	679
15E	Revocation of approval	680
15F	Fitness of applicants	681
15G	Application for approval as listed PAYE intermediary	681
15H	Grounds for revocation of listing	682
15I	Procedure for revocation of listing	682
15J	Employers' arrangements with PAYE intermediaries	682
15K	Privacy requirements	683
15L	Amended monthly schedules	683
15M	Subsidy claim forms	683
	<i>RWT proxies</i>	
15N	RWT proxies	684
	<i>Tax pooling intermediaries</i>	
15O	Establishing tax pooling accounts	685
15P	Role of Commissioner	685
15Q	Applications to establish tax pooling accounts	685
15R	Fitness of applicants	685
15S	Requirements for applications to establish tax pooling accounts	686
15T	Winding up tax pooling accounts	687
436	Information to be furnished on request of Commissioner	688
437	No requirement to disclose tax advice document	688
438	Treatment of book or document	689
439	Claim that book or document is tax advice document	689
440	Person must disclose tax contextual information from tax advice document	690
441	Challenge to claim that book or document is tax advice document	691
442	Keeping of business and other records	692
443	Records to be kept by employer or PAYE intermediary	693
444	PAYE tax codes	693
445	Special tax code certificates	693
446	Variation of requirements	693
447	New heading and section 24Q inserted	694
	<i>Payroll donations</i>	
24Q	Transfer of payroll donations by employers	694
448	Section 28B replaced	694

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

	28B	Notification of investors' tax rates	694
449		Portfolio tax rate entity to give statement to investors and request information	695
450		Section 31B replaced	695
	31B	Notification requirements for PIEs	695
	31C	Notification requirements for multi-rate PIEs	696
450B		Records to be provided by employer who contributes to superannuation fund	697
450C		Certification requirements for withdrawals subject to section CS 1 of Income Tax Act 2007	698
451		Applications for RWT exemption certificates	698
452		Heading and section 32N repealed	698
453		Returns of income	698
454		Annual returns of income not required	699
455		Electronic format of employer monthly schedule and PAYE payment form	700
456		Section 36AB replaced	700
	36AB	Electronic return requirements for multi-rate PIEs	700
457		Returns to annual balance date	701
458		Returns by persons with tax credits for housekeeping payments and charitable or other public benefit gifts	701
459		Return by person claiming rebate on redundancy payment	702
460		Portfolio tax rate entities and portfolio investor proxies to make returns, file annual reconciliation statement	702
461		Section 57B replaced	703
	57B	Return requirements for multi-rate PIEs	703
462		Disclosure of trust particulars	704
463		Disclosure of interest in foreign company or foreign investment fund	705
464		Section 66 repealed	706
465		Tax credit relating to KiwiSaver and complying superannuation fund members: member credit form	706
466		Statements in relation to research and development tax credits: single persons	707
467		Section 68E replaced	707
	68E	Statements in relation to research and development tax credits: internal software development groups	707
467B		New section 68F inserted	708
	68F	Requirements for statements in relation to research and development tax credits	708
468		Section 78E repealed	708

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

469	Section 78F repealed	708
469B	New section 80KLB inserted	709
	80KLB Recovery of excess tax credits	709
469C	Effect of extra instalment on entitlement to tax credit	709
470	Officers to maintain secrecy	710
471	Disclosure of information for verification of large budget screen production grant entitlement	710
472	Disclosure of information in relation to Working for Families tax credits	711
473	Further secrecy requirements	711
474	New section 89AB inserted	711
	89AB Response periods	712
475	Taxpayers and others with standing may issue notices of proposed adjustment	713
476	Taxpayer may issue notice of proposed adjustment for taxpayer assessment	714
477	Completing the disputes process	714
478	Determination on economic rate	714
479	Determination on special rates and provisional rates	715
480	Commissioner may decline to issue special rate or provisional rate	716
481	Notice of setting of economic rate	716
482	Applications for determinations	716
483	Determination on type of interest in FIF and use of fair dividend rate method	717
484	New heading and section 91AAQ inserted	717
	<i>Determinations relating to non-attributing active CFCs</i>	
	91AAQ Determination on insurer as non-attributing active CFC	718
485	New heading and section 91AAR inserted	721
	<i>Determinations relating to relocation payments</i>	
	91AAR Determination relating to eligible relocation expenses	721
485B	Assessment of shortfall penalties	722
486	Section 102 repealed	723
487	Section 103 repealed	723
488	Section 103A repealed	723
489	Section 104 repealed	723
490	Time bar for amendment of income tax assessment	724
490B	Extension of time bars	725

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

491	Amended assessments for research and development tax credits	725
492	Definitions	725
493	Section 120EA repealed	725
493B	Provisional tax instalments in transitional years	726
495	Where provisional tax paid by company does not count as overpaid tax	726
496	Variation to definition of date interest starts	726
496B	Interest paid on deposits in tax pooling accounts	726
497	Section 120R repealed	727
498	Certain rights of objection not conferred	727
498B	Certain rights of challenge not conferred	727
498C	Non-electronic filing penalty	727
498D	Late payment penalty	727
499	Imposition of late payment penalties when financial relief sought	728
499B	Imputation penalty tax payable in some circumstances	729
500	Section 140C repealed	730
500B	FDP penalty tax payable in some circumstances	730
501	Section 140CA repealed	731
502	Tax shortfalls	731
502B	Unacceptable tax position	732
503	Abusive tax position	732
504	Evasion or similar act	732
504B	Not paying employer monthly schedule amount	732
504C	Limitation on reduction of shortfall penalty	733
504D	New date for payment of tax that is not a penalty	733
505	Due dates for payment of imputation penalty tax, FDP penalty tax, and underestimation penalty tax	733
506	Knowledge offences	733
507	Evasion or similar offence	733
507B	Recovery of civil penalties	734
508	Taxes that may be recovered	734
509	Transfer of excess tax within taxpayer's accounts	734
510	Transfer of excess tax to another taxpayer	735
511	Instalment arrangements	735
512	Section 181 repealed	735
513	Section 183 repealed	735
514	Remission for reasonable cause	735
514B	Small amounts of penalties and interest not to be charged	736
515	Remission on application	736

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

516	Payments into, and out of, Listed PAYE Intermediary Bank Account	736
517	Power to make interim payments of WFF tax credit	737

Part 3

Amendments to Goods and Services Tax Act 1985

518	Goods and Services Tax Act 1985	737
519	Interpretation	737
520	Meaning of term supply	738
520B	Supply of certain imported services	738
521	Time of supply	738
522	Value of supply of goods and services	738
523	Zero-rating of goods	738
524	Zero-rating of services	740
525	New section 11C inserted	740
	11C Treatment of supplies by operators of loyalty programmes	740
526B	Fringe benefits and entertainment expenses	742
528	Group of companies	742

Part 4

Amendments to KiwiSaver Act 2006

529	KiwiSaver Act 2006	742
530	Interpretation	742
531	Section 13 repealed	743
531B	Other situations when automatic enrolment rules do not apply	743
532	Eligibility to be exempt employer	743
532B	Involuntary transfers	743
533	What happens when initial back-dated validation ends, with no confirmed back-dated validation?	743
533B	Contribution rate	743
534	How and when interest is paid on refunds	744
535	Refunds of employer contribution by Commissioner if employee opts out	744
536	General	744
537	Compulsory employer contribution amount: general rule	744
538	New sections 101FB and 101FC inserted	744
	101FB Grace periods: employers	744
	101FC De minimis: other contributions and hybrid schemes amount	746
539	Rules: providers	746

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

539B	Terms relating to members' tax credits implied into trust deed	747
539C	Terms relating to lump sum payments by complying superannuation funds	747
540	Crown contribution	747
541	Regulations relating to mortgage diversion facility	747
541B	Schedule 1—KiwiSaver scheme rules	748
9	Withdrawal on death	748

Part 5

Amendments to Income Tax Act 2004

542	Income Tax Act 2004	749
542B	New section CC 8B inserted	749
	CC 8B Certain commercial bills: non-resident holders	749
542C	What is a transfer of value?	750
542D	Returns of capital: off-market share cancellations	750
542E	Treasury stock acquisitions	750
543	Foreign investment fund income	750
543B	Available subscribed capital amount	751
544	Amounts derived in connection with employment	751
545	Meaning of expenditure on account of an employee	752
545B	Benefits, pensions, compensation, and government grants	752
546	New section CR 3 added	752
	CR 3 Income for general insurance outstanding claims reserve	753
546B	Section CW 3B repealed	754
547	Expenditure on account, and reimbursement, of employees	754
548	New sections CW 13B and CW 13C inserted	755
	CW 13B Relocation payments	755
	CW 13C Payments for overtime meals and certain other allowances	757
548B	Local and regional promotion bodies	759
549	Benefits provided instead of allowances	759
549B	Section CX 24 replaced	759
	CX 24 Accommodation	759
549C	Government grants to businesses	759
549D	New heading inserted	760
549E	New section CX 44G inserted	760
	CX 44G Disposal of pre-1990 forest land units	760
549F	Determining tax liabilities	760
549G	New section DB 8B inserted	760

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

	DB 8B Interest or expenditure connected to stapled debt security	761
549H	Cost of revenue account property	761
550	Gifts of money by company	761
550B	New section DB 46B inserted	761
	DB 46B Liabilities for emissions	762
550C	Criteria for approval of share purchase schemes: before period of restriction ends	762
550D	Employment-related activities	762
550E	Interpretation: reimbursement and apportionment	762
550F	Forestry business on land bought from the Crown, Maori owners, or holding company: no deduction	763
551	New section DT 1A inserted	763
	DT 1A Ring-fenced allocations	763
552	Arrangement for petroleum exploration expenditure and sale of property	764
553	Petroleum development expenditure	765
554	Disposal of petroleum mining asset to associate	765
554B	Amount written off by holding company	765
555	New section DW 3 added	766
	DW 3 Deduction for general insurance outstanding claims reserve	767
555B	Prepayments	768
555C	Pool method: calculating amount of depreciation	769
556	Economic rate for plant, equipment, or building, with high residual value	769
557	Annual rate for item acquired in person's 1995–96 or later income year	769
557B	Meaning of adjusted tax value	770
558	Section EJ 11 replaced	770
	EJ 11 Petroleum development expenditure: default allocation rule	772
	EJ 11B Petroleum development expenditure: reserve depletion method	773
559	Relinquishing petroleum permit	774
560	New sections EJ 12B and EJ 12C inserted	774
	EJ 12B Dry well drilled	775
	EJ 12C Well not producing	775
561	Disposal of petroleum mining asset	776
562	Sections EJ 17 and EJ 18 replaced	776
	EJ 18 Meaning of petroleum mining development	776
562B	What spreading methods do	777

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

563	IFRS taxpayer method	777
564	IFRS method	779
565	Determination alternatives to IFRS	780
566	Expected value method and equity-free fair value method	782
566B	New section EW 21 inserted	783
	EW 21 Financial reporting method	783
566C	Default method	784
566D	Failure to use method for financial reporting purposes	784
567	Change of spreading method	784
568	When calculation of base price adjustment required	785
568B	Base price adjustment formula	786
568C	Direct control interests	786
568D	Direct income interests	787
568E	Direct income interests in FIFs	787
569	Exemptions: direct income interests in FIF in grey list country	787
570	Use of particular calculation methods required	787
571	Comparative value method	787
572	Fair dividend rate method: usual method	788
573	Fair dividend rate method: method for unit valuers and persons valuing interests daily	788
574	Cost method	788
575	Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method	789
576	Measurement of cost	789
577	Transitional rule for IFRS financial reporting method	789
578	New sections EZ 51 and EZ 52 added	789
	EZ 51 Transitional rule for financial reporting method	789
	EZ 52 Transitional rule for changes from the fair value method	790
578B	Floating rate of interest on debentures	791
578C	Interest on debentures issued in substitution for shares	791
578D	New section FC 2B inserted	791
	FC 2B Stapled debt securities	791
578E	Rules for calculating New Zealand group debt percentage	792
578F	New Zealand net equity of New Zealand banking group	792
579	Section GC 14EB repealed	793
580	Dividends from qualifying company	793
580B	Modification of agency provisions in respect of income from company debentures	793
581	Effect of failure to meet eligibility requirements for entities	793

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

582	Investor membership requirement	794
583	Investor interest size requirement	795
584	Further eligibility requirements relating to investments	796
585	Unlisted company may choose to become portfolio listed company	796
586	Becoming portfolio investment entity	796
587	Credits received by portfolio tax rate entity or portfolio investor proxy	796
588	Determination of amount of credit in certain cases	797
589	Credit of tax for imputation credit	797
590	Credit of tax for dividend withholding payment credit in hands of shareholder	797
591	Credits in respect of dividends to non-resident investors	798
592	Special rules for holding companies	798
592B	Credits arising to imputation credit account	798
593	Allocation rules for imputation credits	798
594	Amount of imputation credit to be attached to cash distribution	798
595	Notional distribution deemed to be dividend	798
596	Amount of imputation credit to be attached to cash distribution	798
597	Notional distribution deemed to be dividend or taxable Maori authority distribution	799
598	Branch equivalent tax account of company	799
599	Credits and debits arising to branch equivalent tax account of company	799
600	Debits and credits arising to group branch equivalent tax account	799
601	Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability	799
602	Allocation rules for dividend withholding payment credits	800
603	Dividend with both imputation credit and dividend withholding payment credit attached	800
604	Conduit tax relief account	800
605	Credits arising to conduit tax relief account	800
606	Debits arising to conduit tax relief account	800
607	Consolidated group conduit tax relief account	800
608	Credits arising to group conduit tax relief account	800
609	Debits arising to group conduit tax relief account	800
610	Retirement scheme contributors	800
611	Application of RWT rules	801

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

612	Resident withholding tax deductions from dividends deemed to be dividend withholding payment credits	801
613	Definitions	801
614	Schedule 16—Depreciable land improvements	807

Part 6

Amendments to other Acts and regulations

Income Tax Act 1994

615	Income Tax Act 1994 amended	808
616	Exempt income—employee allowances and expenditure on account of employee	808
617	Meaning of fringe benefit	810
617B	Accrual expenditure	811
618	Special and provisional economic rates	811
618B	Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability	811
619	Definitions	812
619B	Schedule 6A—Specified types of entertainment	813
620	Schedule 16—Depreciable land improvements	813

Income Tax Act 1976

621	Special and provisional economic rates	814
622	Schedule 21—Depreciable land improvements	814

Estate and Gift Duties Act 1968

622B	Interpretation	814
------	----------------	-----

Stamp and Cheque Duties Act 1971

622C	Interpretation	815
------	----------------	-----

Taxation Review Authorities Act 1994

622D	Hearing of objections by an Authority	816
------	---------------------------------------	-----

*Taxation (Business Taxation and Remedial Matters) Act
2007*

623	Use of consolidated group credit to reduce dividend withholding payment or use of group or individual debit to satisfy income tax liability	816
-----	---	-----

Acts referring to associated person

624	Consequential amendments to other Acts: associated person	816
-----	--	-----

cl 1	Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill	
	<i>Companies Act 1993</i>	
624B	Schedule 7—Preferential claims	816
	<i>Insolvency Act 2006</i>	
624C	Priority of payments to preferential creditors	817
	<i>Income Tax (Depreciation Determinations) Regulations 1993</i>	
625	Income Tax (Depreciation Determinations) Regulations 1993	817
	<i>Goods and Services Tax (Grants and Subsidies) Order 1992</i>	
626	Schedule—Non-taxable grants and subsidies	818
	<i>KiwiSaver Regulations 2006</i>	
627	KiwiSaver Regulations 2006 amended	818
628	What member of KiwiSaver scheme must do next to participate in mortgage diversion facility	818
629	What scheme provider must do to participate in mortgage diversion facility	818
	Schedule 1	819
	Consequential amendments to lists of defined terms: associated person	
	Schedule 2	822
	Consequential amendments to other Acts: associated person	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the **Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2008**.
- 2 Commencement**
- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.
- (2) **Section 519(4)** is treated as coming into force—

5

- (a) in relation to the Parliamentary Service, on 1 October 1986:
- (b) in relation to the Office of the Clerk of the House of Representatives, on 1 August 1988:
- (3) **Sections 621 and 622** are treated as coming into force on 1 April 1993. 5
- (4) **Sections 618 and 620** are treated as coming into force on 1 April 1995.
- (5) **Section 623** is treated as coming into force on 1 April 1997.
- (6) **Sections 485, 616, 617, 619** are treated as coming into force on 1 October 2001. 10
- (7) **Sections 436(1), 463(1), 478(1), 479(1) and (3), 544, 545, 547, 548, 549, 556, 557, 613(2), (11), and (14), 614, and 625** are treated as coming into force on 1 April 2005.
- (8) **Section 479(2)** is treated as coming into force on 1 October 2005. 15
- (9) **Sections 546, 555, 613(3), (5), (6), and (10)** are treated as coming into force on 1 April 2006.
- (10) **Sections 478(2) and 479(4)** are treated as coming into force on 3 April 2006. 20
- (11) **Sections 543, 563, 564, 565(1), (3), and (4), 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 589(2), 610, and 613(9)** are treated as coming into force on 1 April 2007.
- (12) **Sections 533, 540, and 613(4)** are treated as coming into force on 1 July 2007. 25
- (13) **Sections 449, 460, 463(3), 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589(1), 590, 591, 592, 593, 594, 595, 596, 597, 598, 602, 603, 604, 605, 606, 607, 608, 609, 611, 612, and 613(13)** are treated as coming into force on 1 October 2007. 30
- (14) **Section 552** is treated as coming into force on 1 December 2007.
- (15) **Sections 470(2), 502(2), 550, 599, and 600** are treated as coming into force on 19 December 2007. 35
- (16) **Section 551** is treated as coming into force on 4 March 2008.

- (17) **Sections 14, 15(1) to (3) and (5), 20, 21, 27, 29, 33, 34, 35, 37, 38, 42, 43, 47, 49, 70, 71, 72, 73, 74, 75, 76(1), (3), and (5), 77(1) and (3), 78(1) and (3), 79, 86, 87, 93, 94, 95, 96, 97, 100, 101, 102(1), 103, 104, 107, 108, 116(1), 122(9) and (16), 127, 128, 129, 130, 131, 132(1) to (3), (5) to (7), and (9), 133, 134, 135(1) to (3) and (5) to (9), 136(1) to (3) and (5) to (9), 137, 138(1), 139(1), (2), and (4), 148, 151, 153, 159(3), 161(1) and (2), 166(1), (3), and (4), 177(4), 179, 180, 181(1), 182(1), 185, 186(1), 194, 196, 197, 198, 201(1), 204, 205(3), 206, 207, 208, 209, 210, 211, 212, 213, 215, 216(2), 219, 223(1), 224, 226, 227, 231, 234, 237(1), (2), and (4), 242, 243, 244, 245, 246, 247, 248, 250, 251(1), (3), and (4), 252, 258(1), 259, 262, 263, 268(1) and (2), 270, 273(2), 275, 279(2), 280(2), 281, 282, 284, 286(1), 287(2), 296, 307(1), 325, 326, 327, 328, 329, 331(2), 336(3), 337, 339, 343(2), 349, 371, 377, 380, 381, 382, 385, 386, 387(1) to (4) and (6), 388, 394, 397, 399, 400, 401, 408(5), (7), (28), (32), (37), (40), (42), (57), (59), (63), (67), (78), (88), (93), (94), (95), (96), (97), (98), (100), (107), (111), (115), (117), (118), (128), (133), (134), (136), (138), (141), (142), and (152), 410, 411, 412, 413, 416, 417(1) and (3), 418, 419, 420, 423, 424, 428, 429, 430, 433(3), 434(4), 435, 446, 451, 455, 459, 462, 463(2), 466, 467, 472, 474, 475, 476, 478(3), 479(5), 480, 481, 482, 483(1), 490, 491, 495, 498, 499, 508, 509, 511, 516, 517, 530, 535, 536, 537, 538, 553, 554, 558, 559, 560, 561, 562, 565(2), 613(7), (8), and (12), and 626** are treated as coming into force on 1 April 2008.
- (18) **Sections 22, 46, 62, 64, 65, 69, 89, 90, 91, 92, 229, 230, 408(58), 470(1), 471, 473, and 541** are treated as coming into force on 1 July 2008.
- (19) **Sections 5, 6, 13(2) and (3), 16, 17, 19, 25, 26, 30, 32, 53, 54, 55, 60, 66, 67, 80, 98(3) and (4), 102(2), 116(2), 117, 118, 119, 121, 122(1) to (8), (11) to (15), and (17), 123, 124, 125, 126, 132(8) and (11), 138(2) and (3), 147, 154(1) and (2), 155(1) and (2), 156, 157, 158, 159(1), (2), (4), and (5), 160, 161(3) and (4), 162, 163, 164, 165, 166(2), 167(1) and (2), 168(1) to (10), 169(1), 170, 171(1)**

to (3), 172, 173, 174, 175, 176, 177(1) to (3), (5), and (6), 178, 184, 189, 190, 191, 192, 193, 195, 199, 200, 220, 221, 251(2) and (5), 253, 254, 255, 269, 273(3) and (4), 277, 286(3), 287(3), 288(2), 290, 291, 292, 293, 294, 295, 299, 300, 301, 302, 303, 304, 306, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 330(1), 332, 340, 342(1), 343(3), 344(1), 345, 346, 347, 348, 350, 352, 353(1), 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 370, 373, 374, 375, 376(2) and (3), 391, 392, 396, 398, 408(8), (9), (10), (13), (15), (20), (21), (24), (27), (29), (30), (31), (33), (39), (43), (44), (47), (48), (49), (50), (51), (52), (53), (60), (64), (80), (83), (86), (87), (123), (124), (132), (137), (143), (144), (145), (146), and (147), 409, 421(2), 425, 426, 433(4), 434(1) to (3) and (5), 442(2), 452, 468, 469, 483(2), 484, 486, 487, 488, 489, 496, 497, 500, 501, 505, 506, 507, 512, 514, 515, and 531 are treated as coming into force on 1 October 2008.

(20) Sections 9, 31, 48, 61, 81(2) and (3), 84, 85, 98(1) and (5), 187, 408(26), (36), (55), (71), (85), (108), (109), (122), (125), and (139), 519(2), and 524 are treated as coming into force on 1 January 2009.

(21) Sections 150, 222, and 372 come into force on 31 March 2009.

(22) Sections 4, 7, 8, 10, 11, 12, 13(1), 15(4) and (6), 18, 23, 24, 28, 36, 39, 40, 41, 44, 45, 50, 51, 52, 56, 57, 58, 59, 63, 68, 76(2), (4), and (6), 77(2) and (4), 78(2) and (4), 81(1), 82, 83, 88, 98(2) and (6), 99, 105, 106, 109, 110, 111, 112, 113, 114, 115, 120, 122(10), 132(4) and (10), 135(4) and (10), 136(4) and (10), 139(3) and (5), 140, 141, 142, 143, 144, 145, 146, 149, 152, 154(3), 155(3), 167(3), 168(11), 169(2), 171(4), 182(2), 183, 186(2) and (3), 188, 201(2), 202, 203, 205(1) and (2), 214, 216(1) and (3) to (5), 217, 218, 223(2), 225, 228, 232, 233, 235, 236, 237(3) and (5), 238, 239, 240, 241, 249, 256, 257, 258(2), 260, 261, 264, 265, 266, 267, 268(3), 271, 272, 273(1) and (5), 274, 276, 278, 279(1) and (3), 280(1), 283, 285, 286(2) and (4), 287(1) and (4), 288(1) and (3), 289, 297, 298, 305, 307(2), 323, 324, 330(2) and (3),

- 331(1) and (3), 333, 334, 335, 336(1), (2), and (4), 338, 341, 342(2), 343(1) and (4), 344(2), 351, 353(2), 368, 369, 376(1), 378, 379, 383, 384, 387(5), 389, 390, 393, 395, 402, 403, 404, 405, 407, 408(2), (3), (4), (6), (11), (12), (14), (16), (17), (18), (19), (22), (23), (25), (34), (35), (38), (41), (45), (46), (54), (56), (61), (62), (65), (66), (68), (69), (70), (72), (73), (74), (75), (76), (77), (79), (81), (82), (84), (89), (90), (92), (99), (101), (102), (103), (104), (105), (106), (110), (112), (113), (114), (119), (120), (121), (126), (127), (129), (130), (131), (135), (140), (148), (149), (150), (151), and (153), 414, 415, 417(2) and (4), 421(1), 422, 431, 436(2), 442(1) and (3), 443, 444, 445, 447, 448, 450, 453, 454, 456, 457, 458, 461, 463(4), 464, 477, 492, 493, 494, 502(1), 503, 504, 510, 526, 527, 528, and 624** come into force on 1 April 2009: 15
- (23) **Section 181(2)** comes into force on 1 April 2010.
- (24) **Section 181(3)** comes into force on 1 April 2011.

2 Commencement

- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section. 20
- (2) **Sections 56B, 78D, 232, 233, 235, 236, 379, 384, 402, 403, 408(23), (35B), (38), (89), (98C), and (99), 442(1) and (3), 443, 447, 504, 624B, and 624C** are treated as coming into force 3 months after this Act receives the Royal assent.
- (3) **Section 519(4)** is treated as coming into force— 25
- (a) in relation to the Parliamentary Service, on 1 October 1986;
- (b) in relation to the Office of the Clerk of the House of Representatives, on 1 August 1988.
- (4) **Section 621** is treated as coming into force on 1 April 1993. 30
- (5) **Section 618** is treated as coming into force on 1 April 1995.
- (6) **Sections 618B and 623** are treated as coming into force on 1 April 1997.
- (7) **Sections 485, 616, 617, 619, 619B, 620, and 622** are treated as coming into force on 1 October 2001. 35
- (8) **Sections 463(1), 478(1) and (4), 479(1), (3), and (6), 526B, 542B, 542C, 542E, 544, 545, 545B, 547, 548,**

- 548B, 549, 549B, 549C, 549F, 550C, 550D, 550E, 552(1B), 554B, 555B, 555C, 556, 557, 557B, 568B(2) and (4), 601, 613(2), (4D), (6B), (11), (12B), (14), and (16), 614, 622C(1) and (3), and 625** are treated as coming into force on 1 April 2005. 5
- (9) **Section 479(2)** is treated as coming into force on 1 October 2005.
- (10) **Sections 546, 555, and 613(3), (5), (6), (10), and (15)** are treated as coming into force on 1 April 2006.
- (11) **Sections 478(2) and 479(4)** are treated as coming into force on 3 April 2006. 10
- (12) **Sections 520B, 543, 562B, 563, 564, 565, 566, 566B, 566C, 566D, 567, 568, 568B(1) and (3), 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 589(2), 610, and 613(4C), (6E), (9), and (18)** are treated as coming into force on 1 April 2007. 15
- (13) **Section 504C** is treated as coming into force on 17 May 2007.
- (14) **Sections 449, 540, 541B(2), and 613(4) and (6D)** are treated as coming into force on 1 July 2007.
- (15) **Sections 460, 499B, 500B, 549H, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589(1), 590, 591, 592, 592B, 593, 594, 595, 596, 597, 598, 602, 603, 604, 605, 606, 607, 608, 609, 611, 612, and 613(13)** are treated as coming into force on 1 October 2007. 20
- (16) **Section 552(1) and (2)** is treated as coming into force on 1 December 2007. 25
- (17) **Sections 470(2), 550, 599, and 600** are treated as coming into force on 19 December 2007.
- (18) **Section 550B** is treated as coming into force on 1 January 2008. 30
- (19) **Sections 542D, 543B, 549G, 550F, 568C, 568D, 568E, 578B, 578C, 578D, 578E, 578F, 580B, and 613(3B), (3C), (4B), (4E), (4F), (6C), and (13B) to (13E)** are treated as coming into force on 25 February 2008.
- (20) **Section 551** is treated as coming into force on 4 March 2008. 35
- (21) **Sections 5(1), (2), (4), (5), and (7), 9B, 10B, 12(1)(b), 12B, 14, 15(1), (2), (3), and (5), 17(3), 20, 21, 22, 23,**

27, 29, 29B, 29C, 29D, 29E, 32(1) and (2), 33, 33B, 34,
35, 37, 38, 39, 40B, 42, 43, 45(1A) and (3), 47, 49, 52C,
55B, 56(3), 57B, 61C, 61D, 61E, 61F, 67C, 70(1) and (3),
71, 72(1) to (4), 73, 74, 75, 76(1), (3), (5), and (7), 77(1),
(3), and (5), 77B(1) and (3), 78(1), (3), and (5), 78B(1), 5
(3), and (5), 78C, 79, 80B, 85B, 86, 87, 87B, 87C, 93,
94, 95, 96, 97, 99B, 99C, 100, 101(1), 102(1), (2), and
(4), 103, 104, 105B, 105C, 105D, 107, 108, 108B, 115B,
115C, 116(1), 122(9) and (16), 127, 127B, 128, 128B, 10
129, 130, 131, 132(1) to (3), (5) to (7), and (10), 133,
134(1), 135(1A), (1) to (3), and (5) to (9), 136(1A) to (3)
and (5) to (9), 137, 138(1), 139(1), (2), and (4), 139B,
139C, 141C, 148, 148B, 151, 151B, 151C, 153, 153B(1),
(4), and (5), 157(2), (3), and (5), 159(3) and (6), 163(1)
and (3), 166(1), (2B), (3), (4), and (4C), 174B, 177(4), 15
178B, 179, 179B, 179C, 180, 181(1) and (4), 182(1),
185, 186(1), 194, 195B, 195C, 195D, 196, 197, 198,
200B, 201(1), 201B, 202(2) and (4), 202B, 202C, 203B,
203C, 203D, 203E, 203F, 203G, 203H, 203I, 204, 206,
207, 207B, 208(1), (2), (4), and (6), 209, 210, 211, 211B, 20
212, 213, 213B, 214B, 216(1B), (2), and (7), 217(1B)
and (4), 218(1) and (4), 219, 219B, 220(1B) and (3),
220C, 221B, 223(1), 224, 226, 227, 228B, 230B, 231,
234, 237(1), (2), (4), and (6), 242, 243, 244, 245, 245B,
247, 248, 249, 249B, 249C, 250, 251(1), (3), (4), and (7), 25
252, 254B, 254C, 256B, 256C, 257B, 257C, 257D, 257E,
257F, 257G, 257H, 257I, 257J(1) and (3), 257K, 257L,
257M, 257N, 257O, 258, 260B, 262, 263, 263B, 268,
271(1), (2), (4), (5), and (7), 271B, 273(2) and (6), 275,
278B, 279(2) and (5), 281, 282, 284, 284B, 285B, 285C, 30
286(1), (4), and (8), 287(2) and (6), 296, 307(1) and (3),
308(1A) and (1B), 308B, 311B, 315(1A) and (1B), 325,
326, 327, 328, 329, 330B, 331(2) and (5), 336(3) and
(6), 337, 339, 340B, 343(2), (4), and (7), 349, 353B, 371,
373B, 374(2), (3), and (5), 375(1), (3), and (5), 376(1A) 35
and (3B), 376B, 376C, 377, 377B, 377C, 378B, 379B(2),
(3), and (4), 380, 381, 382, 382B, 383B, 384B, 385, 386,
387(1) to (4), (7), and (9) to (11), 388B, 389(1) and (3)
to (5), 390(1) and (3) to (5), 390B(1) to (6) and (8) to

- (13), 390C, 390D, 390E, 390F, 390G, 390H, 390I, 392B, 392C, 393(1), (2), (4), (5), (7), and (8), 393B, 393C, 394, 397, 399, 400, 401, 401B, 401C, 402B, 402C, 405, 406, 407, 407B, 407C, 408(5), (7), (9B), (22B), (23C), (23D), (28), (29B), (32), (36B), (37B), (37C), (37D), (38B), (38C), (38E), (38F), (38G), (40), (40B), (40C), (42), (49), (56B), (57), (59), (63), (64B), (67), (67B), (74B), (78), (80B), (80C), (88), (90B), (92B), (93), (94), (95), (96), (97), (98), (98B), (98D), (100), (107), (107B), (107C), (110C), (111), (111B), (115), (115B), (117), (118), (128), (129B), (130B), (132), (133), (134), (134B), (136B), (138), (142), (145B), (149), (152), (154), (155), and (158), 182(1), 201(1), 410, 411, 412, 413, 414B, 415B, 415C, 415D, 416, 417(1) and (3), 417B, 418, 419, 420, 420B, 422B(3) to (8), 422C, 423, 423B, 424, 425B, 428, 429, 429B, 430, 433(2B), (3), (5B), and (6), 434(4), 435(1), and (3), 446, 450B, 450C, 451(2), 455, 459, 462, 463(2) to (3), 465(1), 466, 467, 467B, 469B, 469C, 472, 474, 475, 476, 478(3) and (5), 479(5) and (7), 480, 481, 482, 483(1), 485B, 490, 490B, 493B, 495, 496B, 498, 498C, 498D, 499, 502B, 504B, 508, 509, 510, 511, 516, 517, 530(1) to (3), 531B, 532B, 535, 536, 537, 538, 539B, 539C, 541B(3) and (4), 553, 554, 559, 560, 561, 562, 613(7), (8), (12), and (17), 622C(2) and (4), 622D, and 626** are treated as coming into force on 1 April 2008.
- (22) **Sections 64, 229, 230, 257J(2), 379B(1), 408(99B), 541, 628, and 629** are treated as coming into force on 1 July 2008.
- (23) **Sections 31, 45B, 48, 546B, 549D, and 549E** are treated as coming into force on 26 September 2008.
- (24) **Section 102(3) and (5)** is treated as coming into force on 1 October 2008.
- (25) **Sections 9, 61, 61B, 81(2) and (3), 84, 85, 98(2) and (4), 132(8), (12), and (14), 133B, 134(1), 186B, 187, 408(26), (36), (38H), (55), (71), (85), (108), (109), (122), (125), and (139), and 519(2) and (3B)** are treated as coming into force on 1 January 2009.
- (26) **Sections 8B, 67B, 83B, 101(2) to (6), 103B, 132(9) and (11), 134(2) and (3), 139(3B) and (7), 139D, 148C, 203J, 204B, 205, 206B, 208(3), (5), (7), and (8), 219C, 255B,**

286(2) and (6), 287(3) and (7), 288(1), (3), and (4), 330(1) and (4), 345, 346, 347, 348, 376(1), 383, 387(5), (6), and (8), 389(2), 390(2), 390B(7), 395B, 395C, 395D, 395E, 404, 408(62), (125B), and (141), 417(2), (4), and (5), 422, 426B, 444, 445, 454, 458, 528, 530(4), and 533B are

treated as coming into force on 1 April 2009.

(27) Sections 5(3), (6), and (8), 6, 13(2) to (5), 17(1), (2), and (4), 18B, 19, 25, 26, 30, 32(3) and (6), 53, 54, 55, 60, 66, 67, 80, 116B, 117, 119, 121, 122(1) to (8), (11) to (15), (17), and (18), 123, 124, 125, 126, 138(2) to (4), 147, 154, 155, 156, 157(1) and (4), 158, 159(1), (2), (4), (5), and (7), 160, 161, 162, 163(2), (4), and (5), 164, 165, 166(2) and (5), 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177(1) to (3) and (5) to (7), 178, 180B, 181(2), (3), and (5), 184, 189, 190, 191, 192, 193, 195, 199, 200, 220(1) and (2), 220B, 221, 251(2), (5), and (6), 253, 254, 255, 269, 273(3), (4), and (8), 277, 286(3) and (7), 288(2) and (5), 290, 291, 292, 293, 294, 295, 299, 300, 301, 302, 303, 304, 306, 308(1) and (2), 308C, 309, 310, 311, 312, 313, 314, 315(1) and (2), 316, 317, 319, 319B, 320, 321, 322, 332, 340, 342(1) and (3), 343(3) and (8), 344(1) and (3), 352, 353(1) and (3), 354, 355, 356, 357, 358, 359, 360, 361, 362, 364, 365, 366, 367, 370, 373, 374(1) and (4), 375(2), (4), and (6), 376(2), (3), and (4), 391, 392, 396, 408(8), (9), (10), (13), (15), (20), (21), (24), (27), (29), (30), (31), (33), (39), (43), (44), (47), (48), (50), (51), (52), (53), (60), (64), (65), (70B), (80), (83), (86), (87), (123), (123B), (124), (137), (140B), (143), (144), (145), (146), (147), and (159), 409, 421(2) and (4), 425, 426, 433(4) and (7), 434(1) to (3), (5), and (6), 442(2), 452, 468, 469, 483(2) and (5), 484, 486, 487, 488, 489, 496, 497, 500, 501, 505, 506, 507, 512, 514, and 515 are treated as coming into force on 30 June 2009.

(27B) Sections 36, 45(1), (2), and (4), 46, 62, 63, and 65 come into force on 1 October 2009.

(28) Sections 69, 89, 90, 91, 92, 408(74), (75), and (82B) come into force on 1 January 2010.

(29) Sections 4, 7, 8, 11, 12(1)(a) and (2), 13(1), 15(4), (6), and (7), 18, 24, 32(4), (5), and (7), 40, 50, 50B, 51, 52,

52B, 56(1), (2), and (4), 57, 58, 59, 70(2), (4), and (5),
72(5) and (6), 76(2), (4), (6), and (8), 77(2), (4), and (6),
77B(2) and (4), 78(2), (4), and (6), 78B(2), (4), and (6),
81(1), 82, 88, 115, 116(2) and (3), 120, 122(10) and (19),
132(4) and (13), 135(4), (10), and (11), 136(4), (10), and
(11), 139(3), (5), and (6), 144, 145, 166(1B), (3B), (4B),
and (6), 182(2) and (3), 186(2) to (4), 188, 201(2) and
(3), 202(1) and (3), 203, 214, 214C, 216(3), (5), and (8),
218(2), (3), and (5), 223(2) and (3), 228, 237(3), (5), and
(7), 241, 256, 257, 271(3), (6) and (8), 276, 289, 323,
344(2) and (4), 378, 393(3), (6), and (9), 395, 408(2),
(3), (4), (12), (14), (16), (17), (18), (19B), (22), (25), (35),
(41), (46), (54), (56), (61), (66), (68), (68B), (69), (70),
(72), (73), (76), (78B), (79), (82), (84), (90), (92), (101),
(105), (106), (112), (119), (120), (121), (129), (131),
(150), (151), (153), and (157), 414, 414C, 415, 422B(1)
and (2), 426C, 431, 448, 450, 453, 456, 457, 461, 463(4)
and (5), 477, 502, 503, 524(3), and 624 come into force
on 1 April 2010.

(30) Sections 150 and 372 come into force on 30 June 2010.

(31) Sections 28, 38B, 44, 68, 98(1), (3), (5), and (6), 140,
141, 141B, 142, 143, 146, 149, 216(1), (4), and (6),
217(1), (2), and (3), 222, 225, 238, 239, 240, 264, 265,
266, 267, 272, 273(1), (5), and (7), 274, 278, 279(1), (3),
and (4), 283, 285, 286(5) and (9), 287(1), (4), and (5),
297, 298, 305, 307(2) and (4), 324, 330(2), (3), and (5),
331(1), (3), and (4), 333, 334, 335, 336(1), (2), (4), and
(5), 338, 341, 342(2) and (4), 343(1), (5), and (6), 351,
353(2) and (4), 368, 369, 408(6), (11), (19), (23B), (26B),
(27B), (35C), (38D), (40D), (41B), (45), (58B), (60B), (77),
(77B), (81), (83B), (102), (103), (104), (109B), (110),
(110B), (113), (114), (115C), (119B), (126), (127), (130),
(135), (138B), (140), (148), and (156), 421(1) and (3),
464, and 493 come into force on 1 July 2010.

Part 1

Amendments to Income Tax Act 2007

3 Income Tax Act 2007

This Part amends the Income Tax Act 2007.

4 Income tax liability of person with schedular income 5

- (1) After section BC 7(3), the following is added:

“Income tax liability of multi-rate PIEs

- “(4) The income tax liability for a tax year of a multi-rate PIE is determined under **subpart HM** (Portfolio investment entities).”

- (2) In section BC 7, in the list of defined terms, “multi-rate PIE” 10
is inserted.

- (3) **Subsections (1) and (2)** apply for the 2009–10 and later in-
come years.

- (3) **Subsection (1)** applies for the 2010–11 and later income
years. 15

5 Withholding liabilities

- (1) Section BE 1(6) is repealed.

- (2) In section BE 1, in the list of defined terms, “FDP” and “FDP
rules” are omitted.

- (3) **Subsections (1) and (2)** apply for the 2009–10 and later in-
come years. 20

- (1) Section BE 1(1) is replaced by the following:

“PAYE income payments

- “(1) A person who makes a PAYE income payment must withhold
an amount from the payment under the PAYE rules.” 25

- (2) A person who makes an employer’s superannuation cash con-
tribution must pay ESCT under the ESCT rules.

- (3) Section BE 1(6) is repealed.

- (4) In section BE 1, in the list of defined terms, “retirement sav-
ings scheme”, “retirement scheme contribution”, “RSCT”, and 30
“RSCT rules” are inserted.

- (5) In section BE 1, in the list of defined terms,—

- (a) “employer’s superannuation contribution” and “PAYE
payment” are omitted:

- (b) “employer’s superannuation cash contribution” and “PAYE income payment” are inserted.
- (6) In section BE 1, in the list of defined terms, “FDP” and “FDP rules” are omitted.
- (7) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 5
- (8) **Subsection (3)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 10
- 6 Other obligations**
- (1) Section BF 1(d) is repealed.
- (2) In section BF 1, in the list of defined terms, “further FDP” is omitted. 15
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (3) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 20
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 7 Disposal: land used for landfill, if notice of election**
- (1) Section CB 8(c) is replaced by the following:
- “(c) the person acquiring the land is not an associated person; and”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for the 2010–11 and later income years. 30
- 8 Section CB 26 replaced**
- (1) Section CB 26 is replaced by the following:

“CB 26 Disposal of certain shares by portfolio investment entities

“When this section applies

- “(1) This section applies when—
- “(a) the income from the disposal by a person (the **entity**) of the share is excluded income under **section CX 55** (Proceeds from disposal of investment shares); and
 - “(b) a dividend from the share is—
 - “(i) declared before the disposal; and
 - “(ii) paid to a holder of the share who, after the disposal, becomes entitled to the dividend.

“Income

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

$$\begin{aligned} &(\text{shares at declaration} - \text{shares on distribution}) \\ &\quad \times \text{dividend.} \end{aligned}$$

“Definition of items in formula

15

- “(3) In the formula,—

- “(a) **shares at declaration** is the number of shares held by the entity when the dividend is declared:
- “(b) **shares on distribution** is the number of shares for which the entity derives a dividend: 20
- “(c) ~~**dividend** is the amount of the dividend or, for a share issued by an ICA company, the amount of the dividend that is not fully imputed as described in section RF 9(2) (When dividends fully imputed or fully credited):~~
- “(c) **dividend** is the amount of the dividend per share or, for a share issued by an ICA company, the amount of the dividend per share that is not fully imputed. 25

“Positive result

- “(4) The result of the formula must be a positive amount.

“Defined in this Act: ~~amount, company, dividend, excluded income, ICA company, income, pay, portfolio investment entity, share~~
amount, company, dividend, excluded income, fully imputed, ICA company, income, pay, portfolio investment entity, share

“Compare: 2007 No 97 s CB 26”.

- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for the 2010–11 and later income years.

- 8B** **Section CB 27 repealed** 5
- (1) Section CB 27 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

- 9** **New heading and section CB 36 added** 10
- After section CB 35, the following is added:
- “Emissions units under Climate Change
Response Act 2002*

“CB36 Disposal of emissions units

“When this section applies

- “(1) This section applies when a person disposes of an emissions unit. 15

“Income

- “(2) The amount that the person derives on the disposal is income:
- “Surrender of unit: generally no income*

- “(3) If the disposal is by surrender under the Climate Change Re- 20
sponse Act 2002, the person is treated as having sold the unit,
at the time of the surrender, to an unrelated person for an
amount equal to the unit’s cost, except if 1 of **subsections
(4) and (5)** applies:

“Surrender of unit: post-1989 forest land deforestation 25

- “(4) Despite **subsection (3)**, the person is treated as deriving in-
come of zero if the person surrenders the emissions unit in
relation to the deforestation of post-1989 forest land:

*“Surrender of unit: deforestation of some pre-1990 forest
land* 30

- “(5) Despite **subsection (3)**, the person is treated as deriving in-
come of zero if—
- “(a) the person surrenders the emissions unit in relation to
the deforestation of pre-1990 forest land; and

“(b) the person would derive income, other than exempt income or excluded income, from a disposal of the land without timber at the time of the surrender.

“Converted unit treated as sold

“(6) If a person converts a New Zealand emissions unit, other than a forest land emissions unit, into a Kyoto emissions unit under the Climate Change Response Act 2002, the person is treated as having sold the converted unit for an amount equal to the unit’s cost. 5

“Exempt income: pre-1990 forest land unit

“(7) **Section GW 3B** (Pre-1990 forest land emissions units) applies to the disposal to another person of a pre-1990 forest land emissions unit. 10

“Disposal at below market value

“(8) **Section GG 4B** (Disposals of emissions units at below market value) may apply to treat a disposal, other than a surrender, as being for market value. 15

“Defined in this Act: amount, convert, emissions unit, forest land emissions unit, income, Kyoto emissions unit, New Zealand emissions unit, pre-1990 forest land emissions unit, post-1989 forest land emissions unit, surrender”.

9 **Heading and section CB 36 replaced**

The heading before section CB 36 and section CB 36 are replaced by the following:

**“Emissions units under Climate Change
Response Act 2002**

“CB 36 Disposal of emissions units

“When this section applies

“(1) This section applies when a person disposes of an emissions unit.

“Income

“(2) The amount that the person derives on the disposal is income.

“Surrender of unit: deemed sale at given value

“(3) If the disposal is by surrender under the Climate Change Response Act 2002, the person is treated as having sold the unit, 30

at the time of the surrender, to an unrelated person for an amount equal to—

“(a) the unit’s cost, if none of **paragraphs (b) to (f)** applies; or

“(b) the unit’s value under **section ED 1(7B)** (Valuation of excepted financial arrangements), if that subsection applies and none of **paragraphs (c) to (f)** apply; or 5

“(c) zero, if **subsection (4)** applies; or

“(d) zero, if **subsection (5)** applies; or

“(e) the unit’s market value, if **subsection (6)** applies; or 10

“(f) the unit’s market value, if **subsection (7)** applies.

“Surrender of unit: emissions relating to post-1989 forest land

“(4) The person is treated as selling the unit for an amount of zero if the person surrenders the emissions unit for emissions in relation to post-1989 forest land. 15

“Surrender of unit: deforestation of some pre-1990 forest land

“(5) The person is treated as selling the unit for an amount of zero if— 20

“(a) the person surrenders the emissions unit in relation to the deforestation of pre-1990 forest land; and

“(b) the person would derive income, other than exempt income or excluded income, from a disposal of the land without timber at the time of the surrender. 25

“Surrender of post-1989 forest land unit: emissions not relating to post-1989 forest land

“(6) The person is treated as selling a post-1989 forest land emissions unit for an amount equal to the unit’s market value if the person surrenders the emissions unit other than for emissions in relation to post-1989 forest land. 30

“Surrender of unit: free unit other than forest land unit

“(7) The person is treated as selling a unit that is not a forest land unit for an amount equal to the unit’s market value if—

“(a) the person surrenders the unit before the period of the emissions to which the unit relates; and 35

“(b) the unit was transferred to the person under Part 4, sub-part 2 of the Climate Change Response Act 2002 at a price of zero.

“Converted unit treated as sold

“(8) If a person converts a New Zealand emissions unit, other than a forest land emissions unit, into a Kyoto emissions unit under the Climate Change Response Act 2002, the person is treated as having sold the converted unit for an amount equal to— 5

“(a) the unit’s value under **section ED 1(7B)**, if that sub-section applies; or 10

“(b) the unit’s cost, otherwise.

“Excluded income: post-1989 forest land emissions unit

“(9) **Section CX 51B** (Disposal of pre-1990 forest land emissions units) applies to the disposal to another person of a pre-1990 forest land emissions unit. 15

“Defined in this Act: amount, convert, emissions unit, forest land emissions unit, income, Kyoto emissions unit, New Zealand emissions unit, pre-1990 forest land emissions unit, post-1989 forest land emissions unit, surrender”.

9B New section CC 8B inserted

(1) After section CC 8, the following is inserted: 20

“CC 8B Certain commercial bills: non-resident holders

“When this section applies

“(1) This section applies when a non-resident holder of a commercial bill who is required to calculate and allocate income and expenditure under neither the financial arrangements rules nor the old financial arrangements rules because of the application of section EW 9(2) to (4) or EZ 45(e) (which relate to the application of the rules)— 25

“(a) disposes of the commercial bill other than by redemption; or 30

“(b) redeems a commercial bill whose issuer is an associated person of the non-resident.

“Income: disposal

“(2) The value of the commercial bill on the day the non-resident holder disposes of it is income of the person. 35

“Income: redemption

- “(3) The amount that the non-resident holder receives on redemption is income of the person.

“Defined in this Act: amount, commercial bill, financial arrangements rules, income, non-resident, old financial arrangements rules

5

“Compare: 2004 No 35 s CZ 8”.

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

10 Transfers of value generally

- (1) Section CD 4(1)(a) is replaced by the following:

10

“(a) the cause of the transfer is a shareholding in the company; whether or not the person holds shares in the company; and”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

15

10B What is a transfer of value?

- (1) After section CD 5(2), the following is added:

“When shares are cancelled

- “(2B) The market value of any transfer from the shareholder to the company on the cancellation of a share of the shareholder’s rights as a shareholder is zero.”

20

- (2) In section CD 5, in the list of defined terms, “market value”, “share”, and “shareholder” are inserted.

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

25

11 When is a transfer caused by a shareholding relationship?

- (1) The section heading to section CD 6 is replaced by “**Certain shareholding relationships**”.

- (2) Section CD 6(1) is repealed.

- (3) The heading to section CD 6(2) is replaced by “*Indication that transfer caused by shareholding relationship*”.

30

- (4) In section CD 6(3), the words before paragraph (a) are replaced by the following:

- “(3) A transfer of value by a statutory producer board to a member is not caused by a shareholding if—”.
- (5) In section CD 6(4), the words before paragraph (a) are replaced by the following:
- “(4) A transfer of value by a co-operative company to a shareholder is not caused by a shareholding if—”.
- (6) **Subsections (1) to (5)** apply for the 2009–10 and later income years.
- 11 When is a transfer caused by a shareholding relationship?**
- (1) In section CD 6(1)(a)(ii), “shareholder; or” is replaced by “shareholder; and”, and section CD 6(1)(a)(iii) is repealed.
- (2) **Subsection (1)** applies for the 2010–11 and later income years.
- 12 Returns of capital: off-market share cancellations**
- (1) In section CD 22(9), in the definition of **counted associate**, paragraph (b), “is a beneficiary” is replaced by “has benefited or is eligible to benefit”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 12 Returns of capital: off-market share cancellations**
- (1) In section CD 22(9),—
- (a) in the definition of **counted associate**, paragraph (b), “is a beneficiary” is replaced by “has benefited or is eligible to benefit”;
- (b) in the definition of **non-participating redeemable share**, paragraph (b)(iii), “; or” is replaced by “or **section FA 2B(2)** (Stapled debt securities); or”.
- (2) **Subsection (1)(a)** applies for the 2010–11 and later income years.
- 12B Treasury stock acquisitions**
- (1) Section CD 25(4), other than the heading, is replaced by the following:
- “(4) If subsection (2) applies, then, with effect from the cancellation or the first anniversary, depending on which first causes

subsection (2) to apply, the available subscribed capital of the class of the share is reduced by the lesser of—

“(a) the amount paid to the shareholder on the acquisition;
and

“(b) the available subscribed capital per share calculated 5
under the ordering rule and, in the case of the first
anniversary, calculated as if the share and any other
shares to which this subsection applies on that date
were cancelled on that date.”

(2) **Subsection (1)** applies for the 2008–09 and later income 10
years.

13 Property made available intra-group

(1) Section CD 27(1)(b) is replaced by the following:

“(b) the associated company is associated with a shareholder
in the first company. 15

“(b) in the absence of this section, the transfer would be a
dividend under section CD 6(1)(a)(ii) because the asso-
ciated company is associated with a shareholder in the
first company.”

(2) Section CD 27(3)(a)(ii) is replaced by the following: 20

“(ii) the first company is associated with a company
(the **parent company**) that has a voting interest
in the associated company and that could have
received the transfer of value without the transfer
being assessable income or non-resident passive 25
income; and”.

(3) In section CD 27, in the list of defined terms, “FDP” is omitted.

(4) **Subsections (1) to (3)** apply for the 2009–10 and later in-
come years.

(4) **Subsection (2)** applies for— 30

(a) the 2009–10 and later income years, for persons having
a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having
a balance date before 30 June.

14 Employee benefits

In section CD 32(2), “CE 1(c)” is replaced by “**CE 1(1)(c)**”. 35

15 Foreign investment fund income

- (1) In section CD 36, after the heading, “*Amount not dividend*” is inserted as a subsection heading.
- (2) In section CD 36(b)(iv), “method; and” is replaced by “method.”, and paragraph (c) is repealed. 5
- (3) After section CD 36(b), the following are inserted as subsections (2) and (3):
 “*Exclusion for interests in grey list companies*
 “(2) Subsection (1)(b)(iv) does not apply if—
 “(a) the FIF is a grey list company; and 10
 “(b) the person holds a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls.
 “*Application of rule for certain managed funds*
 “(3) **Subsection (2)** does not apply if— 15
 “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and
 “(b) the FIF is a foreign investment vehicle.”
 (4) **Section CD 36(3)(b)**, is replaced by the following: 20
 “(b) the FIF is a foreign PIE equivalent.”
 (5) In section CD 36, in the list of defined terms, “direct income interest”, “foreign investment vehicle”, “life insurance”, and “portfolio investment entity” are inserted.
 (6) In section CD 36, in the list of defined terms, “foreign investment vehicle ” is omitted and “foreign PIE equivalent” is inserted. 25
 (7) **Subsections (4) and (6)** apply for the 2009–10 and later income years.
 (7) **Subsection (4)** applies for the 2010–11 and later income 30
 years.

16 New section CD 36B inserted

- (1) After section CD 36, the following is inserted:

**~~CD 36B~~ Distributions to resident company for deductible
foreign equity and fixed-rate foreign equity**

~~Certain distributions not dividends~~

- ~~(1)~~ A distribution by a foreign company in relation to an interest
in the company of a company resident in New Zealand (the
resident) is not a dividend if, at the time of the distribution,— 5
- ~~(a)~~ the distribution is a deductible foreign equity distribu-
tion;
- ~~(b)~~ the resident’s interest in the company is a fixed-rate for-
eign equity. 10

~~Distributions treated as payments of interest~~

- ~~(2)~~ An amount that is not a dividend as a result of **subsection
(4)** is treated as a payment of interest for money lent to the
company by the resident.

~~“Defined in this Act: amount; company; deductible foreign equity distribution;
dividend; fixed-rate foreign equity; interest; money lent”.~~ 15

- ~~(2)~~ **Subsection (4)** applies for the 2009–10 and later income
years.

17 Available subscribed capital (ASC) amount

- (1) Section CD 43(8)(b) is replaced by the following: 20
- “(b) an amount received by the company if the amount is
mainly attributable, directly or indirectly, to the pay-
ment by the company of a dividend to a controlled for-
eign company at a time when the company is also a
controlled foreign company, regardless of whether ei- 25
ther company is a grey list company or non-attributing
Australian CFC.”
- (2) In section CD 43, in the list of defined terms, “non-attributing
Australian CFC” is added.
- ~~(3)~~ **Subsections (4) and (2)** apply for the 2009–10 and later in- 30
come years.
- (3) In section CD 43, in the list of defined terms, “consideration”
is inserted.
- (4) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having 35
a balance date on or after 30 June; or

- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

18 Available capital distribution amount

- (1) ~~Section CD 44(11) and (12) are replaced by the following:~~

“Associated person transactions

5

- ~~“(11) No capital gain amount is derived or capital loss amount is incurred by a company after 31 March 1988 on disposing of property under an arrangement with an associated person. This subsection is overridden by **subsection (12)**.”~~

“Close company liquidations

10

- ~~“(12) **Subsection (11)** does not apply if—~~

~~“(a) the company is a close company; and~~

~~“(b) the associated person is not a company; and~~

~~“(c) the disposal is on the liquidation of the company.”~~

- (2) ~~Section CD 44(15) to (17) are repealed.~~

15

- (3) ~~In section CD 44, in the list of defined terms, “related person” and “relative” are omitted.~~

- (4) ~~**Subsections (1) to (3)** apply for the 2009–10 and later income years.~~

18 Available capital distribution amount

20

- (1) After section CD 44(10) the following is inserted:

“Associated persons transactions

- “(10B) No capital gain amount is derived or capital loss amount incurred by a company after 31 March 2010 on disposing of property under an arrangement with an associated person. This subsection is overridden by **subsection (10C)**.”

25

“Close company liquidations

- “(10C) **Subsection (10B)** does not apply if—

“(a) the company is a close company; and

“(b) the associated person is not a company; and

“(c) the disposal is on the liquidation of the company.”

30

- (2) Section CD 44(11) and (12) is repealed.

- (3) After section CD 44(14), the following is inserted:

“Relationship with section CZ 9B

“(14B) For capital gain amounts derived or capital loss amounts incurred between 1 April 1988 and 31 March 2010, *see* **section CZ 9B** (Available capital distribution amount: 1988 to 2010).”

- (4) Section CD 44(15) to (17) is repealed. 5
- (5) **Subsections (1) to (4)** apply for the 2010–11 and later income years.

18B Heading and sections CD 45 to CD 52 repealed

- (1) The heading before section CD 45 and sections CD 45 to CD 52 are repealed. 10
- (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 15

19 Prevention of double taxation of share cancellation dividends

- (1) Section CD 53(3), is replaced by the following:

“Non-taxable dividends
- “(3) ~~Subsection (2) does not apply to the extent to which the dividend is exempt income of the person under sections CW 9 and CW 10 (which relate to income from equity).~~ 20
- “(3) Subsection (2) does not apply to the extent to which the dividend is exempt income of the person under sections CW 9 to CW 11 (which relate to income from equity).” 25
- (2) Section CD 53(4) and (5) are repealed.
- (3) In section CD 53, in the list of defined terms, “FDP” and “FDP credit” are omitted.
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years. 30
- (4) **Subsections (1) and (2)** apply for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 35

20 Amounts derived in connection with employment

(1) After the heading to section CE 1, “Income” is inserted as a subsection heading.

(2) Section CE 1(c) is replaced by the following:

~~“(e) the market value of accommodation that the person receives in connection with their employment or service:~~ 5
“(c) the market value of accommodation that the person receives in connection with their employment or service other than an amount paid under **section CW 17B** (Relocation payments):”. 10

(3) After section CE 1(g), the following is inserted as subsection (2):

“Meaning of accommodation

~~“(2) For the purposes of this section, **accommodation** means board or lodging, or the use of a house or part of a house:~~ 15

“(2) For the purposes of this section and **section CX 28** (Accommodation), **accommodation** means board or lodging, or the use of a house or living premises, or the use of part of a house or living premises.”

(4) In section CE 1, in the list of defined terms, “accommodation” 20 is inserted.

(5) **Subclauses (1) to (3)** apply for the 2008–09 and later income years.

21 Meaning of expenditure on account of an employee

After section CE 5(3)(b), the following is inserted: 25

~~“(bb) an amount paid under **section CW 17B** (Relocation payments) or **section CW 17C** (Payments for overtime meals):~~

“(bb) an amount paid under **section CW 17B** (Relocation payments) or **section CW 17C** (Payments for overtime meals and certain other allowances):”. 30

22 Benefits, pensions, compensation, and government grants

Section CF 1(2)(g) is replaced by the following:

~~“(g) a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 paid~~ 35

by the Corporation as defined in that Act, for attendant care as defined in schedule 1, clause 12 of that Act:

- “(h) a personal service rehabilitation payment for a person under the Injury Prevention, Rehabilitation, and Compensation Act 2001.”

5

22 Benefits, pensions, compensation, and government grants

In section CF 1(2), in the definition of **accident compensation payment**, paragraph (f) and subsequent paragraphs are replaced by the following:

- “(f) a payment under the Injury Prevention, Rehabilitation, and Compensation Act 2001 paid by the Corporation as defined in that Act, of weekly compensation that is not recovered or recoverable under section 248 of that Act: 10
- “(g) a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 paid by the Corporation as defined in that Act, for attendant care as defined in schedule 1, clause 12 of that Act: 15
- “(h) a personal service rehabilitation payment for a person under the Injury Prevention, Rehabilitation, and Compensation Act 2001”.

20

23 New subpart CO inserted

After section CH 10, the following is inserted:

“Subpart CO—Income from voluntary activities

“CO 1 Income from voluntary activities

25

An amount that a person derives under **section GW 62B** (Voluntary activities) as a reimbursement payment for expenditure that they incur in undertaking a voluntary activity is income of the person.

“Defined in this Act: amount; income

30

“CO 1 Income from voluntary activities

“Income

- “(1) An amount derived by a person in undertaking a voluntary activity is income of the person.

“Relationship with section CW 62B

“(2) This section is overridden by **section CW 62B** (Voluntary activities)."

“Defined in this Act: amount, income”.

24 Section CP 1 replaced 5

(1) Section CP 1 is replaced by the following:

“CP 1 Attributed income of investors in multi-rate PIEs

“When this section applies

“(1) This section applies when a multi-rate PIE attributes an amount of income for an income year calculated under **section HM 36** (Calculating amounts attributed to investors) to a person who is an investor in the PIE. 10

“Income

“(2) The amount is income of the person in the income year of the person in which the PIE’s income year ends. 15

“Defined in this Act: amount, income, income year, investor, multi-rate PIE, PIE

“Compare: 2007 No 97 s CP 1”.

(2) **Subsection (1)** applies for the 2009–10 and later income years. 20

(2) **Subsection (1)** applies for the 2010–11 and later income years.

25 When attributed CFC income arises

(1) Section CQ 2(1)(f)(i) is replaced by the following:

“(i) the CFC has net attributable CFC income for the accounting period under **section EX 20C** (Net attributable CFC income or loss); or” 25

(2) Section CQ 2(1)(g) is replaced by the following:

“(fb) the CFC is not a non-attributing active CFC for the accounting period, under **section EX 21B** (Non-attributing active CFCs); and 30

“(g) the CFC is not a non-attributing Australian CFC for the accounting period, under **section EX 22** (Non-attributing Australian CFCs); and”.

(3) In section CQ 2, in the list of defined terms,— 35

- (a) “branch equivalent income” is omitted:
 - (b) “net attributable CFC income”, “non-attributing active CFC”, and “non-attributing Australian CFC” are inserted:
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years. 5
- (2) In section CQ 2(1), paragraph (g) is repealed and the following is added:
 - “(h) the CFC is not a non-attributing active CFC for the accounting period, under **section EX 21B** (Non-attributing active CFCs); and 10
 - “(i) the CFC is not a non-attributing Australian CFC for the accounting period, under **section EX 22** (Non-attributing Australian CFCs).”
- (3) After section CQ 2(2), the following is inserted: 15

“*Special rule: attributed CFC amount from personal services*
- “(2B) If a person and a non-attributing active CFC or non-attributing Australian CFC meet the requirements of **subsection (1)(a) to (e)** and the CFC derives income from personal services that is an attributable CFC amount under **section EX 20B(3)(h)** (Attributable CFC amount), the person has **attributed CFC income** from the CFC equal to the product of— 20
 - “(a) the person’s income interest in the CFC:
 - “(b) the amount by which the CFC’s income from personal services exceeds the expenditure incurred by the CFC 25

in deriving the income from personal services.”
- (4) In section CQ 2, in the list of defined terms,—
 - (a) “branch equivalent income” is omitted:
 - (b) “attributable CFC amount”, “net attributable CFC income”, “non-attributing active CFC”, and “non-attributing Australian CFC” are inserted. 30
- (5) **Subsections (1) to (3)** apply for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 35

26 When FIF income arises

- (1) Section CQ 5(3) is replaced by the following:

“FIF income from CFC with FIF interest

- “(3) **FIF income** also includes an additional amount that a person with an income interest of 10% or more in a CFC has in an income year under **section EX 58** (Additional FIF income or loss if CFC owns FIF), whether or not the CFC is a non-attributing Australian CFC under **section EX 22** (Non-attributing Australian CFCs).”

- (2) In section CQ 5, in the list of defined terms, “non-attributing Australian CFC” is inserted.

- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

- (3) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 15
(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

26B Section CQ 7 repealed

Section CQ 7 is repealed.

20

27 Heading to subpart CR replaced

In subpart CR, the heading is replaced by “**Income from insurance**”.

28 Sections CR 1 and CR 2 replaced

- (1) Sections CR 1 and CR 2 are replaced by the following: 25

“CR 1 Policyholder base income of life insurer

“Policyholder base gross income

- “(1) The amount of policyholder base gross income that a life insurer has for an income year is income of the life insurer for that year, to the extent to which it is not used to calculate their schedular policyholder base income under **section EY 2(3) to (6)** (Policyholder base). 30

“Schedular income

- “(2) The amount of schedular policyholder base income that a life insurer has for an income year is schedular income of the life insurer for the year.

“Defined in this Act: amount; income; income year; life insurer; policyholder base gross income; schedular policyholder base income 5

“CR 2 Shareholder base gross income of life insurer

The amount of shareholder base gross income that a life insurer has for an income year is income of the life insurer for that year. 10

“Defined in this Act: amount; income; income year; life insurer; shareholder base gross income

“CR 1 Policyholder base income of life insurer

If, but for this section, a life insurer has an amount of policyholder base income for an income year, and that amount is not income under this Part, the amount is income of the life insurer for the income year. 15

“Defined in this Act: amount; income; income year; life insurer; policyholder base income

“CR 2 Shareholder base income of life insurer

If, but for this section, a life insurer has an amount of shareholder base income for an income year, and that amount is not income under this Part, the amount is income of the life insurer for the income year. 20

“Defined in this Act: amount; income; income year; life insurer; shareholder base income”. 25

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

- (2) **Subsection (1)** applies—

- (a) on and after 1 July 2010, unless **paragraph (b)** applies: 30
(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for

the tax year corresponding to the first relevant income year.

29 New section CR 4 added

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

“CR 4 Income for general insurance outstanding claims reserve 5

“When this section applies

“(1) This section applies for—

“(a) an insurer who uses IFRS 4, Appendix D for general insurance contracts; and

“(b) general insurance contracts, excluding contracts having premiums to which section CR 3 applies. 10

“Formula for insurer’s income

“(2) For an income year (the **current year**), an insurer has income of the amount by which the amount calculated using the following formula is more than zero: 15

opening outstanding claims reserve – closing outstanding claims reserve:

“Definition of items in formula

“(3) In the formula,—

“(a) **opening outstanding claims reserve** is—

“(i) the amount of the insurer’s closing outstanding claims reserve for the income year before the current year; or 20

“(ii) the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the beginning of the current year, if the insurer has no closing outstanding claims reserve for the income year before the current year: 25

“(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the end of the current year: 30

“Defined in this Act: amount; general insurance contract; IFRS 4; income; income year; insurer”.

(2) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, unless **paragraph (b)** applies;
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2009–10 income year.

29 New section CR 4 added

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

“CR 4 Income for general insurance outstanding claims reserve

“What this section applies to 10

“(1) This section applies for—

“(a) an insurer who—

“(i) uses IFRS 4, Appendix D for general insurance contracts;

“(ii) is a life insurer who has general insurance contracts; 15

“(b) general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general insurer) applies.

“Formula for insurer’s OCR income 20

“(2) For an income year (the **current year**), an insurer has income of the amount by which zero is less than the amount calculated using the formula—

opening outstanding claims reserve
– closing outstanding claims reserve.

“Definition of items in formula

“(3) In the formula,— 25

“(a) opening outstanding claims reserve is—

“(i) the amount of the insurer’s closing outstanding claims reserve for the income year before the current year (the **prior year**); or

“(ii) the amount of the insurer’s reserve for outstanding claims liability, calculated at the end of the prior year, using the basis the insurer used for tax purposes in that prior year, if the current year is 30

- the first year that this section applies to the insurer:
- “(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve, calculated at the end of the current year. 5
- “Defined in this Act: amount, general insurance contract, IFRS 4, income, income year, insurer, life insurer, outstanding claims reserve”.
- (2) **Subsection (1) applies—**
- (a) for an insurer who uses IFRS 4,—
- (i) for the 2009–10 and later income years, unless **subparagraph (ii)** applies: 10
- (ii) for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2009–10 income year and the person chooses to use IFRS 4 in a return of income for that first year: 15
- (b) for a life insurer,—
- (i) on and after 1 July 2010, unless **subparagraph (ii)** applies: 20
- (ii) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 25
- 29B Withdrawals**
- (1) Section CS 1(1)(a)(i) is replaced by the following:
- “(i) a fund to which the member’s employer has made for the member’s benefit an employer’s superannuation cash contribution; or”. 30
- (2) Section CS 1(7)(b) is replaced by the following:
- “(b) in the corresponding tax year, the total of the member’s taxable income and the employer’s superannuation cash contributions made for the member’s benefit is less than \$60,000.” 35

(3) In section CS 1, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

(4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

5

29C Exclusions of withdrawals of various kinds

(1) In section CS 2(2), (3), and (10), “employer’s superannuation contributions” is replaced by “employer’s superannuation cash contributions” in each place where it appears.

(2) In section CS 2, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

10

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

29D Exclusion of withdrawal on partial retirement

15

(1) In section CS 6(1)(d), “employer’s superannuation contributions” is replaced by “employer’s superannuation cash contributions”.

(2) In section CS 6, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

20

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

29E Exclusion of withdrawal when member ends employment

(1) In section CS 7(2) to (5), “employer’s superannuation contributions” is replaced by “employer’s superannuation cash contributions” in each place where it appears.

25

(2) In section CS 7, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

30

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

30 Section CV 10 repealed

(1) Section CV 10 is repealed.

(2) **Subsection (4)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

31 **New section CW 3B inserted**

After section CW 3, the following is inserted:

“CW 3B Pre-1990 forest land emissions units

“Who this section applies to

“(1) This section applies to a person and a pre-1990 forest land emissions unit of the person.

“Exempt income: disposal

“(2) An amount of income that the person derives from the disposal of the pre-1990 forest land emissions unit is exempt income if—

“(a) the disposal is not by surrender under the Climate Change Response Act 2002; and

“(b) at the time of the disposal, the person would not derive income, other than exempt income or excluded income, from a disposal of the pre-1990 forest land without timber to which the emissions unit relates.

“Defined in this Act: amount; emissions unit; exempt income; income; pre-1990 forest land; pre-1990 forest land emissions unit; surrender”.

31 **Section CW 3B repealed**

Section CW 3B is repealed.

32 **Section CW 9 replaced**

(1) Section CW 9 is replaced by the following:

“CW 9 Dividend derived from foreign company

“Exempt income

“(1) A dividend from a foreign company is exempt income if derived by a company that is resident in New Zealand.

“Exclusions

- “(2) **Subsection (1)** does not apply to a dividend if the dividend is paid in relation to rights that are a direct income interest of less than 10% in a foreign company and are described in—
- “(a) section EX 31 (Exemption for ASX-listed Australian companies): 5
 - “(b) section EX 32 (Exemption for Australian unit trusts with adequate turnover or distributions):
 - “(c) section EX 36 (Venture capital company emigrating to grey list country: 10-year exemption): 10
 - “(d) section EX 37 (Grey list company owning New Zealand venture capital company: 10-year exemption):
 - “(e) section EX 37B (Share in grey list company acquired under venture investment agreement):
 - “(f) section EX 39 (Terminating exemption for grey list company with numerous New Zealand shareholders: 15

“Defined in this Act: company; dividend; exempt income; resident in New Zealand”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years: 20

32 Dividend derived by company from overseas

- (1) Section CW 9(1), except for the heading, is replaced by the following:
- “(1) A dividend from a foreign company is exempt income if derived by a company that is resident in New Zealand.” 25
 - (2) After section CW 9(2), the following is added:
“Non-application to dividends derived by certain PIEs
 - “(3) This section does not apply to a dividend derived by a portfolio tax rate entity.”
 - (3) Section CW 9 is replaced by the following: 30
- “CW 9 Dividend derived from foreign company**
- “Exempt income*
- “(1) A dividend from a foreign company is exempt income if derived by a company that is resident in New Zealand.

“Exclusions

“(2) **Subsection (1)** does not apply to a dividend if the dividend is paid in relation to rights that are—

“(a) a direct income interest of less than 10% in a foreign company described in— 5

“(i) section EX 31 (Exemption for ASX-listed Australian companies):

“(ii) section EX 32 (Exemption for Australian unit trusts with adequate turnover or distributions):

“(iii) section EX 36 (Venture capital company emigrating to grey list country: 10-year exemption): 10

“(iv) section EX 37 (Grey list company owning New Zealand venture capital company: 10-year exemption):

“(v) section EX 37B (Share in grey list company acquired under venture investment agreement): 15

“(vi) section EX 39 (Terminating exemption for grey list company with numerous New Zealand shareholders):

“(b) a fixed-rate foreign equity: 20

“(c) rights to a deductible foreign equity distribution.

“Non-application to dividends derived by certain PIEs

“(3) This section does not apply to a dividend derived by a portfolio tax rate entity.

“Defined in this Act: company, dividend, deductible foreign equity distribution, exempt income, fixed-rate foreign equity, portfolio tax rate entity, resident in New Zealand”. 25

(4) **Section CW 9(3)**, except for the heading, is replaced by the following:

“(3) This section does not apply to a dividend derived by a multi-rate PIE.” 30

(5) In section CW 9, in the list of defined terms, “multi-rate PIE” is inserted.

(6) **Subsection (3)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 35

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

(7) **Subsection (4)** applies for the 2010–11 and later income years.

33 Proceeds of share disposal by qualifying foreign equity investor

Section CW 12(4), other than the heading, is replaced by the following:

“(4) In this section,—

“**foreign exempt entity** means a person who—

“(a) is established as a legal entity under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws of a part of such a territory; and 10

“(b) has persons (the **members**) who hold interests in the capital of the legal entity and who are entitled to shares of the income of the legal entity; and 15

“(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

“(d) is resident in no territory that has laws that treat the legal entity as being subject to a tax on income other than as a body that handles income of the members; and 20

“(e) does not have a member who—

“(i) has, when treated as holding the interests of any person who is associated with the member, an interest of 10% or more in the capital of the legal entity; and 25

“(ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and

“(f) does not have a member who, when treated as holding the interests of any person who is associated with the member, has an interest of 10% or more in the capital of the legal entity and who would— 30

“(i) be entitled to receive an amount derived from a disposal to which this section would apply; and 35

“(ii) receive an amount referred to in **subparagraph (i)** that, in the absence of this section, would have been reduced by a tax imposed by the Act on the

- amount or on the proceeds of the disposal in the hands of the legal entity; and
- “(iii) in any circumstances under the laws of the territory in which the member is resident or under the laws of part of the territory be entitled to receive 5
from the government of the territory or part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness, or other compensation for the reduction referred to in **sub-paragraph (ii)**; and 10
- “(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 interests of a person associated with the resident, holds a total direct 15
or indirect interest of 10% or more
- “**foreign exempt partnership** means an unincorporated body that—
- “(a) is established under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws 20
of a part of such a territory; and
- “(b) consists of persons (the **partners**); and
- “(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 25
handles income of the partners; and
- “(d) has at least 1 partner (the **general partner**) who is liable for all debts of the unincorporated body and who has significant involvement in, and control of, the business activities of the unincorporated body; and 30
- “(e) has at least 1 partner (the **special partner**) whose liability for debts of the unincorporated body is limited and who has limited involvement in, and control of, the business activities of the unincorporated body; and
- “(f) does not have a general partner who is resident in no 35
territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and
- “(g) does not have a partner who—

- “(i) has, when treated as holding the interests of any person who is associated with the partner, an interest of 10% or more in the capital of the unincorporated body; and
- “(ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and 5
- “(h) does not have a partner who, when treated as holding the interests of any person who is associated with the partner, has an interest of 10% or more in the capital of the unincorporated body and who— 10
 - “(i) would under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and
 - “(ii) would in any circumstances under the laws of the territory in which the partner is resident or under the laws of part of the territory be entitled to receive from the government of the territory or part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness, or other compensation for a payment of the tax referred to in **subparagraph (i)**; and 20
- “(i) does not have a holder of a direct or indirect interest in the capital of the unincorporated body who,—
 - “(i) is resident in New Zealand: 25
 - “(ii) when treated as holding the interests of a person associated with the resident, holds a total direct or indirect interest of 10% or more
- “**foreign exempt person** means a person who—
 - “(a) is resident in a territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and 30
 - “(b) is not a legal entity that meets the requirements of **paragraphs (a) to (c)** of the definition of **foreign exempt entity**; and 35
 - “(c) is not part of an unincorporated body that meets the requirements of **paragraphs (a) to (c)** of the definition of **foreign exempt partnership**; and

- “(d) 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
- “(e) is not a person who—
 - “(i) would under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and 5
 - “(ii) would in any circumstances under the laws of the territory in which the person is resident or under the laws of part of the territory be entitled to receive from the government of the territory or part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness, or other compensation for a payment of the tax referred to in **subparagraph (i)**; and 10 15
- “(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 interests of a person associated with the resident, holds a total direct or indirect interest of 10% or more.” 20
- (2) ~~In section CW 12, in the list of defined terms, “1990 version provisions” is omitted.~~

33B Dividends paid by qualifying companies

- (1) Section CW 15(1), other than the heading, is replaced by the following: 25
 - “(1) To the extent to which the amount of a dividend that a qualifying company pays to a person resident in New Zealand is more than a fully imputed distribution, the amount is exempt income of the person.” 30
- (2) In section CW 15, in the list of defined terms, “fully imputed” is inserted.

34 Expenditure on account, and reimbursement, of employees

- (1) After section CW 17(3), the following is added: 35

“Depreciation loss included

~~“(4)~~ In this section, expenditure includes an amount of depreciation loss.

“Relationship with sections CW 17B and CW 17C

~~“(5)~~ This section does not apply to an amount referred to in **section 5**
CW 17B (Relocation payments) or **CW 17C** (Payments for
overtime meals).”

~~(2)~~ In section CW 17, in the list of defined terms, “depreciation
loss” is inserted.

~~(3)~~ **Subsection (1)** does not apply in relation to a tax position 10
taken by a person—

~~(a)~~ in the period from 1 April 2008 to the date on which this
Act receives the Royal assent; and

~~(b)~~ in relation to a deduction for an amount of depreciation
loss; and 15

~~(c)~~ relying on section CW 17 in the absence of the amend-
ment made by **subsection (1)**.

35 New sections CW 17B and CW 17C inserted

After section CW 17, the following are inserted:

“CW 17B Relocation payments 20

“Exempt income

~~“(1)~~ An amount that an employer pays to or on behalf of an em-
ployee in connection with the expenses of the employee in a
work-related relocation is exempt income of the employee.

“Actual expenditure 25

~~“(2)~~ The amount paid must be no more than the actual cost incurred
by or on behalf of the employee on an expense that the Com-
missioner lists as an eligible relocation expense in a determin-
ation made under **subsection (6)**.

“Time limit 30

~~“(3)~~ **Subsection (1)** applies only to expenditure incurred for the
period from the start of the income year in which the employee
relocates or undertakes work at the new location to the end of
the next income year. However, this subsection does not apply
in the case of a temporary move when— 35

- “(a) an employee moves temporarily to a new location and then relocates permanently to that place; and
 - “(b) the temporary move was not treated as a work-related relocation under this section.
- “(3) **Subsection (1)** applies only to expenditure incurred to the 5
 - end of the tax year following that in which the relocation occurs. For the purposes of this subsection, a temporary move that has not been treated as a work-related relocation under this section is ignored.
- “*Meaning of work-related relocation* 10
- “(4) **Work-related relocation** means a relocation of the place where an employee lives that is required—
 - “(a) because the employee’s workplace is not within reasonable daily travelling distance of their residence; and
 - “(b) as a result of the employee— 15
 - “(i) taking up new employment with a new employer; or
 - “(ii) taking up new duties at a new location with their existing employer; or
 - “(iii) continuing in their current position but at a new 20 location.
- “*Exemption from distance test*
- “(5) The requirement in **subsection (4)(a)** for a person’s workplace to be beyond reasonable travelling distance of their residence does not apply to a person whose accommodation forms 25 an integral part of their work.
- “*Determinations*
- “(6) The Commissioner may issue a determination for the purposes of this section under **section 91AAR** of the Tax Administration Act 1994 to provide a list of eligible relocation expenses, 30 and may extend or modify the list from time to time as required. The Commissioner must give at least 30 days’ notice of the implementation date of any alteration.
- “Defined in this Act: amount, Commissioner, employee, employer, exempt income, ~~income year~~, tax year, work-related relocation 35

“CW 17C Payments for overtime meals

“Exempt income

- “(1) An amount that an employer pays to or on behalf of an employee for a meal for the employee when the employee is working overtime is exempt income of the employee. 5

“Eligibility: agreement or established practice

- “(2) **Subsection (1)** applies only if—

“(a) the employee’s employment agreement provides for pay for overtime hours worked; or

“(b) the employer has an established policy or practice of paying for overtime meals. 10

“Actual cost or reasonable estimate

- “(3) The amount paid must be—

“(a) the actual cost to the employee, with documentation required for amounts over \$20 per meal; or 15

“(b) a reasonable estimate of the expenditure likely to be incurred by the employee or a group of employees for whom an amount is payable.

“Meaning of overtime

- “(4) For the purposes of this section, **overtime**, for a person and a day, means time worked for an employer on the day beyond the person’s ordinary hours of work as set out in their employment agreement when the employee has worked more than 2 hours beyond their ordinary hours on that day. 20

“Defined in this Act: amount; employee; employer; exempt income; overtime; pay 25

“CW 17C Payments for overtime meals and certain other allowances

“Exempt income: overtime meals

- “(1) An amount that an employer pays to or on behalf of an employee for a meal for the employee when the employee is working overtime is exempt income of the employee. 30

“Exempt income: certain sustenance allowances

“(2) An amount that an employer pays to an employee as a sustenance allowance for the employee for a day is exempt income of the employee if—

- “(a) the employee works a minimum of 7 hours on the day; and 5
- “(b) their employment requires them—
 - “(i) to work outdoors and away from their employment base for most of the day; and
 - “(ii) to undertake a long period of physical activity in travelling through a neighbourhood or district on foot or by bicycle; and 10
- “(c) it is not practicable for the employer to provide sufficient sustenance on the day for the period when the employee is working outdoors; and 15
- “(d) the allowance recognises—
 - “(i) the arduous physical nature of the employee’s work as described in **paragraph (b)**; and
 - “(ii) that the employer would normally provide tea, coffee, water, or similar refreshments at the employment base in the course of their business. 20

“Eligibility requirements: overtime meals

“(3) **Subsection (1)** applies only if—

- “(a) the employee has worked at least 2 hours’ overtime on the day of the meal; and 25
- “(b) either—
 - “(i) the employee’s employment agreement provides for pay for overtime hours worked; or
 - “(ii) the employer has an established policy or practice of paying for overtime meals. 30

“Eligibility requirements: sustenance allowances

“(4) **Subsection (2)** applies only if the employer has an established policy or practice of paying a sustenance allowance.

“Actual cost or reasonable estimate

- “(5) The amount paid must be— 35
 - “(a) the actual cost to the employee, and for an overtime meal referred to in **subsection (1)**, with documentation required for amounts over \$20 per meal; or

“(b) a reasonable estimate of the expenditure likely to be incurred by the employee or a group of employees for whom an amount is payable.

“Meaning of overtime

“(6) For the purposes of this section, **overtime**, for a person and a day, means time worked for an employer on the day beyond the person’s ordinary hours of work as set out in their employment agreement. 5

“Defined in this Act: amount, employee, employer, exempt income, overtime, pay.” 10

36 Section CW 37 repealed

(1) Section CW 37 is repealed.

(2) **Subsection (1)** applies for an amount derived by a company as a large budget screen production grant if—

- (a) the final application for the large budget screen production grant is made on or after 1 October 2009; and 15
- (b) the company does not incur before 1 July 2008 an amount of \$3,000,000 or more in expenditure on the project to which the large budget screen production grant relates. 20

37 Local and regional promotion bodies

In section CW 40, in the list of defined terms, “associated person” is omitted.

38 Charities: business income

In section CW 42(5), (7), (8), and (9), “subsection (1)(b)” is replaced by “subsection (1)(c)”. 25

38B New section CW 59C inserted

(1) After section CW 59B, the following is inserted:

“CW 59C Life reinsurance outside New Zealand

An amount of life reinsurance claim derived by a life insurer is exempt income to the extent to which, for the relevant life 30

reinsurance policy, deductions for premiums are denied under **section DR 3** (Life reinsurance outside New Zealand).

“Defined in this Act: amount, claim, deduction, exempt income, income, life insurer, life reinsurance, life reinsurance policy, New Zealand, premium”.

- (2) **Subsection (1)** applies— 5
- (a) on and after 1 July 2010, unless **paragraph (b)** applies: 5
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 10

39 New section CW 62B inserted

After section CW 62, the following is inserted:

“CW 62B Voluntary activities

“Exempt income” 15

- “(1) When a volunteer, in undertaking a voluntary activity, derives an amount that is a reimbursement payment to cover actual expenses incurred by them, the amount is exempt income of the volunteer.

“Estimated expenditure” 20

- “(2) For the purposes of **subsection (1)**—
- “(a) a person may make a reasonable estimate of the amount of expenditure likely to be incurred by the volunteer for which reimbursement is payable; and
- “(b) the amount estimated is treated as if it were the amount incurred. 25

“Payments partly honorarium and partly reimbursement”

- “(3) **Subsection (1)** does not apply to an amount that is partly a reimbursement and partly an honorarium that is treated as a schedular payment to which the PAYE rules apply. 30

“Payments partly reimbursement and partly honorarium”

- “(3) If the person paying the amount to the volunteer makes a payment to them that is only partly a reimbursement of expenses, the person must identify the portion of the amount that is the reimbursement, and treat the remainder as an honorarium, being a schedular payment to which the PAYE rules apply. 35

“Who is a volunteer?”

“(4) For the purposes of this section, a **volunteer** means a person who—

“(a) is resident in New Zealand under subpart YD (Residence and source in New Zealand); and 5

“(b) freely undertakes an activity in New Zealand—

“(i) chosen either by themselves or a group of which they are a member; and

“(ii) that provides a benefit to another person; and

“(iii) for which there is no purpose or intention of private pecuniary profit. 10

“(4) For the purposes of this section, a **volunteer** means a person who freely undertakes an activity in New Zealand—

“(a) chosen either by themselves or by a group of which they are a member; and 15

“(b) that provides a benefit to a community or another person; and

“(c) for which there is no purpose or intention of private pecuniary profit for the person. 20

“Honoraria

“(5) For the purposes of this section, and schedule 4, part B (Rates of tax for schedular payments), an **honorarium** means an amount that a person receives for providing services that—

“(a) is paid at a rate that is less than the market rate for providing the services; and 25

“(b) is an amount for which, in the normal course, no payment is fixed for the services provided.

“Nature of reimbursement payment

“(6) For the purposes of this section, it does not matter whether—

“(a) an amount of a reimbursement payment is paid in 1 sum or not: 30

“(b) the amount is paid during an income year or at the end of an income year.

“Relationship with section RD 8(3)

“(7) A determination made by the Commissioner under section RD 8(3) (Schedular payments) may apply to modify an amount of expenditure under this section.

“Defined in this Act: ~~amount, exempt income, honorarium, income year, New Zealand, pay, PAYE rules, resident in New Zealand, schedular payment, volunteer~~amount, exempt income, honorarium, income year, New Zealand, pay, PAYE rules, schedular payment, volunteer”.

40 Meaning of fringe benefit

(1) In section CX 2(5), the words before paragraph (a) are replaced by the following: 10

“(5) A benefit may be treated for the purposes of the FBT rules as being provided by an employer to an employee under—”.

(2) In section CX 2, in the list of defined terms, “FBT rules” is inserted. 15

(3) ~~**Subsections (1) and (2)** apply for the 2009–10 and later income years.~~

(3) **Subsections (1) and (2)** apply for the 2010–11 and later income years.

40B Contributions to superannuation schemes 20

(1) Section CX 13(2), other than the heading, is replaced by the following:

“(2) This section does not apply if the contribution is an employer’s superannuation cash contribution.”

(2) In section CX 13, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 25

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

~~**41 Section CX 18 replaced**~~ 30

(1) ~~Section CX 18 is replaced by the following:~~

**“CX 18 Benefits provided when both employment and
shareholding relationships exist**

“When this section applies

“(1) This section applies when—

- “(a) a benefit provided to a person would, in the absence of 5
section CX 4, be treated as a fringe benefit under sec-
tion GB 32 (Benefits provided through employment re-
lationships) because of the existence of an employment
relationship; and**
- “(b) the employer is a company; and 10**
- “(c) the benefit is also provided to the person because of the
existence of a shareholding relationship; and**
- “(d) the person is not a company; and**
- “(e) the person is not a shareholder in the company; and**
- “(f) the benefit would be a dividend if provided to a share- 15
holder in the company.**

“FBT rules apply; not dividend rules

“(2) The benefit is treated as—

- “(a) being provided through the employment relationship; 20**
- “(b) being subject to the FBT rules; 20**
- “(c) not being a dividend.**

*“Defined in this Act: company; dividend; employer; FBT rules; fringe benefit;
shareholder”.*

(2) **Subsection (1) applies for the 2009–10 and later income 25
years.**

42 Benefits provided instead of allowances

In section CX 19(1)(b), “transport costs.” is replaced by
“transport costs); or” and the following is added:

- “(c) an amount that, if it had been paid, would have been ex- 30
empt income under **section CW 17B** (Relocation pay-
ments).”**

43 Section CX 28 replaced

(1) Section CX 28 is replaced by the following:

~~CX 28 Accommodation~~

~~The value of accommodation that an employer provides to an employee in connection with the employment or services is a fringe benefit.~~

~~“Defined in this Act: accommodation, employee, employer, employment, fringe benefit”~~ 5

CX 28 Accommodation

The value of accommodation that an employer provides to an employee in connection with the employment or services is not a fringe benefit.

10

“Defined in this Act: accommodation, employee, employer, employment, fringe benefit”.

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

44 Section CX 39 repealed

15

(1) Section CX 39 is repealed.

(2) **~~Subsection (1)~~** applies for income years beginning on and after 1 April 2009.

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies: 20

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

25

45 Government grants to businesses

(1A) Section CX 47(1)(d)(i) is replaced by the following:

“(i) expenditure that they incur and for which they would be allowed a deduction in the absence of section DF 1 (Government grants to businesses):”.

30

(1) Section CX 47(3) is replaced by the following:

- “Exclusion*
- “(3) This section does not apply to a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent to which the grant relates to expenditure— 5
- “(a) incurred by the recipient before the grant; and
- ~~“(b) for which the recipient would be allowed a deduction in the absence of section DF 1 (Government grants to businesses).~~
- “(b) for which the recipient would be allowed a deduction in the absence of section DF 1.” 10
- (2) In section CX 47, in the list of defined terms, “large budget screen production grant” is omitted.
- (3) **Subsection (1A)** applies for the 2008–09 and later income years. 15
- (4) **Subsection (1)** applies for an amount derived by a company as a large budget screen production grant if—
- (a) the final application for the large budget screen production grant is made on or after 1 October 2009; and
- (b) the company does not incur before 1 July 2008 an amount of \$3,000,000 or more in expenditure on the project to which the large budget screen production grant relates. 20
- 45B Section CX 48B repealed**
- Section CX 48B is repealed. 25
- 46 New heading and section CX 48B inserted**New heading and section CX 48C inserted
- After section CX 48, the following is inserted:Before section CX 49, the following is inserted:
- “Government funding of film and television*** 30
- “CX 48BCX 48C Government funding additional to government screen production payments**
- “When this section applies*
- “(1) This section applies when a public authority makes a payment to a person for a project if— 35

- “(a) the payment is not in the nature of a grant or subsidy; and
“(b) the payment is not a grant-related suspensory loan; and
“(c) the person receives a government screen production payment for the project in addition to the payment. 5
“Excluded income
“(2) The payment is excluded income of the person.
“Defined in this Act: excluded income, government screen production payment, grant-related suspensory loan, pay, public authority”.
- 47 ~~New heading and section CX 48C inserted~~New heading and section CX 48D inserted** 10
(1) After ~~section CX 48B~~**section CX 48C**, the following is inserted:
“Research and development
~~CX 48C~~CX 48D Tax credits for expenditure on research and development 15
The amount of a tax credit that a person has under subpart LH (Tax credits for expenditure on research and development) is excluded income of the person.
“Defined in this Act: amount, excluded income, tax credit”. 20
(2) **Subsection (1)** applies for the 2008–09 and later income years.
- 48 ~~New heading and section CX 51B inserted~~**
After section CX 51, the following is inserted:
“Emissions units under Climate Change Response Act 2002 25
~~CX 51B Issue of emissions units~~
“When this section applies
“(1) This section applies when a person is issued an emissions unit:
“Excluded income: issue 30
“(2) An amount of income that the person is treated as deriving from the issue is excluded income:
“Defined in this Act: amount, emissions unit, excluded income, income, pre-1990 forest land emissions unit”.

48 New heading and section CX 51B inserted

After section CX 51, the following is inserted:

**“Emissions units under Climate Change
Response Act 2002”**

“CX 51B Disposal of pre-1990 forest land emissions units

5

“Who this section applies to

“(1) This section applies to a person who disposes of a pre-1990
forest land emissions unit other than by surrender.

“Excluded income: disposal

“(2) An amount of income that the person derives from the disposal
is excluded income if, at the time of the disposal, the person
would not derive income, other than exempt income or ex-
cluded income, from a disposal without timber of the pre-1990
forest land to which the emissions unit relates.

10

“Defined in this Act: amount, emissions unit, excluded income, income, pre-
1990 forest land, pre-1990 forest land emissions unit, surrender”.

15

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

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

“(b) resident in Australia and—

20

“(i) not 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 the other country; and

25

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

“(iii) required under the Income Tax Assessment Act
1997 (Aust) and Income Tax Assessment Act
1936 (Aust) to maintain a franking account.”

30

50 Section CX 55 replaced

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

“CX55 Proceeds from disposal of investment shares*“What this section applies to*

- “(1) This section applies in an income year to the following entities unless the entity is assured, under an arrangement with another person, of having a gain on the disposal: 5

“(a) a portfolio investment entity other than a life fund PIE:

“(b) the New Zealand Superannuation Fund:

“(c) a life insurer.

“Excluded income

- “(2) An amount that the entity derives from the disposal in the income year of a share issued by a company referred to in **subsection (3)** is— 10

“(a) excluded income of the entity for the income year, if the entity is described in **subsection (1)(a) or (b)**; or

“(b) ~~excluded income of the entity for the income year to the extent to which the amount is actuarially determined to be policyholder base gross income, if the entity is a life insurer.~~ 15

“(b) excluded income of the entity for the income year to the extent to which the amount is actuarially determined to be policyholder base income, if the entity is a life insurer. 20

“Particular company

- “(3) The company referred to in **subsection (2)** is,—

“(a) at all times in the income year, a company resident in New Zealand and not treated under and for the purposes of a double tax agreement as not resident in New Zealand; or 25

“(b) a company that meets the following requirements:

“(i) a company that, at all times in the income year, is resident in Australia and not 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 the other country; and 30 35

“(ii) a company that, at the start of the income year or at the time the shares are first acquired in the

income year, is included in an approved index under the ASX Market Rules made under Chapter 7 of the Corporations Act 2001 (Aust); and

- “(iii) a company that, at all times in the income year, is required under the Income Tax Assessment Act 1997 (Aust) and the Income Tax Assessment Act 1936 (Aust) to maintain a franking account. 5

“Non-participating redeemable shares

- “(4) This section does not apply to a non-participating redeemable share. 10

“Defined in this Act: ~~actuarially determined, amount, arrangement, company, double tax agreement, excluded income, income year, life fund PIE, life insurer, non-participating redeemable share, policyholder base gross income, portfolio investment entity, resident in Australia, resident in New Zealand, share~~actuarially determined, amount, arrangement, company, double tax agreement, excluded income, income year, life fund PIE, life insurer, non-participating redeemable share, policyholder base income, portfolio investment entity, resident in Australia, resident in New Zealand, share”. 15

- (2) **Subsection (1) applies—**

- (a) ~~for a portfolio investment entity, including a life fund PIE, and the New Zealand Superannuation Fund, for the 2009–10 and later income years:~~ 20

- (b) ~~for a life insurer, other than in relation to a life fund PIE, for income years beginning on or after 1 April 2009:~~

- (a) for a portfolio investment entity, including a life fund PIE, and the New Zealand Superannuation Fund, for the 2010–11 and later income years: 25

- (b) for a life insurer, other than in relation to a life fund PIE,—

- (i) on and after 1 July 2010, unless **paragraph (b)** applies: 30

- (ii) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 35

(1) After section CX 56(3), the following is added:

“When trustees choose 19.5% portfolio investor rate

“(4) Subsection (1) does not apply in relation to portfolio investor allocated income derived by a trustee who has chosen a portfolio investor rate of 19.5%.”

(2) **Subsection (1)** applies for the 2010–11 and later income years.

51 Section CX 56 replaced 10

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

“When this section applies

“(1) This section applies when an investor in a multi-rate PIE derives income attributed under **section CP 1** (Attributed income of investors in multi-rate PIEs) in an income year, and—

“(a) the prescribed investor rate for the investor in the relevant calculation period is more than zero; and

“(b) that rate is not more than the tax rate notified under **section HM 59** (Notified rates) in relation to the investor when the PIE calculates—

“(i) its income tax liability under **section HM 47** (Calculation of tax liability or tax credit of multi-rate PIEs) in relation to the income; or 25

“(ii) a voluntary payment under **section HM 45** (Voluntary payments) that is intended to be a final payment of its income tax liability in relation to the income.

“When this section does not apply” 30

“(2) This section does not apply if the PHE calculates its income tax liability using the quarterly calculation option under **section HM 43** (Quarterly calculation option) and the amount is attributed to an investor who is treated under **section HM 60** (Certain exiting investors zero-rated) as zero-rated. 35

“(2) This section does not apply when—

- “(a) the PIE calculates its income tax liability using the quarterly calculation option under **section HM 43** (Quarterly calculation option) and the amount is attributed to an investor who is treated under **section HM 60** (Certain exiting investors zero-rated) as zero-rated: 5
- “(b) an amount of attributed PIE income is derived by a trustee who has chosen an investor rate of 19.5% under **section HM 57B** (Optional investor rates for trustees: 30%, 19.5%).
- “*Excluded income* 10
- “(3) The amount is excluded income of the investor.
- “Defined in this Act: amount, attribution period, calculation period, excluded income, income, income tax liability, income year, investor, multi-rate PIE, pay, PIE, prescribed investor rate, quarter
- “**CX 56B Distributions to investors in multi-rate PIEs** 15
- An amount of income derived by an investor in a multi-rate PIE as a distribution or dividend of the PIE is excluded income of the investor.
- “Defined in this Act: amount, dividend, excluded income, income, investor, multi-rate PIE 20
- “**CX 56C Distributions to investors by listed PIEs**
- “*Resident investors*
- “(1) If an investor in a listed PIE derives an amount in an income year as a distribution or dividend of the PIE, the amount is excluded income of the investor if they— 25
- “(a) are resident; and
- “(b) are a natural person or a trustee; and
- “(c) do not include the amount as income in a return of income for the income year.
- “*Imputed dividends* 30
- “(2) If **subsection (1)(a) to (c)** does not apply to the investor, the amount is excluded income to the extent to which the amount of the distribution or dividend is more than the amount that

is fully credited as described in section CD 43(26) (Available subscribed capital amount).

“Defined in this Act: amount, dividend, excluded income, income year, investor, listed PIE, PIE, resident, return of income, trustee”.

(2) **Subsection (4)** applies for the 2009–10 and later income years. 5

(2) **Subsection (1)** applies for the 2010–11 and later income years.

52 Section CX 57 replaced

(1) Section CX 57 is replaced by the following: 10

“CX 57 Credits for investment fees

“When this section applies

“(1) This section applies when—

“(a) a multi-rate PIE includes a credit for fees in the calculation of its tax liability under **section HM 47** (Calculation of tax liability or tax credit of multi-rate PIEs) in relation to an investor in an investor class of the PIE; and 15

“(b) an amount of the credit is attributed to the investor as a member of the class. 20

“Excluded income

“(2) The amount allocated is excluded income of the investor.

“Defined in this Act: amount, excluded income, investor, investor class, multi-rate PIE, PIE”.

(2) **Subsection (4)** applies for the 2009–10 and later income years. 25

(2) **Subsection (1)** applies for the 2010–11 and later income years.

52B New section CZ 9B inserted

After section CZ 9, the following is inserted: 30

“CZ 9B Available capital distribution amount: 1988 to 2010

“When this section applies

“(1) This section applies for the purposes of section CD 44 (Available capital distribution amount) in relation to capital gain

amounts derived or capital loss amounts incurred in the period
that starts on 1 April 1988 and ends on 31 March 2010.

“Related person transactions

- “(2) No capital gain amount is derived or capital loss amount in- 5
curred by a company disposing of property under an arrange-
ment with a related person. But this subsection does not apply
if—
- “(a) the company is a close company; and
 - “(b) the related person is not a company; and
 - “(c) the disposal is not on the liquidation of the company. 10

“Meaning of related person

- “(3) In this section, **related person** means a person related to a
company (the **first company**) because 1 of the following ap-
plies to the person and the first company:
- “(a) the person owns, can control, directly or indirectly, or 15
has the right to acquire 20% or more of the first com-
pany’s ordinary shares; or
 - “(b) the person owns, can control, directly or indirectly, or
has the right to acquire 20% or more of the voting rights
of shareholders in the first company; or 20
 - “(c) the person is a company and the first company owns, can
control, directly or indirectly, or has the right to acquire
20% or more of the ordinary shares in the person; or
 - “(d) the person is a company and the first company owns, can
control, directly or indirectly, or has the right to acquire 25
20% or more of the voting rights of shareholders in the
company; or
 - “(e) the person is a company and 20% or more of the shares
or voting rights in the person are owned or controlled
by persons that also own, control, or have the right to 30
acquire 20% or more of the shares or voting rights in
the first company; or
 - “(f) the person is a partner or co-venturer of the first com-
pany; or
 - “(g) the person is the trustee of a trust and the first company, 35
or a person who is a related person of the first company
under this subsection, benefits or can benefit under the
trust, directly or indirectly; or

“(h) the person is a partnership and 1 or more persons, that are related persons of the first company under this subsection, are entitled to 50% or more of the partnership’s assets or profits or are able to control the partnership.

“Look-through relatives and nominees 5

“(4) For the purposes of **subsection (3)**, a person is treated as holding anything held by—

“(a) their spouse, civil union partner, or de facto partner; or

“(b) their child; or

“(c) a child or their spouse, civil union partner, or de facto partner; or 10

“(d) a spouse, civil union partner, or de facto partner of their child, or a child of their spouse, civil union partner, or de facto partner.

“Look-through interposed companies 15

“(5) For the purposes of **subsection (3)(e)**, if shares or voting rights in a company are owned or controlled by another company, a look-through approach must be applied. The look-through approach requires that—

“(a) the shares or voting rights are treated as if owned or controlled by the shareholders in the other company; and 20

“(b) if a shareholder in the other company is a company, that shareholder’s portion of the shares or voting rights are treated as if owned or controlled by the shareholders in the shareholder company; and 25

“(c) the approach is applied in the same way to any chain of companies, whatever the length of the chain.

“Defined in this Act: amount, close company, company, liquidation, related person, share, shareholder, trustee”. 30

52C Determining tax liabilities

(1) Section DB 3(4), other than the heading, is replaced by the following:

“(4) This section supplements the general permission and overrides the capital limitation, the private limitation, and the employment limitation. The other general limitations still apply.” 35

- (2) In section DB 3, in the list of defined terms, “capital limitation” is inserted.
- (3) **Subsection (1)** applies for the 2008–09 and later income years.
- 53 Interest: not capital expenditure** 5
- (1) Section DB 6(3) is repealed.
- (2) ~~**Subsection (1)** applies for the 2009–10 and later income years.~~
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 54 Interest: most companies need no nexus with income**
- (1) Section DB 7(7) is repealed. 15
- (2) ~~**Subsection (1)** applies for the 2009–10 and later income years.~~
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 20
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 55 Interest: money borrowed to acquire shares in group companies**
- (1) Section DB 8(7) is repealed. 25
- (2) ~~**Subsection (1)** applies for the 2009–10 and later income years.~~
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 30
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 55B New section DB 10B inserted**
- After section DB 10, the following is inserted:

“DB 10B Interest or expenditure connected to stapled debt security

“No deduction

“(1) A company that issues a stapled debt security is denied, while **section FA 2B(2) (Stapled debt securities) applies to the security, a deduction for—** 5

“(a) interest payable under the security:

“(b) expenditure or loss incurred in connection with the security:

“(c) expenditure or loss incurred in borrowing the money secured by or owing under the security. 10

“Relationship with sections DB 5 to DB 8

“(2) This section overrides sections DB 5 to DB 8.

“Link with subpart DA

“(3) This section overrides the general permission. 15

“Defined in this Act: deduction, general permission, interest, pay, stapled debt security”.

56 Cost of revenue account property

(1) Section DB 23(2)(a) is repealed.

(2) In section DB 23(2)(b), “Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund” is replaced by “Proceeds from disposal of investment shares”. 20

(3) ~~In section DB 23, in the list of defined terms, “portfolio investment-linked life fund” is omitted and “life fund PIE”, “life insurer”, and “PIE” are inserted.~~ 25

(4) ~~Subsections (1) to (3) apply for the 2009–10 and later income years.~~

(3) In section DB 23, in the list of defined terms, “portfolio investment entity” is omitted. 30

(4) Subsections (1) and (2) apply for the 2010–11 and later income years.

56B Charitable or other public benefit gifts by company

(1) In section DB 41(2), “a society, institution, association, organisation, trust, or fund of any of the kinds described in section 35

- LD 3(2) (Meaning of charitable or other public benefit gift) or set out in schedule 32 (Recipients of charitable or other public benefit gifts)” is replaced by “a donee organisation”.
- (2) In section DB 41, in the defined terms list,—
- (a) “close company”, “company”, “recognised exchange”, and “share” are omitted: 5
- (b) “donee organisation” is inserted.
- 57 Property misappropriated by employees or service providers**
- (1) Section DB 42(2), other than the heading, is replaced by the following: 10
- “(2) This section does not apply when a person who misappropriates property is associated with the person who carries on the business.”
- (2) ~~**Subsection (4)** applies for the 2009–10 and later income years:~~ 15
- (2) **Subsection (1)** applies for the 2010–11 and later income years.
- 57B Portfolio investment entities: zero-rated portfolio investors and allocated losses** 20
- (1) Section DB 53(1), other than the heading, is replaced by the following:
- “(1) This section applies in relation to an investor in a portfolio investor class of a portfolio tax rate entity when—
- “(a) either— 25
- “(i) the entity pays tax under section HL 22 (Payments of tax by portfolio tax rate entity making no election) and the investor exits from the entity during a portfolio calculation period; or
- “(ii) the investor is a zero-rated portfolio investor for the period; and 30
- “(b) the period includes a portfolio allocation period for which the investor is allocated an amount of portfolio investor allocated loss under subpart HL (Portfolio investment entities).” 35

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

58 Section DB 53 replaced

(1) Section DB 53 is replaced by the following:

“DB 53 Attributed PIE losses of certain investors 5

“When this section applies

“(1) This section applies to an investor in a multi-rate PIE when—

“(a) an amount of attributed PIE loss is attributed under **section HM 36** (Calculating amounts attributed to investors) to an investor for an attribution period in a tax year; and 10

“(b) either the investor is—

“(i) a zero-rated investor; or

“(ii) treated under **section HM 60** (Certain exiting investors zero-rated) as zero-rated. 15

“Deduction

“(2) The investor is allowed a deduction for the amount allocated to the investor’s income year in which the PIE’s tax year ends.

“Link with subpart DA

“(3) This section supplements the general permission. The general limitations still apply. 20

“Defined in this Act: amount, attributed PIE loss, attribution period, deduction, exit period, general limitation, general permission, income tax liability, income year, investor, multi-rate PIE, PIE, quarter, tax year, zero-rated investor

“Compare: 2007 No 97 s DB 53”. 25

~~(2) **Subsection (1)** applies for the 2009–10 and later income years.~~

(2) **Subsection (1)** applies for the 2010–11 and later income years.

59 Section DB 54 replaced

30

(1) Section DB 54 is replaced by the following:

“DB 54 Treatment of credits for investment fees

“When this section applies

- “(1) This section applies when an investor in an investor class of a multi-rate PIE incurs expenses in relation to their investor interest, and the entity includes the amount in the calculation of its tax liability under **section HM 47** (Calculation of tax liability or tax credit of multi-rate PIEs) in relation to the investor. 5

“No deduction

- “(2) The investor is denied a deduction for the amount. 10

“Link with subpart DA

- “(3) This section overrides the general permission.

“Defined in this Act: amount, deduction, general permission, investor, investor class, investor interest, multi-rate PIE

“Compare: 2007 No 97 s DB 54”.

- (2) ~~**Subsection (4)** applies for the 2009–10 and later income years.~~ 15

- (2) **Subsection (1)** applies for the 2010–11 and later income years.

60 Expenditure incurred in deriving exempt dividend 20

- (1) Section DB 55(1) and (2) are replaced by the following:

“Deduction

- “(1) ~~A company that derives a dividend that is exempt income of the company under section CW 9 (Dividend derived by company from overseas) is allowed a deduction of the amount of the expenditure incurred by the company in deriving the dividend.~~ 25

- “(1) A company that derives a dividend that is exempt income of the company under **section CW 9** (Dividend derived from foreign company) is allowed a deduction of the amount of the expenditure incurred by the company in deriving the dividend. 30

- (2) In section DB 55, in the list of defined terms, “CTR company” is omitted.

- (3) ~~**Subsections (4) and (2)** apply for the 2009–10 and later income years.~~ 35

- (3) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 5
- 61 New heading and section DB 60 added**
After section DB 59, the following is added:
“Emissions units under Climate Change Response Act 2002
- “DB 60 Acquisition of emissions units** 10
“When this section applies
- “(1) This section applies when a person is issued an emissions unit.
“No expenditure or loss on issue of emissions unit
- “(2) The person is treated as incurring no expenditure or loss in the acquisition of the emissions unit. 15
“Link with subpart DA
- “(3) **Subsection (2)** overrides the general permission:
“Defined in this Act: amount; capital limitation; convert; deduction; emissions unit; general limitation; general permission; Kyoto emissions unit; New Zealand emissions unit”. 20
- 61 Heading and section DB 60 replaced**
The heading after section DB 59 and section DB 60 are replaced by the following:
“Emissions units and liabilities under Climate Change Response Act 2002 25
- “DB 60 Acquisition of emissions units**
“When this section applies
- “(1) This section applies when a person is transferred an emissions unit under section 64, or Part 4 subpart 2, of the Climate Change Response Act 2002 for a price of zero. 30
“No deduction
- “(2) The person is denied a deduction for an amount of expenditure or loss incurred as consideration for the emissions unit.

“Link with subpart DA

“(3) **Subsection (2)** overrides the general permission.

“Defined in this Act: amount, emissions unit, general permission, loss”.

61B New section DB 61 added

(1) After **section DB 60**, the following is added:

5

“DB 61 Liabilities for emissions

“When this section applies

“(1) This section applies when a person incurs a liability under the Climate Change Response Act 2002 for emissions relating to post-1989 forest land or pre-1990 forest land.

10

“No deduction

“(2) The person is denied a deduction for the liability.

“Link with subpart DA

“(3) **Subsection (2)** overrides the general permission.

“Defined in this Act: amount, deduction, general permission, post-1989 forest land, pre-1990 forest land”.

15

(2) **Subsection (1)** applies for deductions accrued on or after 1 January 2008.

61C Contributions to employees’ superannuation schemes

(1) In section DC 7(1), “for a contribution” is replaced by “for a superannuation contribution”.

20

(2) In section DC 7(1B), “for a contribution” is replaced by “for a superannuation contribution”.

(3) In section DC 7, in the list of defined terms, “superannuation contribution” is inserted.

25

(4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

61D Criteria for approval of share purchase schemes: before period of restriction ends

(1) Section DC 13(5)(d) is replaced by the following:

30

“(d) the trustee to be prohibited from applying the amount of any dividend to the repayment of a sum owing to the company or to the trustee; and”.

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

61E Employment-related activities

- (1) The heading to section DD 4(3) is replaced by “*Relocation expenses, employees’ meals, and sustenance allowances*”. 5
- (2) Section DD 4(3)(a) is replaced by the following:
“(a) an amount that is exempt income of an employee under **sections CW 17B and CW 17C** (which relate to relocation expenses, expenditure on overtime meals, and sustenance allowances):”. 10
- (3) In section DD 4, in the list of defined terms, “amount” is inserted.

61F Interpretation: reimbursement and apportionment

In section DD 10(a), “section CW 17 (Expenditure on account, and reimbursement of employees)” is replaced by “sections CW 17, CW 17B, and CW 17C (which relate to expenditure and reimbursement of employees)”. 15

62 Heading to subpart DF

In the heading to subpart DF, “, **funding**,” is inserted after “grants”. 20

63 Government grants to businesses

- (1) Section DF 1(6) is repealed.
- (2) In section DF 1, in the list of defined terms, “large budget screen production grant” is omitted.
- (3) **Subsection (1)** applies for an amount derived by a company as a large budget screen production grant if— 25
- (a) the final application for the large budget screen production grant is made on or after 1 October 2009; and
- (b) the company does not incur before 1 July 2008 an amount of \$3,000,000 or more in expenditure on the project to which the large budget screen production grant relates. 30

64 Payments for social rehabilitation

In section DF 4(3)(b), “part H,” is replaced by “part I,”.

65 New section DF 5 added

After section DF 4, the following is added:

**“DF 5 Government funding additional to government screen
production payments 5**

“When this section applies

- “(1) This section applies when a public authority makes a payment
(the **funding payment**) to a person for expenditure incurred
in a project if— 10
- “(a) the funding payment is not in the nature of a grant or
subsidy; and
 - “(b) the funding payment is not a grant-related suspensory
loan; and
 - “(c) the person receives a government screen production 15
payment for the project in addition to the funding
payment; and
 - “(d) the person would be allowed a deduction for the ex-
penditure in the absence of this section; and
 - “(e) the payment is excluded income under **section CX 48B** 20
(Government funding additional to government screen
production payments).

“No deduction for expenditure

- “(2) The person is denied, to the extent of the amount of the fund-
ing payment, the deduction for the expenditure that would be 25
allowed in the absence of this section.

“Deduction for payments to public authority

- “(3) The person is allowed a deduction for the amount of a pay-
ment (the **return payment**) made to the public authority to
the extent to which the return payment is required by the ar- 30
rangement under which the funding payment is made.

“Links with subpart DA

- “(4) In this section—
- “(a) **subsection (2)** overrides the general permission; and

“(b) **subsection (3)** supplements the general permission and overrides the capital limitation; the other general limitations still apply.

“Defined in this Act: capital limitation, deduction, excluded income, general limitation, general permission, government screen production payment, grant-related suspensory loan, pay, public authority”.

66 When attributed CFC loss arises

(1) Section DN 2(f) and (g) are replaced by the following:

“(f) the CFC has net attributable CFC loss for the accounting period under **section EX 20C** (Net attributable CFC income or loss); and

“(fb) the CFC is not a non-attributing active CFC for the accounting period, under **section EX 21B** (Non-attributing active CFCs); and

“(g) the CFC is not a non-attributing Australian CFC for the accounting period, under **section EX 22** (Non-attributing Australian CFCs).”

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

(a) “branch equivalent loss” is omitted:

(b) “net attributable CFC loss”, “non-attributing active CFC”, and “non-attributing Australian CFC” are inserted:

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

(1) After the heading to section DN 2, “General rule” is inserted as a subsection heading.

(2) Section DN 2(f) and (g) are replaced by the following:

“(f) the CFC has a net attributable CFC loss for the accounting period under **section EX 20C** (Net attributable CFC income or loss); and

“(h) the CFC is not a non-attributing active CFC for the accounting period, under **section EX 21B** (Non-attributing active CFCs); and

“(i) the CFC is not a non-attributing Australian CFC for the accounting period, under **section EX 22** (Non-attributing Australian CFCs).”

- (3) After **section DN 2(g)**, the following is added as subsection (2):
“Special rule: Attributable CFC amount from personal services
- “(2) If a person and a non-attributing active CFC or non-attributing Australian CFC meet the requirements of **subsection (1)(a) to (e)** and the CFC derives income from personal services that is an attributable CFC amount under **section EX 20B(3)(h)** (Attributable CFC amount), the person has **attributed CFC loss** from the CFC equal to the product of— 5
- “(a) the person’s income interest in the CFC: 10
 “(b) the amount by which the CFC’s expenditure incurred in deriving the income from personal services exceeds the income from personal services.”
- (4) In section DN 2, in the list of defined terms,— 15
- (a) “branch equivalent loss” is omitted;
 (b) “attributable CFC amount”, “net attributable CFC loss”, “non-attributing active CFC”, and “non-attributing Australian CFC” are inserted.
- (5) **Subsections (2) and (3)** apply for— 20
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 67 When FIF loss arises** 25
- (1) Section DN 6(3) is replaced by the following:
“FIF loss from CFC with FIF interest
- “(3) **FIF loss** also includes an amount of additional FIF loss that a person with an income interest of 10% or more in a CFC has in an income year under section EX 58 (Additional FIF income or loss if CFC owns FIF), whether or not the CFC is a non-attributing Australian CFC under **section EX 22** (Non-attributing Australian CFCs).” 30
- (2) In section DN 6, in the list of defined terms, “non-attributing Australian CFC” is inserted. 35
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

- (3) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 5
- 67B Section DO 11B repealed**
- (1) Section DO 11B is repealed.
 - (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 67C Forestry business on land bought from the Crown, Maori owners, or holding company: no deduction** 10
- (1) In the heading to section DP 8(3), “section FA 2” is replaced by “sections FA 2 and FA 2B”.
 - (2) In section DP 8(3), “as it applies to substituting debentures, does” is replaced by “, as it applies to substituting debentures, and **section FA 2B** (Stapled debt securities) do”. 15
- 68 Sections DR 1 to DR 3 replaced**
- (1) Sections DR 1 to DR 3 are replaced by the following:
- “DR 1 Policyholder base gross expenditure or loss of life insurer**
- “Deduction* 20
- “(1) A life insurer is allowed a deduction for an income year for their policyholder base gross expenditure or loss for that year, to the extent to which it is not used to calculate their schedular policyholder base income under **section EY 2(3) to (6)** (Policyholder base). The deduction is allowed against the life insurer’s policyholder base gross income described in **section GR 1(1)** (Policyholder base income of life insurer) for the income year.* 25
- “Prohibition on deduction against schedular policyholder base income and shareholder base gross income* 30
- “(2) The deduction in **subsection (1)** is not allowed against schedular policyholder base income or shareholder base gross income.*

“Code for deductions

- “(3) A life insurer is denied a deduction for any expenditure or loss in relation to their life insurance business that is not their policyholder base gross expenditure or loss, or their shareholder base gross expenditure or loss. 5

“Link with subpart DA

- “(4) **Subsections (2) and (3)** override the general permission.

“Defined in this Act: deduction, general permission, income year, life insurance, life insurer, policyholder base gross expenditure or loss, policyholder base gross income, schedular policyholder base income, shareholder base gross expenditure or loss, shareholder base gross income 10

“DR 2 Shareholder base gross expenditure or loss of life insurer

“Deduction

- “(1) Subject to **subsection (3)**, a life insurer is allowed a deduction for an income year for their shareholder base gross expenditure or loss. The deduction is allowed against the life insurer’s shareholder base gross income described in **section GR 2** (Shareholder base gross income of life insurer) for the income year. 15

“Prohibition on deduction against schedular policyholder base income and policyholder base gross income 20

- “(2) The deduction in **subsection (1)** is not allowed against schedular policyholder base income or policyholder base gross income.

“No deduction for non-New Zealand life reinsurance 25

- “(3) A life insurer is denied a deduction for life reinsurance policy premiums if, for the relevant policy, the life insurer—

“(a) did not offer the policy in New Zealand:

“(b) was not offered the policy in New Zealand:

“(c) did not enter into the policy in New Zealand. 30

“Code for deductions

- “(4) A life insurer is denied a deduction for any expenditure or loss in relation to their life insurance business that is not their shareholder base gross expenditure or loss, or their policyholder base gross expenditure or loss. 35

“Link with subpart DA

“(5) **Subsections (2) to (4)** override the general permission.

“Defined in this Act: deduction, general permission, income year, life insurance, life insurer, life reinsurance, life reinsurance policy, policyholder base gross expenditure or loss, policyholder base gross income, schedular policyholder base income, shareholder base gross expenditure or loss, shareholder base gross income

5

“DR 1 Policyholder base allowable deduction of life insurer

“Deduction

“(1) If, but for this section, a life insurer has an amount of shareholder base allowable deduction for an income year and that amount is neither a deduction under this Part nor denied as a deduction under this Part, the amount is a deduction of the life insurer for the income year.

10

“No cross-deducting: section EY 2

15

“(2) A policyholder base allowable deduction is not allowed against shareholder base income. **Section EY 2** (Policyholder base) deals with allowing policyholder base allowable deductions against policyholder base income, and deals with deductions that relate to the life insurer’s schedular income derived by their life fund PIE that is a multi-rate PIE.

20

“Link with subpart DA

“(3) **Subsections (1) and (2)** override the general permission.

“Defined in this Act: amount, deduction, general permission, income year, life fund PIE, life insurer, multi-rate PIE, policyholder base allowable deduction, policyholder base income, shareholder base income

25

“DR 2 Shareholder base income of life insurer

“Deduction

“(1) If, but for this section, a life insurer has an amount of shareholder base allowable deduction for an income year and that amount is neither a deduction under this Part nor denied as a deduction under this Part, the amount is a deduction of the life insurer for the income year.

30

“No cross-deducting

- “(2) A shareholder base allowable deduction is not allowed against policyholder base income.

“Link with subpart DA

- “(3) **Subsections (1) and (2)** override the general permission. 5

“Defined in this Act: amount, deduction, general permission, income year, life insurer, policyholder base income, shareholder base allowable deduction

“DR 3 Life reinsurance outside New Zealand

“No deduction

A life insurer is denied a deduction for life reinsurance premiums they incur if the relevant life reinsurance policy,— 10

“(a) was not offered in New Zealand:

“(b) was not entered into in New Zealand.

“Defined in this Act: amount, deduction, general permission, income year, life insurer, life reinsurance, life reinsurance policy, New Zealand 15

“DR 4 Life insurers’ claims reserves

“No deduction on account of claims

- “(1) For a life insurer’s life insurance policies, the life insurer is denied a deduction relating to the life insurer’s outstanding claims or for a claim’s expenditure or loss for an income year, except as provided by— 20

“(a) **section EY 24** (Outstanding claims reserving amount: non-participation policies not annuities):

“(b) **subsection (2).**

“Deduction for payments of current claims 25

- “(2) The life insurer is allowed a deduction for the amount of expenditure or loss of a claim paid to an insured under a life insurance policy for the income year.

“Link with subpart DA

- “(3) This section supplements the general permission. The general limitations still apply. 30

“Defined in this Act: claim, deduction, general limitation, general permission, life insurance policy, life insurer”.

(2) ~~Subsection (4)~~ applies for income years beginning on or after 1 April 2009.

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5

69 Film production expenditure

10

(1) Section DS 2(4) is replaced by the following:

“Timing of deduction

“(4) The deduction is allocated under—

“(a) section EJ 4 or EJ 5 (which relate to expenditure incurred in acquiring film rights) if the film is one for which a government screen production payment is made; or 15

“(b) section EJ 7 or EJ 8 (which relate to film production expenditure) if the film is not one for which a government screen production payment is made.” 20

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

(a) “large budget screen production grant” is omitted:

(b) “government screen production payment” is inserted.

70 Meaning of film reimbursement scheme

(1) Section DS 4(5), other than the heading, is replaced by the following: 25

“(5) ~~For the purposes of subsection (3), a shareholder in a loss-attributing qualifying company and the company are associated persons, in addition to the associated persons described in the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or in the 1988 version provisions.~~ 30

“(5) For the purposes of subsection (3), a shareholder in a loss-attributing qualifying company and the company are associated persons, in addition to the associated persons described in the 35

provisions of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or in the 1988 version provisions.”

- (2) ~~In section DS 4, in the list of defined terms, “1973 version provisions”, “1988 version provisions”, and “1990 version provisions” are inserted.~~ 5
- (2) **Section DS 4(5)**, other than the heading, is replaced by the following:
- “(5) For the purposes of subsection (3), a shareholder in a loss-attributing qualifying company and the company are associated persons, in addition to the associated persons described in subpart YB (Associated persons and nominees).” 10
- (3) In section DS 4, in the list of defined terms, “1973 version provisions”, “1988 version provisions”, and “1990 version provisions” are inserted. 15
- (4) In section DS 4, in the list of defined terms, “1973 version provisions”, “1988 version provisions”, and “1990 version provisions” are omitted.
- (5) **Subsection (2)** applies for the 2010–11 and later income years. 20

71 New section DT 1A inserted

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

“DT 1A Ring-fenced allocations

“When this section applies 25

- “(1) This section applies to an amount of a person’s deductions for expenditure and loss for an income year to the extent to which it is—

- “(a) petroleum exploration expenditure:
“(b) petroleum development expenditure: 30
“(c) residual expenditure.

“Basis for allocation of deductions

- “(2) ~~If, but for this subsection, an amount that relates to petroleum mining operations undertaken outside New Zealand is allocated to an income year (the **current year**), including an amount carried forward and allocated to the current year, the~~ 35

amount that is allocated to the current year is no more than the amount of the person's income derived from those operations for the current year.

- “(2) If, but for this subsection, an amount that relates to petroleum mining operations undertaken outside New Zealand would be allocated to an income year (the **current year**), including an amount carried forward and allocated to the current year, the amount that is allocated to the current year is no more than the amount of the person's income derived for the current year from all petroleum mining operations undertaken outside New Zealand.” 5 10

“Excess allocations: carried forward and re-instated next year

- “(3) Any excess not allocated to the current year because of **subsection (2)** is carried forward and treated as— 15
- “(a) relating to petroleum mining operations outside New Zealand for the next income year; and
- “(a) relating to petroleum mining operations undertaken outside New Zealand for the next income year; and
- “(b) allocated to that next income year. 20

“Restriction on reinstating excess allocations

- “(4) Despite **subsection (3)**, the excess is not allocated to the next income year, and no deduction is allowed or allocated to any income year for the excess, if sections IA 5 and IP 3 (which relate to the carrying forward of tax losses for companies) would not have allowed the excess to be carried forward to that next income year in a loss balance, treating the excess as a tax loss component arising on the last day of the current year. 25

“Defined in this Act: deduction, income year, loss balance, New Zealand, petroleum development expenditure, petroleum exploration expenditure, petroleum mining operation, residual expenditure, tax loss component”. 30

- (2) **Subsection (1)** applies for expenditure incurred on or after 4 March 2008.

72 Arrangement for petroleum exploration expenditure and sale of property 35

- (1) In section DT 2(1)(b), the words before subparagraph (i) are replaced by the following:

- “(b) the person or a person associated with them under the parts of subpart YB that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or under the 1988 version provisions may dispose of property—” 5
- “(b) the person or a person associated with them under the provisions of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or the 1988 version provisions may dispose of property—”. 10
- (2) In section DT 2(1)(c), subparagraphs (ii) and (iii) are replaced by the following:
- “(ii) a petroleum permit; or
- “(iii) material or a permit that relates to petroleum mining operations undertaken outside New Zealand, and that material or permit are substantially the same as those described in subparagraphs (i) or (ii), with necessary modifications made to this subpart and the Crown Minerals Act 1991.” 15 20
- (3) In section DT 2, in the list of defined terms, “1973 version provisions”, “1988 version provisions”, and “1990 version provisions” are inserted.
- (4) **Subsections (1) and (3)** are treated as coming into force on 1 April 2008. 25
- (2) In section DT 2(1)(b), the words before subparagraph (i) are replaced by the following:
- “(b) the person or a person associated with them may dispose of property—”. 30
- (3) In section DT 2(1)(c), subparagraphs (ii) and (iii) are replaced by the following:
- “(ii) a petroleum permit; or
- “(iii) material or a permit that relates to petroleum mining operations undertaken outside New Zealand, and that material or permit are substantially the same as those described in subparagraphs (i) or (ii), with necessary modifications made to this subpart and the Crown Minerals Act 1991.” 35

- (4) In section DT 2, in the list of defined terms, “1973 version provisions”, “1988 version provisions”, and “1990 version provisions” are inserted.
- (5) In section DT 2, in the list of defined terms, “1973 version provisions”, “1988 version provisions”, and “1990 version provisions” are omitted. 5
- (6) **Subsection (2)** applies for the 2010–11 and later income years.
- 73 Petroleum development expenditure**
- (1) Section DT 5(1) and (2) is replaced by the following: 10
“Deduction
“(1) A petroleum miner is allowed a deduction for petroleum development expenditure incurred by them.
“Timing of deduction
“(2) For an income year, an amount of the deduction is allocated to that year, as provided by— 15
*“(a) **section EJ 12** (Petroleum development expenditure: default allocation rule); or*
*“(b) **section EJ 12B** (Petroleum development expenditure: reserve depletion method).”* 20
- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.
- 74 Disposal of petroleum mining asset to associate**
- (1) In section DT 9(1)(b), “section EJ 12 (Petroleum development expenditure)” is replaced by “**section EJ 12 or EJ 12B** (which relate to petroleum development expenditure)” 25
- (2) Section DT 9(2)(b) is replaced by the following:
*“(b) the amount of the deduction allocated under **section EJ 12 or EJ 12B** to the income years after the income year in which the miner disposes of the asset.”* 30
- (3) **Subsections (1) and (2)** apply for expenditure incurred on or after 1 April 2008.

75 Amount written off by holding company

(1) In section DU 12(3)(a), “tax year” is replaced by “income year”.

(2) Section DU 12(3)(b) is replaced by the following:

“(b) the prescribed proportion of the total amount of mining exploration expenditure and mining development expenditure incurred by the mining company before the end of the income year in which the amount referred to in subsection (1) is written off, reduced by the total amount of deductions the holding company is allowed under this section in all income years before the income year in which that amount is written off.”

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

76 Transfer of expenditure to master fund

(1) Section DV 2(6), other than the heading, is replaced by the following:

“(6) The expenditure is treated as being incurred by the master superannuation fund as follows:

“(a) for a master fund that is a portfolio tax rate entity, in the income year in which the expenditure is transferred by the member superannuation fund; or

“(b) for other master funds, in the same income year as that in which it was incurred by the member superannuation fund.”

(2) **Section DV 2(6)**, other than the heading, is replaced by the following:

“(6) The expenditure is treated as being incurred by the master superannuation fund as follows:

“(a) for a master fund that is a multi-rate PIE, in the income year in which the expenditure is transferred by the member superannuation fund; or

“(b) for other master funds, in the same income year as that in which it was incurred by the member superannuation fund.”

(3) After section DV 2(8), the following is inserted:

“Amount of deduction when master fund is portfolio tax rate entity

- ~~“(8B) Despite subsection (8), a master superannuation fund that is a portfolio tax rate entity is allowed a deduction only for expenditure transferred to it by a member superannuation fund—~~ 5
- ~~“(a) that is expenditure incurred by the member fund when it has a portfolio investor interest in the portfolio tax rate entity; and~~
- ~~“(b) to the extent to which the member fund incurred the expenditure in relation to its portfolio investor interest in the portfolio tax rate entity.~~ 10
- “(8B) Despite subsection (8), a master superannuation fund that is a portfolio tax rate entity is allowed a deduction for expenditure transferred to it by a member superannuation fund. However, the maximum amount transferred must be no more than the member fund’s share of the entity’s taxable income for the income year in which the amount is transferred, any excess being treated as not transferred.” 15
- (4) **Section DV 2(8B)**, other than the heading, is replaced by the following: 20
- ~~“(8B) Despite subsection (8), a master superannuation fund that is a multi-rate PIE is allowed a deduction only for expenditure transferred to it by a member superannuation fund—~~
- ~~“(a) that is expenditure incurred by the member fund when it has an investor interest in the PIE; and~~ 25
- ~~“(b) to the extent to which the member fund incurred the expenditure in relation to its investor interest in the PIE.~~
- “(8B) Despite subsection (8), a master superannuation fund that is a multi-rate PIE is allowed a deduction for expenditure transferred to it by a member superannuation fund. However, the maximum amount transferred must be no more than the member fund’s share of the taxable income of the PIE for the income year in which the amount is transferred, any excess being treated as not transferred.” 30
- (5) In section DV 2, in the list of defined terms, “portfolio investor interest” and “portfolio tax rate entity” are inserted. 35

- (6) In section DV 2, in the list of defined terms, “portfolio investor interest” and “portfolio tax rate entity” are omitted and “investor interest” and “multi-rate PIE” are inserted.
- (7) **Subsections (1), (3), and (5)** apply for the 2008–09 income year. 5
- (8) **Subsections (2), (4), and (6)** apply for the 2009–10 and later income years.
- (6) In section DV 2, in the list of defined terms,—
- (a) “portfolio investor interest” and “portfolio tax rate entity” are omitted: 10
- (b) “investor interest” and “multi-rate PIE” are inserted.
- (7) **Subsections (1) and (3)** apply for the 2008–09 and 2009–10 income years.
- (8) **Subsections (2) and (4)** apply for the 2010–11 and later income years. 15
- 77 Carry forward of expenditure**
- (1) After section DV 4(1), the following is inserted:
“What this section does not apply to
- “(1B) This section does not apply to a transfer of expenditure to a master superannuation fund that is a portfolio tax rate entity.” 20
- (2) **Section DV 4(1B)** is replaced by the following:
“What this section does not apply to
- “(1B) This section does not apply to a transfer of expenditure to a master superannuation fund that is a multi-rate PIE.”
- (3) In section DV 4, in the list of defined terms, “portfolio tax rate entity” is inserted. 25
- (4) In section DV 4, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted.
- (5) **Subsections (1) and (3)** apply for the 2008–09 income year.
- (6) **Subsections (2) and (4)** apply for the 2009–10 and later income years. 30
- (4) In section DV 4, in the list of defined terms,—
- (a) “portfolio tax rate entity” is omitted:
- (b) “multi-rate PIE” is inserted.
- (5) **Subsection (1)** applies for the 2008–09 and 2009–10 income years. 35

(6) **Subsection (2)** applies for the 2010–11 and later income years.

77B New section DV 4B inserted and replaced

(1) After section DV 4, the following is inserted:

“DV 4B Carry forward of expenditure by member funds investing in portfolio investment entities

5

“When this section applies

“(1) This section applies when—

“(a) a master fund that is a portfolio tax rate entity has a deduction under **section DV 2(8B)** for an income year for expenditure transferred to it by a member fund; and

10

“(b) the amount of the expenditure that meets the tests set out in section DV 2(2) is more than the amount transferred for the income year, so there is surplus expenditure for the member fund.

15

“Member fund carrying expenditure forward

“(2) The member fund may carry forward the surplus expenditure for transfer under **section DV 2(8B)** in a later income year.

“Expenditure as loss balance

“(3) If the member fund carries forward surplus expenditure in an income year, the member fund may treat some or all of the expenditure as a loss balance for the corresponding tax year.

20

“Defined in this Act: amount, deduction, income year, loss balance, master fund, portfolio tax rate entity, tax year”.

(2) **Section DV 4B** is replaced by the following:

25

“DV 4B Carry forward of expenditure by member funds investing in portfolio investment entities

“When this section applies

“(1) This section applies when—

“(a) a master fund that is a multi-rate PIE has a deduction under **section DV 2(8B)** for an income year for expenditure transferred to it by a member fund; and

30

“(b) the amount of the expenditure that meets the tests set out in section DV 2(2) is more than the amount transferred for the income year, so there is surplus expenditure for the member fund.

35

“Member fund carrying expenditure forward

- “(2) The member fund may carry forward the surplus expenditure for transfer under **section DV 2(8B)** in a later income year.

“Expenditure as loss balance

- “(3) If the member fund carries forward surplus expenditure in an income year, the member fund may treat some or all of the expenditure as a loss balance for the corresponding tax year. 5

“Defined in this Act: amount, deduction, income year, loss balance, master fund, multi-rate PIE, tax year”.

- (3) **Subsection (1)** applies for the 2008–09 and 2009–10 income years 10

- (4) **Subsection (2)** applies for the 2010–11 and later income years

78 Investment funds: transfer of expenditure to master funds

- (1) After section DV 5(7), the following is inserted: 15

“Amount of deduction when master fund is portfolio tax rate entity

- “(7B) Despite subsection (7), a master superannuation fund that is a portfolio tax rate entity is allowed a deduction only for expenditure transferred to it by a member superannuation fund— 20

“(a) that is expenditure incurred by the member fund when it has a portfolio investor interest in the portfolio tax rate entity; and

“(b) to the extent to which the member fund incurred the expenditure in relation to its portfolio investor interest in the portfolio tax rate entity.” 25

- “(7B) Despite subsection (7), a master superannuation fund that is a portfolio tax rate entity is allowed a deduction for expenditure transferred to it by a member superannuation fund. However, the maximum amount transferred must be no more than the member fund’s share of the entity’s taxable income for the income year in which the amount is transferred, any excess being treated as not transferred.” 30

- (2) **Section DV 5(7B)** is replaced by the following:

“Amount of deduction when master fund is multi-rate PIE

~~“(7B) Despite subsection (7), a master superannuation fund that is a multi-rate PIE is allowed a deduction only for expenditure transferred to it by a member superannuation fund—~~

~~“(a) that is expenditure incurred by the member fund when it has an investor interest in the PIE; and~~

~~“(b) to the extent to which the member fund incurred the expenditure in relation to its investor interest in the PIE.~~

“(7B) Despite subsection (7), a master superannuation fund that is a multi-rate PIE is allowed a deduction for expenditure transferred to it by a member superannuation fund. However, the maximum amount transferred must be no more than the member fund’s share of the taxable income of the PIE for the income year in which the amount is transferred, any excess being treated as not transferred.”

(3) In section DV 5, in the list of defined terms, “portfolio investor interest” and “portfolio tax rate entity” are inserted.

~~(4) In section DV 5, in the list of defined terms, “portfolio investor interest” and “portfolio tax rate entity” are omitted; and “investor interest” and “multi-rate PIE” are inserted.~~

(5) **Subsections (1) and (3)** apply for the 2008–09 income year.

~~(6) **Subsections (2) and (4)** apply for the 2009–10 and later income years.~~

(4) In section DV 5, in the list of defined terms,—

(a) “portfolio investor interest” and “portfolio tax rate entity” are omitted;

(b) “investor interest” and “multi-rate PIE” are inserted.

(5) **Subsection (1)** applies for the 2008–09 and 2009–10 income years.

(6) **Subsection (2)** applies for the 2010–11 and later income years.

78B Formula for calculating maximum deduction

(1) After section DV 6(4), the following is added:

“Portfolio tax rate entities

~~“(5) This section does not apply to an amount of expenditure transferred to a master fund that is a portfolio tax rate entity.”~~

(2) **Section DV 6(5)** is replaced by the following:

- “Multi-rate PIEs
- “(5) This section does not apply to an amount of expenditure transferred to a master fund that is a multi-rate PIE.”
- (3) In section DV 6, in the defined terms list, “portfolio tax rate entity” is inserted. 5
- (4) In section DV 6, in the defined terms list,—
(a) “portfolio tax rate entity” is omitted:
(b) “multi-rate PIE” is inserted.
- (5) **Subsection (1)** applies for the 2008–09 and 2009–10 income years. 10
- (6) **Subsection (2)** applies for the 2010–11 and later income years.
- 78C Carry forward of expenditure**
- (1) Section DV 7(1) is replaced by the following:
- “When this section applies 15
- “(1) This section applies when a member superannuation fund incurs expenditure that is more than—
“(a) the member fund and master fund agree can be transferred; or
“(b) the maximum amount that can be transferred. 20
- “Member fund carrying expenditure forward
- “(1B) The member fund may carry forward the expenditure for transfer in a later income year.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 25
- 78D Maori authorities: donations**
- (1) In section DV 12(1)(b), “a society, institution, association, organisation, trust, or fund 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” is replaced by “a donee organisation”. 30
- (2) In section DV 12, in the defined terms list, “donee organisation” is inserted.

79 New section DW 4 added

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

“DW 4 Deduction for general insurance outstanding claims reserve

“When this section applies

5

“(1) This section applies for—

“(a) an insurer who uses IFRS 4, Appendix D for general insurance contracts; and

“(b) general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general insurer) applies: 10

“Formula for insurer’s deduction

“(2) For an income year, an insurer is allowed a deduction for the amount by which the amount calculated using the following formula is less than zero: 15

opening outstanding claims reserve – closing outstanding claims reserve:

“Definition of items in formula

“(3) In the formula,—

“(a) **opening outstanding claims reserve** is—

“(i) the amount of the insurer’s closing outstanding claims reserve for the income year before the current year; or 20

“(ii) the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the beginning of the current year, if the insurer has no closing outstanding claims reserve for the income year before the current year: 25

“(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the end of the current year: 30

“Link with subpart DA

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

“Defined in this Act: amount; deduction; general insurance contract; general limitation; general permission; IFRS 4; income year; insurer”.

5

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, unless **paragraph (b)** applies:

(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2009–10 income year.

10

79 New section DW 4 added

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

“DW 4 Deduction for general insurance outstanding claims reserve

15

“When this section applies

“(1) This section applies for—

“(a) an insurer who—

“(i) uses IFRS 4, Appendix D for general insurance contracts:

20

“(ii) is a life insurer who has general insurance contracts:

“(b) general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general insurer) applies.

25

“No deduction on account of claims

“(2) For an insurer’s general insurance contracts, the insurer is denied a deduction relating to the insurer’s outstanding claims liability or for a claim’s expenditure or loss, except as provided by this section.

30

“Formula for insurer’s OCR deduction

“(3) For an income year (the **current year**), an insurer is allowed a deduction for the amount by which zero is greater than the amount calculated using the formula—

35

opening outstanding claims reserve
– closing outstanding claims reserve.

“Definition of items in formula

“(4) In the formula,—

“(a) **opening outstanding claims reserve** is—

“(i) the amount of the insurer’s closing outstanding claims reserve for the income year before the current year (the **prior year**); or 5

“(ii) the amount of the insurer’s reserve for outstanding claims liability, calculated at the end of the prior year, using the basis the insurer used for tax purposes in that prior year, if the current year is the first year that this section applies to the insurer: 10

“(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve, calculated at the end of the current year. 15

“Deduction for payments of current claims

“(5) The insurer is allowed a deduction for the amount of expenditure or loss of a claim paid to an insured under a general insurance contract for the income year. 20

“Link with subpart DA

“(6) This section supplements the general permission. The general limitations still apply. 25

“Defined in this Act: amount, deduction, general insurance contract, general limitation, general permission, IFRS 4, income year, insurer, life insurer, outstanding claims reserve”. 25

(2) **Subsection (1)** applies—

(a) for an insurer who uses IFRS 4,—

(i) for the 2009–10 and later income years, unless **subparagraph (ii)** applies: 30

(ii) for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2009–10 income year and the person chooses to use IFRS 4 in a return of income for that first year: 35

- (b) for a life insurer,—
- (i) on and after 1 July 2010, unless **subparagraph (ii)** applies:
- (ii) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5
- 80 Section DX 2 repealed**
- (1) Section DX 2 is repealed. 10
- (2) **Subsection (4)** applies for the 2009–10 and later income years:
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 15
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 80B Prepayments**
- In section EA 3(7), “sections CW 17 (Expenditure on account, and reimbursement, of employees) and CW 18 (Allowance for additional transport costs)” is replaced by “sections CW 17, **CW 17B, CW 17C,** and CW 18 (which relate to expenditure, reimbursement, and allowances of employees)”. 20
- 81 Meaning of trading stock**
- (1) In section EB 2(3)(e), “Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund” is replaced by “Proceeds from disposal of investment shares”. 25
- (2) In section EB 2(3)(h), “exchange.” is replaced by “exchange.” and the following is added: 30
- “(i) an emissions unit.”
- (3) In section EB 2, in the list of defined terms, “emissions unit” is inserted:
- (2) Section EB 2(3)(i) is replaced by the following:
- “(i) an emissions unit.” 35

- (3) In section EB 2, in the list of defined terms,—
 (a) “ETS unit” is omitted:
 (b) “emissions unit” is inserted.

82 Low-turnover valuation

- (1) In section EB 13(2), “YB 8” is replaced by “**YB 3**”. 5
 (2) ~~**Subsection (4)**~~ applies for the 2009–10 and later income years.
 (2) **Subsection (1)** applies for the 2010–11 and later income years.

83 Valuing closing stock under \$5000 10

- (1) In the heading to section EB 23, “\$5,000” is replaced by “\$10,000”.
 (2) In section EB 23(1)(b), “\$5,000” is replaced by “\$10,000”.

83B New heading and section EC 26B inserted

- (1) After section EC 26, the following is inserted: 15
 “Partnerships: cost price and national
 standard cost scheme

“EC 26B Entering partners’ cost base

“When this section applies

- “(1) This section applies when an entering partner has acquired specified livestock that includes female breeding livestock for which **section HG 10** (Disposal of livestock) applies, and the partners use the cost price method or the national standard cost scheme. 20

“Existing cost base 25

- “(2) For the specified livestock, the entering partner is treated as having the same existing cost base that the exiting partner would have had for the purposes of the cost price method or national standard cost scheme for an income year, if they had not disposed of the interests. 30

“Addition to cost base

- “(3) For the purposes of determining the value of the specified livestock at the end of an income year for the purposes of section EC 2, the entering partner must add to the existing cost base,

described in **subsection (2)**, the amount for the income year
(the **current year**) calculated using the following formula:

$$\frac{\text{livestock cost base difference} \times \text{current year count}}{\text{allowed years.}}$$

“Definition of items in formula

“(4) In the formula,—

“(a) **livestock cost base difference** is the cost base that the
entering partner would have for the specified livestock
at the end of the income year in which the acquisition
of the specified livestock occurred, ignoring **subsec-
tion (2)** reduced by the entering partner’s existing cost
base for the specified livestock at the end of that year,
described in **subsection (2)**. It must be a positive num-
ber: 5 10

“(b) **current year count,—**

“(i) is the allowed years reduced by the number of
years between the current year and the income
year in which the entering partner’s acquisition of
the specified livestock occurred, ignoring years
in which the partners do not use the cost price
method or national standard cost scheme (for ex-
ample: **current year count** is **1**, if the allowed
years is **4**, and the acquisition of the specified
livestock occurred in the 2010–11 income year,
and the current year is the 2013–14 income year,
and the relevant method or scheme was used for
all relevant income years): 15 20 25

“(ii) may equal the allowed years (for example: the
current year is the same year as the income year
in which the entering partner’s acquisition of the
specified livestock occurred), but must not be a
negative number: 30

“(c) **allowed years** is—

“(i) **4**, if the partners acquire or dispose of any part-
nership interests that include any livestock after
the entering partner’s acquisition of the specified

livestock and before the end of the income year in which that acquisition occurred; or

- “(ii) 5, if the partners do not acquire or dispose of any partnership interests that include any livestock after the entering partner’s acquisition of the specified livestock and before the end of the income year in which that acquisition occurred. 5

“Defined in this Act: amount, cost price, dispose, income year, national standard cost scheme, partner, partner’s interest, specified livestock”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years. 10

84 Valuation of excepted financial arrangements

- (1) After subsection ED 1(5), the following is inserted:

“Certain emissions units not pooled with other types of excepted financial arrangement” 15

- “(5B) No emissions unit described in 1 of the following paragraphs may be pooled for the purposes of subsection (5) with another emissions unit except if both emissions units are described in the same paragraph of the following:

“(a) emissions units that are— 20

- “(i) pre-1990 forest land emissions units relating to pre-1990 forest land, if the holder of the units would derive income other than exempt income and excluded income from a disposal of the land without timber: 25

“(ii) post-1989 forest land emissions units:

“(iii) replacement forest land emissions units:

- “(b) pre-1990 forest land emissions units relating to pre-1990 forest land, if the holder of the units would derive no income other than exempt income and excluded income from a disposal of the land without timber: 30

“(e) emissions units issued for no consideration—

“(i) to which **section ED 4B** applies; and

“(ii) that have not been assigned a cost under **section ED 4B(3)(a)**.” 35

- (2) After section ED 1(7), the following is inserted:

“Valuation of emissions units issued for no consideration

~~“(7B) For the purposes of subsection (1),—~~

~~“(a) a forest land emissions unit has a cost of zero at the end of each income year:~~

~~“(b) a replacement forest land emissions unit has a cost of zero at the end of each income year:~~ 5

~~“(c) an emissions unit to which **section ED 1B** applies has the cost at the end of each income year that is given by that section.”~~

~~(3) In section ED 1, in the list of defined terms, “emissions unit” is inserted:~~ 10

84 Valuation of excepted financial arrangements

(1) Subsection ED 1(5) is replaced by the following:

“Certain emissions units not pooled with other types of emissions unit

15

“(5B) No emissions unit described in 1 of the following paragraphs may be pooled for the purposes of subsection (5) with an emissions unit described in another of the paragraphs:

“(a) pre-1990 forest land emissions units relating to pre-1990 forest land, if the holder of the units would derive income, other than exempt income and excluded income, from a disposal of the land without timber: 20

“(b) post-1989 forest land emissions units:

“(c) replacement forest land emissions units:

“(d) pre-1990 forest land emissions units relating to pre-1990 forest land, if the holder of the units would derive no income other than exempt income and excluded income from a disposal of the land without timber: 25

“(e) emissions units issued for no consideration—

“(i) to which **section ED 1B** applies; and 30

“(ii) that have not been assigned a cost under **section ED 1B(3)(a)**.

“Exceptions: types of emissions units pooled with other types

“(5C) Despite **subsection (5B)**, emissions units described in **paragraphs (a) to (c)** of that subsection may be pooled for the purposes of subsection (5).” 35

(2) After section ED 1(7), the following is inserted:

- “Valuation of emissions units issued for zero price*
- “(7B) Despite subsection (1),—
- “(a) an emissions unit transferred under section 64, or Part 4 subpart 2, of the Climate Change Response Act 2002 for no payment of a price has a value of zero during the period beginning with the day of the transfer and ending before the end of the income year in which the transfer occurs: 5
- “(b) a forest land emissions unit has a value of zero at the end of each income year: 10
- “(c) a replacement forest land emissions unit has a value of zero at the end of each income year: 10
- “(d) an emissions unit to which **section ED 1B** applies has the value at the end of each income year that is given by that section.” 15
- (3) Section ED 1(8B) is repealed.
- (4) In section ED 1, in the list of defined terms,—
- (a) “replacement ETS unit” is omitted:
- (b) “emissions unit”, “excluded income”, “exempt income”, “forest land emissions unit”, “post-1989 forest land emissions unit”, “pre-1990 forest land”, “pre-1990 forest land emissions unit”, and “replacement forest land emissions unit” are inserted. 20
- 85 New section ED 1B inserted**
- After section ED 1, the following is inserted: 25
- “ED 1B Valuation of emissions units issued for no consideration**
- “What this section applies to*
- “(1) This section applies to emissions units, held by a person at the end of an income year, that—
- “(a) are issued to the person for no consideration; and 30
- “(b) are held continuously by the person to the end of the income year; and
- “(c) relate to a quantity (the **unit-related quantity**) of emissions; or emissions-related costs; of the person in a period (the **emissions unit period**) that ends in or after the income year; and 35
- “(d) are not forest land emissions units; and

- “(e) are not replacement forest land emissions units; and
- “(f) are not assigned a cost under **subsection (3)(a)** for an earlier income year.

“Cost at end of income year

- “(2) The cost under section ED 1 of the emissions units at the end 5
of the income year is—
- “(a) zero; if the emissions unit period begins after the end of
the income year; or
- “(b) the amount determined under **subsection (3)**; if **para-**
graph (a) does not apply and the emissions unit period 10
ends after the end of the income year; or
- “(c) the amount that a willing purchaser would pay for an
emissions unit in an arm’s length transaction at the end
of the income year, if the emissions unit period ends in
or at the end of the income year. 15

“Cost if emissions unit period ends after end of income year

- “(3) The cost under section ED 1 of the emissions units at the end
of an income year referred to in **subsection (2)(b)** is,—
- “(a) for the number of the emissions units given by **subsec-**
tion (4); the amount that a willing purchaser would pay 20
for an emissions unit in an arm’s length transaction at
the end of the income year; or
- “(b) for the balance of the units; zero.

“Formula based on emissions

- “(4) The number of units referred to in **subsection (3)(a)** is the 25
number, treating negative numbers as equal to zero and ignor-
ing fractions, calculated using the formula—

$$\text{held units} = \left(\text{issued units} \times \frac{\text{remaining quantity}}{\text{total quantity}} \right);$$

“Definition of items in formula

- “(5) The items in the formula are defined in **subsections (6) to**
(9). 30

“Held units

“(6) **Held units** is the number of the issued units that have not been assigned a value under **subsection (3)(a)** for an earlier income year.

“Issued units

5

“(7) **Issued units** is the number of emissions units issued in relation to the unit-related quantity for the unit-related period.

“Remaining quantity

“(8) **Remaining quantity** is—

“(a) if the total unit-related quantity for the person can be determined for each part of the emissions unit period included in an income year, the greater of the following amounts:

10

“(i) the part of the total expected unit-related quantity for the emissions unit period that was not emitted or incurred before the end of the income year.

15

“(ii) zero; or

“(b) if **paragraph (a)** does not apply, the number of days in the emissions unit period after the end of the income year.

20

“Total quantity

“(9) **Total quantity** is,—

“(a) if the total unit-related quantity for the person can be determined for each part of the emissions unit period included in an income year, the total unit-related quantity that was expected to be emitted or incurred for the emissions unit period; or

25

“(b) if **paragraph (a)** does not apply, the number of days in the emissions unit period.

“Defined in this Act: emissions unit; income year”

30

“ED 1B Valuation of emissions units issued for zero price

“What this section applies to

“(1) This section applies to emissions units, held by a person at the end of an income year, that—

“(a) are transferred to the person under section 64, or Part 4, subpart 2 of the Climate Change Response Act 2002 for a price of zero; and

35

“(b) are held continuously by the person to the end of the income year; and

“(c) relate to a quantity (the **unit-related quantity**) of emissions, or emissions-related costs, of the person in a period (the **emissions unit period**) that ends in or after the income year; and 5

“(d) are not forest land emissions units; and

“(e) are not replacement forest land emissions units; and

“(f) are not assigned a cost under **subsection (3)(a)** for an earlier income year. 10

“Value at end of income year

“(2) The value under **section ED 1(7B)** of the emissions units at the end of the income year is—

“(a) zero, if the emissions unit period begins after the end of the income year; or 15

“(b) the amount determined under **subsection (3)**, if **paragraph (a)** does not apply and the emissions unit period ends after the end of the income year; or

“(c) the market value of the emissions units at the end of the income year, if the emissions unit period ends in or at the end of the income year. 20

“Value if emissions unit period ends after end of income year

“(3) The value under **section ED 1(7B)** of the emissions units at the end of an income year referred to in **subsection (2)(b)** is,— 25

“(a) for the number of the emissions units given by **subsection (4)**, the market value of the emissions units at the end of the income year; or

“(b) for the balance of the units, zero.

“Formula based on emissions 30

“(4) The number of units referred to in **subsection (3)(a)** is the number, treating negative numbers as equal to zero and ignoring fractions, calculated using the formula—

$$\frac{\text{held units} - (\text{issued units} \times \frac{\text{remaining quantity}}{\text{total quantity}})}{1}.$$

“Definition of items in formula

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

“Held units

“(6) **Held units** is the number of the issued units that have not been assigned a value under **subsection (3)(a)** for an earlier income year. 5

“Issued units

“(7) **Issued units** is the number of emissions units transferred under section 64, or Part 4 subpart 2, of the Climate Change Response Act 2002 in relation to the unit-related quantity for the emissions unit period. 10

“Remaining quantity

“(8) **Remaining quantity** is—

“(a) if the total unit-related quantity for the person can be determined for each part of the emissions unit period included in an income year, the greater of the following amounts: 15

“(i) the part of the total expected unit-related quantity for the emissions unit period that was not emitted or incurred before the end of the income year: 20

“(ii) zero; or

“(b) if **paragraph (a)** does not apply, the number of days in the emissions unit period after the end of the income year. 25

“Total quantity

“(9) **Total quantity** is,—

“(a) if the total unit-related quantity for the person can be determined for each part of the emissions unit period included in an income year, the total unit-related quantity that was expected to be emitted or incurred for the emissions unit period; or 30

“(b) if **paragraph (a)** does not apply, the number of days in the emissions unit period.

“Defined in this Act: emissions unit, income year”. 35

85B Pool method: calculating amount of depreciation

(1) Section EE 21(5) to (8) are replaced by the following:

“Starting adjusted tax value

“(5) **Starting adjusted tax value** is—

“(a) the pool’s adjusted tax value at the start of the income year, increased as applicable by the amount referred to in section EE 22(2)(b); or

“(b) zero, if the pool did not exist at the start of the income year.

“Ending adjusted tax value

“(6) **Ending adjusted tax value** is the pool’s adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the pool for the income year. The value is, as applicable,—

“(a) increased by the amounts referred to in section EE 22(1) and (2)(a);

“(b) decreased by the amount referred to in section EE 22(3).

“Months

“(7) **Months**, for a person, is the number of whole or part months in their income year, and the number may be more or less than 12.”

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

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

In section EE 30(1)(b), “of cost” is inserted after “13.5%”.

87 Annual rate for item acquired in person’s 1995–96 or later income year

(1) Section EE 31(2)(a) is replaced by the following:

“(a) the item’s economic rate, special rate, or provisional rate, for an item not described in either paragraph (b) or (c):”.

(2) In section EE 31(2)(b), the words before subparagraph (i) are replaced by the following:

“(b) the item’s economic rate, special rate, or provisional rate, multiplied by 1.2, for an item that—”.

87B Meaning of adjusted tax value

- (1) Section EE 55(1)(b) is replaced by the following:
“(b) for a pool, the total adjusted tax value determined under section EE 21.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5

87C Employer’s superannuation contribution tax

- (1) In section EF 2, “employer’s superannuation contributions” is replaced by “employer’s superannuation cash contributions”.
- (2) In section EF 2, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 10
- (3) **Subsection (1)** applies for the 2008–09 and later income years.

88 Section EG 3 repealed 15

- (1) Section EG 3 is repealed.
- (2) ~~**Subsection (1)** applies for the 2009–10 and later income years.~~
- (2) **Subsection (1)** applies for the 2010–11 and later income years. 20

89 Expenditure incurred in acquiring film rights in feature films

- (1) Section EJ 4(1)(b) is replaced by the following:
“(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a government screen production payment is made.” 25
- (2) In section EJ 4, in the list of defined terms, “government screen production payment” is inserted.

90 Expenditure incurred in acquiring film rights in films other than feature films 30

- (1) Section EJ 5(1)(b) is replaced by the following:
“(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a government screen production payment is made.”

- (2) In section EJ 5, in the list of defined terms, “government screen production payment” is inserted.

91 Film production expenditure for New Zealand films having no large budget screen production grant

- (1) In the heading to section EJ 7, “**large budget screen production grant**” is replaced by “**government screen production payment**”. 5
- (2) Section EJ 7(1)(a) is replaced by the following:
“(a) the film is not one for which a government screen production payment is made; and”. 10
- (3) In section EJ 7, in the list of defined terms, “government screen production payment” is inserted.

92 Film production expenditure for other films having no large budget screen production grant

- (1) In the heading to section EJ 8, “**large budget screen production grant**” is replaced by “**government screen production payment**”. 15
- (2) Section EJ 8(1)(a) is replaced by the following:
“(a) the film is not one for which a government screen production payment is made; and”. 20
- (3) In section EJ 8, in the list of defined terms, “government screen production payment” is inserted.

93 Section EJ 12 replaced

- (1) Section EJ 12 is replaced by the following:
~~“EJ 12 Petroleum development expenditure: default allocation rule~~ 25
~~“What this section applies to~~
~~“(1) This section applies to petroleum development expenditure that relates to a petroleum mining development and that is incurred after 1 April 2008 when, for that development, the petroleum miner has not chosen to apply **section EJ 12B** to any petroleum development expenditure for the development.~~ 30

“Default allocation rule

- “(2) For the purposes of **section DT 5(2)(a)** (Petroleum development expenditure); a deduction for the petroleum development expenditure is allocated in equal amounts over a period of 7 income years. The period of 7 years starts with the income year in which the expenditure is incurred. 5

“Relationship with other petroleum mining provisions

- “(3) Sections EJ 13 to EJ 16 override **subsection (2)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IS 5 (which relate to petroleum miners) override this section. 10

“Defined in this Act: amount; deduction; income year; petroleum development expenditure; petroleum mining development

“EJ 12B Petroleum development expenditure: reserve depletion method

“What this section applies to

- “(1) This section applies to petroleum development expenditure that relates to a petroleum mining development and that is incurred after 1 April 2008, if the petroleum miner has chosen to apply this section for the first income year in which the petroleum mining development first produces petroleum in commercial quantities. 20

“Choice

- “(2) The choice described in **subsection (1)** is made in a return of income, and applies this section to petroleum development expenditure that relates to a petroleum mining development for the income year of the return and for all subsequent income years. 25

“Reserve depletion method expense allocation rule

- “(3) For the purposes of **section DT 5(2)(b)** (Petroleum development expenditure); the deduction allocated to an income year for the petroleum development expenditure is calculated using the formula— 30

$$\frac{(\text{reserve expenditure} - \text{previous deductions}) \times \frac{\text{reserve depletion for the year}}{\text{probable reserves}}}{}$$

“Definition of items in formula

- “(4) The items in the formula are defined in **subsections (5) to (8)**:

“Reserve expenditure

- “(5) **Reserve expenditure** is the total of petroleum development expenditure to which this section applies for the income year or an earlier income year: 5

“Previous deductions

- “(6) **Previous deductions** is the total amount of petroleum development expenditure that relates to the relevant petroleum mining development and that has been allocated to an earlier income year: 10

“Reserve depletion for the year

- “(7) **Reserve depletion for the year** is the amount, expressed in barrels of oil equivalent, of petroleum produced from the relevant petroleum mining development for the income year: 15

“Probable reserves

- “(8) **Probable reserves** is the amount, expressed in barrels of oil equivalent, of the reserves of petroleum for the petroleum mining development that are not yet proven but are estimated, at the beginning of the income year, to have a better than 50% chance of being technically and commercially producible: 20

“Relationship with other petroleum mining provisions

- “(9) Sections EJ 13 to EJ 16 override **subsection (3)**: Sections DF 7, DF 8, DF 10, DF 11, DF 16, and IS 5 (which relate to petroleum miners) override this section: 25

“Defined in this Act: amount; deduction; income year; petroleum development expenditure; petroleum mining development”²²

“EJ 12 Petroleum development expenditure: default allocation rule

“When this section applies

- “(1) This section applies to a petroleum miner’s petroleum development expenditure that relates to petroleum mining developments in a permit area and that is incurred on or after 1 April 2008, when **section EJ 12B** does not apply to the expenditure. 5

“Default allocation rule

- “(2) For the purposes of **section DT 5(2)(a)** (Petroleum development expenditure), a deduction for the petroleum development expenditure is allocated in equal amounts over a period of 7 income years. The period of 7 years starts with the income year in which the expenditure is incurred. 10

“Relationship with other petroleum mining provisions

- “(3) Sections EJ 13 to EJ 16 override **subsection (2)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IS 5 (which relate to petroleum miners) override this section. 15

“Defined in this Act: amount, deduction, income year, permit area, petroleum development expenditure, petroleum miner, petroleum mining development 20

“EJ 12B Petroleum development expenditure: reserve depletion method

“When this section applies

- “(1) This section applies to a petroleum miner’s petroleum development expenditure that relates to petroleum mining developments in a permit area, when the expenditure is incurred— 25

“(a) on or after 1 April 2008; and

*“(b) an election to apply this section, described in **subsection (2)**, is made for the permit area.*

“Choice: first year of commercial production and later years 30

- “(2) An election to apply this section may be made by a petroleum miner for a permit area, in a return of income for an income year, only if that income year is the first one in which petroleum is produced in commercial quantities in the permit area. The election is irrevocable, and applies this section to petroleum development expenditure that relates to petroleum mining 35

developments in the relevant permit area for the income year and later income years.

“Reserve depletion method expense allocation rule

- “(3) For the purposes of **section DT 5(2)(b)** (Petroleum development expenditure), the deduction allocated to an income year for the petroleum development expenditure that relates to a petroleum mining development in the relevant permit area is the amount calculated using the following formula, if the amount is positive:

$$\frac{(\text{reserve expenditure} - \text{previous expenditure}) \times \frac{\text{reserve depletion for the year}}{\text{probable reserves}}}{\text{probable reserves}}$$

“Definition of items in formula

- “(4) The items in the formula are defined in **subsections (5) to (8)**.

“Reserve expenditure

- “(5) **Reserve expenditure** is the total petroleum development expenditure that relates to the petroleum mining development for the income year or an earlier income year to which this section applied.

“Previous expenditure

- “(6) **Previous expenditure** is the total petroleum development expenditure that relates to the petroleum mining development and that has been allocated to an earlier income year to which this section applied.

“Reserve depletion for the year

- “(7) **Reserve depletion for the year** is the amount, expressed in barrels of oil equivalent, of petroleum produced from the petroleum mining development for the income year.

“Probable reserves

- “(8) **Probable reserves** is the amount, expressed in barrels of oil equivalent, of the reserves of petroleum for the petroleum mining development that are not yet proven but are estimated, at the beginning of the income year, to have a better than 50% chance of being technically and commercially producible.

“Relationship with other petroleum mining provisions

“(9) Sections EJ 13 to EJ 16 override **subsection (3)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IS 5 (which relate to petroleum miners) override this section.

“Defined in this Act: amount, deduction, income year, permit area, petroleum development expenditure, petroleum miner, petroleum mining development”. 5

(2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

94 Relinquishing petroleum mining permit

(1) In section EJ 13(2)(b), “section EJ 12(1)” is replaced by “**section EJ 12(2) or EJ 12B(3)**”. 10

(2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

95 New sections EJ 13B and EJ 13C inserted

(1) After section EJ 13, the following is inserted: 15

“EJ 13B Dry well drilled

“When this section applies

“(1) This section applies when—

“(a) ~~the petroleum miner has petroleum development expenditure for a well, the drilling of which is completed in an income year, and, from the time of completion, the well—~~ 20

~~“(i) will never produce petroleum in commercial quantities; and~~

~~“(ii) is abandoned; and”~~ 25

“(a) the petroleum miner has petroleum development expenditure for a well, the drilling of which stops in an income year, and, from the time of stopping, the well—

“(i) will never produce petroleum in commercial quantities; and 30

“(ii) is abandoned; and

“(b) part of a deduction under **section DT 5** (Petroleum development expenditure) for the petroleum development expenditure described in **paragraph (a)** has not been allocated under **section EJ 12 or EJ 12B**. 35

“Allocation

- “(2) The part of the deduction described in **subsection (1)** is allocated to the income year.

“Defined in this Act: amount, deduction, income year, petroleum development expenditure

5

“EJ 13C Well not producing

“When this section applies

- “(1) This section applies when—

“(a) the petroleum miner has petroleum development expenditure for a well that, in an income year—

10

“(i) stops producing petroleum in commercial quantities; and

“(ii) is abandoned; and

“(b) the petroleum miner has elected to apply **section EJ 12B** for the petroleum development expenditure described in **paragraph (a)** before the start of the income year; and

15

“(c) part of a deduction under **section DT 5** (Petroleum development expenditure) for the petroleum development expenditure described in **paragraphs (a) and (b)** has not been allocated under **section EJ 12B**.

20

“Allocation

- “(2) The part of the deduction described in **subsection (1)** is allocated to the income year.

“Defined in this Act: amount, deduction, income year, petroleum development expenditure”.

25

- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

96 Disposal of petroleum mining asset

- (1) Section EJ 15(2)(b) is replaced by the following:

30

“(b) it has not been allocated under **section EJ 12 or EJ 12B** to the income year in which the miner disposes of the asset or to an earlier income year.”

- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

35

97 Sections EJ 19 and EJ 20 replaced

(1) Sections EJ 19 and EJ 20 are replaced by the following:

“EJ 20 Meaning of petroleum mining development

“Meaning

“(1) In **sections EJ 12 and EJ 12B**, petroleum mining development means a place where 1 or more of the activities described in **subsection (2)** is carried out. 5

“Activities: inclusions

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

“(a) developing a permit area for producing petroleum: 10

“(b) producing petroleum:

“(c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:

“(d) removal or restoration operations. 15

“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 stabilized into crude oil, condensate, or natural gas; and 20

“(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. 25

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

(2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

98 What is an excepted financial arrangement? 30

(1) ~~After section EW 5(3), the following is inserted:~~

“Emissions unit

~~“(3B) An emissions unit is an excepted financial arrangement.”~~

(2) In section EW 5(8), “insurance contract” is replaced by “insurance contract that is not life financial reinsurance”. 35

- (3) In section EW 5(13), the second sentence is replaced by “This subsection does not apply to a withdrawable share; to an option to acquire or dispose of withdrawable shares; or to a fixed-rate foreign equity.”
- (4) In section EW 5, in the list of defined terms, “fixed-rate foreign equity” is inserted. 5
- (5) In section EW 5, in the list of defined terms, “emissions unit” is inserted.
- (6) In section EW 5, in the list of defined terms, “life financial reinsurance” is inserted. 10
- (7) **Subsections (3) and (4)** apply for the 2009–10 and later income years.
- (8) **Subsections (2) and (6)** apply for income years beginning on or after 1 April 2009.
- (1) In section EW 5(2), “financial arrangement” is replaced by “financial arrangement to the extent to which it is not life financial reinsurance”. 15
- (2) Section EW 5(3B) is replaced by the following:
“Emissions unit
“(3B) An emissions unit is an excepted financial arrangement.” 20
- (3) In section EW 5(8), “insurance contract” is replaced by “insurance contract to the extent to which it is not life financial reinsurance”.
- (4) In section EW 5, in the list of defined terms,—
(a) “ETS unit” is omitted; 25
(b) “emissions unit” is inserted.
- (5) In section EW 5, in the list of defined terms, “life financial reinsurance” is inserted.
- (6) **Subsections (1) and (3)** apply—
(a) on and after 1 July 2010, unless **paragraph (b)** applies; 30
or
(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 35

99 When use of spreading method not required

Section EW 13(2), other than the heading, is replaced by the following:

- “(2) A trustee who holds a financial arrangement in trust to manage compensation paid for personal injury under the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Accident Insurance Act 1988, any of the former Acts as defined in section 13 of the Accident Insurance Act 1998, the Workers’ Compensation Act 1956, or a court order does not use any of the spreading methods for the financial arrangement if the trustee is a cash basis person.”

99B What spreading methods do

After section EW 14(2)(d), the following is inserted:

- “(e) a financial reporting method, to which sections EW 21 and EW 23 are relevant; or”.

99C Applying IFRSs to financial arrangements

After section EW 15B(2), the following is added:

“Functional currency

- “(3) Even if another currency may be used as the functional currency under IFRSs, the methods must be applied using New Zealand dollars.

“Financial statements

- “(4) Unless the context otherwise requires, references to IFRSs in **sections EW 15D to EW 15I** are references to IFRS rules used to prepare the person’s financial statements.”

100 IFRS financial reporting method

After section EW 15D(2)(a), the following is inserted:

- “(ab) even if another currency may be used as the functional currency under IFRSs, the IFRS financial reporting method must be applied using New Zealand dollars, except as required by section EX 21 (Attributable CFC income and net attributable CFC income or loss) for calculations under section EX 21D (Non-attributing active CFC: default test).”

100 IFRS financial reporting method

- (1) In section EW 15D(2)(a), “income year” is replaced by “income year. However, adjustments for financial arrangements held by the person are excluded from this paragraph, if the financial arrangements are not derivative instruments and the person’s business includes dealing in those financial arrangements:”.
- (2) After section EW 15D(2)(a), the following is inserted:
“(ab) borrowing costs are not capitalised under NZIAS 23:”.
- (3) In section EW 15D, in the list of defined terms, “derivative instrument” and “NZIAS 23” are inserted.
- (4) **Subsection (2)** does not apply for a taxpayer and an income year if the taxpayer has,—
 - (a) before 30 June 2009, filed a return of income for the income year; and
 - (b) taken a tax position in the return which ignores **subsection (2)**.

101 Determination alternatives

- (1) In section EW 15E(1)(e), the words before subparagraph (i) are replaced by the following:
“(e) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”.
- (2) In section EW 15E(1)(e)(ii), “fair value method” is replaced by “modified fair value method”.
- (3) In section EW 15E(2), the words before paragraph (a) are replaced by the following:
“(2) The person must use 1 of the following methods modified, as applicable, under subsection (3) or **(3B)**:”.
- (4) After section EW 15E(3), the following is added:
“*Modifications*
“(3B) For a determination alternative that is *Determination G27*, the allocation is modified as follows:
“(a) *method C* must be used, and not *methods A, B, or D*:
“(b) for *method C*, if relevant, *Determination G9C* and not *Determination 9A* must be used.”

- (1) Section EW 15E(1)(c) is replaced by the following:
 - “(c) for a financial arrangement that is not a hedge of another financial arrangement under IFRSs, the financial arrangement—
 - “(i) is not being hedged by another financial arrangement under IFRSs: 5
 - “(ii) meets the requirements of **paragraph (d)**; and
 - “(d) for a financial arrangement that is a hedge of another financial arrangement under IFRSs, or is being hedged by another financial arrangement under IFRSs,— 10
 - “(i) section EW 15D applies or has applied for the relevant other financial arrangement; and
 - “(ii) the method used for the relevant other financial arrangement is not the fair value method; and
 - “(iii) the method used does not account for gains and losses related to either financial arrangement.” 15
- (2) In section EW 15E(2), the words before paragraph (a) are replaced by the following:
 - “(2) The person must use 1 of the following methods modified, as applicable, under subsection (3) or **(3B)**.”. 20
- (3) Before section EW 15E(2)(a), the following is inserted:
 - “(aa) *Determination G3: Yield to maturity*, but only if the financial arrangement is denominated in New Zealand currency and is not a derivative instrument.”.
- (4) After section EW 15E(3), the following is added: 25

“*Modifications*

 - “(3B) For a determination alternative that is *Determination G27*, the allocation is modified as follows:
 - “(a) method C must be used, and not methods A, B, or D:
 - “(b) for method C, if relevant, *Determination G9C* and not *Determination G9A* must be used.” 30
- (5) In section EW 15E, in the list of defined terms, “derivative instrument” and “New Zealand” are inserted.
- (6) **Subsections (2) to (4)** apply for the 2009–10 and later income years. 35

102 Expected value method

- (1) In section EW 15F(1)(c), the words before subparagraph (i) are replaced by the following:
 - “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”.
- (2) Section EW 15F(3) is repealed.
- (3) **Subsection (2)** applies for the 2009–10 and later income years.
- (1) Section EW 15F(1)(c) is replaced by the following:
 - “(c) for a financial arrangement that is not a hedge of another financial arrangement under IFRSs, the financial arrangement—
 - “(i) is not being hedged by another financial arrangement under IFRSs;
 - “(ii) meets the requirements of **paragraph (cb)**; and
 - “(cb) for a financial arrangement that is a hedge of another financial arrangement under IFRSs, or is being hedged by another financial arrangement under IFRSs,—
 - “(i) section EW 15D applies or has applied for the relevant other financial arrangement; and
 - “(ii) the method used for the relevant other financial arrangement is not the fair value method; and
 - “(iii) the method used does not account for gains and losses related to either financial arrangement; and”.
- (2) Section EW 15F(1)(d) is replaced by the following:
 - “(d) the person and all companies in a group of companies to which the person belongs have chosen to use the expected value method and have notified the Commissioner at the time of filing a return of income. This paragraph is ignored if the person carries on a business that has a substantially different nature from other companies in the group, and—
 - “(i) the person and the other parties to the financial arrangement are not associated; or

- “(ii) the person and the other parties to the financial arrangement are associated and use the same method for the arrangement.”
- (3) Section EW 15F(3) is repealed.
- (4) In section EW 15F, in the list of defined terms, “associated person” is inserted. 5
- (5) **Subsection (3)** applies for the 2009–10 and later income years.
- 103 Modified fair value method**
- (1) In section EW 15G(1)(c), the words before subparagraph (i) are replaced by the following: 10
- “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”. 15
- (2) In section EW 15G(1)(d), “fair value method” is replaced by “modified fair value method”.
- (1) Section EW 15G(1)(c) is replaced by the following:
- “(c) for a financial arrangement that is not a hedge of another financial arrangement under IFRSs, the financial arrangement— 20
- “(i) is not being hedged by another financial arrangement under IFRSs;
- “(ii) meets the requirements of **paragraph (cb)**; and
- “(cb) for a financial arrangement that is a hedge of another financial arrangement under IFRSs, or is being hedged by another financial arrangement under IFRSs,— 25
- “(i) section EW 15D applies or has applied for the relevant other financial arrangement; and
- “(ii) the method used for the relevant other financial arrangement is not the fair value method; and 30
- “(iii) the method used does not account for gains and losses related to either financial arrangement; and”.
- (2) Section EW 15G(1)(d) is replaced by the following: 35
- “(d) the person and all companies in a group of companies to which the person belongs have chosen to use the modi-

fied fair value method and have notified the Commis-
sioner at the time of filing a return of income. This para-
graph is ignored if the person carries on a business that
has a substantially different nature from other compan-
ies in the group, and—

5

“(i) the person and the other parties to the financial
arrangement are not associated; or

“(ii) the person and the other parties to the finan-
cial arrangement are associated and use the same
method for the arrangement.”

10

- (3) In section EW 15G(2), the first sentence is replaced by “The person must use a method that is the fair value method under section EW 15D.”

103B Mandatory use of some determinations

- (1) In section EW 15H(1)(d), “*expenditure*.” is replaced by “*ex-*
penditure. However, when applying *Determination G29*, *De-*
termination G9B, and not *Determination G9A*, must be used.”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

15

104 Mandatory use of yield to maturity method for some arrangements

20

- (1) After section EW 15I(1)(b)(ii), the following is inserted:

“(iib) is a lease that is a finance lease; and under NZIAS
17 and in the person’s financial statements, the
lease is classified as an operating lease.”

25

“(iib) is, under NZIAS 17 and in the person’s financial
statements, classified as an operating lease; or”.

- (2) In section EW 15I, in the list of defined terms, “finance lease” and “NZIAS 17” are inserted.

- (2) In section EW 15I, in the list of defined terms, “NZIAS 17” is inserted.

30

105 Straight-line method

In section EW 17(1)(a), “\$1,500,000” is replaced by “\$1,850,000”.

105B New section EW 21 inserted

After section EW 20, the following is inserted:

“EW 21 Financial reporting method

A person who is a party to a financial arrangement may use a financial reporting method if—

“(a) the person cannot use the yield to maturity method or an alternative; and

“(b) the person—

“(i) may not use the straight-line method or a market valuation method; or

“(ii) may use the straight-line method or a market valuation method but chooses not to do so; and

“(c) the person is not required to use a method under section EW 15B; and

“(d) the Commissioner has not made a determination for the financial arrangement under section 90AC(1)(d) of the Tax Administration Act 1994; and

“(e) the method conforms with commercially acceptable practice; and

“(f) the method is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangement (although section EW 23 may apply if the method is not used in this way); and

“(g) the method allocates a reasonable amount to each income year over the financial arrangement’s term.

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

105C Default method

In section EW 22(c), “alternative” is replaced by “alternative, or a financial reporting method”.

105D Failure to use method for financial reporting purposes

(1) In section EW 23(1), “and EW 20(2)(f)” is replaced by “EW 20(2)(f), and EW 21(f)”.

(2) In section EW 23(2), “and EW 20(2)(f)” is replaced by “EW 20(2)(f), and EW 21(f)”.

106 Consistency of use of straight-line method and market valuation method

- (1) In the heading to section EW 25(3), “\$1,500,000” is replaced by “\$1,850,000”.
- (2) In section EW 25(3), “\$1,500,000” is replaced by “\$1,850,000”.

106B Consistency of use of IFRS method

- (1) After section EW 25B(3), the following is inserted:
“*Modification*”
- “(4) **Section EZ 52B** (Consistency of use of IFRS method: *Determination G3* and 2009–10 income year) modifies subsection (2).”
- (2) **Subsection (1)** applies for the 2009–10 income year.

107 Change of spreading method

- (1) Section EW 26(1) is replaced by the following: 15
“*Requirements for change from straight-line and market value method*”
- “(1) A person may change from the straight-line method or the market value method if they change to a method that is not a method for IFRS under section EW 15B, and the Commissioner has given written authorisation for the change.” 20
- (2) In section EW 26(2), the first sentence is replaced by “A person may change from any spreading method to any other method if the Commissioner’s written authorisation under **subsection (1)** is not required for the change, and they have a sound commercial reason for the change”. 25
- (3) Section EW 26(6), other than the heading, is replaced by the following:
- “(6) Subsections (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 or a change from the market value method to a method for IFRS under section EW 15B, in which case section EW 29(13) applies.” 30
- (4) Section EW 26(7)(a) is replaced by the following: 35

- “(a) starting or stopping the use of IFRSs to prepare financial statements at the same time as starting or stopping the use of a method for IFRS under section EW 15B:”.

108 When calculation of base price adjustment required

Section EW 29(13), other than the heading, is replaced by the following:

- “(13) A party to the financial arrangement who changes from the fair value method to another method or from the market value method to a method for IFRS under section EW 15B must calculate a base price adjustment at the date of the change.”
- “(13) A party to the financial arrangement who changes from the fair value method under section EW 15D to another method or from the market value method to a method for IFRS under section EW 15B must calculate a base price adjustment at the date of the change.”

108B Base price adjustment formula

- (1) In section EW 31(7), in the words before the paragraphs,—
- (a) “ignoring non-contingent fees,” is omitted;
- (b) “, ignoring—” is replaced by “. For the purposes of this subsection, the following are ignored:”.
- (2) In section EW 31(9)(a), “, under section CC 3,” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

109 Section EW 54 replaced

Section EW 54 is replaced by the following:

EW 54 Meaning of cash basis person

“Who is cash basis person

- “(1) A person is a **cash basis person** for an income year if—
- “(a) 1 of the following applies in the person’s case for the income year:
- “(i) section EW 57(1); or
- “(ii) section EW 57(2); and
- “(b) section EW 57(3) applies in the person’s case for the income year.

“Persons excluded by Commissioner

- “(2) A person may be excluded under section EW 59 from being a cash basis person for a class of financial arrangements.

“Defined in this Act: cash-basis person; financial arrangement; income year”.

110 Section EW 56 repealed 5
Section EW 56 is repealed.

111 Thresholds

- (1) In section EW 57(1), “section EW 56(1)(a)(i)” is replaced by section “EW 54(1)(a)(i)”.
(2) In section EW 57(2), “section EW 56(1)(a)(ii)” is replaced by “section EW 54(1)(a)(ii)”. 10
(3) In section EW 57(3), “section EW 56(1)(b)” is replaced by “section EW 54(1)(b)”.
(4) After section EW 57(9), the following is added:
“Increase in specified sums 15
“(10) The Governor-General may make an Order in Council increasing a sum specified in any of subsections (1) to (3).”

112 Financial arrangements, income, and expenditure relevant to criteria

- (1) In section EW 58(1), “the natural person” is replaced by “the person”. 20
(2) In section EW 58(2),—
(a) the subsection heading is replaced by “*Partner*”;
(b) “A natural person” is replaced by “A person”.
(3) In section EW 58(3),— 25
(a) the subsection heading is replaced by “*Beneficiary of bare trust*”;
(b) “A natural person” is replaced by “A person”.
(4) In section EW 58(4),—
(a) the subsection heading is replaced by “*Beneficiary of trust other than bare trust*”. 30
(b) “a natural person” is replaced by “a person”.
(5) In section EW 58(5),—
(a) the subsection heading is replaced by “*Trustee*”.

(b) “a natural person” is replaced by “a person”.

113 Section EW 59 replaced

Section EW 59 is replaced by the following:

“EW 59 Exclusion by Commissioner

The Commissioner may treat a person who would otherwise 5
be a cash basis person for a class of financial arrangements as
not being a cash basis person for the class if—

“(a) the person, or any other person, has structured and pro-
moted the class to defer an income tax liability:

“(b) the parties to a financial arrangement are associated, 10
and the person’s calculation of income and expenditure
under the financial arrangement differs from that used
by the associated person:

“Defined in this Act: associated person; cash-basis person; Commissioner; fi-
nancial arrangement; income; income tax liability”.

15

114 Trustee of deceased’s estate

(1) In section EW 60(2) and (3), “section EW 56(1)(a) and (b)” is
replaced by “section EW 54(1)(a) and (b)”.

(2) In section EW 60(4), “to EW 56” are replaced by “and EW
55”.

20

115 Meaning of controlled foreign company

(1A) In section EX 1(2)(a), “foreign investment vehicle” is replaced
by “foreign PIE equivalent”.

(1) Section EX 1(2)(b)(ii) is replaced by the following:

“(ii) an entity that qualifies for PIE status:”.

25

(2) **Subsection (4)** applies for the 2009–10 and later income
years.

(2) **Subsections (1A) and (1)** apply for the 2010–11 and later
income years.

115B Direct control interests

30

In section EX 5(5)(c), “debentures” is replaced by “deben-
tures), **FA 2B** (Stapled debt securities),”.

115C Direct income interests

In section EX 9(6)(c), “debentures)” is replaced by “debentures), **FA 2B** (Stapled debt securities),”.

116 Associates and 10% threshold

- (1) In section EX 15(1), “section EX 14” is replaced by “sections CD 45, CQ 2, EX 14, EX 21, EX 34, EX 58, and LL 9.” 5
- (2) In section EX 15(1), “EX 34, EX 58, and LL 9.” is replaced by “EX 34, and EX 58.”
- ~~(3)~~ **Subsection (2)** applies for the 2009–10 and later income years: 10
- (3) **Subsection (2)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 15

116B New section EX 18A inserted

- (1) After the heading before section EX 18, the following is inserted:

“EX 18A Scheme for finding person’s attributed CFC income or loss” 20

“Formula and rules for calculation

- “(1) The attributed CFC income or loss of a person (an **interest holder**) holding an income interest in a CFC, for the purposes of the general rules in **sections CQ 2(1) and DN 2(1)** (which relate to attributed CFC income or loss), is found for the CFC and an accounting period from— 25
 - “(a) the formula in section EX 18, which uses the interest holder’s income interest and the CFC’s net attributable CFC income or loss determined as described in **sub-section (2)**; 30
 - “(b) the interest holder’s additional CFC attributed income under section EX 19;
 - “(c) the reduction in the interest holder’s attributed CFC loss under section EX 20.

“Determination of attributed CFC income or loss from attributable CFC amount

“(2) An interest holder with an income interest of a fraction (the fraction) in a CFC with an attributable CFC amount under **section EX 20B** for an accounting period has under **section EX 18**, for the CFC and accounting period,— 5

“(a) attributed CFC income or loss equal to the fraction of the CFC’s net attributable CFC income or loss under **sections EX 20C to EX 20E** and the rules in sections EX 21 and EX 24 to EX 27, if **paragraph (b)** does not apply: 10

“(b) no attributed CFC income or attributed CFC loss, if the CFC is—

“(i) a non-attributing active CFC under **section EX 21B**, determined as described in **subsection (3)**: 15

“(ii) a non-attributing Australian CFC under **section EX 22**.

“Non-attributing active CFCs

“(3) Whether a CFC is a non-attributing active CFC is determined under **section EX 21B** using— 20

“(a) a test in—

“(i) **section EX 21D**, if the interest holder does not use a test referred to in **subparagraph (ii)**; or

“(ii) **section EX 21E**, if the CFC has accounts prepared to a standard meeting the requirements of **section EX 21C** and the interest holder chooses to use a test in that section based on those accounts; and 25

“(b) the rules in sections EX 21 and EX 24 to EX 27. 30

“Defined in this Act: accounting period, attributable CFC amount, attributed CFC income, attributed CFC loss, CFC, non-attributing active CFC, non-attributing Australian CFC”.

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 35

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

117 Formula for calculating attributed CFC income or loss

- (1) In the formula in section EX 18, “branch equivalent income” is replaced by “net attributable CFC income”.
- (2) In section EX 18, in the list of defined terms,—
 - (a) “branch equivalent income” is omitted: 5
 - (b) “net attributable CFC income” is inserted.
- ~~(3)~~ **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (3) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

118 Taxable distribution from non-complying trust

- (1) In section EX 19(1)(b), “branch equivalent income” is replaced by “net attributable CFC income”. 15
- (2) In section EX 19(2), “branch equivalent income” is replaced by “net attributable CFC income”.
- (3) Section EX 19(5) is repealed.
- (4) In section EX 19, in the list of defined terms,— 20
 - (a) “branch equivalent income” is omitted:
 - (b) “net attributable CFC income” is inserted.
- ~~(5)~~ **Subsections (1) to (4)** apply for the 2009–10 and later income years.
- (5) **Subsections (1) to (3)** apply for— 25
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

119 New heading and sections EX 20B to EX 20D inserted 30

- ~~(1)~~ After section EX 20, the following is inserted:

“Attributable CFC amount and net attributable CFC income or loss

“EX 20B Attributable CFC amount

“Attributable CFC amount

“(1) Attributable CFC amount, for an accounting period and a CFC, means the amount calculated under the rules in **section EX 21** using the formula—

gross income + arrangement income:

“Definition of items in formula

“(2) The items in the formula in subsection (1) are defined in subsections (3) and (4):

“Gross income

“(3) Gross income is the total amount of income derived in the accounting period by the CFC that is 1 or more of the following:

“(a) a dividend that is paid in relation to rights that are a direct income interest of less than 10% in a foreign company and are described in—

“(i) section EX 31:

“(ii) section EX 32:

“(iii) section EX 36:

“(iv) section EX 37:

“(v) in section EX 37B:

“(vi) section EX 39:

“(b) a dividend that is paid by a company resident in New Zealand to the extent to which the dividend is not fully imputed under section RF 9(2) (When dividends fully imputed or fully credited):

“(c) an amount that is treated as a payment of interest under section GD 36B (Distributions to resident company for deductible foreign equity and fixed-rate foreign equity):

“(d) a royalty, other than a royalty referred to in subsection (5):

“(e) rent, other than rent referred to in subsection (6), from—

“(i) a lease or sublease of land:

“(ii) a lease or sublease of personal property:

- 165

- “(i) income from the alienation of shares that are revenue account property, other than shares referred to in **subsection (7)**;
- “(j) income from the alienation of revenue account property if the property is— 5
 - “(i) not a share, financial arrangement, or life insurance policy; and
 - “(ii) capable of giving rise to income of the CFC referred to in another paragraph of this subsection;
- “(k) income from a service physically performed wholly or partly in New Zealand, other than a telecommunications service: 10
- “(l) income from a service relating to the use of equipment to provide a telecommunications service, to the extent to which the equipment is at the time— 15
 - “(i) physically located outside any country or territory; and
 - “(ii) owned by the CFC or by another CFC that is associated with the CFC; and
 - “(iii) not a mobile telephone handset or a radio receiver and transmitter for a ship or aircraft: 20
- “(m) income from a telecommunications service to the extent to which the service is physically performed in New Zealand, except if—
 - “(i) the service is the transmission, emission, or reception of information between New Zealand and the country or territory in which the CFC is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and 25
 - “(ii) the CFC is a network operator under the Telecommunications (Interception Capability) Act 2004 or a person who is such a network operator owns an income interest of 50% or more in the CFC; and 30
 - “(iii) the service is not performed using equipment that at the time is physically located in New Zealand and is in the possession of the CFC or of another CFC that is associated with the CFC; and 35

- “(iv) the service is not performed by a person who at the time is physically located in New Zealand and is an employee or contractor of the CFC or of another CFC that is associated with the CFC.

“Arrangement income

5

- “(4) **Arrangement income** is the total for the CFC and the accounting period of amounts of income under section CC 3 (Financial arrangements) for—

- “(a) an arrangement that—

- “(i) is a financial arrangement, or a short-term agreement for sale and purchase for which the CFC has made an election under section EW 8 (Election to treat certain excepted financial arrangements as financial arrangements); and 10

- “(ii) is not a derivative instrument; and 15

- “(iii) is not referred to in **subsection (8)**;

- “(b) a derivative instrument that—

- “(i) is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument; 20

- “(ii) is not entered in the ordinary course of a business of the CFC;

- “(iii) is in a hedging relationship, of a type referred to in IFRS 39, with income of the CFC referred to in **subsection (3) or paragraph (a)** or with a transaction producing such income of the CFC. 25

“Exclusions from attributable CFC amount: royalties

- “(5) A royalty derived by a CFC is not included in an attributable CFC amount under **subsection (3)(d)** if—

- “(a) the CFC has a pattern of activity involving creating, developing, or adding value to property that produces royalties and the royalty is— 30

- “(i) paid by a person who is not associated with the CFC under section YB 2 (Two companies with common control); and 35

- “(ii) from property that is not linked to New Zealand under **subsection (9)**; and

- “(iii) from property that the CFC has created or developed or to which the CFC has added substantial value;
- “(b) the CFC has a pattern of activity involving creating, developing, or adding value to property that produces royalties and the royalty is— 5
- “(i) paid by a person who is associated with the CFC under section YB 2 and would not be an associated non-attributing active CFC if such royalties were attributable CFC amounts; and 10
- “(ii) from property that is not linked to New Zealand under **subsection (9)**; and
- “(iii) from property that the CFC has created or developed or to which the CFC has added substantial value; and 15
- “(iv) an arm’s length amount determined under section GC 13 (Calculation of arm’s length amounts) for the arrangement between the CFC and the associated person:
- “(c) the royalty is— 20
- “(i) paid by a person who would be an associated non-attributing active CFC in the absence of this paragraph and **subsections (6)(c) and (8)(a)**; and
- “(ii) from property that is not linked to New Zealand under **subsection (9)**; 25
- “(d) the royalty is paid by a person who is not associated with the CFC under section YB 2 and is from property that is—
- “(i) owned by a New Zealand resident who is not treated as a non-resident under a double tax agreement; and 30
- “(ii) licensed to the CFC by the New Zealand resident for an arm’s length amount determined under section GC 13 for the arrangement between the CFC and the New Zealand resident. 35
- “Exclusions from attributable CFC amount: rent*
- “(6) Rent derived by a CFC is not included in an attributable CFC amount under **subsection (3)(e)** if the rent is—

- “(a) from land in a country or territory under the laws of which—
- “(i) the CFC is liable to income tax on the CFC’s income because of its domicile, residence, place of incorporation, or centre of management: 5
- “(ii) persons holding income interests in the CFC are liable for the income tax on the CFC’s income and the country or territory is the source of 80% or more of the CFC’s income:
- “(b) from property other than land, to the extent to which the rent relates to the use of the property in a country or territory referred to in **paragraph (a)**: 10
- “(c) paid by a person who would be an associated non-attributing active CFC in the absence of this paragraph and **subsections (5)(c) and (8)(a)**: 15
- “(d) a payment under a hire purchase agreement:
- “(e) a payment under a finance lease:
- “(f) a royalty:
- “Exclusions from attributable CFC amount: shares*
- “(7) Income derived by a CFC from the alienation of a share that is revenue account property is not included in an attributable CFC amount under **subsection (3)(i)** if the CFC’s FIF income or loss from the share in the period ending with the alienation is calculated using— 20
- “(a) the comparative value method: 25
- “(b) the deemed rate of return method:
- “(c) the fair dividend rate method:
- “(d) the cost method:
- “Exclusions from attributable CFC amount: income from financial arrangements other than derivative instruments* 30
- “(8) Income of a CFC from a financial arrangement or excepted financial arrangement that is referred to in **subsection (4)(a)(i)** is not included in an attributable CFC amount under **subsection (4)(a)** if the financial arrangement or agreement is—
- “(a) an agreement by the CFC to lend money to a person who would be an associated non-attributing active CFC in the absence of this paragraph and **subsections (5)(c) and (6)(c)**: 35

“(b) an agreement for the sale or purchase of property or services or a hire purchase agreement—

 “(i) entered in the ordinary course of business by the CFC:

 “(ii) for property or services produced or used by the CFC in business: 5

“Royalties: property linked to New Zealand

“(9) Property giving rise to a royalty is linked to New Zealand for the purposes of **subsection (5)** if the property—

 “(a) has been owned by a New Zealand resident: 10

 “(b) has been owned by a non-resident for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand:

 “(c) was created or developed in New Zealand:

 “(d) has had substantial value added in New Zealand: 15

 “(e) has been acquired by a person who had a deduction for expenditure or loss incurred in the acquisition:

 “(f) is based on knowledge acquired by a person who—

 “(i) acquired the knowledge with a purpose or intention of creating the property; and 20

 “(ii) had a deduction for expenditure or loss incurred in the acquisition:

 “(g) is created or developed from activities; or from the extension, continuation, development, or completion of activities; if the activities produced knowledge acquired by a person who had a deduction for expenditure or loss incurred in the acquisition: 25

“Defined in this Act: accounting period; agreement for the sale or purchase of property or services; associated; associated non-attributing active CFC; attributable CFC amount; business; CFC; comparative value method; deduction; deemed rate of return method; depreciable property; derivative instrument; dividend; exempt income; fair dividend rate method; finance lease; financial arrangement; general insurance; hire purchase agreement; income; insurance contract; interest; land; life insurance; life insurance policy; loan; loss; money lent; New Zealand; New Zealand resident; non-attributing active CFC; non-resident; reinsurance contract; relative; resident in New Zealand; revenue account property; royalty; share; short-term agreement for sale and purchase; telecommunications service 30 35

EX 20C Net attributable CFC income or loss

“CFC’s net attributable CFC income or loss

“(1) For the purpose of calculating the attributed CFC income or loss for an accounting period of a person with an income interest in a CFC,—

5

“(a) the CFC’s **net attributable CFC income** for the accounting period is—

“(i) the amount calculated using the formula in **subsection (2)** and the rules in **section EX 21**, if that amount is more than zero:

10

“(ii) zero, if **subparagraph (i)** does not apply:

“(b) the CFC’s **net attributable CFC loss** for the accounting period is—

“(i) the absolute value of the amount calculated using the formula in **subsection (2)** and the rules in **section EX 21**, if that amount is less than zero:

15

“(ii) zero, if **subparagraph (i)** does not apply:

“Formula for net attributable CFC income or loss

“(2) The amount of a CFC’s net attributable CFC income or loss for an accounting period is calculated using the formula—
attributable CFC = (interest × fraction) – other deductions:

20

“Definition of items in formula in subsection (2)

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

“Attributable CFC

25

“(4) **Attributable CFC** is the CFC’s attributable CFC amount for the accounting period:

“Interest

“(5) **Interest** is the total of amounts for which the CFC would have a deduction in the accounting period that—

30

“(a) relate to financial arrangements providing funds to the CFC:

“(b) are a payment treated as a payment of interest under **section GD 36B** (Distributions to resident company for deductible foreign equity and fixed-rate foreign equity):

35

“Fraction

“(6) **Fraction** is the amount calculated under—

- “(a) **subsection (8)**; if the CFC is not excessively debt funded under **section EX 20D**; or
- “(b) **section EX 20D**; if the CFC is excessively debt funded under that section.

“*Other deductions*

“(7) **Other deductions** is the amount of expenditure and loss incurred in the accounting period by the CFC to the extent to which the expenditure and loss,—

“(a) if not a deduction relating to a financial arrangement, is—

“(i) incurred for the purpose of deriving an attributable CFC amount; and

“(ii) not incurred for the purpose of deriving an amount that is not an attributable CFC amount; and

“(iii) a deduction of the CFC.

“(b) if a deduction relating to a financial arrangement, is—

“(i) not included in the calculation of the item ‘interest’ referred to in **subsection (5)**; and

“(ii) from a financial arrangement meeting the requirements of **section EX 20B(4)**.

“*Proportion by value of assets producing attributable CFC amount*

“(8) If the CFC is not excessively debt funded under **section EX 20D**, the item **fraction** referred to in **subsection (6)** is calculated using the formula—

$$\frac{\text{attributable CFC assets}}{\text{total CFC assets.}}$$

“*Definition of items in formula in subsection (8)*

“(9) In the formula,—

“(a) **attributable CFC assets** is the total value of the CFC’s assets determined under generally accepted accounting practice; to the extent to which each asset is used for the purpose of deriving an attributable CFC amount and not used for the purpose of deriving an amount that is not an attributable CFC amount.

“(b) **total CFC assets** is the total value of the CFC’s assets determined under generally accepted accounting practice.

“Defined in this Act: accounting period; attributable CFC amount; CFC; deduction; income interest; interest; loss; net attributable CFC income; net attributable CFC loss

5

“EX 20D Adjustment of fraction for excessively debt funded CFC

“When this section applies

“(1) This section applies for the purposes of **section EX 20G(3)** to a CFC that is excessively debt funded under **subsection (2)** in relation to a person (the **interest holder**) with an income interest in the CFC.

10

“Excessive debt funding

“(2) A CFC is excessively debt funded under this section if—

15

“(a) the amount (the CFC’s **debt-asset ratio**) calculated using the formula in **subsection (4)** is more than 0.75; and

“(b) the amount (the CFC’s **relative debt-asset ratio**) calculated from the CFC’s group debt-asset ratio given by **subsection (9)** and using the formula in **subsection (13)** is more than 1.10.

20

“Calculations for CFC

“(3) For the purposes of **subsections (4) to (7)**, the debts and assets of the CFC are determined under sections FE 8 to FE 11 (which contain rules for determining the apportionment of interest) as if the CFC were an excess debt outbound company.

25

“Formula for debt-asset ratio of CFC

“(4) The formula for the CFC’s debt-asset ratio referred to in **subsection (2)(a)** is—

30

$$\frac{\text{total CFC debts}}{\text{total CFC assets.}}$$

“Definition of items in formula in subsection (4)

“(5) The items in the formula are defined in **subsections (6) and (7)**:

“Total CFC debts

“(6) **Total CFC debts** is the total amount for the CFC and the 5
accounting period, determined under generally accepted ac-
counting practice, of the outstanding balances of—

“(a) financial arrangements entered by the CFC, each of
which—

“(i) provides funds to the CFC; and 10

“(ii) gives rise to an amount for which the CFC would
have a deduction:

“(b) fixed-rate foreign equity issued by the CFC and held by
a New Zealand resident:

“Total CFC assets

“(7) **Total CFC assets** is the total value of the CFC’s assets deter- 15
mined under generally accepted accounting practice:

“Members of CFC’s group and calculations for group

“(8) For the purposes of **subsections (9) to (14)**,—

“(a) the members of a CFC’s group are determined under 20
sections FE 31 and **FE 32** (which relate to the determin-
ation of groups) as if the interest holder were an excess
debt outbound company; and

“(b) the debts and assets of the CFC’s group are determined 25
under sections FE 8 to FE 11 and FE 18 (Measurement
of debts and assets of worldwide group) as if the interest
holder were an excess debt outbound company:

“Formula for CFC’s group debt-asset ratio

“(9) The formula for the CFC’s group debt-asset ratio referred to 30
in **subsection (2)(b)** is—

total group debts

total group assets:

“Definition of items in formula in subsection (9)

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

“Total group debts

“(11) **Total group debts** is the total amount, consolidated for the CFC’s group and the accounting period, of the outstanding balances of—

“(a) financial arrangements entered by the group’s members, 5
each of which—

“(i) provides funds to a group member; and

“(ii) gives rise to an amount for which a group member would have a deduction:

“(b) fixed-rate foreign equity issued by a member of the 10
group and held by a New Zealand resident:

“Total group assets

“(12) **Total group assets** is the total consolidated value for the accounting period of the assets of the CFC’s group:

“Formula for CFC’s relative debt-asset ratio

15

“(13) The formula for the CFC’s relative debt-asset ratio referred to in **subsection (2)(b)** is—

$$\frac{\text{CFC debt-asset ratio}}{\text{group debt-asset ratio}}$$

group debt-asset ratio:

“Definition of items in formula in subsection (13)

“(14) In the formula,—

“(a) **CFC debt-asset ratio** is the CFC’s debt-asset ratio 20
under **subsection (4)**:

“(b) **group debt-asset ratio** is the CFC’s group debt-asset
ratio under **subsection (9)**:

“Fraction for excessively funded CFC

“(15) For a CFC that is excessively funded, the item **fraction** for 25
the purposes of **section EX 20G(6)** is the amount calculated
using the formula in **subsection (16)**:

“Formula for fraction deduction

“(16) The formula for the CFC’s fraction deduction is—

CFCs' debts

CFCs' assets.

“Definition of items in formula in subsection (16)

“(17) The items in the formula are defined in **subsections (18) and (19)**:

“CFCs' debts

“(18) **CFCs' debts** is the total amount, for all the interest holder's CFCs and the accounting period, of the outstanding balances of—

“(a) financial arrangements entered by the CFCs, each of which—

“(i) provides funds to a CFC; and

“(ii) gives rise to an amount for which a CFC would have a deduction:

“(b) fixed-rate foreign equity issued by a CFC and held by a New Zealand resident.

“CFCs' assets

“(19) **CFCs' assets** is the total for the accounting period of the assets of the interest holder's CFCs determined under generally accepted accounting practice.

“Defined in this Act: accounting period; CFC; deduction; excess debt outbound company; financial arrangement; fixed-rate foreign equity; New Zealand resident”.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

119 New heading and sections EX 20B to EX 20E inserted

(1) After section EX 20, the following is inserted:

“Attributable CFC amount and net attributable CFC income or loss

“EX 20B Attributable CFC amount

“Attributable CFC amount

“(1) **Attributable CFC amount**, for an accounting period and a CFC, means the amount calculated under the rules in **section EX 21** using the formula—

gross + arrangement.

“Definition of items in formula

“(2) The items in the formula in **subsection (1)** are defined in **subsections (3) and (4)**.

“Gross

“(3) **Gross** is the total amount of income derived in the accounting 5
period by the CFC that is 1 or more of the following:

“(a) a dividend that is paid in relation to rights that are a direct income interest of less than 10% in a foreign company and are described in—

“(i) section EX 31:

10

“(ii) section EX 32:

“(iii) section EX 36:

“(iv) section EX 37:

“(v) section EX 37B:

“(vi) section EX 39:

15

“(b) a dividend that is paid by a company resident in New Zealand to the extent to which the dividend is not fully imputed:

“(c) an amount that is a deductible foreign equity distribution or a distribution for fixed-rate foreign equity:

20

“(d) a royalty of a type referred to in **subsection (5)**:

“(e) rent of a type referred to in **subsection (6)**:

“(f) income from a business of general insurance or life insurance that is a premium under an insurance contract or reinsurance contract:

25

“(g) income from a life insurance policy of a type referred to in **subsection (8)**:

“(h) income from the supply of personal services of a type referred to in **subsection (9)**:

“(i) income from the disposal of revenue account property that is a share, other than a share referred to in **subsection (10)**:

30

“(j) income from the disposal of revenue account property that is an option to acquire or dispose of a share:

“(k) income from the disposal of revenue account property that is—

35

- “(i) not a share, financial arrangement, or life insurance policy; and
 - “(ii) used by the CFC with a purpose or effect of giving rise to income of the CFC referred to in another paragraph of this subsection: 5
 - “(l) income from a service, other than a telecommunications service, to the extent to which the service is physically performed in New Zealand:
 - “(m) income from a service relating to the use of equipment to provide a telecommunications service, to the extent to which the equipment is at the time— 10
 - “(i) physically located outside any country or territory; and
 - “(ii) owned by the CFC or by another CFC that is associated with the CFC; and 15
 - “(iii) not a mobile telephone handset or a radio receiver and transmitter for a ship or aircraft:
 - “(n) income from a telecommunications service to the extent to which the service is physically performed in New Zealand and is not described in **subsection (11)**. 20
- “Arrangement income*
- “(4) **Arrangement** is the total for the CFC and the accounting period of amounts of income under section CC 3 (Financial arrangements) for—
 - “(a) an arrangement that— 25
 - “(i) is a financial arrangement, or a short-term agreement for sale and purchase for which the CFC has made an election under section EW 8 (Election to treat certain excepted financial arrangements as financial arrangements); and 30
 - “(ii) is not a derivative instrument; and
 - “(iii) is not referred to in **subsection (12)**:
 - “(b) a derivative instrument—
 - “(i) that is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument: 35
 - “(ii) that is not entered in the ordinary course of a business of the CFC:

“(iii) to the extent that the income is from a hedging relationship, of a type referred to in NZIAS 39, with income of the CFC referred to in **subsection (3) or paragraph (a)** or with a transaction producing such income of the CFC.

5

“Attributable CFC amount: royalties

“(5) A royalty derived by a CFC is included in an attributable CFC amount under **subsection (3)(d)** if none of the following are satisfied:

“(a) the CFC is regularly engaged in creating, developing, or adding value to property that produces royalties and the royalty is—

10

“(i) paid by a person who is not associated with the CFC under section YB 2 (Two companies with common control); and

15

“(ii) from property that is not linked to New Zealand under **subsection (13)**; and

“(iii) from property that the CFC has created or developed or to which the CFC has added substantial value;

20

“(b) the CFC is regularly engaged in creating, developing, or adding value to property that produces royalties and the royalty is—

“(i) paid by a person who is associated with the CFC under section YB 2; and

25

“(ii) from property that is not linked to New Zealand under **subsection (13)**; and

“(iii) from property that the CFC has created or developed, or to which the CFC has added substantial value; and

30

“(iv) an arm’s length amount determined under section GC 13 (Calculation of arm’s length amounts) for the arrangement between the CFC and the associated person;

“(c) the royalty is—

35

“(i) paid by a person who would be an associated non-attributing active CFC in the absence of this paragraph and **subsections (7)(c) and (12)(a)**; and

- “(ii) from property that is not linked to New Zealand under **subsection (13)**:
- “(d) the royalty is—
- “(i) paid to the CFC by a person who is not associated with the CFC under section YB 2, or by a CFC associated with the CFC under section YB 2 that has received a corresponding royalty payment from such a person; and 5
- “(ii) from property owned by a New Zealand resident who is not treated as a non-resident under a double tax agreement; and 10
- “(iii) from property licensed to the CFC by the New Zealand resident for an arm’s length amount determined under section GC 13 for the arrangement between the CFC and the New Zealand resident. 15
- “Attributable CFC amount: rent
- “(6) Rent derived by a CFC is included in an attributable CFC amount under **subsection (3)(e)** if the rent is not of a type referred to in **subsection (7)** and is from— 20
- “(a) a lease or sublease of land;
- “(b) a lease or sublease of personal property;
- “(c) a licence to use intangible property;
- “(d) a hire or bailment.
- “Attributable CFC amount: exclusions from rent 25
- “(7) Rent derived by a CFC from a source referred to in **subsection (6)** is not included in an attributable CFC amount under **subsection (3)(e)** if the rent is—
- “(a) from land in a country or territory under the laws of which the CFC is liable to income tax on the CFC’s income because of its domicile, residence, place of incorporation, or centre of management; 30
- “(b) from property other than land, to the extent to which the rent relates to the use of the property in a country or territory referred to in **paragraph (a)**: 35
- “(c) paid by a person who would be an associated non-attributing active CFC in the absence of this paragraph and **subsections (5)(c) and (12)(a)**:

- “(d) a payment under a hire purchase agreement:
- “(e) a payment under a finance lease:
- “(f) a royalty:
- “(g) a payment under a licence to use intangible property that— 5
- “(i) is not a royalty; and
- “(ii) would not be included in an attributable CFC amount under **subsection (5)** if treated as a royalty for the purposes of that subsection.
- “*Attributable CFC amount: income from life insurance contract* 10
- “(8) Income from a life insurance policy is included in an attributable CFC amount under **subsection (3)(g)** if the income is not included in a calculation of FIF income or loss and is— 15
- “(a) a distribution, if the life insurance policy is not intended to compensate the CFC for financial losses arising from the death or extended incapacity of a specified employee or member involved in the CFC’s business:
- “(b) a distribution that is not intended to compensate the CFC for financial losses arising from the death or extended incapacity of a specified employee or member involved in the CFC’s business, if the life insurance policy is intended to compensate the CFC for such losses: 20
- “(c) income from a disposal of the life insurance policy, if the policy is revenue account property. 25
- “*Attributable CFC amount: income from personal services*
- “(9) Income derived by a CFC from the supply of personal services is included in an attributable CFC amount under **subsection (3)(h)** if the personal services are performed by another person (the **working person**) and— 30
- “(a) the working person is a New Zealand resident; and
- “(b) the personal services are not essential support for a product supplied by the CFC; and
- “(c) the working person is associated with the CFC under section YB 5 (Company and non-corporate 25% interest holder) at the time the services are performed or is a relative, at the beginning of the accounting period, of 35

- a person associated with the CFC under section YB 5;
and
- “(d) 80% or more of the CFC’s total income in the accounting period from supplying personal services is derived through personal services meeting the requirements of **paragraph (a)** performed by working persons meeting the requirements of **paragraph (b)**; and 5
- “(e) to derive the income, the CFC uses a business structure that requires depreciable property having, at the end of the accounting period, a total cost under section GB 28(7) (Interpretation of terms used in section GB 27) less than or equal to the greater of \$75,000 and 25% of the CFC’s total income from personal services performed in the accounting period. 10
- “*Exclusions from attributable CFC amount: shares* 15
- “(10) Income derived by a CFC from the disposal of a share that is revenue account property is not included in an attributable CFC amount under **subsection (3)(i)** if the CFC’s FIF income or loss from the share in the period ending with the disposal is calculated using— 20
- “(a) the comparative value method;
- “(b) the deemed rate of return method;
- “(c) the fair dividend rate method;
- “(d) the cost method.
- “*Exclusions from attributable CFC amount: telecommunications services in New Zealand* 25
- “(11) Income of a CFC from a telecommunications service physically performed in New Zealand is not included in an attributable amount CFC under **subsection (3)(n)** if—
- “(a) the service is the transmission, emission, or reception of information between New Zealand and the country or territory in which the CFC is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and 30
- “(b) the CFC is a network operator under the Telecommunications (Interception Capability) Act 2004 or— 35
- “(i) a person who is such a network operator holds an income interest of 50% or more in the CFC:

- “(ii) a person who holds a voting interest of 50% or more in such a network operator holds an income interest of 50% or more in the CFC; and
- “(c) the service is not performed using equipment that at the time is physically located in New Zealand and is in the possession of the CFC or of another CFC that is associated with the CFC; and 5
- “(d) the service is not performed by a person who at the time is physically located in New Zealand and is an employee or contractor of the CFC or of another CFC that is associated with the CFC. 10
- “Exclusions from attributable CFC amount: income from financial arrangements other than derivative instruments*
- “(12) Income of a CFC from a financial arrangement or excepted financial arrangement that is referred to in **subsection (4)(a)(i)** is not included in an attributable CFC amount under **subsection (4)(a)** if the financial arrangement or agreement is— 15
- “(a) an agreement by the CFC to lend money to a person who would be an associated non-attributing active CFC in the absence of this paragraph and **subsections (5)(c)** and **(7)(c)**; 20
- “(b) an agreement for the sale or purchase of property or services or a hire purchase agreement—
- “(i) entered in the ordinary course of business by the CFC; 25
- “(ii) for property or services produced or used by the CFC in business.
- “Royalties: property linked to New Zealand*
- “(13) Property giving rise to a royalty is linked to New Zealand at a time in an accounting period for the purposes of **subsection (5)** if the property meets the requirements of **subsection (14)** at a time in the period— 30
- “(a) beginning—
- “(i) at the time the property was created, if the property has not since met the requirements of **subsection (15)**; or 35
- “(ii) from the time the property most recently met the requirements of **subsection (15)**; and

- “(b) ending at the time in the accounting period.
- “Situations creating link with New Zealand
- “(14) Property owned by a CFC has a link with New Zealand if the property—
- “(a) has been owned by a New Zealand resident: 5
- “(b) has been owned by a non-resident for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand:
- “(c) was created or developed in New Zealand:
- “(d) has had substantial value added in New Zealand: 10
- “(e) has been acquired by a person who had a deduction for expenditure or loss incurred in the acquisition:
- “(f) is based on knowledge acquired by a person who—
- “(i) acquired the knowledge with a purpose or intention of creating the property; and 15
- “(ii) had a deduction for expenditure or loss incurred in the acquisition:
- “(g) is created or developed from activities, or from the extension, continuation, development, or completion of activities, if the activities produced knowledge acquired by a person who had a deduction for expenditure or loss incurred in the acquisition. 20
- “Situations breaking link with New Zealand
- “(15) There is no link between property and New Zealand for a CFC when the property is owned by a non-resident who— 25
- “(a) is not a CFC and is not associated with the CFC; and
- “(b) is not associated with a person who has owned the property while it had a link with New Zealand.
- “Defined in this Act: accounting period, agreement for the sale or purchase of property or services, associated, associated non-attributing active CFC, attributable CFC amount, business, CFC, comparative value method, deductible foreign equity distribution, deduction, deemed rate of return method, depreciable property, derivative instrument, dividend, exempt income, fair dividend rate method, finance lease, financial arrangement, fixed-rate foreign equity, fully imputed, general insurance, hire purchase agreement, income, insurance contract, interest, land, life insurance, life insurance policy, loan, loss, money lent, New Zealand, New Zealand resident, non-attributing active CFC, non-resident, reinsurance contract, relative, resident in New Zealand, revenue account prop-

erty, royalty, share, short-term agreement for sale and purchase, telecommunications service

“EX 20C Net attributable CFC income or loss

“CFC’s net attributable CFC income or loss

“(1) For the purpose of calculating the attributed CFC income or loss for an accounting period of a person (the **interest holder**) with an income interest in a CFC,—

“(a) the CFC’s **net attributable CFC income** for the accounting period is the greater of zero and the amount calculated using the formula in **subsection (2)**;

“(b) the CFC’s **net attributable CFC loss** for the accounting period is—

“(i) the absolute value of the amount calculated using the formula in **subsection (2)**, if that amount is less than zero;

“(ii) zero, if **subparagraph (i)** does not apply.

“Formula for net attributable CFC income or loss

“(2) The amount of a CFC’s net attributable CFC income or loss for an accounting period is calculated using the rules in **section EX 21** and the formula—

$$\frac{\text{attributable CFC} - (\text{limited funding costs} \times \text{fraction}) - \text{other deductions.}}{\text{fraction}}$$

“Definition of items in formula

“(3) The items in the formula in **subsection (2)** are defined in **subsections (4) to (6), (8), and (9)**.

“Attributable CFC

“(4) **Attributable CFC** is the CFC’s attributable CFC amount for the accounting period.

“Limited funding costs

“(5) **Limited funding costs** is—

“(a) if **paragraph (b)** does not apply, the amount of the item **funding costs** in **subsection (6)(a)**; or

“(b) if the item **funding** in **subsection (6)(b)** is not zero and the interest holder chooses to rely on this paragraph, the amount calculated using the formula—

$$\frac{\text{funding costs} \times \frac{\text{funding} - \text{group funding}}{\text{funding}}}{\text{funding}}$$

“Definition of items in formula

“(6) In the formula in **subsection (5)(b)**,—

“(a) **funding costs** is the total of amounts in the accounting period—

“(i) for which the CFC would have a deduction relating to a financial arrangement referred to in **subsection (7)(a)**;

“(ii) that are distributions relating to fixed-rate foreign equity or deductible foreign equity distributions of the CFC and paid by the CFC to companies resident in New Zealand or to CFCs;

“(b) **funding** is the total amount of outstanding balances for financial arrangements referred to in **subsection (7)(a)** and of shares referred to in **subsection (7)(b)**;

“(c) **group funding** is the lesser of the item **funding** and the total amount of outstanding balances for financial arrangements—

“(i) under which the CFC provides funds to another CFC associated with the CFC under section YB 2 (Two companies); and

“(ii) which produce for the CFC an amount included in the item **arrangement income** under **section EX 20B(4)**.

“Financial arrangements and shares contributing to funding costs

“(7) A financial arrangement to which a CFC is a party, or a share issued by the CFC, contributes to the item **funding costs** under **subsection (6)(a)** for the CFC if it is—

“(a) a financial arrangement that provides funds for the CFC;

“(b) a share that is—

“(i) held by a company that is a New Zealand resident or a CFC; and

“(ii) a fixed-rate foreign equity or a share giving a right to a deductible foreign equity distribution.

“Fraction

“(8) **Fraction** is,—

“(a) if the CFC is not excessively debt funded under **section EX 20D**, the amount calculated under **subsection (10)**;

or

“(b) if the CFC is excessively debt funded under **section EX 20D**, the lesser of—

“(i) the amount calculated under **subsection (10)**;

“(ii) the amount calculated under **section EX 20D**.

“Other deductions

“(9) **Other deductions** is the amount of expenditure and loss incurred in the accounting period by the CFC to the extent to which the expenditure and loss,—

“(a) if not consisting of deductions relating to financial arrangements and shares, is—

“(i) incurred for the purpose of deriving an attributable CFC amount; and

“(ii) not incurred for the purpose of deriving an amount that is not an attributable CFC amount; and

“(iii) a deduction of the CFC;

“(b) if consisting of deductions relating to financial arrangements and shares referred to in **subsection (7)(a) and (b)**, exceeds the amount of the item **limited funding costs** referred to in **subsection (5)**;

“(c) if consisting of deductions relating to financial arrangements not referred to in **subsection (7)(a)**, relates to a financial arrangement referred to in **section EX 20B(4)**.

“Proportion by value of assets producing attributable CFC amount

“(10) The amount referred to in **subsection (8)(a) and (b)(i)** is calculated using the formula—

attributable CFC’s assets – group funding

total CFC’s assets – group funding.

“Definition of items in formula

“(11) In the formula in **subsection (10)**,—

- “(a) **attributable CFC’s assets** is the total value of the CFC’s assets, to the extent to which each asset is used for the purpose of deriving an attributable CFC amount and not used for the purpose of deriving an amount that is not an attributable CFC amount: 5
- “(b) **group funding** is zero or, if **subsection (5)(b)** applies for the interest holder and the CFC, the amount of the item **group funding** referred to in **subsection (6)(c)**: 10
- “(c) **total CFC’s assets** is the total value of the CFC’s assets.

“Determining debts and assets of CFC

“(12) For the items referred to in **subsection (11)**, the debts and assets of the CFC are determined under sections FE 8 to FE 11 (which contain rules for determining the apportionment of interest) as if the CFC were— 15

- “(a) an excess debt outbound company; and
- “(b) the only member of the CFC’s New Zealand group.

“Defined in this Act: accounting period, attributable CFC amount, CFC, deductible foreign equity distribution, deduction, financial arrangement, fixed-rate foreign equity, generally accepted accounting practice, income interest, interest, loss, net attributable CFC income, net attributable CFC loss, share 20

“EX 20D Adjustment of fraction for excessively debt funded CFC

“When this section applies” 25

“(1) This section applies for the purposes of **section EX 20C(8)** to a CFC that is excessively debt funded under **subsection (2)** in relation to a person (the **interest holder**) with an income interest in the CFC.

“Excessive debt funding” 30

“(2) A CFC is excessively debt funded under this section if—

- “(a) the amount (the CFC’s **debt-asset ratio**) calculated using the formula in **subsection (4)** is more than 0.75; and
- “(b) the amount (the CFC’s **relative debt-asset ratio**) given by **section EX 20E** is more than 1.10. 35

“Calculations for CFC

- “(3) For the purposes of **subsections (4) to (8)**, the debts and assets of the CFC are determined under sections FE 8 to FE 11 (which contain rules for determining the apportionment of interest) as if the CFC were— 5
- “(a) an excess debt outbound company; and
- “(b) the only member of the CFC’s New Zealand group.

“Formula for debt-asset ratio of CFC

- “(4) The formula for the CFC’s debt-asset ratio referred to in **subsection (2)(a)** is— 10

total CFC’s debts – group funding

total CFC’s assets – group funding.

“Definition of items in formula

- “(5) The items in the formula in **subsection (4)** are defined in **subsections (6) to (8)**.

“Total CFC’s debts

- “(6) **Total CFC’s debts** is the total amount for the CFC and the accounting period, determined under generally accepted accounting practice, of the outstanding balances of— 15

“(a) financial arrangements entered by the CFC, each of which—

“(i) provides funds to the CFC; and 20

“(ii) gives rise to an amount for which the CFC would have a deduction:

“(b) fixed-rate foreign equity issued by the CFC and held by a company that is a New Zealand resident or another CFC: 25

“(c) shares issued by the CFC in relation to which the CFC makes deductible foreign equity distributions to a company that is a New Zealand resident or another CFC.

“Group funding

- “(7) **Group funding** is— 30

“(a) if **paragraph (b)** does not apply, zero; or

“(b) if the interest holder chooses to rely on this paragraph and the item **total CFC’s assets** is greater than the item

- total CFC's debts, the lesser of the item total CFC's debts and the total amount of outstanding balances for financial arrangements—
- “(i) under which the CFC provides funds to another CFC associated with the CFC under section YB 2 5
(Two companies); and
- “(ii) which produce for the CFC an amount included in the item **arrangement income** under **section EX 20B(4)**.
- “*Total CFC's assets* 10
- “(8) **Total CFC's assets** is the total value of the CFC's assets determined under generally accepted accounting practice.
- “*Fraction for excessively debt funded CFC*
- “(9) For a CFC that is excessively debt funded, the item **fraction** for the purposes of **section EX 20C(8)** is the amount calculated using the formula in **subsection (10)** and determining the debts and assets of a CFC under sections FE 8 to FE 11 as if the CFC were— 15
- “(a) an excess debt outbound company; and
- “(b) the only member of the CFC's New Zealand group. 20
- “*Formula for fraction*
- “(10) The formula for the CFC's fraction is—
- $$\frac{\text{attributable CFC assets}}{\text{total CFC assets.}}$$
- “*Definition of items in formula*
- “(11) The items in the formula in **subsection (10)** are defined in **subsections (12) and (13)**. 25
- “*Attributable CFC assets*
- “(12) **Attributable CFC assets** is the total value of assets, consolidated under generally accepted accounting practice for all the interest holder's CFCs and the accounting period, to the extent to which each asset is— 30
- “(a) used for the purpose of deriving an attributable CFC amount; and

“(b) not used for the purpose of deriving an amount that is not an attributable CFC amount.

“Total CFC assets

“(13) **Total CFC assets** is the total value of assets, consolidated under generally accepted accounting practice, for all the interest holder’s CFCs and the accounting period. 5

“Defined in this Act: accounting period, CFC, deductible foreign equity distribution, deduction, excess debt outbound company, financial arrangement, fixed-rate foreign equity, New Zealand resident

“EX 20E Relative debt-asset ratio for CFC 10

“What this section does

“(1) This section determines the relative debt-asset ratio of a CFC for the purposes of **section EX 20D(2)(b)** by determining an amount (the **group debt-asset ratio**) for the CFC’s group and comparing that amount with the debt-asset ratio of the CFC determined under **section EX 20D(4)**. 15

“Members of CFC’s group and calculations for group

“(2) For the purposes of **subsections (3) to (8)**,—

“(a) the members of a CFC’s group are—

“(i) the CFC: 20

“(ii) if the interest holder is a company, the members of the worldwide group that the interest holder would have under **sections FE 31B, FE 31C, and FE 32** (which relate to the determination of groups) if the interest holder were an excess debt outbound company: 25

“(iii) if the interest holder is a trustee, the members of the trustee’s worldwide group under **section FE 3(1)(b)** (Interest apportionment for individuals): 30

“(iv) if the interest holder is a natural person, the person’s worldwide group referred to in **section FE 5(1C)(a) to (c)**:

“(b) the debts and assets of the CFC’s group are determined under sections FE 8 to FE 11 and FE 18 (Measurement of debts and assets of worldwide group) as if the inter- 35

est holder, if a company, were an excess debt outbound company.

“Formula for CFC’s group debt-asset ratio

“(3) The formula for the CFC’s group debt-asset ratio is—

$$\frac{\text{total group debts}}{\text{total group assets.}}$$

“Definition of items in formula

5

“(4) The items in the formula in **subsection (3)** are defined in **subsections (5) and (6)**.

“Total group debts

“(5) **Total group debts** is the total amount, consolidated under generally accepted accounting practice for the CFC’s group and the accounting period, of the outstanding balances of—

10

“(a) financial arrangements entered by the group’s members, each of which—

“(i) provides funds to a group member; and

“(ii) gives rise to an amount for which a group member would have a deduction:

15

“(b) fixed-rate foreign equity issued by a member of the group and held by a company that is a New Zealand resident or a CFC:

“(c) equity interests issued by a member of the group in relation to which the member makes deductible foreign equity distributions to a company that is a New Zealand resident or a CFC.

20

“Total group assets

“(6) **Total group assets** is the total value, consolidated under generally accepted accounting practice for the accounting period, of the assets of the CFC’s group.

25

“Formula for CFC’s relative debt-asset ratio

“(7) The formula for the CFC’s relative debt-asset ratio is—

$$\frac{\text{CFC’s debt-asset ratio}}{\text{group debt-asset ratio.}}$$

“Definition of items in formula

- “(8) In the formula in **subsection (7)**,—
- “(a) **CFC’s debt-asset ratio** is the CFC’s debt-asset ratio under **section EX 20D(4)**;
- “(b) **group debt-asset ratio** is the CFC’s group debt-asset ratio under **subsection (3)**. 5
- “Defined in this Act: accounting period, CFC, deductible foreign equity distribution, deduction, excess debt outbound company, financial arrangement, fixed-rate foreign equity, New Zealand resident”.
- (2) **Subsection (1)** applies for— 10
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 120 Attributable CFC amount** 15
- (1) **Section EX 20B(3)(h)(ii)** is replaced by the following:
- “(ii) the working person is associated with the CFC under **section YB 3** (Company and person other than company) at the time the services are performed or is a relative, at the beginning of the accounting period, of a person associated with the CFC under **section YB 3**; and”. 20
- (2) **Section EX 20B(5)(a)(i)** is replaced by the following:
- “(i) paid by a person who is not associated with the CFC under **section YB 2** (Two companies); and”. 25
- (3) **Section EX 20B(9)(c)** is replaced by the following:
- “(c) the working person is associated with the CFC under **section YB 3** (Company and person other than company) at the time the services are performed or is a relative, at the beginning of the accounting period, of a person associated with the CFC under **section YB 3**; and”. 30
- (4) **Subsections (2) and (3)** apply for the 2010–11 and later income years.

121 Heading repealed

The heading before section EX 21 is repealed.

(2) **Subsection (4)** applies for the 2009–10 and later income years. 5

122 Branch equivalent income or loss: calculation rules

(1) In the heading to section EX 21, “**Branch equivalent income or loss**” is replaced by “**Attributable CFC amount and net attributable CFC income or loss**”. 10

(2) Section EX 21(1) is replaced by the following:

“Calculation rules for CFC

“(1) For the purposes of calculating an attributable CFC amount and attributed CFC income for a CFC and of determining under **section EX 21D** whether a CFC is a non-attributing active CFC, the CFC’s attributable CFC amount and net attributable CFC income or loss are calculated under the rules in this section. 15

“(1) The rules in this section apply for the purposes of—

“(a) calculating the attributable CFC amount for a CFC under **section EX 20B**; 20

“(b) calculating the net attributable CFC income or loss for a CFC under **section EX 20C**;

“(c) determining under **section EX 21D** whether a CFC is a non-attributing active CFC. 25

“Calculation rules for test group of CFCs

“(1B) For the purpose of determining under **section EX 21D** whether a member of a group of CFCs is a non-attributing active CFC,—

“(a) the consolidated annual gross income of the group is calculated under the rules in this section; and 30

“(b) the consolidated attributable CFC amount of the group is calculated under the rules in this section.”

(3) Section EX 21(2), except for the heading, is replaced by the following: 35

“(2) The rules in this Act are applied as if the CFC were always a New Zealand resident.”

(4) After section EX 21(3), the following is inserted:

“Determining currency of calculations

“(3B) The currency used for calculations relating to a CFC is given by— 5

- “(a) subsection (4), except for calculations under **section EX 21D**; or
- “(b) **subsection (8B)**, for calculations under **section EX 21D**.” 10
- (5) In section EX 21(5), “branch equivalent income or loss for” is replaced by “attributable CFC amount and net attributable CFC income or loss attributable to”.
- (6) In section EX 21(7), “branch equivalent income or loss attributable to” is replaced by “attributable CFC amount and net 15
attributable CFC income or loss arising from”.
- (7) After section EX 21(8), the following is inserted:
“*Currency for calculations under section EX 21D*
- “(8B) For determining under section EX 21D whether a CFC is a non-attributing active CFC for the taxpayer, the taxpayer must 20
use the currency (the **functional currency**) of the primary economic environment in which the CFC operates.
- “*Factors in determining primary economic environment*
- “(8C) The functional currency for the CFC is determined by—
- “(a) the following factors (the **primary factors**), if they are 25
sufficient to identify the functional currency:
- “(i) the currency that mainly influences sales prices of goods and services for the CFC:
- “(ii) the currency of the country or territory whose competitive forces and regulations mainly deter- 30
mine the sales prices of goods and services for the CFC:
- “(iii) the currency that mainly influences the costs for the CFC of providing goods and services, including labour and material costs; or 35
- “(b) the following factors (the **additional factors**) in addition to the primary factors, if the primary factors are insufficient to identify the currency:
- “(i) the currency in which funds from financing activities are generated:
- “(ii) the currency in which receipts from operating activities are usually retained:

- “~~(iii)~~ whether or not the CFC is acting merely as an extension of a parent company; or operating with substantial autonomy; or 5
- “~~(e)~~ the Commissioner, if the primary factors and additional factors are insufficient to identify the currency.
- “*Change of currency* 10
- “(8D) The taxpayer must notify the Commissioner of a change in the currency used for calculations under **section EX 21D** for a CFC.”
- (8) Section EX 21(13)(a) is replaced by the following: 15
- “~~(a)~~ the consolidation rules.”
- (8) After section EX 21(13)(d), the following is inserted:
- “~~(db)~~ **section CW 9** (Dividend derived from foreign company):
- “~~(dc)~~ section CW 10 (Dividend within New Zealand wholly-owned group.” 20
- (9) In section EX 21(15), the sentence after paragraph (d) is replaced by “Also, when sections GC 6 to GC 14 are applied, the associated persons include persons associated under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or ~~under~~ the 1988 version provisions.” 25
- (10) In section EX 21(15), the sentence following paragraph (d) is omitted.
- (11) Section EX 21(16) and (17) are replaced by the following: 30
- “*Dividends*
- “(16) Dividends that are not part of the CFC’s attributable CFC amount are exempt income of the CFC.”
- (11B) Section EX 21(24)(b) is replaced by the following: 35
- “~~(b)~~ it is a deduction if—
- “~~(i)~~ paid by the CFC to a person who is resident in the same country as the CFC and not a non-attributing active CFC; and
- “~~(ii)~~ deductible under the taxation law of that country.”
- (12) In section EX 21(26),—

- (a) “branch equivalent income or loss” is replaced by “net attributable CFC income or loss”: 5
- (b) “net income or loss” is replaced by “net attributable CFC income or loss”.
- (13) In section EX 21(32)(b), “branch equivalent income or loss” is replaced by “net attributable CFC income or loss”.
- (14) In section EX 21(33)(b), “branch equivalent income” is replaced by “net attributable CFC income”. 10
- (15) Section EX 21(35) is repealed.
- (16) In section EX 21, in the list of defined terms, “1973 version provisions”, “1988 version provisions”, and “1990 version provisions” are inserted. 15
- (17) In section EX 21, in the list of defined terms,—
 - (a) “branch equivalent income” is omitted:
 - (b) “annual gross income”, “attributable CFC amount”, “net attributable CFC income”, “net attributable CFC loss”, and “non-attributing active CFC” are inserted. 20
- (18) **Subsections (4) to (8), (14) to (15), and (17)** apply for the 2009–10 and later income years.
- (18) **Subsections (1) to (8) and (11) to (15)** apply for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- (19) **Subsection (10)** applies, for the purposes of—
 - (a) provisions other than the land provisions, for the 2009–10 and later income years: 30
 - (b) the land provisions other than section CB 11, for land acquired on or after 1 April 2009:
 - (c) section CB 11, for land on which improvements are begun on or after 1 April 2009:
- (19) **Subsection (10)** applies for the purposes of the 2010–11 and later income years. 35

123 New heading and sections EX 21B to EX 21E inserted

- (1) After section EX 21, the following is inserted:

“Non-attributing active CFCs

“EX 21B Non-attributing active CFCs

“Non-attributing active CFC 5

“(1) Non-attributing active CFC, for an accounting period and a person, means a CFC that meets the requirements, or is a member of a group of companies that meets the requirements, of **subsection (2) or (3)**:

“CFC meeting test in section EX 21D or EX 21E 10

“(2) A CFC is a non-attributing active CFC if it meets the requirements of—

“(a) section EX 24E; if—

“(i) the CFC meets the requirements of section EX 24G for the use of an applicable accounting standard in the application of section EX 24E; and 15

“(ii) the person chooses to use the applicable accounting standard in applying section EX 24E; or

“(b) section EX 24D; if paragraph (a) does not apply.

“Non-attributing active CFC 20

“(1) Non-attributing active CFC, for an accounting period and a person (the **interest holder**), means a CFC that, alone or as part of a test group of companies under **section EX 21D or EX 21E**, meets the requirements of **subsection (2) or (3)**.

“CFC meeting test in section EX 21D or EX 21E 25

“(2) A CFC is a non-attributing active CFC—

“(a) under section EX 21D, if the CFC meets the requirements of that section and paragraph (b) does not apply;

“(b) under section EX 21E, if—

“(i) the CFC meets the requirements of section EX 21C for the use of an applicable accounting standard in the application of section EX 21E; and 30

“(ii) the person chooses to use the applicable accounting standard in applying section EX 21E; and 35

“(iii) the CFC meets the requirements of section EX 21E.

“Insurer meeting requirements of determination

- “(3) A CFC that is an insurer meeting the requirements of a determination made by the Commissioner under section 91AAQ of the Tax Administration Act 1994 is a non-attributing active CFC.

5

“Defined in this Act: ~~accounting period; CFC; group of companies; non-attributing active CFC~~accounting period, CFC, non-attributing active CFC

“Tests for non-attributing active CFCs

“EX 21C Applicable accounting standards for section EX 21E

“Applicable accounting standards

10

- “(1) In applying **section EX 21E** to determine whether a CFC is a non-attributing active CFC for a person, the person may use as an accounting standard (the **applicable accounting standard**) ~~†~~ of the standards given by **subsections (2) to (7)**:

“Generally accepted accounting practice with IFRS for CFC

15

- “(2) The person may use generally accepted accounting practice in New Zealand including IFRSs and the framework for differential reporting for entities applying the New Zealand equivalents to international financial standards reporting regime (the **generally accepted accounting practice with IFRS**) for the CFC; if the person or another person has accounts that—

20

“(a) include the accounts of the CFC; and

“(b) comply with generally accepted accounting practice with IFRS; and

“(e) are audited by a chartered accountant or by an accountant of equivalent professional standard in the country in which the accounts are prepared; and

25

“(d) are given an unqualified opinion, a qualified opinion other than an adverse opinion or disclaimer of opinion, or an opinion of equivalent standard in the country in which the accounts are prepared:

30

“Generally accepted accounting practice with IFRS for test group

- “(3) The person may use generally accepted accounting practice with IFRS for the CFC’s test group, if the person or another person has accounts that—

35

- “(a) include the accounts of the members of the test group;
and
- “(b) comply with generally accepted accounting practice
with IFRS; and
- “(c) are audited by a chartered accountant or by an account- 5
ant of equivalent professional standard in the country in
which the accounts are prepared; and
- “(d) are given an unqualified opinion; a qualified opinion
other than an adverse opinion or disclaimer of opinion;
or an opinion of equivalent standard in the country in 10
which the accounts are prepared:

“IFRSEs for CFC

- “(4) The person may use IFRSEs for the CFC, if the person or an-
other person has accounts that—
- “(a) include the accounts of the CFC; and 15
- “(b) comply with the relevant IFRSEs; and
- “(c) are audited by a chartered accountant or by an account-
ant of equivalent professional standard in the country in
which the accounts are prepared; and
- “(d) are given an unqualified opinion; a qualified opinion 20
other than an adverse opinion or disclaimer of opinion;
or an opinion of equivalent standard in the country in
which the accounts are prepared:

“IFRSEs for test group

- “(5) The person may use IFRSEs for the CFC’s test group, if the 25
person or another person has accounts that—
- “(a) include the accounts of the members of the test group;
and
- “(b) comply with the relevant IFRSEs; and
- “(c) are audited by a chartered accountant or by an account- 30
ant of equivalent professional standard in the country in
which the accounts are prepared; and
- “(d) are given an unqualified opinion; a qualified opinion
other than an adverse opinion or disclaimer of opinion;
or an opinion of equivalent standard in the country in 35
which the accounts are prepared:

*“Generally accepted accounting practice without IFRS for
CFC*

- “(6) The person may use generally accepted accounting practice
in New Zealand for persons not required to use IFRS but re-
quired to apply with standards, other than IFRSs, approved 5
by the Accounting Standards Review Board under the Finan-
cial Reporting Act 1993 (the **generally accepted accounting
practice without IFRS**) for the CFC, if the person or another
person is a company resident in New Zealand that—
- “(a) has no revenue under Financial Reporting Standard 34 10
and Financial Reporting Standard 35; and
 - “(b) is an issuer under section 4 of the Financial Reporting
Act 1993 in neither of the current and preceding ac-
counting periods; and
 - “(c) is not required by section 19 of the Financial Reporting 15
Act 1993 to file its accounts with the Registrar of Com-
panies; and
 - “(d) is not a large company under section 19A(1)(b) of the
Financial Reporting Act 1993; and
 - “(e) does not have accounts that are prepared and audited 20
under generally accepted accounting practice in New
Zealand with IFRS; and
 - “(f) is not required to have accounts prepared under gener-
ally accepted accounting practice in New Zealand with
IFRS; and 25
 - “(g) is not a subsidiary of a company having accounts that—
“(i) include the accounts of the subsidiary; and
“(ii) are prepared and audited, or required to be pre-
pared, under generally accepted accounting prac-
tice in New Zealand with IFRS; and 30
 - “(h) has accounts that include the accounts of the CFC, com-
ply with generally accepted accounting practice without
IFRS, and are given by a chartered accountant an un-
qualified audit opinion or a qualified audit opinion other
than an adverse opinion or disclaimer of opinion. 35

“Generally accepted accounting practice without IFRS for CFC’s test group

- “(7) The person may use generally accepted accounting practice without IFRS for the CFC’s test group, if the person or another person is a company resident in New Zealand that— 5
- “(a) has no revenue under Financial Reporting Standard 34 and Financial Reporting Standard 35; and
- “(b) is an issuer under section 4 of the Financial Reporting Act 1993 in neither of the current and preceding accounting periods; and 10
- “(c) is not required by section 19 of the Financial Reporting Act 1993 to file its accounts with the Registrar of Companies; and
- “(d) is not a large company under section 19A(1)(b) of the Financial Reporting Act 1993; and 15
- “(e) does not have accounts that are prepared and audited under generally accepted accounting practice in New Zealand with IFRS; and
- “(f) is not required to have accounts prepared under generally accepted accounting practice in New Zealand with IFRS; and 20
- “(g) is not a subsidiary of a company having accounts that—
- “(i) include the accounts of the subsidiary; and
- “(ii) are prepared and audited, or required to be prepared, under generally accepted accounting practice in New Zealand with IFRS; and 25
- “(h) has accounts that include the accounts of the members of the CFC’s test group, comply with generally accepted accounting practice without IFRS, and are given by a chartered accountant an unqualified audit opinion or a qualified audit opinion other than an adverse opinion or disclaimer of opinion. 30

“Applicable accounting standards

- “(1) In applying **section EX 21E** to determine whether a CFC is a non-attributing active CFC for a person (the **interest holder**) with an interest in the CFC, the interest holder may use as an accounting standard (the **applicable accounting standard**) 1 of the standards given by **subsections (2) to (7)** if **section** 35

GB 15C (Arrangements related to accounting test for non-attributing active CFC) does not apply.

“Generally accepted accounting practice with IFRS for CFC

“(2) The interest holder may use generally accepted accounting practice in New Zealand including IFRSs and the framework for differential reporting for entities applying the New Zealand equivalents to the international financial standards reporting regime (the **generally accepted accounting practice with IFRS**) for the CFC, if the interest holder or another person has accounts that—

“(a) include the accounts of the CFC; and

“(b) comply with generally accepted accounting practice with IFRS; and

“(c) meet the audit requirements of **subsection (8)**.

“Generally accepted accounting practice with IFRS for test group

“(3) The interest holder may use generally accepted accounting practice with IFRS for the CFC’s test group under **section EX 21E(2)**, if the interest holder or another person has accounts that—

“(a) include the accounts of the members of the test group; and

“(b) comply with generally accepted accounting practice with IFRS; and

“(c) meet the audit requirements of **subsection (8)**.

“IFRSEs for CFC

“(4) The interest holder may use IFRSEs for the CFC, if the interest holder or another person has accounts that—

“(a) include the accounts of the CFC; and

“(b) comply with the relevant IFRSEs; and

“(c) meet the audit requirements of **subsection (8)**.

“IFRSEs for test group

“(5) The interest holder may use IFRSEs for the CFC’s test group under **section EX 21E(2)**, if the interest holder or another person has accounts that—

“(a) include the accounts of the members of the test group; and

“(b) comply with the relevant IFRSEs; and

- “(c) meet the audit requirements of **subsection (8)**.
“Generally accepted accounting practice without IFRS for
CFC
- “(6) The interest holder may use generally accepted accounting
practice in New Zealand for persons not required to use IFRS 5
but required to comply with standards, other than IFRSs, ap-
proved by the Accounting Standards Review Board under the
Financial Reporting Act 1993 (the **generally accepted ac-**
counting practice without IFRS) for the CFC, if the interest
holder or another person is a company resident in New Zealand 10
that—
- “(a) has no revenue under Financial Reporting Standard 34
and Financial Reporting Standard 35; and
- “(b) is an issuer under section 4 of the Financial Reporting
Act 1993 in neither of the current and preceding ac- 15
counting periods; and
- “(c) is not required by section 19 of the Financial Reporting
Act 1993 to file its accounts with the Registrar of Com-
panies; and
- “(d) is not a large company under section 19A(1)(b) of the 20
Financial Reporting Act 1993; and
- “(e) does not have accounts that are prepared and audited
under generally accepted accounting practice with
IFRS; and
- “(f) is not a subsidiary of a company having accounts that— 25
“(i) include the accounts of the subsidiary; and
“(ii) are prepared and audited, or required to be pre-
pared, under generally accepted accounting prac-
tice with IFRS; and
- “(g) has accounts that— 30
“(i) include the accounts of the CFC; and
“(ii) comply with generally accepted accounting prac-
tice without IFRS; and
“(iii) meet the audit requirements of **subsection (8)**.
- “Generally accepted accounting practice without IFRS for 35
CFC’s test group
- “(7) The interest holder may use generally accepted accounting
practice without IFRS for the CFC’s test group under **section**

EX 21D(1), if the interest holder or another person is a company resident in New Zealand that—

“(a) has no revenue under Financial Reporting Standard 34 and Financial Reporting Standard 35; and

“(b) is an issuer under section 4 of the Financial Reporting Act 1993 in neither of the current and preceding accounting periods; and 5

“(c) is not required by section 19 of the Financial Reporting Act 1993 to file its accounts with the Registrar of Companies; and 10

“(d) is not a large company under section 19A(1)(b) of the Financial Reporting Act 1993; and

“(e) does not have accounts that are prepared and audited under generally accepted accounting practice with IFRS; and 15

“(f) is not a subsidiary of a company having accounts that—

“(i) include the accounts of the subsidiary; and

“(ii) are prepared and audited, or required to be prepared, under generally accepted accounting practice with IFRS; and 20

“(g) has accounts that—

“(i) include the accounts of the members of the CFC’s test group; and

“(ii) comply with generally accepted accounting practice without IFRS; and 25

“(iii) meet the audit requirements of **subsection (8)**.

“Audit requirements

“(8) Accounts meet the audit requirements of this subsection if they—

“(a) are audited by an accountant who is— 30

“(i) a chartered accountant or an accountant of equivalent professional standard in the country in which the accounts are prepared; and

“(ii) independent of the CFC and the person; and

“(b) are given an unqualified opinion or an opinion of equivalent standard in the country in which the accounts are prepared. 35

“Compliance with accounting standards

“(9) For the purposes of **subsections (2) to (7)**, accounts are treated as complying with the accounting standard relevant to the subsection if—

- “(a) the accounts state that they comply with the accounting standard; and 5
- “(b) the accounts meet the audit requirements of **subsection (8)**; and
- “(c) the Commissioner does not have reasonable grounds to suspect— 10
 - “(i) fraudulent activity by the interest holder, the CFC, a CFC in the CFC’s test group, or the auditor:
 - “(ii) preparation of the accounts with an intent to mislead: 15
 - “(iii) incompetence of the auditor.

“Defined in this Act: accounting period, annual gross income, associated, attributable CFC amount, CFC, generally accepted accounting practice, IFRS, IFRSE, insurer, New Zealand resident, non-attributing active CFC, rent, royalty 20

“EX 21D Non-attributing active CFC: default test

“CFC as part of test group

- “(1) A person may choose to apply this section for a CFC as a member of a group (a **test group**) if the group consists of companies— 25
- “(a) each subject to the laws of the same country or territory under which—
 - “(i) the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management: 30
 - “(ii) persons holding income interests in the company are liable for the income tax on its income and the country or territory is the source of 80% or more of that income; and
 - “(b) in each of which the person holds voting interests, measured under section IC 3 (Common ownership: group of companies), of more than 50%; and 35

“(c) that are consolidated—

“(i) using uniform accounting policies for like transactions and for other events in similar circumstances; and

“(ii) eliminating in full all balances, transactions, income, and expenses arising between members of the test group. 5

“Threshold ratio

“(2) A CFC is a non-attributing active CFC under **section EX 21B(2)(b)** for an accounting period and a person if the amount calculated under **subsection (3)** using the formula in **subsection (4)**— 10

“(a) is less than 0.05; and

“(b) is not zero under **subsection (3)(f)**.

“Application of formula to test group

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

“(a) each item in the formula is determined—

“(i) for the CFC’s consolidated test group, if the person chooses to apply the formula to the test group; or 20

“(ii) for the CFC, if **subparagraph (i)** does not apply; and

“(b) each item in the formula is determined after amounts included in the item are adjusted to remove amounts corresponding to minority interests not held by the person; and 25

“(c) a reference to a company that is associated is treated as being a reference to a company that is—

“(i) associated with a member of the CFC’s test group, although not a member of the CFC’s test group, if the person chooses to apply the formula to the test group; or 30

“(ii) associated with the CFC, if **subparagraph (i)** does not apply; and

“(d) a reference to a company that is in the same group of companies is treated as being a reference to a company that is— 35

- “(i) in the same group of companies as a member of the CFC’s test group; although not a member of the CFC’s test group, if the person chooses to apply the formula to the test group; or
 - “(ii) in the same group of companies as the CFC, if **subparagraph (i)** does not apply; and
 - “(e) a numerator or denominator that is a negative number is treated as being zero; and
 - “(f) the amount calculated using the formula is zero if the denominator is zero.
- 5
10
- “*Formula*
- “(4) The amount that determines whether the CFC is a non-attributing active CFC is calculated using the formula—
- $$\frac{\text{attributable}}{\text{annual gross} - \text{adjustments}}$$
- “*Definition of items in formula*
- “(5) In the formula,—
 - “(a) **attributable** is the attributable CFC amount for the accounting period;
 - “(b) **annual gross** is the annual gross income for the accounting period in the absence of income under subpart EQ (Attributed income from foreign equity);
 - “(c) **adjustments** is the total of the following amounts for the accounting period:
 - “(i) expenditure or loss that is included in the calculation of the attributable CFC amount under **section EX 20B**;
 - “(ii) interest, rent, or royalties derived from a company that is not an attributable CFC amount but would be an attributable CFC amount in the absence of **section EX 20B(5)(c), (6)(c), and (8)(a)**;
 - “(iii) income derived from a company that would meet the requirements of **subsection (1)(a) and (b)** for a member of a test group with the CFC;
- 15
20
25
30

“(iv) income from a supply, made for the purposes of increasing the amount given by **paragraph (b)**; to a company that would not meet the requirements of **subsection (1)(a) and (b)** for a member of a test group with the CFC.

5

“CFC as part of test group

“(1) A person (the **interest holder**) with an interest in a CFC may choose to apply this section for the CFC as a member of a group (a **test group**) if the group consists of companies—

“(a) each subject to the laws of the same country or territory under which the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and

10

“(b) in each of which the interest holder holds an income interest of more than 50%; and

15

“(c) each of which is required to use the same currency under **section EX 21(4)**; and

“(d) that are consolidated for the purposes of this section—

“(i) using like tax treatments for like transactions and for other events in similar circumstances; and

20

“(ii) eliminating in full all balances, transactions, income, and expenses arising between members of the test group.

“Threshold ratio

“(2) A CFC is a non-attributing active CFC under **section EX 21B(2)(a)** for an accounting period and a person if the amount calculated under **subsection (3)** using the formula in **subsection (4)**—

25

“(a) is less than 0.05; and

“(b) is not zero under **subsection (3)(f)**.

30

“Application of formula

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

“(a) each item in the formula is determined—

“(i) for the CFC’s consolidated test group, if the interest holder chooses to apply the formula to the test group; or

35

“(ii) for the CFC, if **subparagraph (i)** does not apply; and

“(b) each item in the formula is determined for a test group after amounts included in the item are adjusted to remove amounts corresponding to income interests not held by the interest holder; and

“(c) a reference to a company that is associated is treated as being a reference to a company that is— 5

“(i) associated with a member of the CFC’s test group, although not a member of the CFC’s test group, if the interest holder chooses to apply the formula to the test group; or 10

“(ii) associated with the CFC, if **subparagraph (i)** does not apply; and

“(d) a reference to a company that is in the same group of companies is treated as being a reference to a company that is— 15

“(i) in the same group of companies as a member of the CFC’s test group, although not a member of the CFC’s test group, if the interest holder chooses to apply the formula to the test group; or

“(ii) in the same group of companies as the CFC, if **subparagraph (i)** does not apply; and 20

“(e) a numerator or denominator that is a negative number is treated as being zero; and

“(f) the amount calculated using the formula is zero if the denominator is zero. 25

“*Formula*

“(4) The amount that determines whether the CFC is a non-attributing active CFC is calculated using the formula—

$$\frac{\text{attributable} - \text{attributable adjustments}}{\text{gross} - \text{gross adjustments}}$$

“*Definition of items in formula*

“(5) The items in the formula are defined in **subsections (6) to (9)**. 30

“*Attributable*

“(6) **Attributable** is the attributable CFC amount for the accounting period.

“Attributable adjustments

“(7) **Attributable adjustments** is the total of amounts included in the item attributable, in **subsection (6)**, that are—

“(a) if the interest holder chooses that this paragraph apply, income derived from the supply of personal services— 5

“(i) included in an attributable CFC amount under **section EX 20B(3)(h)**; and

“(ii) not included in an attributable CFC amount under another paragraph of **section EX 20B(3) and (4)**; 10

“(b) if the interest holder chooses that this paragraph apply, the cost of revenue account property producing an amount (the **included amount**) included in the attributable CFC amount under **section EX 20B(3)(k)** to the extent, not exceeding the included amount, that— 15

“(i) the cost is treated as a deduction of the CFC in the accounting period; and

“(ii) the deduction exceeds the amount of any income under subpart CH (Adjustments) relating to the deduction. 20

“Gross

“(8) **Gross** is the annual gross income for the accounting period in the absence of income under subpart CQ (Attributed income from foreign equity).

“Gross adjustments

“(9) **Gross adjustments** is the total of the following amounts for the accounting period:

“(a) the amount of the item ‘attributable adjustments’ in **subsection (7)**;

“(b) expenditure or loss that is included in the calculation of the attributable CFC amount under **section EX 20B**; 30

“(c) income derived from a company that would meet the requirements of **subsection (1)(a) to (c)** for a member of a test group with the CFC;

“(d) income from a supply that meets the requirements of
section GB 15B (Supplies with purpose of affecting
default test for non-attributing active CFC).

“Defined in this Act: accounting period, annual gross income, associated non-
attributing active CFC, attributable CFC amount, CFC, company, group of com- 5
panies, income, interest, non-attributing active CFC, resident in New Zealand,
royalty

**“EX 21E Non-attributing active CFC: test based on accounting
standard**

“Applicable accounting standard” 10

“(1) A person who chooses to determine under this section whether
a CFC is a non-attributing active CFC for the person for an ac-
counting period must use an accounting standard (the **applic-
able accounting standard**) permitted by **section EX 21C**:

“CFC as part of test group” 15

“(2) A person may choose to apply this section for a CFC as a mem-
ber of a group (a **test group**) if the group consists of compan-
ies—

“(a) required to consolidate under the applicable accounting
standard; and 20

“(b) each subject to the laws of the same country or territory
under which—

“(i) the company is liable to income tax on its income
because of its domicile, residence, place of incor-
poration, or centre of management: 25

“(ii) persons holding income interests in the company
are liable for the income tax on its income and the
country or territory is the source of 80% or more
of that income; and

“(c) in each of which the person holds voting interests, mea- 30
sured under section IC 3 (Common ownership: group
of companies), of more than 50%; and

“(d) for which audited and consolidated financial statements
are prepared complying with the applicable accounting
standard: 35

“Threshold ratio

- “(3) A CFC is a non-attributing active CFC under **section EX 21B(2)(a)** for an accounting period and a person if the amount calculated under **subsection (4)** using the formula in **subsection (5)** is less than 0.05: 5

“Application of formula to test group

- “(4) In using the formula in **subsection (5)**,—

- “(a) each item in the formula is—

“(i) determined under the applicable accounting standard; and 10

“(ii) adjusted so that no amount is included in the item more than once; and

- “(b) each item in the formula is determined—

“(i) from amounts consolidated for the CFC’s test group under the applicable accounting standard; 15
if the person chooses to apply the formula to the test group; or

“(ii) from amounts for the CFC; if **subparagraph (i)** does not apply; and

- “(c) each item in the formula is determined after adjustment 20
of amounts included in the item by removing amounts corresponding to minority interests not held by the person; and

- “(d) a reference to a company that is associated is treated as being a reference to a company that is— 25

“(i) associated with a member of the CFC’s test group; although not a member of the CFC’s test group; if the person chooses to apply the formula to the test group; or

“(ii) associated with the CFC; if **subparagraph (i)** 30
does not apply; and

- “(e) a reference to a company that is in the same group of companies is treated as being a reference to a company that is—

“(i) in the same group of companies as a member of the CFC’s test group; although not a member of the CFC’s test group; if the person chooses to apply the formula to the test group; or 35

- “(ii) in the same group of companies as the CFC, if **subparagraph (i)** does not apply; and
- “(f) amounts determined for a CFC other than as part of a test group are—
 - “(i) determined in the functional currency of the CFC; and
 - “(ii) converted between currencies under the applicable accounting standard, but ignoring exchange differences arising on a monetary item that forms part of a net investment of the CFC in a foreign operation; and
- “(g) amounts determined for a test group are—
 - “(i) converted from the functional currency of the CFC to the presentation currency of the consolidated accounts for the test group using the average conversion rate for the accounting period; and
 - “(ii) otherwise converted between currencies under the applicable accounting standard; and
- “(h) the amount calculated using the formula is zero if the denominator equals zero.

“Applicable accounting standard

- “(1) A person (the **interest holder**) who chooses to determine under this section whether a CFC is a non-attributing active CFC for the person for an accounting period must use an accounting standard (the **applicable accounting standard**) permitted by **section EX 21C**.

“CFC as part of test group

- “(2) The interest holder may choose to apply this section for the CFC as a member of a group (a **test group**) if—
- “(a) the group consists of companies required under the applicable accounting standard to consolidate, whether or not with companies that are not in the group; and
 - “(b) each company is subject to the laws of the same country or territory under which the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and

- “(c) the interest holder holds an income interest of more than 50% in each company; and
- “(d) each company has the same functional currency; and
- “(e) there are audited and consolidated financial statements that— 5
- “(i) include the accounts of the companies in the group, whether or not with accounts of companies that are not in the group; and
- “(ii) comply with the applicable accounting standard.
- “*Threshold ratio* 10
- “(3) A CFC is a non-attributing active CFC under **section EX 21B(2)(b)** for an accounting period and an interest holder if, under **subsection (4)**,—
- “(a) the amount calculated using the formula in **subsection (5)** is less than 0.05; and 15
- “(b) the amount calculated using the numerator in the formula in **subsection (5)** is equal to or more than zero; and
- “(c) the amount calculated using the denominator in the formula in **subsection (5)** is more than zero. 20
- “*Application of formula*
- “(4) In using the formula in **subsection (5)**,—
- “(a) each item in the formula is—
- “(i) determined under the applicable accounting standard; and 25
- “(ii) adjusted so that no amount is included in the item more than once; and
- “(b) each item in the formula is determined—
- “(i) from amounts consolidated for the CFC’s test group under the applicable accounting standard, if the interest holder chooses to apply the formula to the test group; or 30
- “(ii) from amounts for the CFC, if **subparagraph (i)** does not apply; and
- “(c) each item in the formula is determined after adjustment of amounts included in the item by removing amounts corresponding to minority interests not held by the interest holder; and 35

- “(d) a reference to a company that is associated is treated as being a reference to a company that is—
- “(i) associated with a member of the CFC’s test group, although not a member of the CFC’s test group, if the interest holder chooses to apply the formula to the test group; or 5
- “(ii) associated with the CFC, if **subparagraph (i)** does not apply; and
- “(e) a reference to a company that is in the same group of companies is treated as being a reference to a company that is— 10
- “(i) in the same group of companies as a member of the CFC’s test group, although not a member of the CFC’s test group, if the person chooses to apply the formula to the test group; or 15
- “(ii) in the same group of companies as the CFC, if **subparagraph (i)** does not apply; and
- “(f) amounts determined for a CFC other than as part of a test group are—
- “(i) determined in the functional currency of the CFC; and 20
- “(ii) converted between currencies under the applicable accounting standard, but ignoring exchange differences arising on a monetary item that forms part of a net investment of the CFC in a foreign operation; and 25
- “(g) amounts determined for a test group are—
- “(i) converted from the functional currency of the CFC to the presentation currency of the consolidated accounts for the test group using the average conversion rate for the accounting period; and 30
- “(ii) otherwise converted between currencies under the applicable accounting standard.
- “*Formula* 35
- “(5) The amount that determines whether the CFC is a non-attributing active CFC is calculated using the formula—

$$\frac{\text{reported passive} + \text{added passive} - \text{removed passive}}{\text{reported revenue} + \text{added revenue} - \text{removed revenue}}$$

reported revenue + added revenue – removed revenue.

“Definition of items in formula

“(6) The items in the formula are defined in **subsections (7) to (12)**.

“Reported passive

“(7) **Reported passive** is the total amount that is— 5

“(a) a dividend;

“(b) interest;

“(c) a royalty;

“(d) rent;

“(e) income, other than rent or interest, from a finance lease or operating lease; 10

“(f) gains from a financial asset that is not a derivative, as defined in NZIAS 39, in the form of—

“(i) an increase in the fair value of the asset;

“(ii) a gain on the derecognition, as defined in NZIAS 39, of the asset; 15

“(iii) a foreign exchange gain on the asset;

“(g) gains from a business of insurance, including gains from property used to back insurance assets;

“Added passive 20

“(8) **Added passive** is the total of amounts not included in the item **reported passive** for the accounting period that are 1 or more of the following:

“(a) income from a life insurance policy that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(g)**; 25

“(b) income from a supply of personal services that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(h)**;

“(c) income from the alienation of revenue account property that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(j)**; 30

- “(d) income from a supply of services performed in New Zealand that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(k)**;
- “(e) income from a supply of telecommunications services that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(l) or (m)**;
- “(f) income from a derivative instrument that is included in the attributable CFC amount for the accounting period under **section EX 20B(4)(b)**;
- “*Removed passive*
- “(9) **Removed passive** is the total of amounts included in the item **reported passive** or **added passive** for the accounting period that are 1 or more of the following:
 - “(a) in a category included in categories chosen by the person from the following:
 - “(i) a dividend that is not included in the attributable CFC amount for the accounting period under **section EX 20B(3)(a) or (b)**;
 - “(ii) a royalty that would be included in the attributable CFC amount for the accounting period but for **section EX 20B(5)(a) to (d)**;
 - “(iii) rent that would be included in the attributable CFC amount for the accounting period but for **section EX 20B(6)(a) to (c)**;
 - “(iv) income from a financial arrangement that would be included in the attributable CFC amount for the accounting period but for **section EX 20B(8)(a) and (b)**;
 - “(b) gains on a share that is not revenue account property under the Act in the form of—
 - “(i) an increase in the fair value of the share;
 - “(ii) a gain on the derecognition, as defined in NZIAS 39, of the share;
 - “(iii) a foreign exchange gain on the share;
- “*Reported revenue*
- “(10) **Reported revenue** is the total amount that is—
 - “(a) included under the applicable accounting standard in—

- “(i) operating revenue, if the applicable accounting standard is generally accepted accounting practice without IFRS; or
 - “(ii) revenue, if **subparagraph (i)** does not apply:
 - “(b) income, other than rent, from a finance lease or operating lease: 5
 - “(c) gains on a financial asset that is not a derivative, as defined in NZIAS 39, in the form of—
 - “(i) an increase in the fair value of the asset:
 - “(ii) a gain on the derecognition, as defined in NZIAS 39, of the asset: 10
 - “(iii) a foreign exchange gain on the asset:
 - “(d) gains from a business of insurance, including gains from property used to back insurance assets, if the applicable accounting standard is not generally accepted accounting practice without IFRS: 15
- “Added revenue*
- “(11) **Added revenue** is the total of amounts not included under the applicable accounting standard in the item reported revenue for the accounting period that are 1 or more of the following: 20
- “(a) income from a life insurance policy that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(g)**:
 - “(b) income from the alienation of revenue account property that is included in the CFC’s attributable CFC amount for the accounting period under **section EX 20B(3)(j)**: 25
 - “(c) income from a derivative instrument that is included in the attributable CFC amount for the accounting period under **section EX 20B(4)(b)**:
- “Removed revenue* 30
- “(12) **Removed revenue** is the total of amounts that are included under the applicable accounting standard in the item reported revenue or added revenue for the accounting period and are 1 or more of the following:
- “(a) gains on a derivative instrument that is— 35
 - “(i) not referred to in **section EX 20B(4)(b)**; and
 - “(ii) not part of a hedging relationship of a type referred to in IFRS 39:

- “(b) gains on the ineffective portion of a derivative instrument that is—
 - “(i) not referred to in **section EX 20B(4)(b)**; and
 - “(ii) part of a hedging relationship of a type referred to in IFRS 39: 5
- “(c) income from a derivative instrument referred to in **section EX 20B(4)(b)**; to the extent to which the income under the applicable standard exceeds the amount of income under section CC 3 (Financial arrangements): 10
- “(d) a dividend to the extent to which it is included in the item removed passive under **subsection (9)(a)(i)**: 15
- “(e) a royalty that—
 - “(i) would be included in the attributable CFC amount for the accounting period but for **section EX 20B(5)(b) and (c)**; and 15
 - “(ii) is included in the item removed passive under **subsection (9)(a)(ii)**: 15
- “(f) rent that—
 - “(i) is derived from a CFC that could be consolidated with the CFC for the purposes of this section; and 20
 - “(ii) would be included in the attributable CFC amount for the accounting period but for **section EX 20B(6)(c)**; and
 - “(iii) is included in the item removed passive under **subsection (9)(a)(iii)**: 25
- “(g) income from a financial arrangement that—
 - “(i) would be included in the attributable CFC amount for the accounting period but for **section EX 20B(8)(a)**; and
 - “(ii) is included in the item removed passive under **subsection (9)(a)(iv)**: 30
- “(h) gains on a share that is not revenue account property under this Act in the form of—
 - “(i) an increase in the fair value of the share: 35
 - “(ii) a gain on the derecognition, as defined in NZIAS 39, of the share:
 - “(iii) a foreign exchange gain on the share:
- “(i) income derived from another CFC that, if appropriate audited accounts were prepared, could be consolidated

with the CFC for the purposes of this section, if both companies are subject to the laws of the same country or territory under which—

- “(i) the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management: 5
- “(ii) persons holding income interests in the company are liable for the income tax on its income and the country or territory is the source of 80% or more of that income: 10
- “(j) income of the CFC from a supply, made for the purposes of increasing the amount given by **subsection (10) or (14)**, to another CFC that—
- “(i) could not be consolidated with the CFC for the purposes of this section: 15
- “(ii) is not subject with the CFC to laws of the same country or territory meeting the requirements of **paragraph (i)(i) and (ii)**: 15
- “(k) if the applicable standard is generally accepted accounting practice without IFRS, income from a liability, other than income derived in the normal course of business from a sale or supply of services, in the form of— 20
 - “(i) a reduction in the liability:
 - “(ii) a gain on the disposal or other derecognition of the liability: 25
 - “(iii) a foreign exchange gain on the liability:
- “(l) if the applicable standard is generally accepted accounting practice without IFRS, income from an asset that is not a financial asset under NZIAS 32 and not revenue account property as defined in section YA 1 (Definitions) in the form of— 30
 - “(i) an increase in the fair value of the asset:
 - “(ii) a gain on the disposal of the asset:
 - “(iii) a foreign exchange gain on the asset: 35

“Reported passive

“(7) Reported passive is the total amount of—

- “(a) income from a dividend:
- “(b) income from interest:
- “(c) income from a royalty:

- “(d) income from rent:
- “(e) income, other than rent or interest, from a finance lease or operating lease:
- “(f) income or loss from a financial asset, other than a derivative as defined in NZIAS 39 or a share that is not revenue account property, in the form of— 5
- “(i) a change in the reported fair value of the asset:
- “(ii) a gain or loss on the derecognition, as defined in NZIAS 39, of the asset:
- “(iii) a foreign exchange gain or loss on the asset: 10
- “(g) income or loss from a derivative instrument, as defined in NZIAS 39, and included in the CFC’s statement of income—
- “(i) if the instrument is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument: 15
- “(ii) if the instrument is not entered in the ordinary course of a business of the CFC:
- “(iii) to the extent that the income or loss is from a hedging relationship, of a type referred to in NZIAS 39, with an amount that would change the numerator of the formula in **subsection (5)** or with a transaction producing such an amount of income or gain: 20
- “(h) income or gains from a business of insurance, including income or gains from property used to back insurance assets. 25
- “Added passive*
- “(8) **Added passive** is the total of amounts not included in the item **reported passive** for the accounting period that are 1 or more of the following: 30
- “(a) income from a life insurance policy that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(g)**:
- “(b) income from the disposal of revenue account property that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(k)**, if the property is— 35

- “(i) not a share, financial arrangement, or life insurance policy; and
- “(ii) used by the CFC in a way giving rise to income or gains that increase the numerator of the formula in **subsection (5)**: 5
- “(c) income from a supply of services performed in New Zealand that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(l)**:
- “(d) income from a supply of telecommunications services that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(m) or (n)**. 10
- “Removed passive*
- “(9) **Removed passive** is zero if the interest holder does not choose to include an amount for this item or is the total of amounts that are included in the item **reported passive** or **added passive** for the accounting period and are in a category included in categories chosen by the interest holder from the following: 15
- “(a) a dividend that is not included in the attributable CFC amount for the accounting period under **section EX 20B(3)(a) to (c)**: 20
- “(b) a royalty that would be included in the attributable CFC amount for the accounting period but for **section EX 20B(5)(a) to (d)**:
- “(c) rent that would be included in the attributable CFC amount for the accounting period but for **section EX 20B(7)(a) to (c)**: 25
- “(d) the cost of revenue account property producing an amount (the **included amount**) included in the attributable CFC amount under **section EX 20B(3)(k)** to the extent, not exceeding the included amount, that— 30
- “(i) the cost would be a deduction of the CFC in the accounting period if the CFC were a resident of New Zealand; and
- “(ii) the deduction would exceed the amount of any income arising under subpart CH (Adjustments) relating to the deduction. 35
- “Reported revenue*
- “(10) **Reported revenue** is the total amount that is—

- “(a) included under the applicable accounting standard in—
- “(i) operating revenue, if the applicable accounting standard is generally accepted accounting practice without IFRS; or
- “(ii) revenue, if **subparagraph (i)** does not apply: 5
- “(b) income, other than rent, from a finance lease or operating lease:
- “(c) a gain or loss on a financial asset, other than a derivative as defined in NZIAS 39 or a share not on revenue account, in the form of— 10
- “(i) a change in the reported fair value of the asset:
- “(ii) a gain or loss on the derecognition, as defined in NZIAS 39, of the asset:
- “(iii) a foreign exchange gain or loss on the asset:
- “(d) a gain or loss from a derivative instrument, as defined in NZIAS 39, and included in the CFC’s statement of income— 15
- “(i) if the derivative instrument is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument: 20
- “(ii) if the derivative instrument is not entered in the ordinary course of a business of the CFC:
- “(iii) to the extent that the gain or loss is from a hedging relationship, of a type referred to in NZIAS 39, with an amount that would change the denominator of the formula in **subsection (5)** or with a transaction producing such an amount of income or gain: 25
- “(e) income or a gain from a business of insurance, including from property used to back insurance assets, if the applicable accounting standard is not generally accepted accounting practice without IFRS. 30
- “Added revenue
- “(11) **Added revenue** is zero if the interest holder does not choose to include an amount for this item or is the total of amounts that are not included in the item **reported revenue** for the accounting period and are either or both of the following: 35

- “(a) income from a life insurance policy that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(g)**:
- “(b) income from the disposal of revenue account property that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(k)**, if the property is— 5
- “(i) not a share, financial arrangement, or life insurance policy; and
- “(ii) used by the CFC in a way giving rise to income or gains that increase the numerator of the formula in **subsection (5)**. 10
- “Removed revenue*
- “(12) **Removed revenue** is the total of amounts that are included under the applicable accounting standard in the item reported revenue or added revenue for the accounting period and are 1 or more of the following: 15
- “(a) an amount included in the item removed passive under **subsection (9)(d)**:
- “(b) a dividend to the extent to which it is included in the item removed passive, under **subsection (9)(a)**: 20
- “(c) income from a supply of personal services that is included in the item reported revenue, and in the attributable CFC amount for the accounting period under **section EX 20B(3)(h)**: 25
- “(d) income or loss from a share that is not revenue account property under this Act in the form of—
- “(i) a change in the reported fair value of the share:
- “(ii) income or loss on the derecognition, as defined in NZIAS 39, of the share: 30
- “(iii) a foreign exchange gain or loss on the share:
- “(e) income derived from another CFC that—
- “(i) is subject to the laws of the country or territory under which the CFC is liable to income tax on the CFC’s income because of the CFC’s domicile, residence, place of incorporation, or centre of management; and 35

- “(ii) is liable to tax on its income in that country or territory because of its domicile, residence, place of incorporation, or centre of management; and
 “(iii) could be consolidated with the CFC for the purposes of this section if appropriate audited accounts were prepared: 5
- “(f) if the applicable standard is generally accepted accounting practice without IFRS, income from a liability, other than income derived in the normal course of business from a sale or supply of services, in the form of— 10
- ““(i) a reduction in the liability:
 ““(ii) a gain on the disposal or other derecognition of the liability:
 ““(iii) a foreign exchange gain on the liability:
- “(g) if the applicable standard is generally accepted accounting practice without IFRS, income from an asset that is not a financial asset under NZIAS 32 and not revenue account property as defined in section YA 1 (Definitions) in the form of— 15
- ““(i) an increase in the fair value of the asset: 20
 ““(ii) a gain on the disposal of the asset:
 ““(iii) a foreign exchange gain on the asset.
- “Compliance with accounting standards*
- “(13) If accounts meet the requirements of **section EX 21C** for the relevant accounting standard— 25
- ““(a) the accounts are treated as complying with the relevant accounting standard for the purposes of **subsection (2)**:
 ““(b) amounts drawn from the accounts, or from information that is used to prepare the accounts and is consistent with them, are treated as complying with the relevant accounting standard for the purposes of **subsection (4)** if the Commissioner does not have reasonable grounds to suspect— 30
- ““(i) fraudulent activity by the interest holder, the CFC, a CFC in the CFC’s test group, or the auditor: 35
 ““(ii) preparation of the accounts with an intent to mislead:

“(iii) incompetence of the auditor.

“Defined in this Act: accounting period, associated non-attributing active CFC, attributable CFC amount, CFC, company, dividend, financial arrangement, finance lease, group of companies, IFRS, income, life insurance policy, non-attributing active CFC, operating lease, premium, revenue account property, royalty”.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

124 Heading and section EX 22 replaced

(1) The heading before section EX 22 and section EX 22 are replaced by the following:

“Non-attributing Australian CFCs

“EX 22 Non-attributing Australian CFCs

“Criteria

“(1) A CFC is a **non-attributing Australian CFC** for an accounting period if—

“(a) at all times in the accounting period the CFC is—

“(i) resident in Australia; and

“(ii) subject under Australian law to income tax on its income; and

“(iii) treated as being resident in a country other than Australia under no agreement between the government of Australia and the government of another country or territory that would be a double tax agreement if between the government of New Zealand and the government of the other country or territory; and

“(ii) under Australian law, subject to income tax on its income or treated as part of the head company of a consolidated group subject to income tax on its income; and

- “(iii) treated as being resident in Australia under all agreements between the government of Australia and the governments of other countries or territories that would be a double tax agreement if between the government of New Zealand and the government of the other country or territory; and 5
- “(b) the CFC’s liability for income tax has not been reduced by—
- “(i) an exemption from income tax for income derived from business activities carried on outside Australia: 10
- “(ii) a special allowance, relief, or exemption with respect to offshore banking units.
- “No attributed CFC income or loss*
- “(2) Sections CQ 2(1)(g) (When attributed CFC income arises) and DN 2(g) (When attributed CFC loss arises) provide that no attributed CFC income or attributed CFC loss arises from a non-attributing Australian CFC. 15
- “CFCs with interest in FIF: look-through approach*
- “(3) This section does not prevent FIF income or FIF loss arising under section EX 58 from an interest of a non-attributing Australian CFC in a FIF. 20
- “Defined in this Act: accounting period, attributed CFC income, attributed CFC loss, CFC, double tax agreement, FIF, FIF income, FIF loss, income tax, non-attributing Australian CFC, resident in Australia”. 25
- (2) ~~**Subsection (1)** applies for the 2009–10 and later income years.~~
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 30
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 125 Section EX 23 repealed**
- (1) Section EX 23 is repealed.
- (2) ~~**Subsection (1)** applies for the 2009–10 and later income years.~~ 35

- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 5
- 126 Change of CFC’s balance date**
- (1) Section EX 25(3)(d) is replaced by the following:
- “(d) whether the change would postpone liability to income tax on attributed CFC income or on attributed repatriation.” 10
- (2) In section EX 25, in the list of defined terms, “FDP” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (3) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 15
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 127 Attributing interests in FIFs**
- In section EX 29(1)(b), “EX 32 to EX 37” is replaced by “EX 31 to EX 43”. 20
- 127B Direct income interests in FIFs**
- In section EX 30(6)(c), “debentures” is replaced by “debentures) or **FA 2B** (Stapled debt securities)”.
- 128 Exemption for ASX-listed Australian companies** 25
- (1) In section EX 31(2)(c)(i), “if subparagraph (ii) does not apply” is replaced by “if subparagraphs (ii) and **(iii)** do not apply”.
- (2) In section EX 31(2)(c)(ii), “earlier in the year; and” is replaced by “earlier in the year; or” and the following is added:
- “(iii) ~~at the beginning of the final month of the preceding income year if, in the first month of an income year, the shares are cancelled under a scheme of arrangement entered into under Part 5.1 of the Corporations Act 2001 (Aust); and~~ 30

- 5
- 10
- 15
- 20
- 25
- 30
- (3) In section EX 31, in the list of defined terms, “cancellation” is inserted.
- 128B Exemption for Australian unit trusts with adequate turnover or distributions**
- (1) In section EX 32(9)(d), “contributions by investors by the unit trust” is replaced by “contributions by investors to the unit trust”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 129 CFC rules exemption**
- In section EX 34(b), “the person has” is replaced by “the person has, under sections EX 14 to EX 17,”.
- 130 Grey list company owning New Zealand venture capital company: 10-year exemption**
- (1) In section EX 37(e), the words before subparagraph (i) are 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 resident in New Zealand (the **resident company**) that, for 12 months or more, has—”.
- (2) Section EX 37(f) is replaced by the following:
- “(f) the year begins less than 10 years after the grey list company first held more than 50% of the voting interests in the resident company; and”.
- (3) In section EX 37, in the list of defined terms, “voting interest” is inserted.
- 131 Exemption for employee share purchase scheme of grey list company**
- Section EX 38(g) is replaced by the following:

“(g) the share purchase agreement includes a restriction on the disposal of the shares; and”.

132 Limits on choice of calculation methods

- (1) In section EX 46(6)(b)(iii), “charities:” is replaced by “charities); and” and the following is inserted: 5
 “(iv) is not a superannuation scheme:”.
- (2) Section EX 46(6)(d) is replaced by the following:
 “(d) the share is a non-ordinary share described in subsection (10).”
- (3) Section EX 46(7)(b) is replaced by the following: 10
 “(b) the FIF is a foreign investment vehicle and the person is—
 “(i) a portfolio investment entity or an entity eligible to be a portfolio investment entity:
 “(ii) a life insurance company.” 15
- (4) **Section EX 46(7)(b)** is replaced by the following:
 “(b) the FIF is a foreign PIE equivalent and the person is—
 “(i) a portfolio investment entity or an entity that qualifies for PIE status:
 “(ii) a life insurance company.” 20
- (5) Section EX 46(8)(a) is replaced by the following:
 “(a) the share is a non-ordinary share described in subsection (10):”.
- (6) The heading to section EX 46(10) is replaced by “*Certain non-ordinary shares*”. 25
- (7) In section EX 46(10), the words before paragraph (a) are replaced by the following:
 “(10) For the purposes of **subsections (6)(d) and (8)(a)**, a non-ordinary share in a foreign company is—”.
- (8) Section EX 46(10)(a) is replaced by the following: 30
 “(a) a fixed-rate foreign equity:”.
- (9) ~~In section EX 46, in the list of defined terms, “foreign PIE” is omitted and “foreign investment vehicle” is inserted.~~
- (10) ~~In section EX 46, in the list of defined terms, “foreign investment vehicle” is omitted and “foreign PIE equivalent” and “PIE” are inserted.~~ 35

- (11) In section EX 46, in the list of defined terms, “fixed-rate foreign equity” is inserted.
- (12) **Subsections (4), (8), (10), and (11)** apply for the 2009–10 and later income years.
- (9) After section EX 46(10)(c), the following is inserted: 5
 - “(cb) an interest in a non-resident if—
 - “(i) the non-resident holds directly or indirectly assets of which 80% or more by value at a time in the income year consist of fixed-rate shares or financial arrangements providing funds to a person; and 10
 - “(ii) the interest is denominated in New Zealand dollars or, under NZIAS 39, is a hedged item having a value in New Zealand dollars governed by a hedging instrument that is highly effective:”. 15
- (10) In section EX 46, in the list of defined terms,—
 - (a) “foreign PIE” is omitted:
 - (b) “foreign investment vehicle” is inserted.
- (11) In section EX 46, in the list of defined terms,— 20
 - (a) “foreign investment vehicle” is omitted:
 - (b) “foreign PIE equivalent” and “PIE” are inserted.
- (12) In section EX 46, in the list of defined terms, “fixed-rate foreign equity” is inserted.
- (13) **Subsection (4)** applies for the 2010–11 and later income years. 25
- (14) **Subsection (8)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 30

133 Section EX 47 replaced

Section EX 47 is replaced by the following:

“EX 47 Method required for certain non-ordinary shares

A person must calculate FIF income or loss for an income year from an attributing interest that is a non-ordinary share described in section EX 46(10) using— 35

- “(a) the comparative value method; or

“(b) the deemed rate of return method, if use of the comparative value method is not practical because the person cannot determine the market value of the attributing interest at the end of the income year.

“Defined in this Act: attributing interest, comparative value method, deemed rate of return method, fair dividend rate method, FIF income, FIF loss, income year, market value, share”.

133B Branch equivalent method

In section EX 50(3), “section EX 21 of the CFC rules” is replaced by “section EX 21 of the CFC rules as that provision read immediately before being amended by **section 122** of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008**”.

134 Comparative value method

(1) Section EX 51(5), other than the heading, is replaced by the following:

“(5) **Opening value** is the market value of the person’s interest in the FIF at the end of the previous income year, calculated using the exchange rate applying under section EX 57 for that previous year. The value is zero if the person did not hold the interest then or was then applying another calculation method to it.”

(2) ~~Section EX 51(7)(b) is replaced by the following:~~

~~“(b) is not a non-ordinary share described in section EX 46(10).”~~

(2) Section EX 51(7) and (8) are replaced by the following:

“Losses from some attributing interests not subject to rule

“(7) **Subsection (8)** applies to a person who calculates under subsection (1) an amount of FIF loss for an attributing interest in a FIF (the **affected interest**) that is neither of the following:

“(a) a direct income interest in a foreign company equal to or more than 10% at all times in the relevant income year:

“(b) a non-ordinary share described in **section EX 46(10)**.

“No total FIF loss from other attributing interests

“(8) If, in the absence of this subsection, the person would have under subsection (1) a total FIF loss for the income year from

all the person's affected interests, the FIF loss for the income year for the person from each affected interest is reduced to the extent necessary for the total FIF loss from the affected interests to be zero."

- (3) **Subsection (2)** applies for the 2009–10 and later income years. 5

135 Fair dividend rate method: usual method

(1A) In section EX 52(1)(a), "or loss" is omitted.

- (1) Section EX 52(2), other than the heading, is replaced by the following: 10

"(2) The person's total FIF income for the income year from the attributing interests in FIFs (the **FDR interests**) for which the person uses the fair dividend rate method is calculated using the formula in subsection (3)."

- (2) In section EX 52(5), the words before paragraph (a) are replaced by the following: 15

"(5) **Opening value** is the total of the market values of the FDR interests that—"

- (3) After section EX 52(5), the following is inserted:

"Exclusion for certain managed funds" 20

"(5B) Subsection (5)(b) does not apply if—

"(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and

"(b) the FIF is a foreign investment vehicle." 25

- (4) **Section EX 52(5B)(b)** is replaced by the following:

"(b) the FIF is a foreign PIE equivalent."

- (5) Section EX 52(6), other than the heading is replaced by the following:

"(6) ~~The quick sale adjustment is required only if, in the income year, the person disposes of or reduces an FDR interest to which this section applies after acquiring it or increasing it. The quick sale adjustment is zero in any other case.~~ 30

"(6) The quick sale adjustment is required, and is not zero, only if the person, in the income year,— 35

"(a) acquires or increases an FDR interest to which this section applies; and

- “(b) later disposes of or reduces the FDR interest.”
- (6) Section EX 52(7)(a) and (b) are replaced by the following:
- “(a) the total of the amounts (the **peak holding method amount**) calculated for each FDR interest using the formula in subsection (8): 5
- “(b) the total of the amounts (the **quick sale gain amount**) calculated for each FDR interest using the formula in subsection (12), treating a negative total as being zero.”
- (7) In section EX 52(13),—
- (a) in paragraph (a), “during the income year” is omitted: 10
- (b) in paragraph (c), “during the year” is omitted.
- (8) After section EX 52(14B), the following is inserted:
- “Treatment of attributing interests subject to returning share transfer*
- “(14C) 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.” 15
- “(14C) 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, the attributing interest is treated as held by the share supplier.” 20
- (9) In section EX 52, in the list of defined terms, “FIF loss”, “foreign investment vehicle”, “life insurance”, “original share”, “portfolio investment entity”, “returning share transfer”, “share”, and “share supplier” are inserted: 25
- (10) In section EX 52, in the list of defined terms, “foreign investment vehicle” is omitted and “foreign PIE equivalent” is inserted:
- (11) **Subsections (4) and (10)** apply for the 2009–10 and later income years: 30
- (9) In section EX 52, in the list of defined terms, “foreign investment vehicle”, “life insurance”, “original share”, “portfolio investment entity”, “returning share transfer”, “share”, and “share supplier” are inserted. 35
- (10) In section EX 52, in the list of defined terms,—
- (a) “foreign investment vehicle” is omitted:
- (b) “foreign PIE equivalent” is inserted.

(11) **Subsection (4)** applies for the 2010–11 and later income years.

136 Fair dividend rate method for unit-valuing funds and others by choice

- (1A) In section EX 53(1)(a), “or loss” is omitted. 5
- (1) Section EX 53(2), other than the heading, is replaced by the following:
- “(2) The total FIF income for the income year of the fund or person (the **interest holder**) from the attributing interests in FIFs (the **FDR interests**) for which the fund or person uses the fair dividend rate method is the total of the amounts calculated using the formula in subsection (3) for each unit valuation period.” 10
- (2) In section EX 53(5), the words before paragraph (a) are replaced by the following:
- “(5) **Opening value** is the total of the market values of the FDR interests that—” 15
- (3) After section EX 53(5), the following is inserted:
- “*Exclusion for certain managed funds*
- “(5B) Subsection (5)(b) does not apply if—
- “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and 20
- “(b) the FIF is a foreign investment vehicle.”
- (4) In **section EX 53(5B)(b)**, “foreign investment vehicle” is replaced by “foreign PIE equivalent”. 25
- (5) Section EX 53(8), other than the heading, is replaced by the following:
- “(8) ~~The quick sale adjustment is required only if, in the income year, the person disposes of or reduces an FDR interest to which this section applies after acquiring it or increasing it. The quick sale adjustment is zero in any other case.~~ 30
- “(8) The quick sale adjustment is required, and is not zero, only if the FIF has a unit valuation period of more than 1 day and the person, in the unit valuation period,—
- “(a) acquires or increases an FDR interest to which this section applies; and 35
- “(b) later disposes of or reduces the FDR interest.”

- (6) Section EX 53(9)(a) and (b) are replaced by the following:
 - “(a) the total of the amounts (the **peak holding method amount**) calculated for each FDR interest using the formula in subsection (10):
 - “(b) the total of the amounts (the **quick sale gain amount**) 5
calculated for each FDR interest using the formula in subsection (14), treating a negative total as being zero.”
- (7) In section EX 53(15),—
 - (a) in paragraph (a), “during the unit valuation period” is omitted: 10
 - (b) in paragraph (c), “during the period” is omitted.
- (8) After section EX 53(16B), the following is inserted:

“Treatment of attributing interests subject to returning share transfer

~~“(16C) 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.~~ 15

“(16C) 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, the attributing interest is treated as held by the share supplier.” 20

- (9) In section EX 53, in the list of defined terms, “FIF loss”, “foreign investment vehicle”, “life insurance”, “original share”, “portfolio investment entity”, “returning share transfer”, “share”, and “share supplier” are inserted. 25
- (10) In section EX 53, in the list of defined terms, “foreign investment vehicle” is omitted and “foreign PIE equivalent” is inserted.
- (11) **Subsections (4) and (10)** apply for the 2009–10 and later income years. 30
- (9) In section EX 53, in the list of defined terms, “foreign investment vehicle”, “life insurance”, “original share”, “portfolio investment entity”, “returning share transfer”, “share”, and “share supplier” are inserted. 35
- (10) In section EX 53, in the list of defined terms,—
 - (a) “foreign investment vehicle” is omitted:
 - (b) “foreign PIE equivalent” is inserted.

- (11) **Subsection (4)** applies for the 2010–11 and later income years.

137 Cost method

- (1) In section EX 56(3)(ac)(ii), “income year; or” is replaced by “income year; and” and the following is added: 5
 “(iii) the interest was not an attributing interest for the income year before the relevant income year; or
- (2) ~~In section EX 56(15), the formula is replaced by the following:~~
 ~~$0.05 \times \text{peak holding differential} \times \text{average cost}$~~
- (3) ~~In section EX 56, in the list of defined terms, “close of trading spot exchange rate” is omitted.~~ 10
- (2) In section EX 56(4), the formula is replaced by the following:
 $1.05 \times \text{preceding opening}$
- (3) In section EX 56(5), the formula is replaced by the following:
 $1.05 \times \text{preceding opening} + (\text{increase} \times \text{average cost})$
- (4) In section EX 56(6), the formula is replaced by the following:

$$\frac{\text{opening shareholding}}{\text{preceding shareholding}} \times 1.05 \times \text{preceding opening}$$
- (5) Section EX 56(9) is repealed.
- (6) In section EX 56(15), the formula is replaced by the following: 15
 $0.05 \times \text{peak holding differential} \times \text{average cost}$
- (7) In section EX 56, in the list of defined terms, “close of trading spot exchange rate” is omitted.
- (8) **Subsections (4) and (6)** apply for the 2008–09 and later income years.

138 Additional FIF income or loss if CFC owns FIF 20

- (1) In section EX 58(1)(a), “EX 8” is replaced by “EX 14”.
- (2) Section EX 58(6) is replaced by the following:

“Non-attributing Australian CFCs

“(6) This section applies whether or not the CFC is a non-attributing Australian CFC under **section EX 22** for the period.”

(3) Section EX 58(7) is repealed.

(4) **Subsections (2) and (3)** apply for the 2009–10 and later income years. 5

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

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June. 10

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

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

“(c) the fair dividend rate method.”. 15

(2) After section EX 59(1), the following is inserted:

“Exclusion for interests in grey list companies

“(1B) **Subsection (1)(c)** does not apply if—

“(a) the FIF is a grey list company; and

“(b) the person holds a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls. 20

“Application of rule for certain managed funds

“(1C) **Subsection (1B)** does not apply if—

“(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and

“(b) the FIF is a foreign investment vehicle.”

(3) **Section EX 59(1C)(b)** is replaced by the following:

“(b) the FIF is a foreign PIE equivalent.” 30

(3B) After section EX 59(2), the following is inserted:

“Exception to subsection (2): fees rebate or deduction

“(2B) An amount derived by the person from the interest is not disregarded under subsection (2) if—

“(a) the amount is a rebate of fees; and 35

- “(b) the person was allowed a deduction for the payment of the fees.”
- (4) In section EX 59, in the list of defined terms, “company”, “direct income interest”, “foreign investment vehicle”, “grey list company”, “life insurance”, and “portfolio investment entity” are inserted. 5
- (5) ~~In section EX 59, in the list of defined terms, “foreign investment vehicle” is omitted and “foreign PIE equivalent” is inserted.~~
- (6) **Subsections (3) and (5)** apply for the 2009–10 and later income years. 10
- (5) In section EX 59, in the list of defined terms,—
- (a) “foreign investment vehicle” is omitted;
- (b) “foreign PIE equivalent” is inserted.
- (6) **Subsection (3)** applies for the 2010–11 and later income years. 15
- (7) **Subsection (3B)** applies for the 2009–10 and later income years.

139B Limits on changes of method

- (1) In section EX 62(1), “subsections (2) to (8)” is replaced by “subsections (2) to **(9)**”. 20
- (2) After section EX 62(8), the following is added:
“Change to fair dividend rate method in return for 2008–09, 2009–10 tax year
- “(9) A person may change to the fair dividend rate method from the branch equivalent method or the accounting profits method in the person’s return of income for— 25
- “(a) the 2008–09 tax year, if the person has not furnished a return for that tax year before the date on which the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2009** receives the Royal assent; or 30
- “(b) the 2009–10 tax year, if the person has furnished a return for the 2008–09 tax year before the date on which that Act receives the Royal assent.”
- (3) In section EX 62, in the list of defined terms, “return”, “return of income”, and “tax year” are inserted. 35

139C Changes in application of FIF exemptions

- (1) In section EX 65(1)(b)(i), “sections EX 34 to EX 43” is replaced by “sections EX 31 to EX 43”.
- (2) In section EX 65(5)(b)(i), “sections EX 34 to EX 43” is replaced by “sections EX 31 to EX 43”. 5
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

139D New section EX 66B inserted

- (1) After section EX 66, the following is inserted:

“EX 66B Entities ceasing to be FIFs 10

“When this section applies

- “(1) This section applies when a person holds rights that cease to be an attributing interest in a FIF because an entity ceases to be a FIF.

“Treatment as sale and repurchase 15

- “(2) The person is treated as having,—

“(a) immediately before the change, disposed of the interest to an unrelated person; and

“(b) immediately after the change, repurchased the interest; and 20

“(c) received for the sale and paid for the repurchase an amount equal to the market value of the interest at the end of the business day on which the change occurred.

“Calculation of reduction in FIF income or loss

- “(3) If the change occurs during an accounting period of the FIF and the person uses the accounting profits method or branch equivalent method to calculate FIF income or FIF loss from the rights for that period, section EX 24 does not apply and the FIF income or FIF loss is reduced by subtracting the amount calculated using the formula— 25 30

$$\text{FIF income or loss} \times \frac{\text{days before change}}{\text{days in period.}}$$

“Definition of items in formula

- “(4) In the formula,—

- “(a) **FIF income or loss** is the FIF income or FIF loss of the person from the rights for the period before allowing for the reduction:
- “(b) **days before change** is the number of complete days in the period before the change occurs: 5
- “(c) **days in period** is the number of days in the period.
- “Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, FIF, FIF income, FIF loss, market value, pay”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 10
- 140 Sections EY 1 to EY 5 replaced**
- (1) Sections EY 1 to EY 5 are replaced by the following:
- ~~EY 1~~ What this subpart does**
- “Two bases”* 15
- ~~“(1)~~ This subpart provides for the taxation of life insurers on 2 separate bases; the policyholder base and the shareholder base. **Sections EY 2 and EY 3** describe the apportionment of income, expenditure, or loss to the 2 bases. **Section LA 8B** (General rules particular to life insurers) provides some general rules for tax credits relating to the 2 bases. Also, Parts L and O include tax credit rules and memorandum account rules specific to the 2 bases. 20
- “Counting once”*
- ~~“(2)”~~ Income, expenditure, or loss must be apportioned to either the policyholder base or the shareholder base. There is no double-counting. 25
- ~~“Defined in this Act: income, life insurer, memorandum account, tax credit~~
- ~~EY 2~~ Policyholder base**
- “Policyholder base gross income”* 30
- ~~“(1)”~~ A life insurer derives policyholder base gross income,—
- ~~“(a)”~~ for savings product policies that are not profit participation policies, under **section EY 15**;
- ~~“(b)”~~ for profit participation policies, under **section EY 17**;
- ~~“(c)”~~ under **section EY 27(4)**. 35

“Policyholder base gross expenditure or loss

- “(2) A life insurer incurs policyholder base gross expenditure or loss,—
- “(a) for savings product policies that are not profit participation policies; under **section EY 16**: 5
 - “(b) for profit participation policies; under **section EY 18**:
 - “(c) under **section EY 27(4)**:
 - “(d) under **section EZ 62** (Allowance of cancelled amount: spreading):
 - “(e) under **section LE 2B** (Use of remaining credits by life insurer on policyholder base): 10

“Schedular policyholder base income

- “(3) A life insurer’s **schedular policyholder base income** is the amount given by subtracting their policyholder base gross expenditure or loss for an income year, and any amount carried forward to the income year under **subsection (5)**; from their policyholder base gross income for the income year. 15

“Cap on subtracting: ring fencing policyholder base gross expenditure or loss

- “(4) Despite **subsection (3)**, the total amount that is subtracted under **subsection (3)**, including an amount carried forward to the current year under **subsection (5)**, is no more than the amount of the life insurer’s policyholder base gross income for the income year. 20

“Excess allocations: carrying forward and re-instating next year 25

- “(5) Any excess not able to be subtracted in the current year because of **subsection (4)** is treated as—
- “(a) policyholder base gross expenditure or loss for the next income year; and 30
 - “(b) carried forward to the next income year.

“Exception

- “(6) **Subsections (3) to (5)** do not apply to a life insurer’s policyholder base gross income, or expenditure or loss to the extent

to which the income, or expenditure or loss relates to a life fund PIE that is a multi-rate PIE.

“Defined in this Act: income year; life fund PIE; life insurance; life insurer; multi-rate PIE; policyholder base gross expenditure or loss; policyholder base gross income; savings product policy; schedular policyholder base income 5

“EY 3 Shareholder base

“Shareholder base gross income

- “(1) A life insurer derives shareholder base gross income,—
- “(a) for policies that are not profit participation policies; under **section EY 19**: *see also subsection (3)*; for reserves: 10
 - “(b) for profit participation policies; under **sections EY 21 and EY 28**:
 - “(c) for annuities; under **section EY 30**:

“Shareholder base gross expenditure or loss 15

- “(2) A life insurer incurs shareholder base gross expenditure or loss,—
- “(a) for policies that are not profit participation policies; under **section EY 20**: *see also subsection (3)*; for reserves: 20
 - “(b) for profit participation policies; under **section EY 22**:
 - “(c) for the period and policies described in **section EY 29**; under that section:
 - “(d) for annuities; under **section EY 30**:

“Reserves 25

- “(3) Under **sections EY 23 to EY 27**, a life insurer calculates reserving amounts for life insurance policies; other than annuities; that have a life risk component and are not profit participation policies. The reserving amounts may be shareholder base gross income derived; or expenditure or loss incurred; as 30 provided by the relevant section:

“Defined in this Act: life insurance; life insurer; profit participation policy; shareholder base; shareholder base gross expenditure or loss; shareholder base gross income

“EY 4 Apportionment of income of particular source or nature, and of tax credits

“Default basis

“(1) For each class of life insurance policies, income of a particular source or nature, and tax credits received, are apportioned 5
between the policyholder base and shareholder base—

“(a) in the same proportion as the policyholder base gross income relating to the particular source, nature or credits bears to the life insurer’s total gross gains relating to the particular source, nature, or credits, in the case of 10
the policyholder base:

“(b) in the same proportion as the shareholder base gross income relating to the particular source, nature, or credits bears to the life insurer’s total gross gains relating to the particular source, nature, or credits, in the case of 15
the shareholder base:

“More equitable or reasonable basis

“(2) For a class of life insurance policies, the life insurer may use a basis of apportionment that is different from the one described in **subsection (1)**; if that basis is actuarially determined and 20
is more equitable and reasonable than the basis described in **subsection (1)**:

“Defined in this Act: actuarially determined; life insurance policy; policyholder base; shareholder base; shareholder base gross income; tax credit

“EY 1 What this subpart does 25

“Two bases

“(1) This subpart provides for the taxation of life insurers on 2 separate bases, the policyholder base and the shareholder base. Sections EY 2 and EY 3 describe the general apportionment of income and deductions between the 2 bases under this Part. 30
Section LA 8B (General rules particular to life insurers) provides some general rules for tax credits relating to the 2 bases. Parts L and O include tax credit rules and memorandum account rules specific to the 2 bases.

“Schedular policyholder base income and PIE schedular income

“(2) **Section EY 2** uses the assessable income in a life insurer’s policyholder base income, and the life insurer’s policyholder base allowable deductions, to calculate their schedular policyholder base income. A life insurer’s schedular income derived by their life fund PIE that is a multi-rate PIE is excluded from their schedular policyholder base income, along with deductions for that income. 5

“Counting once

“(3) Income and deductions must be apportioned to either the policyholder base or the shareholder base. There is no double-counting. 10

“Defined in this Act: assessable income, deduction, income, life fund PIE, life insurance, life insurer, life reinsurance, memorandum account, multi-rate PIE, policyholder base, policyholder base income, schedular policyholder base income, shareholder base, tax credit 15

“EY 2 Policyholder base

“Policyholder base income

“(1) A life insurer has policyholder base income,— 20

- “(a) for savings product policies that are not profit participation policies, under **section EY 15**;
- “(b) for profit participation policies, under **section EY 17**;
- “(c) under **section EY 27(4)**.

“Policyholder base allowable deductions

“(2) A life insurer has policyholder base allowable deductions,— 25

- “(a) for savings product policies that are not profit participation policies, under **section EY 16**;
- “(b) for profit participation policies, under **section EY 18**;
- “(c) under **section EY 27(4)**; 30
- “(d) under **section EZ 61** (Allowance for cancelled amount: spreading);
- “(e) under **section LE 2B** (Use of remaining credits by life insurer on policyholder base).

“Schedular policyholder base income

“(3) A life insurer’s **schedular policyholder base income** is the amount given by subtracting their policyholder base allowable deductions for an income year, and any amount carried forward to the income year under **subsection (5)**, from the assessable income in their policyholder base income for the income year. 5

“Cap on subtracting: ring-fencing policyholder base allowable deductions

“(4) Despite **subsection (3)**, the total amount that is subtracted under **subsection (3)**, including an amount carried forward to the current year under **subsection (5)**, is no more than the amount of the assessable income in the life insurer’s policyholder base income for the income year. 10

“Excess allocations: carrying forward and re-instating next year 15

“(5) Any excess not able to be subtracted in the current year because of **subsection (4)** is carried forward to the next income year.

“Exception 20

“(6) Despite **subsections (3) to (5)** a life insurer’s schedular income derived by their life fund PIE that is a multi-rate PIE is excluded from their schedular policyholder base income, along with deductions for that income.

“Defined in this Act: amount, income year, life fund PIE, life insurance, life insurer, multi-rate PIE, policyholder base allowable deduction, policyholder base income, profit participation policy, savings product policy, schedular income, schedular policyholder base income 25

“EY 3 Shareholder base

“Shareholder base income 30

“(1) A life insurer has shareholder base income,—

“(a) for policies that are not profit participation policies, under **section EY 19**: see also **subsection (3)**, for reserves:

“(b) for profit participation policies, under **sections EY 21, EY 28, and EY 29**: 35

- “(c) for annuities, under **section EY 30**.
- “*Shareholder base allowable deductions*
- “(2) A life insurer has shareholder base allowable deductions,—
- “(a) for policies that are not profit participation policies, under **section EY 20**: *see also subsection (3)*, for reserves: 5
- “(b) for profit participation policies, under **sections EY 22 and EY 28**:
- “(c) for the period and policies described in **section EY 30**, under that section: 10
- “(d) for annuities, under **section EY 31**.
- “*Reserves*
- “(3) Under **sections EY 23 to EY 27**, a life insurer calculates reserving amounts for life insurance policies, other than annuities, that have a life risk component and are not profit participation policies. A reserving amount may be income included in their shareholder base income, or a deduction that is included in their shareholder base allowable deduction, as provided by the relevant sections. 15
- “Defined in this Act: assessable income, deduction, life insurance, life insurer, life risk, profit participation policy, shareholder base allowable deduction, shareholder base income 20
- “**EY 4 Apportionment of income of particular source or nature, and of tax credits**
- “*Default basis* 25
- “(1) For a class of policies, income of a particular source or nature, and tax credits received, are apportioned between the policyholder base and shareholder base—
- “(a) in the same proportion as the policyholder base income relating to the particular source, nature, or credits bears to the life insurer’s total gross gains relating to the particular source, nature, or credits, in the case of the policyholder base: 30
- “(b) in the same proportion as the shareholder base income relating to the particular source, nature, or credits bears to the life insurer’s total gross gains relating to the par- 35

tical source, nature, or credits, in the case of the shareholder base.

“More equitable or reasonable basis

- “(2) For a class of policies, the life insurer may use a basis of apportionment that is different from the basis described in **subsection (1)**, if that basis results in an amount, actuarially determined, that is more equitable and reasonable than an amount determined using the basis described in **subsection (1)**. 5

“Defined in this Act: actuarially determined, class of policies, income, life insurer, policyholder base, policyholder base income, shareholder base, shareholder base income, tax credit 10

“EY 5 Part-year tax calculations

“Part-year tax calculations

- “(1) For their life insurance and for their general insurance contracts outstanding claims reserve, a life insurer does part-year tax calculations, described in **subsection (2)**, if they do not have an early life regime application day and 1 July 2010 is not the first day of their income year. 15

“First year part-year calculations: description

- “(2) For calculating their income tax liability for the income year that includes 1 July 2010, where 1 July 2010 is not the first day of the income year, the life insurer treats references, in the new life insurance rules and in the rules they replace, to an income year as if they are references to 2 separate income years (the **part-years**) within the first income year, divided by 1 July 2010 (for example: a rule to calculate an amount of policyholder income for an income year under the replaced rules means the calculation is done for the relevant part-year before 1 July 2010. A rule to calculate an opening reserve amount under **sections EY 23 to EY 27** at the beginning of an income year under the new rules means the calculation is done on 1 July 2010, at the beginning of the relevant part-year). 20 25 30

“First year part-year calculations: effect

- “(3) The part-year calculations may give rise to income and deductions for the income year, but they do not create any part-year 35

tax return obligations. The 2 part-year calculations compose 1 income tax liability for 1 income year.

“Part-year calculations for transfers

- “(4) Where a life insurer (the **transferor**) transfers life insurance business to another life insurer (the **transferee**), the transferor does a part-year calculation, as described in **subsection (2)**, for each class of policy in the transferred business, but only for their part-year ending on the day the transfer occurs. The transferee also does a part-year calculation for the transferred policies, as described in **subsection (2)**, but only for their part-year starting on the day the transfer occurs. The transferee’s relevant opening part-year reserve amounts under **sections EY 23 to EY 27** equal the transferor’s relevant closing part-year reserve amounts .

“Part-year calculations for transfers: effect

- “(5) Transferor’s and transferee’s part-year calculations may give rise to income and deductions for the income year, but they do not create any part-year tax return obligations.

“Part-year calculations for transfers: adjustments

- “(6) If life reinsurance, associated with a class of policies transferred, is assigned by the transferor to the transferee, then the transferor’s relevant closing part-year reserve amounts and the transferee’s relevant opening part-year reserve amounts are adjusted, by adding the life reinsurance’s value to the transferee’s opening, and subtracting it from the transferor’s closing.

“Part-year calculations : end of transitional adjustments

- “(7) Where, for relevant life insurance policies, the life insurer has a relevant period under **section EY 30(5)** that ends on 30 June 2015, and 1 July 2015 is not the first day of their income year, the life insurer does part-year tax calculations for the income year that includes 1 July 2015, as described in **subsection (2)**, for the policies, but the income year is divided by 1 July

2015. The effect of the part-year calculations is described in **subsection (3)**.

“Defined in this Act: amount, class of policies, deduction, early life regime application day, income, income tax liability, income year, life insurance, life insurance policies, life insurer, life reinsurance”.

5

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

10

141 Section EY 6 replaced

15

(1) Section EY 6 is replaced by the following:

“EY 6 Actuarial advice and guidance

“ The Commissioner may seek the advice of the Government Actuary or any other actuary on any matter that is required to be actuarially determined, or any related matter.

20

— The Commissioner may seek the advice of the Government Actuary or any other actuary on anything that is required to be actuarially determined, or any related matter.

“Defined in this Act: actuarially determined, actuary, Commissioner”.

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

30

141B Meaning of claim

(1) In section EY 7(1)(b), “includes” is replaced by “excludes”.

35

- (2) **Subsection (1)** applies—
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5
- 141C Superannuation schemes providing life insurance**
- (1) In section EY 11(7), “contributions” is replaced by “superannuation contributions” in both places where it appears. 10
- (2) In section EY 11(11), “contributions” is replaced by “superannuation contributions” in both places where it appears.
- (3) In section EY 11, in the list of defined terms, “superannuation contribution” is inserted.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 15
- 142 Meaning of life reinsurance**
- (1) Section EY 12(1) is replaced by the following:
- “*Meaning*
- “(1) **Life reinsurance**— 20
- “(a) means a contract of insurance between a life insurer and another person (**person C**) under which the life insurer is secured, fully or partially, against a risk by person C:
- “(b) does not include a contract that—
- “(i) secures against financial risk unless, in the contract, it is incidental to securing against life risk: 25
- “(ii) is, or is part of, a tax avoidance arrangement.
- “‘*Fully*’ and ‘*partially*’
- “(1B) The words ‘fully’ and ‘partially’ describe the extent to which the life insurer is secured against life risk; they do not describe the term for which the reinsurance is provided.” 30
- (2) Section EY 12(4) is replaced by the following:
- “*Exclusion: general insurance*
- “(4) To the extent to which insurance secures a life insurer against liability that arises from insurable events other than death or 35

survival of a human being, that insurance is not life reinsurance.

“Other definitions

“(5) In this Act,—

“**life financial reinsurance** is a contract that may be life reinsurance under **section EY 12(1)(a)**, but is not included under **section EY 12(1)(b)**

“**financial risk**—

“(a) means risk, whether or not specific to a party to the relevant arrangement relating to risk, that is contingent on a valuation or disposal of financial arrangements, or contingent on profitability or creditworthiness, or contingent on a variable such as future expenditure:

“(b) does not include life risk

“**life reinsurer** means a person in the position of person C.

“Relationship with subject matter

“(5) ~~**Section EZ 63** (Reinsurance transition: life financial reinsurance may be life reinsurance) overrides this section.~~

“(6) **Section EZ 62** (Reinsurance transition: life financial reinsurance may be life reinsurance) overrides this section.”

(3) ~~In section EY 12, in the list of defined terms, “life financial reinsurance” and “financial risk” are inserted.~~

(4) ~~**Subsections (1) to (3)** apply for income years beginning on and after 1 April 2009.~~

(3) In section EY 12, in the list of defined terms, “financial risk” and “life financial reinsurance” are inserted.

(4) **Subsections (1) and (2)** apply—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

143 Section EY 15 to EY 47 replaced

(1) Sections EY 15 to EY 47 are replaced by the following:

“Policyholder base***“Non-participation policies*****“EY 15 Policyholder base income: non-participation policies*****“What is included***

“(1) For an income year, subject to **subsection (2)**, a life insurer has **policyholder base gross income** equal to income they derive that,= 5

“(a) does not relate to life risk; and

“(b) does not relate to policies that are profit participation policies; and 10

“(c) is accounted for by the life insurer, in accordance with generally accepted accounting practice, as investment income relating to a savings product policy that is not an annuity.

“Certain income: basis of apportionment 15

“(2) Despite **subsection (1)**, if an amount of investment income meets the requirements of **subsection (1)(a) to (c)**, but may also be shareholder base gross income under **section EY 19**; ignoring **section EY 19(2)(e)**, then the investment income is only accounted for as **policyholder base gross income** to the extent provided by the formula= 20

$$\text{income} \times \frac{\text{average surrender value}}{\text{average savings assets:}}$$

“Definition of items in formula

“(3) In the formula,=

“(a) **income** is the income described in **subsection (2)**;

“(b) **average surrender value** is, for the savings product policies to which the income relates, the average surrender value of the policies for the income year: 25

“(c) **average savings assets** is, for the savings product policies to which the income relates, the average market value of assets held by the life insurer for the policies for the income year. 30

“More equitable or reasonable basis

- “(4) For income described in **subsection (2)**, the life insurer may use a basis of apportionment that is different from the one described in **subsections (2) and (3)**, if that basis is actuarially determined and is more equitable and reasonable than the basis described in **subsections (2) and (3)**:

“Defined in this Act: generally accepted accounting practice; income year; life insurer; policyholder base gross income; profit participation policy; savings product policy; shareholder base gross income; surrender value

“EY 16 Policyholder base gross expenditure or loss: non-participation policies

For an income year, a life insurer has **policyholder base gross expenditure or loss** to the extent to which they incur expenditure or loss in deriving their policyholder base gross income under **section EY 15**:

“Defined in this Act: policyholder base gross expenditure or loss; policyholder base gross income

“Profit participation policies

“EY 17 Policyholder base gross income: profit participation policies

“What is included

- “(1) For an income year, a life insurer has **policyholder base gross income** to the extent to which they have an amount for profit participation policies calculated using the formula—

$$\text{asset base gross income} \times \frac{(\uparrow + \text{liabilities proportion} \times \text{gate})}{(\uparrow + \text{gate})}$$

“Definition of items in formula

- “(2) In the formula,—
- “(a) **asset base gross income** is the amount of annual gross income that the life insurer would have for the policies² asset base, if the life insurer is treated as having no assets other than the asset base, and amounts under **section EY 28** are ignored:

“(b) **liabilities proportion** is the proportion of the policies² asset base that is attributed to policy liabilities; using an average of policy liabilities over the income year; and an average of the asset base’s value over the year:

“(c) **gate** is the proportion of a policyholder’s share of profits from the asset base that is used in the formula that calculates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base; as described in the definition of **profit participation policy**. 5

“Defined in this Act: amount; annual gross income; asset base; income year; life insurer; policy liabilities; policyholder base gross income; profit participation policy 10

“**EY 18 Policyholder base gross expenditure or loss: profit participation policies**

For an income year, a life insurer has **policyholder base gross expenditure or loss** to the extent to which, for profit participation policies, they would have expenditure or loss under **section EY 17**; treating the item **asset base gross income** as being the annual total deduction for the policies² asset base; if the life insurer is treated as having no assets other than the asset base. 15 20

“Defined in this Act: amount; annual total deduction; asset base; income year; life insurer; policyholder base gross expenditure or loss; profit participation policy

“*Shareholder base*

“*Non-participation policies* 25

“**EY 19 Shareholder base gross income: non-participation policies**

“*What this section applies to*

“(1) This section applies to amounts derived by a life insurer to the extent to which the amounts do not relate to profit participation policies. 30

“*Income*

“(2) For an income year, a life insurer has **shareholder base gross income** equal to—

- “(a) an amount of income they derive, to the extent to which the income—
 - “(i) relates to life risk, other than for annuities; and
 - “(ii) is not described in **paragraphs (b) to (e)**:
- “(b) the life risk component of premiums they derive: 5
- “(c) fees and commissions they derive:
- “(d) life reinsurance claims they derive:
- “(e) investment income they derive that is not accounted for as policyholder base gross income under **section EY 15(2)**: 10
- “(f) income not otherwise accounted for in this subpart, for the income year.

“Defined in this Act: income year; life reinsurance; policyholder base gross income; profit participation policy; shareholder base gross income

“EY 20 Shareholder base gross expenditure or loss: non-participation policies 15

“What this section applies to

- “(1) This section applies to amounts incurred by a life insurer to the extent to which the amounts do not relate to profit participation policies: 20

“Expenditure or loss

- “(2) For an income year, a life insurer has **shareholder base expenditure or loss** equal to—
 - “(a) an amount of expenditure or loss they incur, to the extent to which the expenditure or loss— 25
 - “(i) relates to life risk, other than for annuities; and
 - “(ii) is not described in **paragraphs (b) to (e)**:
 - “(b) the life risk component of claims they incur:
 - “(c) fees and commissions they incur:
 - “(d) life reinsurance premiums they incur: 30
 - “(e) expenditure or loss to the extent to which it is incurred in deriving shareholder base gross income described in **section EY 19(2)(e)**:
 - “(f) expenditure or loss not otherwise accounted for in this subpart, for the year. 35

“Defined in this Act: income year; life reinsurance; profit participation policy; shareholder base gross expenditure or loss; shareholder base gross income

“Profit participation policies

“EY 21 Shareholder base gross income: profit participation policies

“What is included

- “(1) For an income year, a life insurer has **shareholder base gross income** to the extent to which they have an amount for profit participation policies calculated using the formula—

$$\frac{\text{adjusted asset base gross income} \times (\text{1} - \text{liabilities proportion}) \times \text{gate}}{(\text{1} + \text{gate})}.$$

“Definition of items in formula

- “(2) In the formula,—

- “(a) **adjusted asset base gross income** is the amount of annual gross income that the life insurer would have for the profit participation policies’ asset base; if the life insurer is treated as having no assets other than the asset base, section CX 55 (Proceeds from certain disposals by portfolio investment entities; New Zealand Superannuation Fund; or life insurers) is ignored; and amounts under **section EY 28** are ignored: 10
- “(b) **liabilities proportion** is the proportion of the profit participation policies’ asset base that is attributed to policy liabilities; using an average of policy liabilities over the income year; and an average of the asset base’s value over the year: 15 20
- “(c) **gate** is the proportion of a policyholder’s share of profits from the asset base that is used in the formula that calculates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base; as described in the definition of **profit participation policy**: 25

“Defined in this Act: amount; annual gross income; asset base; income year; life insurer; policy liabilities; profit participation policy; shareholder base gross income

30

“EY 22 Shareholder base gross expenditure or loss: profit participation policies

For an income year, a life insurer has **shareholder base gross expenditure or loss** to the extent to which, for profit participation policies, they would have expenditure or loss under **section EY 21**; treating the item **adjusted asset base gross income** as being the annual total deduction for the policies’ asset base, if the life insurer is treated as having no assets other than the asset base, and section DB 23 (Cost of revenue account property) is ignored. 5 10

“Defined in this Act: amount; annual total deduction; asset base; income year; life insurer; profit participation policy; shareholder base gross expenditure or loss

“Reserves: non-participation policies

“EY 23 Reserving amounts for life insurers: non-participation policies 15

“Reserves

“(1) As provided by **subsection (3); sections EY 24 to EY 27** apply to calculate a life insurer’s reserving amounts for life insurance policies, other than annuities, that have a risk component and that are not profit participation policies. 20

“Actuarial determination

“(2) All reserving amounts must be actuarially determined, for each class of policies.

“Positive and negative amounts: shareholder base gross income, or expenditure or loss 25

“(3) If a reserving amount calculated under **sections EY 24 to EY 27** is a positive amount, the life insurer has that amount of shareholder base gross income, treated as derived. If a reserving amount calculated under **sections EY 24 to EY 27** is a negative amount, the life insurer has that amount of shareholder base gross expenditure or loss, treated as incurred in deriving shareholder base gross income. 30

“Which reserve can be used when?

“(4) For an income year, for a relevant class of policies, a life insurer has a reserving amount under— 35

“(a) **section EY 24**, for outstanding claims reserves (the **outstanding claims reserving amount**):

“(b) **section EY 25**, for premium smoothing reserves (the **premium smoothing reserving amount**) if, for the relevant policies, the insurer chooses to calculate a premium smoothing reserving amount and for a period that begins, continues or ends in the income year (the **PSR period**),—

“(i) the premium payable is level or substantially level; or

“(ii) a material mismatch occurs between the life risk component and the amount of premium payable:

“(c) **section EY 26**, for unearned premium reserves (the **unearned premium reserving amount**) if, for the relevant class of policies, the life insurer chooses to not calculate a premium smoothing reserving amount:

“(d) **section EY 27**, for capital guarantee reserves (the **capital guarantee reserving amount**):

“*Choice*

“(5) Despite **subsection (4)(b) and (c)**, a life insurer may not change between calculating a premium smoothing reserving amount and an unearned premium reserving amount for a class of policies once a choice has been made as to which reserving amount will be used for the class of policies. If an individual policy of a class does not meet the relevant requirements described in **subsection (4)(b)(i) and (ii)**, then a life insurer has an unearned premium reserving amount:

“Defined in this Act: actuarially determined; amount; income year; life insurance policy; life insurer; life risk; profit participation policy; shareholder base gross expenditure or loss; shareholder base gross income

“**EY 24 Outstanding claims reserving amount: non-participation policies not annuities**

“*Calculation of reserving amount*

“(1) For an income year (the **current year**), a life insurer has, in the circumstances described in **section EY 23(4)(a)**, a reserving amount for each class of policies calculated using the formula—

opening outstanding claims reserve
– closing outstanding claims reserve.

“Definition of items in formula in subsection (1)”

“(2) In the formula in **subsection (1)**,—

“(a) **opening outstanding claims reserve** is—

“(i) the amount of the life insurer’s closing outstanding claims reserve for the class of policies; for the 5
income year before the current year; or

“(ii) the amount of the life insurer’s outstanding claims reserve calculated under **subsections (3) and (4)** for the class of policies and the beginning of the current year; if the life insurer 10
has no closing outstanding claims reserve for the income year before the current year:

“(b) **closing outstanding claims reserve** is the amount of the life insurer’s outstanding claims reserve calculated under **subsections (3) and (4)** for the class of policies 15
and the end of the current year.

“Outstanding claims reserve calculation

“(3) A life insurer’s outstanding claims reserve is calculated for the relevant policies using the formula—

life risk claims incurred + life risk claims reported + risk margin:

“Definition of items in formula in subsection (3)” 20

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

“(a) **life risk claims incurred** is the total of the present values of the life risk component of claims that have occurred prior to the end of the income year but were not reported to the life insurer for that year. The life 25
risk component must take into account the probability of the claims being paid; and future expenses for administering the claims; but the present values of relevant life reinsurance claims must be subtracted from the total:

“(b) **life risk claims reported** is the total of the present 30
values of the life risk component of claims reported but not yet paid. The life risk component must take into account the probability of the claims being paid; and fu-

ture expenses for administering the claims; but the present values of relevant life reinsurance claims must be subtracted from the total:

- “(c) **risk margin** is the total appropriate margin for the life risk component of claims described in **paragraph (a) or (b)**; to the extent to which the margin is actuarially determined; reflects the inherent uncertainty in the relevant best estimate assumptions; and is not already included in the life risk component of the claims: 5

“Defined in this Act: amount; best estimate assumptions; income year; life insurer; life reinsurance; life risk; present value 10

“EY 25 Premium smoothing reserving amount: non-participation policies not annuities

“Calculation of reserving amount

- “(1) For an income year (the **current year**); a life insurer has, in the PSR period described in **section EY 23(4)(b)**; a reserving amount for a class of policies calculated using the following formula: 15

opening premium smoothing reserve — closing premium
smoothing reserve:

“Definition of items in formula in subsection (1)

- “(2) In the formula in **subsection (1)**,— 20

“(a) **opening premium smoothing reserve** is—

“(i) the amount of the life insurer’s closing premium smoothing reserve for the class of policies; for the income year (the **prior year**) before the current year; or 25

“(ii) the amount of the life insurer’s premium smoothing reserve calculated under **subsections (3) to (6)** for the class of policies; calculated at the beginning of the current year; if the insurer has no closing outstanding premium smoothing reserve for the prior year: 30

“(b) **closing premium smoothing reserve** is the amount of the life insurer’s premium smoothing reserve calculated

under **subsections (3) to (6)** for the class of policies, calculated at the start of the year.

“Premium smoothing reserve calculation

“(3) A life insurer’s premium smoothing reserve is calculated using the formula—

5

future life risk claims + future costs + (future profit carrier
× profit margin) – future life risk premiums.

“Definition of items in formula in subsection (3)

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

“(a) **future life risk claims** is the total of the present values of the future life risk component of claims for the relevant policies’ PSR period described in **section EY 23(4)(b)**: The future life risk component must take into account the probability of claim, and the probability of the relevant policies being in force, but the present values of relevant future life reinsurance claims must be subtracted from the total:

10

15

“(b) **future costs** is the total of the present values of the costs of administration and claims management for the future life risk component of claims:

“(c) **future profit carrier** is the insurer’s choice of either the future life risk component of claims or future life risk component of premiums for the relevant policies’ PSR period described in **section EY 23(4)(b)**, but calculating the relevant future life risk component by not subtracting any amount on account of life reinsurance. The choice between claims or premiums must be made on the basis that the use of the chosen profit carrier gives a reasonable match between emerging profits and services provided by the life insurer:

20

25

“(d) **profit margin** is the amount calculated under **subsection (5)**:

30

“(e) **future life risk premiums** is the total of present values of the future life risk component of premiums for the relevant policies’ PSR period described in **section EY 23(4)(b)**: The future life risk component must take into account the probability of the relevant policies being

35

in force, but the present values of relevant future life reinsurance premiums must be subtracted from the total:

“Profit margin

- “(5) For the purposes of the item **profit margin** in **subsection (4)**, an amount is calculated for the relevant policies using the following formula, using the method described in **subsection (8)**, and adjusted for the spreading requirement in **subsection (9)**:

$$\frac{\text{future life risk premiums} - \text{future life risk claims} - \text{future costs}}{\text{future profit carrier}}$$

future profit carrier.

“Definition of items in formula in subsection (5)

- “(6) In the formula in **subsection (5)**,—
- “(a) **future life risk premiums** is the item **future life risk premiums** in **subsection (4)(e)**:
- “(b) **future life risk claims** is the item **future life risk claims** in **subsection (4)(a)**:
- “(c) **future costs** is the item **future costs** in **subsection (4)(b)**:
- “(d) **future profit carrier** is whichever future profit carrier that the life insurer chooses under the item **future profit carrier** in **subsection (4)(c)**:

“Best estimate assumptions for PSR

- “(7) In actuarially determining an item described in **subsection (4)** for the formula in **subsection (3)**, the actuary must use best estimate assumptions. All possible policy discontinuances must be considered, and future costs must exclude the costs of acquiring policies:

“Best estimate assumptions for profit margin

- “(8) In actuarially determining an item described in **subsection (6)** for the formula in **subsection (5)**, the actuary must use—
- “(a) best estimate assumptions from the end of the prior year, if the item is being used for calculating the item **closing premium smoothing reserve** in **subsection (2)**; and

a premium smoothing reserving amount was calculated in the prior year; or

- “(b) best estimate assumptions from the current year if the item is being used for calculating the item **closing premium smoothing reserve** in **subsection (2)**; and the relevant policy is first entered into in the current year; or no premium smoothing reserving amount was calculated in the prior year.

“Best estimate assumptions for profit margin: change

- “(9) The effect of a change in best estimate assumptions must be spread evenly over the remaining PSR period described in **section EY 23(4)(b)**; for the relevant policies:

“Special grouping rule for the purposes of best estimate assumptions

- “(10) For the purposes of determining best estimate assumptions and profit margins under this section, policies may be grouped together if the policies have in common,—

- “(a) substantially the same contractual terms and conditions, other than their PSR periods described in **section EY 23(4)(b)**; and

- “(b) substantially the same assumptions for pricing their life risk.

“Defined in this Act: actuarially determined; best estimate assumptions; life reinsurance; life risk; present value

“EY 26 Unearned premium reserving amount: non-participation policies not annuities

“Calculation of reserving amount

- “(1) For an income year (the **current year**), a life insurer has, in the circumstances described in **section EY 23(4)(c)**, a reserving amount for each class of policy calculated using the formula—

opening unearned premium reserve
– closing unearned premium reserve:

“Definition of items in formula

- “(2) In the formula,—

- “(a) **opening unearned premium reserve** is—

- “(i) the amount of the life insurer’s closing unearned premium reserve for the class of policies; for the income year before the current year; or
- “(ii) the amount of the life insurer’s unearned premium reserve under **subsection (3)** for the class of policies; calculated at the beginning of the current year, if the life insurer has no closing unearned premium reserve for the income year before the current year: 5
- “(b) **closing unearned premium reserve** is the amount of the life insurer’s unearned premium reserve under **subsection (3)** for the class of policies; calculated at the end of the current year: 10
- “Unearned premium reserve*
- “(3) A life insurer’s unearned premium reserve is the amount of the premium, for the relevant policies; that the life insurer accounts for in the current year or any prior year, to the extent to which the amount relates to life risk in income years after the current year, but subtracting relevant life reinsurance premiums: 15 20
- “Defined in this Act: amount; income year; life insurer; life reinsurance; life risk*
- “EY 27 Capital guarantee reserving amount: non-participation policies not annuities**
- “Calculation of reserving amount 25*
- “(1) For an income year (the **current year**); a life insurer has for each class of policies; in the circumstances described in **section EY 23(4)(d)**; a reserving amount calculated using the formula—
- opening capital guarantee reserve – closing capital guarantee reserve:
- “Definition of items in formula 30*
- “(2) In the formula,—
- “(a) **opening capital guarantee reserve** is—

- “(i) the amount of the life insurer’s closing capital guarantee reserve for the class of policies; for the income year before the current year; or
- “(ii) the amount of the life insurer’s capital guarantee reserve under **subsection (3)** for the class of policies; calculated at the beginning of the current year, if the life insurer has no closing capital guarantee reserve for the income year before the current year: 5
- “(b) **closing capital guarantee reserve** is the amount of the life insurer’s capital guarantee reserve under **subsection (3)** for the class of policies; calculated at the end of the current year: 10
- “Capital guarantee reserve*
- “(3) A life insurer’s capital guarantee reserve is the net amount of credits and debits on account of a risk-linked provision for future obligations in relation to a guarantee; for the class of policies; by the life insurer that capital invested will be returned or that a minimum return on capital will be paid: 15
- “Reflex in policyholder base* 20
- “(4) For the income year, if the reserving amount under this section is positive, the life insurer has that amount of policyholder base gross expenditure or loss. For the income year, if the reserving amount under this section is negative, the life insurer has that amount of policyholder base gross income: 25
- “Defined in this Act: amount, income year, life insurer, pay, policyholder base gross expenditure or loss, policyholder base gross income*
- “Shareholder base other profit: profit participation policies*
- “EY 28 Shareholder base other profit: profit participation policies** 30
- “Calculation of income*
- “(1) For an income year, a life insurer has **shareholder base gross income** to the extent to which they have an amount for profit participation policies calculated using the formula— 35

$$\text{other profit} \times \frac{\text{gate}}{(\text{1} + \text{gate})} - \text{previous negative amount.}$$

“Definition of items in formula in subsection (1)

“(2) In the formula in **subsection (1)**,—

“(a) **other profit** is the amount calculated for the income year under **subsections (5) to (14)**;

“(b) **gate** is the proportion of a policyholder’s share of profits from the asset base that is used in the formula that calculates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base, as described in the definition of **profit participation policy**;

“(c) **previous negative amount** is the amount from the previous year described in **subsections (3) and (4)**;

“Formula in subsection (1): negative amounts and positive amounts

“(3) If for an income year, the formula in **subsection (1)** calculates a positive amount, that amount is included in the life insurer’s shareholder base gross income, and if it is a negative amount, then that amount is not included in the life insurer’s shareholder base gross expenditure or loss, but see **subsection (4)**;

“Negative amounts: carry forward

“(4) The amount by which the amount calculated using the formula in **subsection (1)** for an income year is less than zero is carried forward to the next year, to be used under this section in the formula as the item **previous negative amount** in that next year.

“Other profit

“(5) For the purposes of the item **other profit** in **subsection (2)**, an amount is calculated for the income year (the **current year**) for profit participation policies using the formula—

$$\begin{aligned} &(\text{premiums} - \text{premiums estimate}) - (\text{claims} - \text{claims estimate}) \\ &- (\text{closing policy liabilities} - \text{estimated closing policy liabilities}). \end{aligned}$$

“Definition of items in formula in subsection (5)

“(6) In the formula in **subsection (5)**,—

“(a) **premiums** is the amount of premiums for policies for the current year, but subtracting relevant life reinsurance premiums: 5

“(b) **premiums estimate** is the total amount of valuation premiums described in **subsection (7)** that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that are in force at the start of the current year, or are first entered into in the current year, after subtracting relevant life reinsurance premiums: 10

“(c) **claims** is the amount of claims for the current year, but subtracting relevant life reinsurance claims:

“(d) **claims estimate** is the amount of claims that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that are in force at the start of the current year, or are first entered into in the current year, but ignoring surrenders and after subtracting relevant life reinsurance claims: 15 20

“(e) **closing policy liabilities** is the total amount of policy liabilities for policies determined at the end of the current year for vested benefits after the previous year’s bonus declaration:

“(f) **estimated closing policy liabilities** is the total estimated policy liabilities at the end of the current year for policies in force at the start of the current year and expected to be in force at the end of the current year, taking into account vested benefits after the previous year’s bonus. The estimated policy liabilities must not take into account any future bonus declarations, and must use best estimate assumptions: 25 30

“Definition of valuation premiums

“(7) In this section, **valuation premiums** means the amount of premiums payable for a policy, actuarially determined by reference to the premium formula used when the policy was first entered into; or, if the premium formula is unavailable, by reference to mortality, expense, and other assumptions applicable to premiums for similar policies at the start of the income year 35

beginning on or after 1 April 2009. The valuation premiums must not include any allowance for future bonus declarations or future shareholder profits.

“Valuation premiums: no unjustifiable change

- “(8) The amount of the valuation premium for a policy must not change, unless significant changes to the policy justify changing the valuation premium. 5

“Definition of policy liabilities

- “(9) In this section, and in **sections EY 17 and EY 21**, **policy liabilities** means, for a policy, an amount that is the present value of future mortality and maturity claims; plus the present value of future expenditure or loss plus the present value of future tax payments less the present value of future valuation premiums. The amount of policy liabilities must not include any allowance for surrenders or the payment of surrender values and relevant life reinsurance premiums and claims must be subtracted. 10 15

“Policy liabilities: minimum

- “(10) For the purposes of this section and of **sections EY 17 and EY 21**, the minimum amount of policy liabilities for a policy is the current surrender value of the policy. 20

“Best estimate assumptions for other profit

- “(11) In actuarially determining the items **premiums estimate** and **claims estimate** under **subsection (6)**, and **policy liabilities** for the purposes of this section, the actuary must use the same best estimate assumptions for each determination of policy liabilities. The actuary may choose start-of-year best estimate assumptions or end of year best estimate assumptions, but once a choice is made, it may not be changed. 25

“Defined in this Act: actuarially determined; amount; best estimate assumptions; income year; life insurance policy; life insurer; life reinsurance; present value; policy liabilities; profit participation policy; valuation premiums 30

“Transitional adjustments and annuities

“EY 29 Transitional adjustments: life risk

“When this section applies

- “(1) This section applies to a life insurance policy; other than an annuity; that is first entered into before 1 April 2009; and for which the life insurer has no policyholder base gross income; or expenditure or loss; if—
- “(a) the policy meets the relevant requirements for the relevant period described in **subsection (2)**; and
 - “(b) the amount of insurance cover does not increase for the relevant income year by more than the greater of—
 - “(i) 10% of the previous year’s insurance cover; and
 - “(ii) the percentage change in consumer price index for the previous income year.

“Requirements and periods for which this section applies

- “(2) This section applies to a policy to the extent to which; for the relevant period; it is described by the following requirements:
- “(a) for a life insurance policy for which only 1 premium is ever payable; or for which the rate of premiums payable is always the same amount and cannot be changed; the period that—
 - “(i) starts on the first day of the first income year beginning on or after 1 April 2009; and
 - “(ii) finishes on the day that the policy ceases to be in force;
 - “(b) for a life insurance policy for which the rate of premium is guaranteed for a continuous period (the **continuous guarantee period**) that begins before 1 April 2009; the period that—
 - “(i) starts on the first day of the first income year beginning on or after 1 April 2009; and
 - “(ii) ends on the later of the day that is the last day of the continuous guarantee period that begins before 1 April 2009 or whichever day described in **paragraph (c)(ii)** is relevant;
 - “(c) for a life insurance policy for which the premium may vary each year; the period that—

- “(i) starts on the first day of the first income year beginning on or after 1 April 2009; and
- “(ii) ends on the day that is 5 years after the first day of the first income year beginning on or after 1 April 2009, or the day that the policy expires, if earlier.

“When this section does not apply: once-only opt out

- “(3) This section does not apply to a class of policies after the life insurer irrevocably chooses in a notice received by the Commissioner that this section does not apply for the class.

“Adjustment

- “(4) For the income year, a life insurer has an amount of shareholder base gross expenditure or loss, treated as incurred in deriving their shareholder base gross income, calculated for the relevant class of policies using the formula—

$$\begin{aligned} & \text{premiums} - \text{total net reserving amounts} \\ & - (1.2 \times \text{expected death strain}). \end{aligned}$$

“Definition of items in formula

- “(5) In the formula,—

- “(a) **premiums** is the life insurer’s total premiums for the income year for the policies, but subtracting relevant life reinsurance premiums;
- “(b) **total net reserving amounts** is the total of reserving amounts for the income year under **sections EY 24 to EY 26**, but treating amounts that are shareholder base gross income as negative amounts, and amounts that are shareholder base gross expenditure or loss as positive amounts;
- “(c) **expected death strain** is the amount calculated under the expected death strain formula (life) in accordance with **sections EZ 53 to EZ 60** (which relate to the transitional adjustment for expected death strain) for the income year.

“Negative amounts

- “(6) If **subsection (4)** gives a negative amount for a policy, it is ignored for that policy.

“Defined in this Act: amount; Commissioner; income year; life insurer; shareholder base gross expenditure or loss; shareholder base gross income

5

“EY 30 Annuities

“When this section applies

- “(1) This section applies to a life insurance policy that is an annuity.

“Negative and positive amounts

- “(2) If the formula in **subsection (3)** gives a negative amount, the life insurer has that amount of shareholder base gross expenditure or loss, treated as incurred in deriving shareholder base gross income. If the formula in **subsection (3)** gives a positive amount, the life insurer has that amount of shareholder base income, treated as derived.

15

“Adjustment

- “(3) For the income year, a life insurer has an amount of shareholder base gross income, expenditure or loss calculated for the relevant annuities using the formula—

closing actuarial reserves – (0.99 × expected death strain);

“Definition of items in formula

20

- “(4) In the formula,—

“(a) **closing actuarial reserves** is the life insurer’s closing actuarial reserves (active annuities), calculated in accordance with **section EZ 59(2)** (Meaning of actuarial reserves);

25

“(b) **expected death strain** is the amount calculated under the expected death strain formula (active annuities) in accordance with **sections EZ 53 to EZ 60** (which relate to the transitional adjustment for expected death strain) for the income year.

30

“Defined in this Act: amount; income year; life insurer; shareholder base gross income or loss”.

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

143 Sections EY 15 to EY 47 replaced

(1) Sections EY 15 to EY 47 are replaced by the following:

“Policyholder base

5

“Non-participation policies

“EY 15 Policyholder base income: non-participation policies

“What is included

“(1) For an income year, a life insurer’s income is included as their policyholder base income if it relates to life insurance policies that are not profit participation policies, and it— 10

“(a) does not relate to life risk components of premiums and claims:

“(b) is investment income that—

“(i) is included in investment income gains or losses in the financial statements of the life insurer; and 15

“(ii) is not a premium; and

“(iii) is fairly attributable to savings products.

“Certain income: basis of apportionment

“(2) Despite **subsection (1)**, if an amount of investment income is included in a life insurer’s policyholder base income under **subsection (1)**, but may also be shareholder base income under **section EY 19**, ignoring **section EY 19(1)(d)**, then the investment income is included in policyholder base income to the extent provided by the formula— 20 25

$$\text{income} \times \frac{\text{average surrender value}}{\text{average savings assets.}}$$

“Definition of items in formula

“(3) In the formula,—

“(a) **income** is the income described in **subsection (2)**;

“(b) **average surrender value** is, for the savings product policies to which the income relates, the average surrender value of the policies for the income year. The 30

life insurer may determine an equitable and reasonable basis for the measurement of the average:

“(c) average savings assets is, for the savings product policies to which the income relates, the average market value of assets held by the life insurer for the policies for the income year. The life insurer may determine an equitable and reasonable basis for the measurement of the average.

“More equitable or reasonable basis of apportionment

“(4) Despite **subsections (2) and (3)**, for investment income described in **subsection (2)**, the life insurer may use a basis of apportionment that is different from the one described in **subsections (2) and (3)**, if that basis results in an amount, actuarially determined, that is more equitable and reasonable than an amount determined using the basis described in **subsections (2) and (3)**.

“Treatment of de minimis life risk component amounts

“(5) An amount of income in respect of a policy that, but for this subsection, is an amount related to the life risk of a premium or life reinsurance claim, is treated as not relating to the relevant life risk component for the purposes of **subsection (1)**, if—

“(a) the life insurer has actuarially determined that the life risk is 1% or less of the premium or life reinsurance claim; and

“(b) chooses to apply this subsection for the policy.

“Defined in this Act: actuarially determined, amount, claim, income, income year, life insurance policy, life insurer, life reinsurance, life risk, life risk component, market value, premium, policyholder base income, profit participation policy, savings product policy, shareholder base income, surrender value

“EY 16 Policyholder base allowable deductions: non-participation policies

“What is included

“(1) For an income year, a life insurer’s deduction that relates to life insurance policies that are not profit participation policies is included as their policyholder allowable deduction to the extent to which it is incurred in relation to their policyholder base income under **section EY 15**.

“Basis of apportionment

- “(2) Despite **subsection (1)**, if a deduction is included in a life insurer’s policyholder base income under **subsection (1)**, but may also be a shareholder base allowable deduction under **section EY 20**, ignoring **section EY 20(1)(d)**, the life insurer must use a basis of apportionment for the deduction which is—
- “(a) the same as in **section EY 15(2) and (3)** with necessary modifications; or
- “(b) is the same as in **section EY 15(4)** with necessary modifications.

“Defined in this Act: deduction, income year, life insurance policy, life insurer, policyholder base allowable deduction, policyholder base income, profit participation policy, shareholder base allowable deduction

“Profit participation policies

“EY 17 Policyholder base income: profit participation policies

“What is included

- “(1) For an income year, a life insurer has policyholder base income to the extent to which they have an amount for profit participation policies calculated using the formula—

$$\frac{\text{asset base gross income} \times (1 - \text{retained earnings average} - \text{future shareholder transfers average})}{\text{net transfers}}$$

“Definition of items in formula

- “(2) In the formula,—
- “(a) **asset base gross income** is the amount of annual gross income that the life insurer would have for the policies’ asset base, if—
- “(i) the life insurer is treated as having no assets other than the asset base; and
- “(ii) amounts under **sections EY 28 and EY 29** are ignored;
- “(b) **retained earnings average** is an actuarially determined amount that is the average of the following 2 proportions:
- “(i) the proportion of the value of the policies’ asset base that is attributable to the life insurer’s share-

- holders at the end of the year before the income year:
- “(ii) the proportion of the value of the policies’ asset base that is attributable to the life insurer’s shareholders at the end of the income year: 5
- “(c) **future shareholder transfers average** is an actuarially determined amount that is the average of the following 2 proportions:
- “(i) the proportion of the value of the policies’ asset base that is attributable to the present value (net) of future transfers to the life insurer’s shareholders for future bonus declarations that are able to be supported by the supporting asset base at the beginning of the income year: 10
- “(ii) the proportion of the value of the policies’ asset base that is attributable to the present value (net) of future transfers to the life insurer’s shareholders for future bonus declarations that are able to be supported by the supporting asset base at the end of the income year: 15 20
- “(d) **net transfers** is the amount transferred to the benefit of policyholders from shareholders in respect of participation policies.
- “Meaning of supporting asset base*
- “(3) **Supporting asset base** means the asset base for relevant policies excluding— 25
- “(a) policyholder unvested liabilities:
- “(b) the value of assets attributable to the life insurer’s shareholders.
- “Defined in this Act: actuarially determined, amount, annual gross income, asset base, income year, life insurer, policyholder base income, present value (net), profit participation policy, supporting asset base 30
- “EY 18 Policyholder base allowable deductions: profit participation policies**
- For an income year, a life insurer has policyholder base allowable deductions equal to the amount they would have, for profit 35

participation policies, under the formula in **section EY 17(1)**, if—

“(a) the life insurer is treated as having no assets other than the asset base; and

“(b) the item **asset base gross income** is treated as being the annual total deduction for the policies’ asset base. 5

“Defined in this Act: amount, annual total deduction, asset base, income year, life insurer, policyholder base allowable deduction, profit participation policy

“Shareholder base

“Non-participation policies

10

“EY 19 Shareholder base income: non-participation policies

“What is included

“(1) For an income year, a life insurer’s income is included as their shareholder base income if it relates to life insurance policies that are not profit participation policies, and it— 15

“(a) relates to life risk components of premiums and claims, other than for annuities, and is not described in **paragraphs (b) to (d)**;

“(b) relates to fees and commissions;

“(c) relates to the life risk component of life reinsurance claims; 20

“(d) is investment income that is not included as their policyholder base income under **section EY 15**;

“(e) is not otherwise accounted for in this subpart, for the income year. 25

“Treatment of de minimis life risk component amounts

“(2) An amount of income in respect of a policy that, but for this subsection, is an amount related to the life risk of a premium or life reinsurance claim, is treated as not relating to the life risk component for the purposes of **subsection (1)**, if— 30

“(a) the life insurer has actuarially determined that the life risk is 1% or less of the premium or life reinsurance claim; and

“(b) chooses to apply **section EY 15(5)** for the policy.

“No double-counting

“(3) If an amount is included as shareholder base income under **sections EY 23 to EY 29**, it is not included under this section.

“Defined in this Act: amount, actuarially determined, claim, income year, life insurer, life insurance policy, life reinsurance, life risk, life risk component, policyholder base income, premium, profit participation policy, shareholder base income

5

“**EY 20 Shareholder base allowable deductions: non-participation policies**

“What is included

10

“(1) For an income year, a life insurer’s deduction is included as their shareholder base allowable deduction if it relates to life insurance policies that are not profit participation policies, and it—

“(a) relates to life risk components of premiums and claims, other than for annuities, and is not described in **paragraphs (b) to (e)**:

15

“(b) relates to fees and commissions:

“(c) relates to the life risk component of life reinsurance premiums:

20

“(d) is a deduction in relation to investment income that is not included as their policyholder base allowable deduction under **section EY 16**:

“(e) is a premium payback amount, and—

“(i) **section EY 19** applies or has applied to include the original premium as shareholder base income; and

25

“(ii) **section EY 30(7)** does not apply or has not applied to calculate a transitional amount for the original premium:

30

“(f) is not otherwise accounted for in this subpart, for the income year.

“No double-counting

- “(2) If an amount is included as shareholder base allowable deduction under **sections EY 23 to EY 29**, it is not included under this section.

“Defined in this Act: amount, claim, deduction, income year, life insurer, life insurance policy, life reinsurance, life risk component, policyholder base allowable deduction, premium, premium payback amount, profit participation policy, shareholder base allowable deduction, shareholder base income 5

“Profit participation policies

“**EY 21 Shareholder base income: profit participation policies** 10

“What is included

- “(1) For an income year, a life insurer has shareholder base income to the extent to which they have an amount for profit participation policies calculated using the formula—

asset base gross income × (retained earnings average + future shareholder transfers average) – net transfers.

“Definition of items in formula

- “(2) In the formula,— 15

“(a) **asset base gross income** is the amount of annual gross income that the life insurer would have for the profit participation policies’ asset base, if—

“(i) the life insurer is treated as having no assets other than the asset base; and 20

“(ii) amounts under **sections EY 28 and EY 29** are ignored;

“(b) **retained earnings average** is an actuarially determined amount that is the average of the following 2 proportions: 25

“(i) the proportion of the value of the policies’ asset base that is attributable to the life insurer’s shareholders at the end of the year before the income year; 30

“(ii) the proportion of the value of the policies’ asset base that is attributable to the life insurer’s shareholders at the end of the income year;

“(c) **future shareholder transfers average** is an actuarially determined amount that is the average of the following 2 proportions:

“(i) the proportion of the value of the policies’ asset base that is attributable to the present value (net) of future transfers to the life insurer’s shareholders for future bonus declarations that are able to be supported by the supporting asset base at the beginning of the income year: 5

“(ii) the proportion of the value of the policies’ asset base that is attributable to the present value (net) of future transfers to the life insurer’s shareholders for future bonus declarations that are able to be supported by the supporting asset base at the end of the income year: 10 15

“(d) **net transfers** is the amount transferred to the benefit of policyholders from shareholders in respect of profit participation policies.

“Defined in this Act: actuarially determined, amount, annual gross income, asset base, income, income year, life insurer, present value (net), profit participation policy, shareholder base income, supporting asset base 20

“EY 22 Shareholder base allowable deductions: profit participation policies

For an income year, a life insurer has shareholder base allowable deductions equal to the amount they would have, for profit participation policies, under the formula in **section EY 21(1)** if— 25

“(a) the life insurer is treated as having no assets other than the asset base; and

“(b) the item **asset base gross income** is treated as being the annual total deduction for the policies’ asset base. 30

“Defined in this Act: amount, annual total deduction, asset base, income year, life insurer, profit participation policy, shareholder base allowable deduction

*“Non-participation policies: reserves***“EY 23 Reserving amounts for life insurers: non-participation policies***“Reserves*

“(1) Sections EY 24 to EY 27 apply to calculate a life insurer’s 5
reserving amounts for life insurance policies, other than annuities, that have a life risk component and that are not profit participation policies.

“Actuarial determination

“(2) All reserving amounts must be actuarially determined, for each 10
class of policies.

“Positive and negative amounts: shareholder base income or shareholder base allowable deduction

“(3) If a reserving amount calculated under sections EY 24 to 15
EY 27 is a positive amount, the life insurer has that amount as income included in their shareholder base income. If a reserving amount calculated under sections EY 24 to EY 27 is a negative amount, the life insurer has that amount as a deduction included in their shareholder base allowable deductions.

“Which reserve can be used when?

“(4) For an income year, for a relevant class of policies, a life insurer has a reserving amount described in— 20

“(a) section EY 24, for outstanding claims reserves (the outstanding claims reserving amount):

“(b) section EY 25, for premium smoothing reserves (the premium smoothing reserving amount) if the life insurer chooses to calculate a premium smoothing reserving amount and the PSR periods for policies in the class of policies begins, continues or ends in the income year: 25

“(c) section EY 26, for unearned premium reserves (the unearned premium reserving amount), if the life insurer chooses to not calculate a premium smoothing reserving amount: 30

“(d) section EY 27, for capital guarantee reserves (the capital guarantee reserving amount). 35

“Choice

“(5) Despite **subsection (4)(b) and (c)**, a life insurer may not change between calculating a premium smoothing reserving amount and an unearned premium reserving amount for a class of policies once a choice has been made as to which reserving amount will be used for the class of policies. If a policy in a class of policies does not meet the relevant requirements described in **subsection (6)**, then a life insurer has an unearned premium reserving amount for that class of policy. 5

“Meaning of PSR period

“(6) **PSR period** means, for a policy in the relevant class of policies, a period beginning, continuing or ending in the income year for which— 10

“(a) premiums payable are level or substantially level, and the period is 1 or more years; or 15

“(b) there is a material mismatch between the incidence of life risk components and the timing of premiums payable, and the period is 1 or more years.

“Defined in this Act: actuarially determined, amount, class of policies, deduction, income year, life insurance policy, life insurer, life risk, life risk component, premium, profit participation policy, PSR period, shareholder base allowable deduction, shareholder base income 20

“EY 24 Outstanding claims reserving amount: non-participation policies not annuities

“Calculation of reserving amount

“(1) For an income year (the **current year**), a life insurer has an outstanding claims reserving amount for a class of policies calculated using the formula— 25

$$\begin{array}{l} \text{opening outstanding claims reserve} \\ - \text{closing outstanding claims reserve.} \end{array}$$

“Definition of items in formula

“(2) In the formula in **subsection (1)**,— 30

“(a) **opening outstanding claims reserve** is—

“(i) the amount of the life insurer’s closing outstanding claims reserve for the class of policies, for the

- income year before the current year (the **prior year**); or
- “(ii) if the life insurer has no closing outstanding claims reserve for the prior year, the amount of the life insurer’s outstanding claims reserve under **subsections (3) and (4)** for the class of policies, calculated at the beginning of the current year, but excluding amounts that were included in the closing sum insured for the calculation of mortality profit for the prior year or an earlier income year: 5
- “(b) **closing outstanding claims reserve** is the amount of the life insurer’s outstanding claims reserve calculated under **subsections (3) and (4)** for the class of policies at the end of the current year. 10 15
- “*Outstanding claims reserve calculation*
- “(3) A life insurer’s outstanding claims reserve is calculated for the relevant policies using the formula—
- life risk claims incurred + life risk claims reported + risk margin.
- “*Definition of items in formula*
- “(4) In the formula in **subsection (3)**,— 20
- “(a) **life risk claims incurred** is the actuarially determined estimate of present values (gross) for the life risk components of claims not yet reported to the life insurer before the end of the current year, but the insured-against event has occurred. The life risk components must take into account the probability of the claims being paid, and future expenses for administering the claims, but the present value (gross) of relevant life reinsurance claims must be subtracted from the total: 25
- “(b) **life risk claims reported** is the present values (gross) of the life risk components of claims reported but not yet paid. The life risk components must take into account the probability of the claims being paid, and future expenses for administering the claims, but the present values (gross) of relevant life reinsurance claims must be subtracted from the total: 30 35

“(c) **risk margin** is the appropriate margin for the life risk components of claims described in **paragraph (a) or (b)**, to the extent to which the margin is actuarially determined, reflects the uncertainty of the estimates that arise from the use of the relevant best estimate assumptions, and is not already included in the life risk components of the claims. 5

“Defined in this Act: amount, best estimate assumptions, claim, class of policies, income year, life insurer, life reinsurance, life risk, life risk component, mortality profit, present value (gross) 10

“EY 25 Premium smoothing reserving amount: non-participation policies not annuities

“Calculation of reserving amount

“(1) For an income year (the **current year**), a life insurer has a premium smoothing reserving amount for a class of policies, during the policies’ PSR periods, calculated using the formula— 15

$$\begin{aligned} & \text{opening premium smoothing reserve} \\ & - \text{closing premium smoothing reserve.} \end{aligned}$$

“Definition of items in formula

“(2) In the formula,—

“(a) **opening premium smoothing reserve** is—

“(i) the amount of the life insurer’s closing premium smoothing reserve for the class of policies, for the income year (the **prior year**) before the current year; or 20

“(ii) the amount of the life insurer’s premium smoothing reserve calculated under the principles in **subsection (3)** for the class of policies, calculated at the beginning of the current year, if the life insurer has no closing premium smoothing reserve for the prior year: 25

“(b) **closing premium smoothing reserve** is the amount of the life insurer’s premium smoothing reserve calculated under the principles in **subsection (3)** for the class of policies, calculated at the end of the current year. 30

“Premium smoothing reserve calculation: principles

“(3) A premium smoothing reserve for policies in a class of policies, during their PSR periods, is calculated using the following principles:

- “(a) the premium smoothing reserve must allow the calculation of a reserving amount for an income year, such that the reserving amount plus the life risk component of premiums for the policies for the income year must equal the expected life risk proportion: 5
- “(b) the life risk component of premiums plus reserving amount recognised for tax purposes during the policies’ PSR periods must equal the total life risk component of premiums recognised for financial reporting purposes during the PSR periods. 10

“Best estimate assumptions for PSR

15

“(4) Closing and opening premium smoothing reserve amounts must be actuarially determined, using best estimate assumptions.

“Special grouping rule for the purposes of best estimate assumptions

20

“(5) For the purposes of determining premium smoothing reserve amounts, life insurance policies may be grouped together if the policies have in common,—

- “(a) substantially the same contractual terms and conditions, other than their PSR periods; and 25
- “(b) substantially the same assumptions for pricing their life risk.

“Meaning of expected life risk proportion

“(6) In this section, **expected life risk proportion** means a proportion of the total life risk and life risk renewal expenses of premiums for life insurance policies in the relevant class during their PSR periods, where that proportion fairly reflects the life risk and an amount of life risk renewal expenses expected to be borne in that income year if the policies were still existing at the earlier of— 30

- “(a) the end of the income year: 35

“(b) immediately before the end of the policies’ PSR period.

“Defined in this Act: amount, actuarially determined, best estimate assumptions, class of policies, expected life risk proportion, income year, life insurance policy, life insurer, life risk, life risk component, premium, PSR period

“EY 26 Unearned premium reserving amount:
non-participation policies not annuities

5

“Calculation of reserving amount

“(1) For an income year (the **current year**), a life insurer has an unearned premium reserving amount for a class of policies calculated using the formula—

10

opening unearned premium reserve
– closing unearned premium reserve.

“Definition of items in formula

“(2) In the formula,—

“(a) **opening unearned premium reserve** is—

“(i) the amount of the life insurer’s closing unearned premium reserve for the class of policies, for the income year before the current year; or

15

“(ii) the amount of the life insurer’s unearned premium reserve under **subsection (3)** for the class of policies, calculated at the beginning of the current year, if the life insurer has no closing unearned premium reserve for the income year before the current year:

20

“(b) **closing unearned premium reserve** is the amount of the life insurer’s unearned premium reserve under **subsection (3)** for the class of policies, calculated at the end of the current year.

25

“Unearned premium reserve

“(3) A life insurer’s unearned premium reserve is the amount of the premium in the current year or a prior year, for the relevant policies, that relates to life risk components and relevant costs,

30

in income years after the current year, but subtracting relevant life reinsurance premiums.

“Defined in this Act: amount, class of policies, income year, life insurer, life reinsurance, life risk component

“EY 27 Capital guarantee reserving amount: non-participation policies not annuities 5

“Calculation of reserving amount

“(1) For an income year (the **current year**), a life insurer has a reserving amount for a class of policies calculated using the formula— 10

opening capital guarantee reserve – closing capital guarantee reserve.

“Definition of items in formula

“(2) In the formula,—

“(a) **opening capital guarantee reserve** is—

“(i) the amount of the life insurer’s closing capital guarantee reserve for the class of policies, for the income year before the current year; or 15

“(ii) the amount of the life insurer’s capital guarantee reserve under **subsection (3)** for the class of policies, calculated at the beginning of the current year, if the life insurer has no closing capital guarantee reserve for the income year before the current year; 20

“(b) **closing capital guarantee reserve** is the amount of the life insurer’s capital guarantee reserve under **subsection (3)** for the class of policies, calculated at the end of the current year. 25

“Capital guarantee reserve

“(3) A life insurer’s capital guarantee reserve is the net amount of credits and debits on account of a risk-linked provision for future obligations in relation to a guarantee, for the class of policies, by the life insurer that capital invested will be returned or that a minimum return on capital will be paid. 30

“Reflex in policyholder base

“(4) For the current year, if the reserving amount under this section is positive, the life insurer has that amount as a deduction included in their policyholder base allowable deductions. For the current year, if the reserving amount under this section is negative, the life insurer has that amount as income included in their policyholder base income. 5

“Reflex in policyholder base: exception.

“(5) Despite **subsection (4)**, for the current year, the life insurer does not have that amount as income included in their policyholder base income to the extent to which the amount represents payment on account of lost capital in the policyholder base. 10

“Defined in this Act: amount, class of policies, income year, life insurer, pay, policyholder base, policyholder base allowable deduction, policyholder base income 15

“Shareholder base other profit: profit participation policies

“EY 28 Shareholder base other profit: profit participation policies that are existing business 20

“Calculation of income

“(1) For an income year, a life insurer has an amount, for profit participation policies that are existing business, that is calculated using the formula—

$$\text{other profit} \times \frac{\text{gate}}{(1 + \text{gate})}.$$

“Definition of items in formula 25

“(2) In the formula in **subsection (1)**,—

“(a) **other profit** is the amount calculated for the income year under **subsection (4)**;

“(b) **gate** is the proportion of a policyholder’s share of profits from the asset base that is used in the formula that calculates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base, as described 30

in **paragraph (a)(iii)** of the definition of **profit participation policy**.

“Formula: negative amounts and positive amounts

- “(3) If, for an income year, the formula in **subsection (1)** calculates a positive amount, that amount is included as income in the life insurer’s shareholder base income. If it is a negative amount, then that amount is included as a deduction in the life insurer’s shareholder base allowable deductions. 5

“Other profit

- “(4) For the purposes of the item **other profit** in **subsection (2)**, an amount is calculated, for the income year (the **current year**) for profit participation policies that are existing business, using the following formula: 10

(premiums – premiums estimate) – (claims – claims estimate)
– (closing policy liabilities – estimated closing policy liabilities).

“Definition of items in formula

- “(5) In the formula in **subsection (5)**,— 15

“(a) **premiums** is the amount of premiums for policies for the current year, but subtracting relevant life reinsurance premiums:

“(b) **premiums estimate** is the actuarially determined total amount of premiums that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that were in force at the start of the current year or are first entered into in the current year, after subtracting the present value (net) of relevant life reinsurance premiums: 20 25

“(c) **claims** is the amount of claims for the current year, after subtracting relevant life reinsurance claims:

“(d) **claims estimate** is the actuarially determined total amount of claims that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that were in force at the start of the current year or are first entered into in the current year, after subtracting the present value (net) of relevant life reinsurance claims: 30

“(e) **closing policy liabilities** is the total amount of policy liabilities for policies determined at the end of the current year for vested benefits after the previous year’s bonus declaration:

“(f) **estimated closing policy liabilities** is the total estimated policy liabilities at the end of the current year for policies in force at the start of the current year and expected to be in force at the end of the current year, taking into account vested benefits after the previous year’s bonus. The estimated policy liabilities must not take into account any future bonus declarations, and must use best estimate assumptions.

“Meaning of policy liabilities

“(6) For the purposes of **subsection (5)**, **policy liabilities** means, for a policy, an actuarially determined amount that is the present value (net) of future claims, plus the present value (net) of future expenditure or loss, plus the present value (net) of future tax payments, less the present value (net) of future premiums. Relevant life reinsurance premiums and claims must be subtracted.

“Basis of best estimate assumptions in actuarially determining items

“(7) The same best estimate assumptions must be used for actuarially determining the items **premiums estimate**, **claims estimate**, and **policy liabilities** in this section. The assumptions may be appropriate for the start of the year, or for the end of the year, but once the choice is made between start of the year and end of the year, that basis may not be changed.

“Meaning of existing business

“(8) For the purposes of this section and **section EY 29**, **existing business** means, for a policy, that it is—

“(a) issued on or before 30 June 2009; or

“(b) issued after 30 June 2009, if—

“(i) issued on the same substantial and material terms, conditions, and bonus entitlements as participation policies that the life insurer issued on or before 30 June 2009, ignoring any annual increase in life insurance cover that is less than

10% or less than annual percentage change in the consumer price index:

“(ii) issued as the result of conversion rights in a policy issued on or before 30 June 2009.

“Defined in this Act: actuarially determined, amount, best estimate assumptions, claim, existing business, income year, life insurance, life insurance policy, life insurer, life reinsurance, premium, present value (net), profit participation policy 5

“EY 29 Shareholder base other profit: profit participation policies that are new business 10

“Calculation of income

“(1) For an income year, a life insurer has an amount, for profit participation policies that are new business, that is calculated using the formula—

$$\text{other profit} \times \frac{\text{gate}}{(1 + \text{gate})} - \text{previous negative amount.}$$

“Definition of items in formula 15

“(2) In the formula in **subsection (1)**,—

“(a) **other profit** is the amount calculated for the income year under **subsections (5) to (9)**:

“(b) **gate** is the proportion of a policyholder’s share of profits from the asset base that is used in the formula that calculates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base, as described in **paragraph (a)(iii)** of the definition of **profit participation policy**: 20

“(c) **previous negative amount** is the amount from the previous year described in **subsections (3) and (4)**. 25

“Formula: negative amounts and positive amounts

“(3) If, for an income year, the formula in **subsection (1)** calculates a positive amount, that amount is included as income in the life insurer’s shareholder base income. If it is a negative amount, then that amount is not included as a deduction in the 30

life insurer's shareholder base allowable deductions, but *see* **subsection (4)**.

“Negative amounts: carry forward

- “(4) The amount by which the amount calculated using the formula in **subsection (1)** is less than zero is carried forward to the next income year, to be used under this section in the formula as the item **previous negative amount** in that next year. 5

“Other profit

- “(5) For the purposes of the item **other profit** in **subsection (2)**, an amount is calculated, for the income year (the **current year**) for profit participation policies that are new business, using the following formula: 10

(premiums – premiums estimate) – (claims – claims estimate)
– (closing policy liabilities – estimated closing policy liabilities).

“Definition of items in formula

- “(6) In the formula in **subsection (5)**,—

“(a) **premiums** is the amount of premiums for policies for the current year, but subtracting relevant life reinsurance premiums: 15

“(b) **premiums estimate** is the amount of valuation premiums that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that are in force at the start of the current year, or are first entered into in the current year, after subtracting the present value (net) of relevant life reinsurance premiums: 20

“(c) **claims** is the amount of claims for the current year, after subtracting relevant life reinsurance claims: 25

“(d) **claims estimate** is the actuarially determined amount of claims that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that are in force at the start of the current year, or are first entered into in the current year, ignoring surrenders and after subtracting the present value (net) of relevant life reinsurance claims: 30

“(e) **closing policy liabilities** is the amount of policy liabilities for policies determined at the end of the current 35

year for vested benefits after the previous year's bonus declaration:

- “(f) **estimated closing policy liabilities** is the estimated policy liabilities at the end of the current year for policies in force at the start of the current year and expected to be in force at the end of the current year, taking into account vested benefits after the previous year's bonus. The estimated policy liabilities must not take into account any future bonus declarations, and must use best estimate assumptions.

“Meaning of valuation premiums

- “(7) In this section, **valuation premiums** means the amount of premiums payable for a policy, actuarially determined by reference to the premium formula used when the policy was first entered into, or, if the premium formula is unavailable, by reference to mortality, expense, and other assumptions applicable to premiums for similar policies at the beginning of the income year in which the policy was first entered into. The valuation premiums must not include any allowance for future bonus declarations or future shareholder profits. The amount of the valuation premium for a policy must not change, unless significant changes to the policy justify changing the valuation premium.

“Meaning of policy liabilities

- “(8) In this section, **policy liabilities** means, for a policy, an actuarially determined amount that is the present value (net) of future mortality and maturity claims, plus the present value (net) of future expenditure or loss, plus the present value (net) of future tax payments, less the present value (net) of future valuation premiums. The amount of policy liabilities must not include any allowance for surrenders or the payment of surrender values and relevant life reinsurance premiums and claims must be subtracted. The minimum amount of policy liabilities for a policy is the current surrender value of the policy.

“Basis of best estimate assumptions in actuarially determining items

- “(9) The same best estimate assumptions must be used for actuarially determining the items **premiums estimate, claims esti-**

mate, and policy liabilities in this section. The assumptions may be appropriate for the start of the year, or for the end of the year, but once the choice is made between start of the year and end of the year, the assumptions must not be changed.

“Meaning of new business

5

“(10) For the purposes of this section, **new business** means, for a policy, that it is not existing business under **section EY 28**.

“Defined in this Act: actuarially determined, amount, best estimate assumptions, claim, existing business, income year, life insurance policy, life insurer, life reinsurance, new business, premium, present value (net), profit participation policy, valuation premiums

10

“Transitional adjustments and annuities

“EY 30 Transitional adjustments: life risk

“When this section applies: treatment of old and new policies

“(1) This section applies to life insurance policies described in **sections (2) to (4)**. For the purposes of this section, a policy (the **new policy**) is treated as being issued at the same time as another policy (the **old policy**) that the new policy replaces, if the replacement is caused by—

15

“(a) reinstating the old policy due to a lapse by the insured in premium payments, if the new policy comes into force within 90 days of the lapse, and the life insurer treats the new policy and old policy the same; or

20

“(b) the life insurer being sold, or the life insurer selling its rights and obligations under the old policy.

25

“Life insurance policies

“(2) This section applies to a life insurance policy, excluding an annuity, a group life master policy, credit card repayment insurance, and an employer sponsored group policy, if the policy is issued by the life insurer before the grandparenting start day or if the life insurer receives an application and a deposit in money before the grandparenting start day for the policy which is issued after that day, and—

30

“(a) the life insurer has no policyholder base income or policyholder base allowable deduction for the policy; and

35

- “(b) the policy meets the relevant requirements for the relevant period described in **subsection (5)(a) to (c)**; and
- “(c) the amount of life insurance cover does not increase for a cover review period that is wholly or partly in the relevant income year by more than the greater of— 5
- “(i) 10% of the insurance cover at the beginning of the cover review period; and
- “(ii) the percentage change in consumer price index for the cover review period.
- “*Group life master policies* 10
- “(3) This section applies to a group life master policy, if the policy is issued by the life insurer before the grandparenting start day or if the life insurer receives an application and a deposit in money before the grandparenting start day for the policy which is issued after that day, and— 15
- “(a) the life insurer has no policyholder base income or policyholder base allowable deduction for the policy; and
- “(b) the policy meets the requirements for the period described in **subsection (5)(c)**, or, looking through to the individual lives covered, to the extent to which the policy meets the requirements of **subsection (5)(a)**; and 20
- “(c) to the extent to which, looking through to the individual lives covered, the cover was first in place before the grandparenting start day; and
- “(d) the substantial and material terms and conditions of the policy do not change on or after the grandparenting start day; and 25
- “(e) the amount of life insurance cover, looking through to the individual lives covered, does not increase for a cover review period that is wholly or partly in the relevant income year by more than the greater of— 30
- “(i) 10% of the life insurance cover at the beginning of the cover review period; and
- “(ii) the percentage change in consumer price index for the cover review period. 35

“Credit card repayment insurance and employer sponsored group policies

- “(4) This section applies to a credit card repayment insurance and employer sponsored group policies, if the policy is issued by the life insurer before the grandparenting start day or if the life insurer receives an application and a deposit in money before the grandparenting start day, and—
- “(a) the life insurer has no policyholder base income or policyholder base allowable deduction; and
 - “(b) the policy meets the requirements for the period described in **subsection (5)(c)**; and
 - “(c) to the extent to which, looking through to the individual lives covered, the cover was first in place before the grandparenting start day, if the policy is an employer sponsored group policy; and
 - “(d) the substantial and material terms and conditions of the policy do not change on or after the grandparenting start day.
- “Requirements and periods for which this section applies
- “(5) For the purposes of **subsections (2)(b), (3)(b), and (4)(b)**, this section applies to a policy to the extent to which, for the following relevant period, it is described by the following relevant requirements:
- “(a) for a life insurance policy for which only 1 premium is ever payable, or for which the amount of each premium is the same, the period that—
 - “(i) starts on the grandparenting start day; and
 - “(ii) finishes on the day that the policy ceases to be in force;
 - “(b) for a life insurance policy for which the premium is set for a continuous period beginning before the grandparenting start day and the premium does not go up in the period (the **continuous rate period**), the period that starts on the grandparenting start day and ends on the later of the following:
 - “(i) the day that is the last day of the continuous rate period;
 - “(ii) whichever day described in **paragraph (c)(i) and (ii)** is earlier:

- “(c) for a life insurance policy for which the premium may vary each year, the period that starts on the grandparenting start day and ends on the earlier of the following:
- “(i) the day that the policy expires:
- “(ii) the day that is before the 5 years anniversary of the grandparenting start day. 5
- “When this section does not apply: once-only opt out
- “(6) This section does not apply to a class of policies after the life insurer irrevocably chooses in a notice received by the Commissioner that this section does not apply for the class. 10
- “Adjustment
- “(7) For the income year, a life insurer has an amount of shareholder base allowable deduction calculated for a class of policies using the formula—
- $$\begin{aligned} & \text{premiums} - \text{total net reserving amounts} \\ & - (1.2 \times \text{expected death strain}). \end{aligned}$$
- “Definition of items in formula 15
- “(8) In the formula,—
- “(a) **premiums** is the life insurer’s total premiums for the income year for the policies, but subtracting relevant life reinsurance premiums:
- “(b) **total net reserving amounts** is the total of reserving amounts for the income year under **sections EY 24 to EY 27**, but treating amounts that are shareholder base income as negative amounts, and amounts that are shareholder base allowable deductions as positive amounts: 20
- “(c) **expected death strain** is the amount calculated under the expected death strain formula (life) in accordance with **sections EZ 53 to EZ 60** (which relate to the transitional adjustment for expected death strain) for the income year. 25
- “Negative amounts
- “(9) If **subsection (7)** gives a negative amount for a policy, it is ignored for that policy. 30

“Meaning of cover review period

“(10) **Cover review period** means—

“(a) the relevant income year, if the life insurer has not chosen a different period under **paragraph (b)**:

“(b) a period of a year that has a starting and anniversary date that the life insurer irrevocably chooses, for a class of policies, in a return of income for the tax year corresponding to the income year in which the grandparenting start day is included. 5

“Meaning of credit card repayment insurance

10

“(11) **Credit card repayment insurance** means a life insurance policy with multiple individuals’ life insurance cover grouped under it, if—

“(a) the group of individuals is identified in the policy and the general public are excluded; and

15

“(b) the benefits of the cover are for the repayment of an outstanding debt balance of a credit card.

“Meaning of employer sponsored group policies

“(12) **Employer sponsored group policy** means a life insurance policy with multiple individual’s life insurance cover grouped under it, if—

20

“(a) the group of individuals is identified in the policy as employees and the general public are excluded; and

“(b) the benefits of the cover are determined by a calculation that is based on age, salary or wages, or employee seniority.

25

“Meaning of grandparenting start day

“(13) **Grandparenting start day** means—

“(a) 1 July 2010, if **paragraph (b)** does not apply:

“(b) a life insurer’s early life regime application day, if the life insurer irrevocably chooses that day as their grandparenting start day.

30

“Meaning of group life master policies

“(14) **Group life master policy** means a life insurance policy with multiple individual’s life insurance cover grouped under it, if the group of individuals is identified in the policy and the general public are excluded. Life reinsurance policies are group

35

life master policies but credit card repayment insurance and employer sponsored group policies are not group life master policies.

“Defined in this Act: amount, Commissioner, cover review period, credit card repayment insurance, class of policies, early life regime application day, employer sponsored group policy, grandparenting start day, group life master policy, income year, life insurance, life insurer, life reinsurance, policyholder base allowable deduction, policyholder base income, shareholder base allowable deduction, shareholder base income

5

“EY 31 Annuities

10

“When this section applies

“(1) This section applies when a life insurance policy is an annuity.

“Adjustment

“(2) For the income year, a life insurer has an amount calculated for the relevant annuities using the formula—

15

closing actuarial reserves – (0.99 × expected death strain).

“Definition of items in formula

“(3) In the formula,—

“(a) **closing actuarial reserves** is the life insurer’s closing actuarial reserves (active annuities), calculated in accordance with **section EZ 59(2)** (Meaning of actuarial reserves):

20

“(b) **expected death strain** is the amount calculated under the expected death strain formula (active annuities) in accordance with **sections EZ 53 to EZ 60** (which relate to the transitional adjustment for expected death strain) for the income year.

25

“Positive and negative amounts

“(4) If the formula in **subsection (1)** gives a positive amount, the life insurer has that amount as income included in their shareholder base income. If the formula in **subsection (1)** gives a

30

negative amount, the life insurer has that amount as a deduction included in their shareholder base allowable deductions.

“Defined in this Act: amount, income year, life insurer, life insurance policy, shareholder base allowable deduction, shareholder base income”.

- (2) **Subsection (1) applies—** 5
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 10

144 Policyholder income formula: FDR adjustment

- (1) Section EY 43B(1)(a) and (b) are replaced by the following:
- “(a) property is an attributing interest in a FIF held by a life insurer or by a multi-rate PIE that the life insurer has invested in, directly or indirectly; and 15
- “(b) the life insurer or the multi-rate PIE uses the fair dividend rate method for the property; and”.
- (2) Section EY 43B(2) is replaced by the following:
- “*When has life insurer indirectly invested in multi-rate PIE?* 20
- “(2) For the purposes of subsection (1), a life insurer is treated as investing indirectly in a multi-rate PIE (**PIE A**) when a multi-rate PIE has invested in PIE A and the investment may be traced through an unbroken chain of investments in multi-rate PIEs to a direct investment by the life insurer in a multi-rate PIE.” 25
- (3) ~~In section EY 43B, in the list of defined terms, “portfolio investment-linked life fund” is omitted, and “multi-rate PIE” and “PIE” are inserted.~~
- (4) **Subsections (1) to (3) apply for the 2009–10 income year.** 30
- (3) In section EY 43B, in the list of defined terms,—
- (a) “portfolio investment-linked life fund” is omitted; and
- (b) “multi-rate PIE” and “PIE” are inserted.
- (4) **Subsections (1) and (2) apply for the 2010–11 income year.**

145 Policyholder income formula: PILF adjustment

- (1) In section EY 43C(1), the words before paragraph (a) and paragraph (a) are replaced by the following:
- “(1) This section applies for the purposes of section EY 42(5C) to property that supports only actuarial reserves for a life fund 5
PIE to the extent to which the property is—
- “(a) an attributing interest in a FIF—
- “(i) held by a life insurer or a multi-rate PIE that the life insurer has invested indirectly or indirectly; 10
and
- “(ii) for which the life insurer or multi-rate PIE uses the fair dividend rate method.”.
- (2) Section EY 43C(2); ~~other than the heading~~; is replaced by the following:
- “When has life insurer invested directly in multi-rate PIE?” 15*
- “(2) For the purposes of subsection (1), a life insurer is treated as investing directly in a multi-rate PIE (**PIE A**) when a multi-rate PIE has invested in PIE A and the investment may be traced through an unbroken chain of investments in multi-rate 20
PIEs to a direct investment by the life insurer in a multi-rate PIE.”
- (3) Section EY 43C(3)(b)(ii) is replaced by the following:
- “(ii) dividends or distributions for shares described in subsection (1)(b) other than a distribution from a multi-rate PIE to which **section CX 56B** (Distributions to investors in multi-rate PIEs) applies.” 25
- (4) Section EY 43C(9)(c)(ii) is replaced by the following:
- “(ii) dividends and distributions for the shares, other than distributions from a multi-rate PIE to which **section CX 56B** applies.” 30
- (5) ~~In section EY 43C, in the list of defined terms, “portfolio investment-linked life fund” is omitted and “life fund PIE”, “multi-rate PIE”, and “PIE” are inserted.~~
- (6) **Subsections (1) to (5)** apply for the 2009–10 income year.
- (5) In section EY 43C, in the list of defined terms,— 35
- (a) “portfolio investment-linked life fund” is omitted; and
- (b) “life fund PIE”, “multi-rate PIE”, and “PIE” are inserted.

(6) **Subsections (1) to (4)** apply for the 2010–11 income year.

146 Non-resident life insurers with life insurance policies in New Zealand

(1) Section EY 48(3) is replaced by the following:

“Shareholder base and policyholder base” 5

~~“(3) The life insurer’s income, or expenditure or loss, is apportioned between their policyholder base or shareholder base under the provisions of this subpart to the extent to which the income, or expenditure or loss, relates to—~~

~~“(a) life insurance policies that the life insurer, as insurer, offered or was offered or entered into in New Zealand: 10~~

~~“(b) life reinsurance policies held by the life insurer that relate exclusively to life insurance policies described in paragraph (a):~~

~~“(3) The life insurer’s income and deductions are apportioned between their policyholder base or shareholder base under the provisions of this subpart to the extent to which the income or deductions relate to— 15~~

~~“(a) life insurance policies that the life insurer, as insurer, offered or was offered or entered into in New Zealand: 20~~

~~“(b) life reinsurance policies held by the life insurer that relate exclusively to life insurance policies described in paragraph (a).”~~

(2) In section EY 48(4), “other than under a formula referred to in subsection (3)” is replaced by “other than under the provisions of this subpart”. 25

~~(3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.~~

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

(a) on and after 1 July 2010, unless **paragraph (b)** applies: 30

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 35

147 Section EZ 31 repealed

- (1) Section EZ 31 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for— 5
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

148 Section EZ 32B repealed 10
 Section EZ 32B is repealed.

148B Income and expenditure where financial arrangement redeemed or disposed of

- (1) In section EZ 38(6)(a)(iii), “section EZ 41(8)(c)(ii)” is replaced by “subsection (8)(c)(ii)”. 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

148C New section EZ 52B added

- (1) After section EZ 52, the following is added:
“EZ 52B Consistency of use of IFRS method: *Determination G3* and 2009–10 income year 20
 - “(1) For the purposes of the exception in **section EW 25B(2)**, a person may change a method for IFRS if—
 - “(a) the method they change to is *Determination G3* under **section EW 15E(2)(aa)**; and 25
 - “(b) that method is available to them to use.
 - “(2) This section applies for the 2009–10 income year.
 “Defined in this Act: IFRS, income year”.
- (2) **Subsection (1)** applies for the 2009–10 income year.

149 New headings and sections EZ 53 to EZ 60 added 30
headings and sections EZ 53 to EZ 62 added

- (1) After section EZ 52, the following is added: After **section EZ 52B**, the following is added:

***“Life insurance transitional adjustment:
expected death strain***

“Expected death strain formulas

“EZ 53 How expected death strain is calculated

“Calculation of expected death strain: steps 5

“(1) For an income year, the life insurer calculates their expected death strain by following these steps:

“(a) first, use the relevant expected death strain formula to calculate an amount for each life insured under each life insurance policy existing at the start of the income year (*see: subsections (2) and (3)* for guidance on the relevant expected death strain formula): 10

“(b) second, for each such life insurance policy, add together the amounts for the lives insured under it:

“(c) third, add together the totals reached under **paragraph (b)**. 15

“Expected death strain formula (life)

“(2) **Section EZ 54(1)** sets out the expected death strain formula (life). This is the formula a life insurer uses for an income year, to calculate an amount for a life insured under a life insurance policy, except to the extent to which an annuity is being paid under the policy at some time in the income year. 20

“Expected death strain formula (active annuities)

“(3) **Section EZ 54(2)** sets out the expected death strain formula (active annuities). This is the formula a life insurer uses for an income year, to calculate an amount for a life insured under a life insurance policy, to the extent to which an annuity is being paid under the policy at some time in the income year. 25

“Defined in this Act: business, income year, life insurance, life insurance policy, life insured, life insurer, pay 30

“EZ 54 Expected death strain formulas

“Expected death strain formula (life)

“(1) The expected death strain formula (life) is—

claim probability \times (opening sum assured
– opening actuarial reserves).

“Expected death strain formula (active annuities)”

“(2) The expected death strain formula (active annuities) is—

claim probability \times opening actuarial reserves.

“Definition of items in formulas”

“(3) The items in the formulas are defined in **subsections (4) to (6)**. 5

“Claim probability”

“(4) **Claim probability** is the probability of a claim arising under the policy for the life insured’s death in the income year. It is determined at the start of the income year using the same mortality assumptions as are used to calculate the life insurer’s actuarial reserves at the start of the income year. It is expressed as a decimal. Variations to **claim probability** are in **sections EZ 55(2) and EZ 57(2)**. 10

“Opening sum assured”

“(5) **Opening sum assured** is the claim that would be payable under the policy for the life insured’s death in the income year or, if no such claim would be payable, the claim that would be payable under the policy for the life insured’s survival to the relevant date or age specified in the policy. It is determined at the start of the income year. It may be zero. Variations to **opening sum assured** are in **sections EZ 56(2), EZ 57(3), and EZ 58(2)**. 15 20

“Opening actuarial reserves”

“(6) **Opening actuarial reserves** is the amount in the life insurer’s actuarial reserves for the life insured under the policy. It is determined at the start of the income year. 25

“Defined in this Act: actuarial reserves, amount, claim, income year, life insured, life insurer, pay

**“EZ 55 Expected death strain formulas: option when more
than 1 life insured**

“When this section applies

- “(1) This section applies when a life insurance policy covers more
than 1 life insured. 5

“Claim probability

- “(2) In using the relevant expected death strain formula, the life
insurer may use as **claim probability** a common factor for all
the lives insured under the policy.

“Features of common factor

10

- “(3) The common factor must be a reasonable approximation of the
average probability of a claim arising under the policy for each
life insured’s death in the income year. It must be weighted as
necessary to take account of—

“(a) differing claims for individual lives insured under the 15
policy; and

“(b) differing amounts in the life insurer’s actuarial reserves
for individual lives insured under the policy.

“Defined in this Act: actuarial reserves, amount, claim, income year, life insur-
ance policy, life insured, life insurer 20

**“EZ 56 Expected death strain formula (life): when annuity
payable on death**

“When this section applies

- “(1) This section applies when, and to the extent to which, a life
insurance policy provides for the payment of an annuity the 25
start of which is contingent on the life insured’s death.

“Opening sum assured

- “(2) In using the expected death strain formula (life), the life in-
surer uses as **opening sum assured** the net present value of
the annuity. The net present value is determined— 30

“(a) at the start of the income year; and

“(b) on the assumption that the life insured died at the start
of the income year; and

“(c) using the same assumptions and bases of calculation as 35
are used to calculate the life insurer’s actuarial reserves
for the income year.

“(2) In using the expected death strain formula (life), the life insurer uses as **opening sum assured** the present value (net) of the annuity. The present value (net) is determined—

“(a) at the start of the income year; and

“(b) on the assumption that the life insured died at the start of the income year; and 5

“(c) using the same assumptions and bases of calculation as are used to calculate the life insurer’s actuarial reserves for the income year.

“Defined in this Act: ~~actuarial reserves, income year, life insurance policy, life insured, life insurer, payment~~actuarial reserves, income year, life insurance policy, life insured, life insurer, payment, present value (net) 10

“EZ 57 Expected death strain formulas: when annuity payable on survival to date or age specified in policy

“When this section applies 15

“(1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured’s survival to the relevant date or age specified in the policy.

“Claim probability 20

“(2) In using the relevant expected death strain formula, the life insurer must use **claim probability** as defined in **section EZ 54(4)**, without regard to the fact that the payment of the annuity is not contingent on the life insured’s death.

“Opening sum assured 25

~~“(3) In using the expected death strain formula (life), the life insurer must use as **opening sum assured** the net present value of the annuity. The net present value is determined—~~

~~“(a) at the relevant date or age specified in the policy; and~~

~~“(b) on the assumption that the life insured survived to the date or age; and~~ 30

~~“(c) using the same assumptions and bases of calculation as are used to calculate the life insurer’s actuarial reserves for the income year.~~

“(3) In using the expected death strain formula (life), the life insurer must use as **opening sum assured** the present value (net) of the annuity. The present value (net) is determined—

“(a) at the relevant date or age specified in the policy; and

“(b) on the assumption that the life insured survived to the date or age; and 5

“(c) using the same assumptions and bases of calculation as are used to calculate the life insurer’s actuarial reserves for the income year.

“Defined in this Act: ~~actuarial reserves, income year, life insurance policy, life insured, life insurer, pay, payment~~ actuarial reserves, income year, life insurance policy, life insured, life insurer, pay, payment, present value (net) 10

“EZ 58 Expected death strain formula (life): when partial reinsurance exists

“When this section applies 15

“(1) This section applies when a life insurer has partial life reinsurance.

“Opening sum assured

“(2) In using the expected death strain formula (life), the life insurer must reduce **opening sum assured** by the claim receivable by the life insurer under the life reinsurance policy for the contingency against which the life insured is covered under the life insurance policy. 20

“Defined in this Act: claim, life insurance policy, life insured, life insurer, life reinsurance policy, partial reinsurance 25

“Actuarial reserves

“EZ 59 Meaning of actuarial reserves

“Actuarial reserves generally

“(1) For the purposes of **sections EZ 53 to EZ 58, actuarial reserves** means a life insurer’s reserves as calculated under **section EZ 60.** 30

“Closing actuarial reserves for annuities

“(2) For the purposes of the item **closing actuarial reserves in section EY 30(3)** (Annuities), **closing actuarial reserves (active**

annuities) means a life insurer’s opening actuarial reserves under **section EZ 54(6)** for a life insurance policy, to the extent to which an annuity is being paid under the policy where the life insured dies in the income year for which the formula in **section EY 30** is applied. Where the life insured survives to the end of that income year, the **closing actuarial reserves (active annuities)** is zero. 5

“Link between actuarial reserves and life insurer

“(3) Actuarial reserves, for a life insurer at any time, means the life insurer’s actuarial reserves at that time. 10

“Defined in this Act: actuarial reserves, life insurance policy, life insurer

“EZ 60 Actuarial reserves: calculation

“Calculation by actuary

“(1) The life insurer’s actuarial reserves must be actuarially determined. 15

“All reserves or 1 or more amounts

“(2) The actuary may calculate—

“(a) the actuarial reserves for all the life insurance policies for which the life insurer is the insurer; or

“(b) the amount in the life insurer’s actuarial reserves for 1 or more life insurance policies for which the life insurer is the insurer. 20

“Interest, mortality, and other assumptions and bases of calculation

“(3) The actuary must do the calculation using interest, mortality, and other assumptions and bases of calculation that— 25

“(a) are based on the same principles as those used in the actuarial advice on which the following are calculated:

“(i) the level of surplus funds available to the life insurer for allotment or payment to shareholders or policyholders; or 30

“(ii) the level of surplus funds available to the life insurer, if a superannuation scheme, for allotment to objects of the scheme other than the object of providing for members’ benefits; and 35

- “(b) are likely to produce a reasonable estimation of the future experience of the life insurer in relation to life insurance policies of which the life insurer is the insurer, having regard to the past experience of the life insurer in relation to life insurance policies of which the life insurer was the insurer; and 5
- “(c) conform with commercially acceptable practice.
- “Reserves for policy never negative*
- “(4) The amount in the actuarial reserves for a life insurance policy must never be negative. 10
- “Reserves for all policies never less than total of surrender values*
- “(5) The actuarial reserves at any time must not be less than the total of the surrender values of all the life insurance policies they cover at that time. 15
- “Reserves for policies same at end of one, and start of next, income year*
- “(6) The amount in the actuarial reserves for life insurance policies at the start of an income year is the same as the amount in the actuarial reserves for the life insurance policies at the end of the previous income year. 20
- “Effect of partial reinsurance*
- “(7) The actuarial reserves of a life insurer who has partial life reinsurance must be reduced by an amount that the actuary responsible for actuarial control of the life insurer considers appropriate having regard to the nature of the life reinsurance policies. 25
- “Defined in this Act: actuarial reserves, actuary, amount, income year, life insurance policy, life insurer, life reinsurance policy, partial reinsurance, payment, shareholder, superannuation scheme 30*

**“Entry to new life insurance regime:
transitional and miscellaneous provisions”**

“EZ 61 Allowance for cancelled amount: spreading”

“Policyholder base allowable deduction”

“(1) For an income year that includes 1 July 2010 and later income years, a life insurer may choose, by a notice received by the Commissioner on or before the last day for furnishing a return of income for the relevant income year or within such further time as the Commissioner may allow, that an amount (the **deduction amount) is included as their policyholder base allowable deduction for the income year, if—** 5 10

“(a) the life insurer has no taxable income, other than in relation to its policyholder base, for the tax year corresponding to the income year, and no taxable income, other than in relation to its policyholder base, for every earlier tax year going back to, and including, the tax year that corresponds with the income year that includes 1 July 2010; and 15

“(b) the deduction amount is stated in the notice and it is equal to or less than the least of the following: 20

“(i) the available tax loss for the tax year that corresponds with the income year, before applying this section; and

“(ii) the available concession amount for the income year, described in **subsection (2); and** 25

“(iii) the amount that would be the life insurer’s schedular policyholder base income for the income year, before applying this section for the year.

“Available concession amount 30

“(2) For the purposes of **subsection (1), the available concession amount for the income year is a positive amount calculated using the formula—**

base concession amount – used.

“Definition of items in formula

“(3) In the formula,— 35

“(a) **base concession amount** is the lesser of the following:

“(i) the cancelled amount described in **section IT 1** (Cancellation of life insurer’s policyholder net losses); and

“(ii) the amount of available tax loss for the tax year that corresponds with the income year that includes 1 July 2010, before applying this section for the year: 5

“(b) **used** is the total amount of policyholder base allowable deductions that have arisen under this section for income years before the income year. 10

“Defined in this Act: amount, Commissioner, income year, life insurer, net loss, policyholder base, policyholder base allowable deduction, return of income, schedular policyholder base income, tax loss, tax year, taxable income

“**EZ 62 Reinsurance transition: life financial reinsurance may be life reinsurance** 15

“(1) If a life contract that is entered into before a life insurer’s reinsurance grandparenting start day would be a contract for life financial reinsurance but for this section, then it is treated as life reinsurance, instead of life financial reinsurance, for the period starting on the reinsurance grandparenting start day, and ending on the earlier of,— 20

“(a) the last day of the term of the contract, as that term is stated in the contract before the reinsurance grandparenting start day; and 25

“(b) the day 5 years after the reinsurance grandparenting start day.

“*Meaning of reinsurance grandparenting start day*

“(2) **Reinsurance grandparenting start day** means— 30

“(a) 1 July 2010, if the life insurer does not have an early life regime application day; or

“(b) a life insurer’s early life regime application day, if the life insurer has an early life regime application day.

“Defined in this Act: early life regime application day, income year, life financial reinsurance, life insurer, life reinsurance, reinsurance grandparenting start day”. 35

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5

150 New heading and sections EZ 61 to EZ 63 added 10

Before the heading to Part F, the following is added:

“Transitional and other miscellaneous provisions relating to entry into new life insurance regime

“EZ 61 Disposal and re-acquisition upon entry 15

Immediately before the first day of the income year beginning on or after 1 April 2009, all of the property of a life insurer that supports actuarial reserves for the purposes of the policyholder income formula in section EY 43 (Policyholder income formula) is treated as disposed of, for market value consideration, to a third person, and immediately re-acquired from that person for the same consideration. 20

“Defined in this Act: actuarial reserves; amount; dispose; income year; life insurer; market value

“EZ 62 Allowance for cancelled amount: spreading 25

“Policyholder base gross expenditure or loss

“(1) For an income year beginning on or after 1 April 2009, a life insurer may choose, by a notice received by the Commissioner on or before the last day for furnishing a return of income for the relevant income year, that an amount is policyholder base gross expenditure or loss for the income year, if— 30

“(a) the life insurer has no taxable income, other than in relation to its policyholder base, for the tax year corresponding to the income year, and no taxable income, other than in relation to its policyholder base, for every earlier tax year going back to, and including, the tax year 35

that corresponds with the first income year beginning on or after 1 April 2009; and

“(b) the amount is stated in the notice and the amount is equal to or less than the least of the following:

“(i) the amount of available tax loss for the tax year 5
that corresponds with the income year, before applying this section; and

“(ii) the available concession amount for the income year, described in **subsection (2)**; and

“(iii) the amount that would be the life insurer’s 10
scheduling policyholder base income for the income year, before applying this section for the year.

“Available concession amount

“(2) For the purposes of **subsection (1)**, the available concession 15
amount for the income year is a positive amount calculated using the formula—

base concession amount – used:

“Definition of items in formula

“(3) In the formula,—

“(a) **base concession amount** is the lesser of the following: 20

“(i) the cancelled amount described in **section 17 4** (Cancellation of life insurer’s policyholder net losses); and

“(ii) the amount of available tax loss for the tax year 25
that corresponds with the first income year beginning on or after 1 April 2009 before applying this section for the year.

“(b) **used** is the total amount of policyholder base gross expenditure or loss that is under this section for income 30
years before the income year.

“Defined in this Act: amount; Commissioner; income year; life insurer; net loss; policyholder base gross expenditure or loss; return of income; scheduling policyholder base income; tax loss; tax year; taxable income

~~EZ 63~~ Reinsurance transition: life financial reinsurance may be life reinsurance

A contract that is entered into before 1 April 2009 and that, but for this section, would be a contract for life financial reinsurance is treated as life reinsurance, not life financial reinsurance, for the period starting on the first day of the first income year beginning on or after 1 April 2009, and ending on the later of,—

- “(a) the last day of the term of the contract, as that term is stated in the contract before 1 April 2009 and ignoring any renewal; and
- “(b) 31 March 2014.

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

150 New section EZ 63 inserted

Before the heading to Part F, the following is inserted: 15

“EZ 63 Disposal and acquisition upon entry

“When this section applies

- “(1) This section applies for a life insurer immediately before a day (the **application day**) that is—

- “(a) 1 July 2010, if the life insurer does not have an early life regime application day, or
- “(b) their early life regime application day, if the life insurer does have an early life regime application day.

“Disposal and acquisition upon entry

- “(2) Immediately before the application day, all of the property of a life insurer that supports actuarial reserves for the purposes of the policyholder income formula in section EY 43 (Policyholder income formula) is treated as disposed of, for market value consideration, to a third person, and immediately re-acquired from that person for the same consideration. 25 30

“Exclusion

“(3) Property that is an interest in a PIE that is not a listed PIE is excluded from the disposal and re-acquisition described in subsection (2).

“Defined in this Act: actuarial reserves, amount, dispose, early life regime application day, income year, life insurer, listed PIE, market value, PIE, portfolio-listed company”. 5

151 Recharacterisation of certain debentures

(1) Section FA 2(3) is repealed.

(2) Section FA 2(4), other than the heading, is replaced by the following: 10

“(4) **A profit-related debenture—**

“(a) means a debenture with a rate of interest that is set from time to time by reference to—

“(i) the dividend payable by the company issuing the debenture; or 15

“(ii) the profits of the company issuing the debenture, however measured:

“(b) does not include a debenture under which the interest payable is determined by a fixed relationship to— 20

“(i) banking rates; or

“(ii) general commercial rates; or

“(iii) economic, commodity, industrial, or financial indices, but the application of this subparagraph is subject to section FZ 1(3) (Treatment of interest payable under debentures issued before certain date).” 25

(2B) In **section FA 2(4)(b)(iii)**, “date).” is replaced by “date):” and the following is inserted:

“(c) does not include a debenture treated as a share under **section FA 2B** (Stapled debt securities).” 30

(3) Section FA 2(5), other than the heading, is replaced by the following:

“(5) ~~In this section, a **substituting debenture**~~**Substituting debenture—** 35

“(a) means a debenture issued by a company to a shareholder or class of shareholders of the company when

- the amount of the debenture is determined by reference to 1 or more of the following aspects of the shares in the company or another company held by the shareholder or class of shareholder at the time the debenture is issued or at an earlier time: 5
- “(i) the number of shares:
 - “(ii) the available subscribed capital of the relevant company calculated under the slice rule set out in section CD 23 (Ordering rule and slice rule):
 - “(iii) some other reference to the shares: 10
- “(b) includes a debenture issued to a shareholder or a class of shareholder when the amount of the debenture is determined by reference to 1 or more aspects of the shares as described in **paragraph (a)** held by the shareholder in a company other than that issuing the debenture, whether or not the company is being, or has been, liquidated: 15
- “(c) does not include a debenture that is a convertible note.”
- (3B) In section FA 2(5)(c), “note.” is replaced by “note:” and the following is added:**
- “(d) does not include a debenture treated as a share under section FA 2B.” 20
- (4) Section FA 2(6) is repealed.
- (5) Section FA 2(7), other than the heading, is replaced by the following:
- “(7) For the purposes of **subsection (5)**, the amount of the debenture means the principal sum secured by or owing under the debenture.” 25
- 151B New section FA 2B inserted**
- (1) After section FA 2, the following is inserted:**
- “FA 2B Stapled debt securities** 30
- “When subsection (2) applies*
- “(1) Subsection (2) applies when—**
- “(a) a company has issued a debt security; and**
 - “(b) the debt security is stapled to a share in the company or to a share in another company; and** 35
 - “(c) the share is not a fixed-rate share.**

“Stapled debt treated as equity

“(2) The stapled debt security is treated as a share issued by the company and—

“(a) interest payable under the stapled debt security is treated as a dividend; and 5

“(b) **section DB 10B** (Interest or expenditure connected to stapled debt security) may deny deductions for expenditure or loss related to the security.

“Stapled securities aggregated

“(3) A stapled debt security and a share to which it is stapled are treated as a single share for the purposes of applying— 10

“(a) the definition of **non-participating redeemable share** in section CD 22(9) (Returns of capital: off-market share cancellations); and

“(b) the definition of **fixed-rate share** in section LL 9 (Some definitions); and 15

“(c) the definitions, in section YA 1 (Definitions), of—

“(i) **fixed-rate foreign equity**; and

“(ii) **fixed-rate share**, except for the purposes of **sub-section (1)(c)**. 20

“Meaning of debt security

“(4) In this section, **debt security** means a financial arrangement if—

“(a) the financial arrangement provides funds to the company; and 25

“(b) the financial arrangement gives rise to an amount for which the company would have a deduction but for this section; and

“(c) the amount does not arise only from either a movement in a currency exchange rate or a non-contingent fee. 30

“Meaning of stapled

“(5) In this section, a debt security is **stapled** to a share if—

“(a) the debt security can, or ordinarily can, be disposed of only together with the share; and

“(b) the arrangement that requires the debt security and the share to be disposed of together is an arrangement to which the company that issued the debt security or the company that issued the share is a party. 35

“Exclusion: small company shareholder agreements

- “(6) This section does not apply if the debt security is stapled to the share using a shareholder agreement for a company that is not a widely-held company, and is not an associated person of a widely-held company.

5

“Exclusion: stapling before 25 February 2008

- “(7) This section does not apply if the debt security was stapled to the share before 25 February 2008.

“Defined in this Act: amount, associated person, company, debt security, deduction, dividend, financial arrangement, fixed-rate share, interest, non-contingent fee, share, shareholder agreement, stapled, widely-held company”.

10

- (2) **Section FA 2B(3)(b)** is repealed.
(3) **Subsection (1)** applies if a debt security is stapled to a share on or after 25 February 2008.
(4) **Subsection (2)** applies for the 2009–10 and later income years.

15

151C Financial arrangements rules

- (1) Section FB 9, other than the heading and list of defined terms, is replaced by the following:
The financial arrangements rules do not apply to a financial arrangement transferred on a settlement of relationship property if the financial arrangement meets the criteria set out in section EW 10(6) (Financial arrangements to which financial arrangements rules apply). For the application of the old financial arrangements rules, see section EZ 45(c) (Application of old financial arrangements rules).”
(2) **Subsection (1)** applies for the 2008–09 and later income years.

20

25

152 What this subpart does

- (1) Section FC 1(1)(d) is replaced by the following:
“(d) the transfer of property on a distribution in kind by a company in a transfer of value caused by a shareholding in the company.”.
(2) **Subsection (1)** applies for the 2009–10 and later income years.

30

35

153 Transfer at market value

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

- “(2) For property referred to in section FC 1(1)(a), the disposal and acquisition is treated as occurring immediately before the death of the person.” 5

153B Property transferred to charities or to close relatives and others

- (1) Section FC 4(1), other than the heading, is replaced by the following: 10

“(1) This section applies in the circumstances described in section FC 1(1)(a) or (b) when tax-base property is transferred on a person’s death when the only beneficiaries of the deceased person are—

“(a) a close relative of the deceased person: 15

“(b) a person exempt under section CW 43 (Charitable bequests).”

- (2) **Section FC 4(1)**, other than the heading, is replaced by the following:

“(1) This section applies in the circumstances described in section FC 1(1)(b) when tax-base property is transferred on a person’s death when the only beneficiaries of the deceased person are— 20

“(a) a close relative of the deceased person:

“(b) a person exempt under section CW 43 (Charitable bequests).” 25

- (3) In section FC 4(2), “The transfer, including any intervening transfer to an executor or administrator, is treated” is replaced by “The transfer is treated”.

- (4) In section FC 4, in the list of defined terms, “tax base property” is replaced by “tax-base property”. 30

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

154 What this subpart does

- (1) Section FE 1(1)(a)(i) is replaced by the following:

“(i) is controlled by a single non-resident, or is a New Zealand resident (an **outbound entity**) with an 35

income interest in a CFC, or a New Zealand resident that controls an outbound entity; and”.

- (2) In section FE 1, in the list of defined terms, “CFC” and “income interest” are inserted.
- (3) ~~In section FE 1, in the list of defined terms, “control” is omitted.~~ 5
- (4) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (3) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

155 When this subpart applies

- (1) In section FE 2(1)(d), “trust.” is replaced by “trust:”, and the following is added: 15
 - “(e) a company that is resident in New Zealand and has an income interest in a CFC:
 - “(f) a company that is resident in New Zealand and has—
 - “(i) an ownership interest in a company described in **paragraph (e)** of 50% or more: 20
 - “(ii) control of a company described in **paragraph (e)** by any other means:
 - “(g) a natural person, or a trustee of a trust settled by a New Zealand resident, if the natural person or trustee is resident in New Zealand and has— 25
 - “(i) an income interest in a CFC:
 - “(ii) an ownership interest in a company described in **paragraph (e) or (f)** of 50% or more:
 - “(iii) control of a company described in **paragraph (e) or (f)** by any other means.” 30
- (2) In section FE 2, in the list of defined terms, “CFC” and “income interest” are inserted.
- (3) ~~In section FE 2, in the list of defined terms, “control” is omitted.~~ 35
- (4) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

- (3) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 5
- 156 Section FE 3 replaced**
- (1) Section FE 3 is replaced by the following:
- “FE 3 Interest apportionment for individuals**
- “Natural persons and trustees: inbound, not described in section FE 2(1)(g)”* 10
- “(1) This subpart applies to a natural person or trustee not described in **section FE 2(1)(g)** with the following modifications:
- “(a) the New Zealand group of the natural person or trustee is made up of the natural person or trustee and all associated persons who— 15
 - “(i) are resident in New Zealand; or
 - “(ii) are carrying on business in New Zealand through a fixed establishment in New Zealand; or
 - “(iii) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable: 20
 - “(b) the worldwide group of the trustee is made up of the trustee and—
 - “(i) the trustee’s New Zealand group; and
 - “(ii) all non-residents who are associated with the trustee or a member of the trustee’s New Zealand group: 25
 - “(c) in the calculation of the amount of the natural person’s total assets, private and domestic assets are excluded. 30
- “Natural persons and trustees: outbound, described in section FE 2(1)(g)”* 30
- “(2) This subpart applies to a natural person or trustee described in **section FE 2(1)(g)** with the following modifications:
- “(a) the New Zealand group of the natural person or trustee is made up of the natural person or trustee and all associated persons who are not excess debt outbound com- 35

- panies and are not included in a New Zealand group of an excess debt outbound company, and who—
- “(i) are resident in New Zealand; or
 - “(ii) are carrying on business in New Zealand through a fixed establishment in New Zealand; or 5
 - “(iii) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:
- “(b) the worldwide group of the trustee is made up of the trustee and— 10
 - “(i) the trustee’s New Zealand group; and
 - “(ii) all CFCs in which the trustee or a member of the trustee’s New Zealand group has an income interest:
 - “(c) in the calculation of the amount of the natural person’s total assets, private and domestic assets are excluded. 15
- “Defined in this Act: amount, associated person, business, CFC, double tax agreement, fixed establishment, generally accepted accounting practice, group of companies, income interest, natural person, New Zealand, resident in New Zealand, source in New Zealand, total group assets, total group debt, trustee”. 20
- (2) **Subsection (1)** applies for the 2009–10 and later income years:
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 157 Some definitions**
- (1) In section FE 4, after the definition of **excess debt entity**, the following is inserted: 30
- “**excess debt outbound company** for an income year is an excess debt entity that meets the requirements of **section FE 2(1)(e) or (f)**, and none of the requirements of section FE 2(1)(a) to (d)”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 35

- (2) In section FE 4, the definition of **reporting bank** is replaced by the following:
“**reporting bank** for a New Zealand banking group is a person who—
“**(a)** meets the requirements of section FE 2; and 5
“**(b)** is the person determined under section FE 37.”
- (3) In section FE 4, in the list of defined terms, “registered bank” is omitted.
- (4) **Subsection (1)** applies for—
(a) the 2009–10 and later income years, for persons having 10
a balance date on or after 30 June; or
(b) the 2010–11 and later income years, for persons having
a balance date before 30 June.
- (5) **Subsection (2)** applies for the 2008–09 and later income
years. 15
- 158 Thresholds for application of interest apportionment rules**
- (1) After section FE 5(1), the following is inserted:
“Exceptions for excess debt outbound companies
- “(1B) Despite subsection (1), an excess debt outbound company and a natural person or trustee who is described in **section** 20
FE 2(1)(g) do not have to apportion interest expenditure for an income year under section FE 6 if, for the income year,—
- “(a) the ratio of the total group assets measured under section FE 16 for its New Zealand group to the total group assets measured under section FE 18 for its worldwide 25
group is 90% or greater:
- “(b) its New Zealand group—
- “(i) has a total amount of deductions for interest allowed under sections DB 6 to DB 8 (which relate to deductions for interest) to the group, less 30
the total deductions allowed in relation to interest payable intra-group, that is not greater than \$250,000; and
- “(ii) does not include an entity with an income interest in a CFC, and the CFC derives rent from land 35
in the country or territory in which the CFC is resident.

“Natural persons’ worldwide group total assets

- “(1C) For the purposes of **subsection (1B)(a)**, the total group assets of a natural person’s worldwide group under section FE 18 are measured on the basis that the natural person is an excess debt entity that has a worldwide group made up of— 5
- “(a) the natural person; and
 - “(b) the natural person’s New Zealand group; and
 - “(c) all CFCs in which the natural person or a member of the natural person’s New Zealand group has an income interest.” 10
- (2) In section FE 5, in the list of defined terms, “CFC”, “excess debt outbound company”, “income interest”, and “total group assets” are inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 15
- (3) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 20

159 Apportionment of interest by excess debt entity

- (1) Section FE 6(1) is replaced by the following:
- “Who this section applies to*
- “(1) This section applies to an excess debt entity or a natural person if section FE 5 requires the entity or person to apportion their interest expenditure for an income year under this section, treating the natural person, for the purposes of this section other than in the definition of **threshold amount**, as an excess debt entity.” 25
- (2) In section FE 6(2), in the formula, “total deduction” is replaced by “total deduction + FRFE dividend”. 30
- (3) In section FE 6(3)(a), “DB 8” is replaced by “DB 8 (which relates to deductions for interest expenditure)”.
- (4) After section FE 6(3)(a), the following is inserted:
- “(ab) **FRFE dividend** means the total amount of dividends paid by the excess debt entity in relation to fixed-rate foreign equity— 35

- “~~(i)~~ issued by the entity; and
“~~(ii)~~ held by a person resident in New Zealand who is
not a company that is a member of the entity’s
New Zealand group.”.
- (5) In section FE 6, in the list of defined terms, “fixed-rate foreign equity” is inserted. 5
- (6) **Subsections (1), (2), (4), and (5)** apply for the 2009–10 and later income years.
- (1) This section applies to an excess debt entity or a natural person if section FE 5 requires the entity or person to apportion their interest expenditure for an income year under this section. A natural person is treated as an excess debt entity for the purposes of this section other than in the item **threshold amount**. 10
- (2) In section FE 6(2), in the formula, “total deduction” is replaced by “(total deduction + FRD – adjust)”. 15
- (3) In section FE 6(3)(a), “sections DB 6 to DB 8” is replaced by “sections DB 6 to DB 8 (which relate to deductions for interest expenditure)”.
- (4) After section FE 6(3)(a), the following is inserted:
“(ab) **FRD** is the total amount of dividends paid by the excess debt entity in relation to fixed-rate foreign equity or fixed-rate shares— 20
“~~(i)~~ issued by the entity; and
“~~(ii)~~ held by a person resident in New Zealand who is
not a company that is a member of the entity’s 25
New Zealand group:
- “(ac) **adjust** is—
“~~(i)~~ zero, if the excess debt entity is not an excess debt outbound company or a natural person or trustee described in **section FE 2(1)(g)**; or 30
“~~(ii)~~ the total amount of the items **total deduction** and **FRD** (the **finance cost**), if the finance cost is \$1,000,000 or less and **subparagraph (i)** does not apply; or
“~~(iii)~~ the amount by which \$2,000,000 exceeds the 35
finance cost, if the finance cost is more than \$1,000,000 and less than \$2,000,000 and **subparagraph (i)** does not apply; or

- “(iv) zero, if the finance cost is \$2,000,000 or more and subparagraph (i) does not apply:”.
- (5) In section FE 6, in the list of defined terms, “fixed-rate foreign equity” and “fixed-rate share” are inserted.
- (6) **Subsection (3)** applies for the 2008–09 and later income years. 5
- (7) **Subsections (1), (2), and (4)** apply for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 10
- 160 Calculation of debt percentages**
- (1) In section FE 12(1), the second sentence is replaced by “A natural person must calculate their debt percentage under the rules set out in sections FE 13 to FE 16 and FE 18.” 15
- (2) In section FE 12(2), “or natural person” is omitted.
- (3) Section FE 12(5) is replaced by the following:
“Membership of company’s worldwide group
- “(5) For an excess debt entity that is a company, the worldwide group is made up of all companies included as members of the worldwide group under— 20
- “(a) sections FE 31 and FE 32, for an excess debt entity that is not an excess debt outbound company:
- “(b) sections **FE 31B** to FE 32, for an excess debt outbound company.” 25
- (4) Section FE 12(6) is replaced by the following:
“Natural persons: membership of New Zealand groups
- “(6) For a natural person, the membership of the New Zealand group is determined as described in **sections FE 3(1) and (2)**, as applicable. 30
- “Trustees: membership of New Zealand and worldwide groups*
- “(7) For a trustee, the memberships of the New Zealand group and the worldwide group are determined as described in **sections FE 3(1) and (2)**, as applicable.” 35

- (5) In section FE 12, in the list of defined terms, “control” is omitted and “excess debt outbound company” is inserted.
- (6) **Subsections (1) to (5)** apply for the 2009–10 and later income years.
- (5) In section FE 12, in the list of defined terms, “excess debt outbound company” is inserted. 5
- (6) **Subsections (1) to (4)** apply for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 10
- 161 Financial arrangements entered into with persons outside group**
- (1) In section FE 13(1), “However, this section applies only if the financial arrangement would otherwise be included in the calculation of the debt percentage of the New Zealand group or worldwide group, as the case may be.” is added after “person A.” 15
- (1) Section FE 13(1), other than the heading, is replaced by the following: 20
- This section applies when a natural person, a member of a natural person’s New Zealand group, an excess debt entity, or a member of an entity’s New Zealand group or worldwide group, enters into a financial arrangement with another person (person A) as described in this section and the financial arrangement— 25
- “(a) provides funds to person A; and
- “(b) would otherwise be included in the calculation of the debt percentage of the natural person, excess debt entity, New Zealand group, or worldwide group.” 30
- (2) In section FE 13(2), “and a worldwide group” is inserted after “New Zealand group”.
- (3) Section FE 13(3)(a) is replaced by the following:
- “(a) a non-resident who is not carrying on business through a fixed establishment in New Zealand and who— 35
- “(i) does not derive income that has a New Zealand source:

- “(ii) does derive income that has a New Zealand source and, for all of that income, relief from New Zealand tax under a double tax agreement is available; or”.
- (4) In section FE 13, in the list of defined terms, “double tax agree- 5
ment” and “source in New Zealand” are inserted.
- (5) **Subsections (3) and (4)** apply for the 2009–10 and later in-
come years.
- (5) **Subsection (3)** applies for—
- (a) the 2009–10 and later income years, for persons having 10
a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having
a balance date before 30 June.
- 162 Consolidation of debts and assets**
- (1) Section FE 14(2) and (3) are replaced by the following: 15
“*Natural persons’ and trustees’ calculation*
- “(2) For a natural person and an excess debt entity that is a trustee,
the debt percentage of a New Zealand group is calculated
under generally accepted accounting practice for the con-
solidation of companies for the purposes of eliminating 20
intra-group balances by consolidating the debts and assets for
the group.
- “*When member not resident*
- “(3) If a member of a New Zealand group is not resident in New
Zealand, the assets and debts of the member are included in a 25
consolidation only to the extent to which the assets and debts
are for the group member to—
- “(a) carry on business in New Zealand through a fixed es-
tablishment in New Zealand:
- “(b) derive income that has a source in New Zealand and for 30
which relief from New Zealand tax under a double tax
agreement is unavailable.”
- (2) In section FE 14, in the list of defined terms, “double tax agree-
ment” and “source in New Zealand” are inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later in- 35
come years.
- (3) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

163 Total group debt

5

- (1) Section FE 15(1) and (2) are replaced by the following:

“Meaning

- “(1) In this subpart for a New Zealand group, **total group debt** means the sum of the outstanding balances for—

- “(a) financial arrangements entered into by a natural person, or an excess debt entity, or another member of the New Zealand group, if the financial arrangement—

- “(i) provides funds to the natural person, the entity, or another member of the group; and

- “(ii) gives rise to an amount for which the natural person, the entity, or another member of the group, would have a deduction:

- “(b) fixed-rate foreign equity that is—

- “(i) issued by the entity or another member of the New Zealand group; and

- “(ii) held by a person resident in New Zealand.

“Exchange rate fluctuations

- “(2) **Subsection (1)(a)(ii)** does not include a deduction for an amount that arises only from movement in currency exchange rates.”

- (2) In section FE 15, in the list of defined terms, “fixed-rate foreign equity” and “resident in New Zealand” are inserted.

- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

163 Total group debt

30

- (1) Section FE 15(1)(b) is replaced by the following:

- “(b) the financial arrangement—

- “(i) gives rise to an amount for which the natural person, the entity, or another member of the group, would have a deduction:

35

- “(ii) is a stapled debt security that is held by a person resident in New Zealand and is stapled to shares other than shares of a company that is a proportional-stapling company.”
- (2) Section FE 15(1) and (2) are replaced by the following: 5
- “Meaning
- “(1) In this subpart, for a New Zealand group, **total group debt** means the sum of the outstanding balances of—
- “(a) financial arrangements entered into by a natural person, or an excess debt entity, or another member of the New Zealand group, if the financial arrangement— 10
- “(i) provides funds to the natural person, the entity, or another member of the group; and
- “(ii) gives rise to an amount for which the natural person, the entity, or another member of the group, would have a deduction: 15
- “(b) fixed-rate foreign equity or fixed-rate shares that are—
- “(i) issued by the entity or another member of the New Zealand group; and
- “(ii) held by a person resident in New Zealand: 20
- “(c) stapled debt securities—
- “(i) issued by the entity or another member of the New Zealand group; and
- “(ii) held by a person resident in New Zealand; and
- “(iii) stapled to shares other than shares of a company that is a proportional-stapling company. 25
- “Exchange rate fluctuations
- “(2) **Subsection (1)(a)(ii)** does not include a deduction for an amount that arises only from movement in currency exchange rates.” 30
- (3) In section FE 15, in the list of defined terms, “proportional-stapling company”, “resident in New Zealand”, “stapled”, and “stapled debt security” are inserted.
- (4) In section FE 15, in the list of defined terms, “fixed-rate foreign equity” is inserted. 35
- (5) **Subsection (2)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

164 Total group assets

- (1) After section FE 16(1), the following is inserted:

“CFC investments excluded

5

- ~~“(1B) If the excess debt entity or another member of the New Zealand group has an investment in a CFC in which the entity or member has an income interest, the value of the investment is excluded from the calculation and measurement of total group assets under this section, except to the extent to which—~~

10

~~“(a) the value represents the outstanding balances of financial arrangements to which section FE 13 applies:~~

~~“(b) the CFC derives income with a New Zealand source and for which relief from New Zealand tax under a double tax agreement is unavailable:~~

15

- “(1B) If the excess debt entity or another member of the New Zealand group has an investment in a CFC in which the entity or member has an income interest, the value of the total group assets calculated and measured under this section does not include the value of the investment, except—

20

“(a) to the extent to which—

“(i) the value of the investment represents the outstanding balances of financial arrangements to which section FE 13 applies:

25

“(ii) the CFC derives income with a New Zealand source and for which relief from New Zealand tax under a double tax agreement is unavailable:

“(b) that the value of the total group assets is treated as being \$1 if the value would otherwise be zero as a result of this subsection.

30

“When member not resident

- ~~“(1C) If the excess debt entity or another member of a New Zealand group is not resident in New Zealand, the assets of the entity or member are included in the calculation and measurement of total group assets under this section only to the extent to which the assets are for the entity or member to—~~

35

- “(a) carry on business in New Zealand through a fixed establishment in New Zealand:
- “(b) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable.” 5
- (2) In section FE 16, in the list of defined terms, “CFC”, “double tax agreement”, “income interest”, and “source in New Zealand” are inserted.
- (3) **Subsections (1) and (2)** ~~apply for the 2009–10 and later income years:~~ 10
- (3) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 15
- 165 Measurement of debts and assets of worldwide group**
- (1) In section FE 18(1), the words before paragraph (a) are replaced by the following:
 - “(1) The amount of total group debt and the amount of total group assets of the worldwide group of an excess debt entity is calculated—” 20
 - (2) Section FE 18(2) and (3) are replaced by the following:
 - “*Date of measurement*
 - “(2) The amount of total group debt and the amount of total group assets of the worldwide group of an excess debt entity for an income year are measured using— 25
 - “(a) the average amount at the end of each day of the income year; or
 - “(b) the average amount at the end of each 3-month period in the income year; or 30
 - “(c) the amount as at the worldwide group’s balance date that immediately precedes the income year.
 - “*Measurement of amounts*
 - “(3) Despite subsection (1), an excess debt entity must measure the amount of total group debt by applying section FE 15 as if it 35
 - referred to a deduction that would be allowed if the entity, or another group member, were resident in New Zealand.”

- (3) In section FE 18(4), the first sentence is replaced by “If an excess debt entity is unable to calculate the debt percentage of their worldwide for an income year, they may ask the Commissioner to estimate the percentage under this subpart.”
- (3) In section FE 18(4), the first sentence is replaced by “If an excess debt entity is unable to calculate the debt percentage of their worldwide group for an income year, they may ask the Commissioner to estimate the percentage under this subpart.” 5
- (4) In section FE 18(5), the words before paragraph (a) and paragraph (a) are replaced by the following: 10
- “(5) The debt percentage of the worldwide group of an excess debt entity is treated as 68.1818% in the following cases:
- “(a) the entity is unable to calculate the percentage and does not ask the Commissioner to make an estimate under subsection (4):” 15
- (5) In section FE 18, in the list of defined terms, “natural person” is omitted.
- (6) **Subsections (1) to (5)** apply for the 2009–10 and later income years.
- (6) **Subsections (1) to (4)** apply for— 20
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 166 Banking group’s New Zealand net equity** 25
- (1) Section FE 21(3)(d)(ii) is replaced by the following:
- “(ii) that is made by a non-resident who is not a member of the New Zealand banking group or associated with a member of the group under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or of the 1988 version provisions; and” 30
- (1B) Section FE 21(3)(d)(ii) is replaced by the following: 35

- “(ii) that is made by a non-resident who is not a member of the New Zealand banking group or associated with a member of the group; and”.
- (2) In section FE 21(4), the words before paragraph (a) are replaced by the following: 5
- “(4) **Adjustment 1** is the financial value of fixed-rate foreign equities that are—
- “(4) **Adjustment 1** is the financial value of fixed-rate foreign equities or fixed-rate shares that are—”.
- (2B) After section FE 21(4), the following is inserted: 10
- “*Stapled debt securities*
- “(4B) **Adjustment 1A** is the financial value of stapled debt securities that are—
- “(a) owned by a person resident in New Zealand; and
- “(b) included in equity value under subsection (3); and 15
- “(c) stapled to shares other than shares of a company that is a proportional-stapling company.”
- (3) Section FE 21(7)(a)(i) and (ii) are replaced by the following:
- “(i) acquired from a person who, at the time of acquisition, is not associated with a member of the group under the parts of subpart YB that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or ~~under~~ the 1988 version provisions; or 20
- “(ii) relating to an entity that is acquired from a person who is not associated with a member of the group under the parts of subpart YB that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or ~~under~~ the 1988 version provisions.”. 25 30
- (3B) Section FE 21(7)(a)(i) and (ii) are replaced by the following:
- “(i) acquired from a person who, at the time of acquisition, is not associated with a member of the group; or
- “(ii) relating to an entity that is acquired from a person who is not associated with a member of the group.”. 35

- (4) ~~In section FE 21(8)~~Section FE 21(8), other than the heading,
is replaced by the following:
- “(8) **Adjustment 5** is the total amount of capital gain arising for the
2004–05 income year or a later income year from a transfer
of an intangible asset between a member of the group and a
person who is associated with a member of the group under the
parts of subpart YB that apply for the purposes of the whole
Act (excluding the 1973, 1988, and 1990 version provisions)
or the 1988 version provisions.”
- (4B) Section FE 21(8), other than the heading, is replaced by the
following:
- “(8) **Adjustment 5** is the total amount of capital gain arising for the
2004–05 income year or a later income year from a transfer
of an intangible asset between a member of the group and a
person who is associated with a member of the group.”
- (4C) In section FE 21, in the list of defined terms, “proportional-
stapling company”, “stapled”, and “stapled debt security” are
inserted.
- (5) **Subsection (2)** applies for the 2009–10 and later income
years:
- (5) **Subsection (2)** applies for—
- (a) the 2009–10 and later income years, for persons having
a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having
a balance date before 30 June.
- (6) **Subsections (1B), (3B), and (4B)** apply for the 2010–11 and
later income years.
- 167 New Zealand group for excess debt entity that is a
company**
- (1) In section FE 25(2), “company” is replaced by “company.
However, section FE 30 does not apply to an excess debt out-
bound company”.
- (2) In section FE 25, in the list of defined terms, “excess debt
outbound company” is inserted.
- (3) ~~In section FE 25, in the list of defined terms, “control” is omit-
ted.~~

~~(4)~~ **Subsections (1) and (2)** apply for the 2009–10 and later income years.

(4) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 5
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

168 Identifying New Zealand parent

(1) Section FE 26(2)(b)(ii) is replaced by the following:

- “~~(ii)~~ no single non-resident who is carrying on business in New Zealand through a fixed establishment in New Zealand or who derives income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable has an ownership interest in the entity of 50% or more.” 10
15

(2) In section FE 26(2)(b), “more.” is replaced by “more; or” and the following is added:

- “~~(c)~~ the entity is an excess debt outbound company and no single company resident in New Zealand has an ownership interest in the entity of 50% or more.” 20

(3) The heading to section FE 26(3) is replaced by “*Top tier New Zealand resident company if not excess debt outbound company*”.

(4) In section FE 26(3), the words before the paragraphs are replaced by the following: 25

- “(3) If subsection (2) does not apply, and the excess debt entity is not an excess debt outbound company, the entity’s New Zealand parent is the company (**company A**) that meets all the following requirements:” 30

(5) In section FE 26(3)(a)(ii), “New Zealand; and” is replaced by “New Zealand; or” and the following is added:

- “(iii) not resident in New Zealand but deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and” 35

- (6) In section FE 26(4)(a)(ii), “New Zealand; and” is replaced by
“New Zealand; or” and the following is added:
 “(iii) not resident in New Zealand but deriving income
 that has a source in New Zealand and for which
 relief from New Zealand tax under a double tax 5
 agreement is unavailable; and”.
- (7) After section FE 26(4), the following is inserted:
 *“Top tier New Zealand resident company for excess debt
 outbound company*
- “(4B) If subsection (2) does not apply, and the excess debt entity is 10
an excess debt outbound company, the entity’s New Zealand
parent is the company (**company C**) that meets all the follow-
ing requirements:
 “(a) company C—
 “(i) is resident in New Zealand; and 15
 “(ii) has an ownership interest of 50% or more in the
 entity; and
 “(b) no company that meets the requirements of **paragraph
 (a)(i) and (ii)** has a direct ownership interest in com-
 pany C.” 20
- (8) Section FE 26(6), other than the heading, is replaced by the
following:
 “(6) If subsection (2) does not apply, and no company meets the
 requirements of subsection (3), (4), **or (4B)**, the excess debt
 entity is treated as the New Zealand parent.” 25
- (9) Section FE 26(7), other than the heading, is replaced by the
following:
 “(7) In subsections (3) **to (4B)**, ownership interests are determined
 under sections FE 38 to FE 41, but for the purpose of iden-
 tifying a New Zealand parent, the ownership interests of an 30
 associated person are ignored.”
- ~~(10) In section FE 26, in the list of defined terms, “excess debt
outbound company”, “double tax agreement”, and “source in
New Zealand” are inserted.~~
- (10) In section FE 26, in the list of defined terms, “double tax agree- 35
ment”, “excess debt outbound company”, and “source in New
Zealand” are inserted.

(11) ~~In section FE 26, in the list of defined terms, “control” is omitted.~~

(12) ~~**Subsections (1) to (10)** apply for the 2009–10 and later income years.~~

(12) **Subsections (1) to (9)** apply for— 5
 (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

169 Section FE 28 replaced 10

(1) Section FE 28 is replaced by the following:

“FE 28 Identifying members of New Zealand group

“New Zealand parent’s group

“(1) A New Zealand group is made up of an excess debt entity, the entity’s New Zealand parent, and a company— 15

 “(a) that is—

 “(i) resident in New Zealand:

 “(ii) carrying on a business in New Zealand through a fixed establishment in New Zealand:

 “(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and 20

 “(b) that is identified under section FE 27 as being under the control of the New Zealand parent; and

 “(c) that is not a member of the New Zealand banking group of a registered bank. 25

“Special rule for some entity’s group

“(2) Despite **subsection (1)**, if the excess debt entity is not an excess debt outbound company and is not a company identified under section FE 27 as being under the control of the New Zealand parent because the threshold is not met, the New Zealand group is made up of the entity and a company— 30

 “(a) that is—

 “(i) resident in New Zealand:

 “(ii) carrying on a business in New Zealand through a fixed establishment in New Zealand: 35

- “(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and
- “(b) that is a company that—
- “(i) would be identified under section FE 27 as being under the control of the entity if the entity were treated as the New Zealand parent; or
- “(ii) if the entity is identified under section FE 27 as being under the control of another company (**company A**), would be identified under section FE 27 as under the control of company A if company A were included in the New Zealand group and treated as the New Zealand parent; or
- “(iii) would be identified under section FE 27 as under the control of a company (**company B**) included in the entity’s New Zealand group under **sub-paragraph (ii)**, if company B were treated as the New Zealand parent; or
- “(iv) is not a member of the New Zealand banking group of a registered bank.
- “Another special rule for some other entity’s group*
- “(3) Despite **subsection (1)**, if the excess debt entity is an excess debt outbound company and is not a company identified under section FE 27 as being under the control of the New Zealand parent because the threshold is not met, the entity is included in the New Zealand group for the New Zealand parent if—
- “(a) the entity is a company that meets the requirements of **subsection (1)(a) and (c)**; and
- “(b) a member of the New Zealand group has a 50% or more ownership interest in the entity.
- “Defined in this Act: business, company, control, double tax agreement, excess debt entity, excess debt outbound company, fixed establishment, New Zealand, New Zealand banking group, registered bank, resident in New Zealand, source in New Zealand”.
- (2) ~~In section FE 28, in the list of defined terms, “control” is omitted.~~
- (3) **Subsection (4)** applies for the 2009–10 and later income years.

- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 5
- 170 Section FE 29 replaced**
- (1) Section FE 29 is replaced by the following:
- “FE 29 Combining New Zealand groups owned by natural persons and trustees**
- “When this section applies* 10
- “(1) This section applies when a natural person or trustee described in **section FE 2(1)(g)** has—
- “(a) a 50% or more ownership interest in a member of a New Zealand group (**group 1**) having a member that is an excess debt outbound company; and 15
 - “(b) a 50% or more ownership interest in a member of a different New Zealand group (**group 2**) having a member that is an excess debt outbound company.
- “Groups combine*
- “(2) Group 1 and group 2 combine into 1 New Zealand group. 20
- “Defined in this Act: excess debt outbound company, New Zealand”.*
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 171 Ownership interests in companies outside New Zealand group** 30
- (1) Section FE 30(1)(b) and (c) are replaced by the following:
- “(b) a particular excess debt entity (**company A**) that is not an excess debt outbound company is outside the group; and
 - “(c) company A is— 35

- “(i) resident in New Zealand:
 - “(ii) carrying on business in New Zealand through a fixed establishment in New Zealand:
 - “(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (2) Section FE 30(3)(b) is replaced by the following:
 - “(b) company B is—
 - “(i) resident in New Zealand:
 - “(ii) carrying on business in New Zealand through a fixed establishment in New Zealand:
 - “(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- ~~(3) In section FE 30, in the list of defined terms, “excess debt outbound company”, “double tax agreement”, and “source in New Zealand” are inserted.~~
- (3) In section FE 30, in the list of defined terms, “double tax agreement”, “excess debt outbound company”, and “source in New Zealand” are inserted.
- ~~(4) In section FE 30, in the list of defined terms, “control” is omitted.~~
- ~~(5) Subsections (1) to (3) apply for the 2009–10 and later income years.~~
- (4) Subsections (1) and (2) apply for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 172 Worldwide group for corporate excess debt entity**
- (1) The heading to section FE 31 is replaced by “**Worldwide group for corporate excess debt entity if not excess debt outbound company**”.
- (2) In section FE 31(1), the words before the paragraphs and paragraph (a) are replaced by the following:

- “(1) For an income year, for an excess debt entity that is a company and is not an excess debt outbound company, a worldwide group is made up of—
“(a) the entity; and”.
- (3) In section FE 31, in the list of defined terms, “excess debt outbound company” is inserted. 5
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years.
- (4) **Subsections (1) and (2)** apply for—
(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

173 New sections FE 31B and FE 31C inserted

- (1) After section FE 31, the following is inserted: 15
“FE 31B Worldwide group for excess debt outbound companies
“Members of worldwide group
“(1) For an income year, a worldwide group for an excess debt outbound company is made up of—
“(a) the company; and 20
“(b) the company’s New Zealand group for the income year; and
“(c) the company’s worldwide GAAP group, as described in **subsection (2)**.
“Worldwide GAAP group” 25
“(2) ~~An excess debt outbound company’s worldwide GAAP group is made up of all non-residents who are required to be included with the company in consolidated financial statement under generally accepted accounting practice.~~
“(2) An excess debt outbound company’s worldwide GAAP group is made up of all non-residents who are required to be included with the company in consolidated financial statements under generally accepted accounting practice. 30
“Defined in this Act: excess debt outbound company, generally accepted accounting practice, income year, non-resident 35

**“FE 31C CFCs in worldwide group for natural persons or
trustees described in section FE 2(1)(g)**

“When this section applies

- “(1) This section applies when a natural person or trustee described
in **section FE 2(1)(g)** has— 5
- “(a) a 50% or more ownership interest in an excess debt out-
bound company that is a member of a worldwide group
(**worldwide group A**); and
- “(b) an income interest in a CFC that is not part of the world-
wide group A. 10

“Transfer

- “(2) The CFC is part of the worldwide group A.

“Ownership interests

- “(3) For the purposes of this section, ownership interests are deter-
mined under sections FE 38 to FE 41. 15

“Defined in this Act: CFC, excess debt outbound company, income interest,
New Zealand, non-resident”.

- (2) **Subsection (1)** applies for the 2009–10 and later income
years.

- (2) **Subsection (1)** applies for— 20

- (a) the 2009–10 and later income years, for persons having
a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having
a balance date before 30 June.

174 Section FE 32 replaced 25

- (1) Section FE 32 is replaced by the following:

“FE 32 Joint venture parties

“What this section applies to

- “(1) This section applies to a company (the **joint venture com-
pany**) in a worldwide group under section FE 31 or FE 31B 30
if—
- “(a) a person (the **excluded joint venturer**) holds an owner-
ship interest equal to 50% in the joint venture company;
and

- “(b) 1 other person (the **included joint venturer**) in the worldwide group holds an ownership interest equal to 50% in the joint venture company; and
 - “(c) but for the application of this section, the worldwide group includes every person who holds both an ownership interest equal to 50% in the joint venture company and—
 - “(i) who has an ownership interest in the included joint venturer; or
 - “(ii) in whom the included joint venture company has an ownership interest.
- “Exclusion of excluded joint venturer*
- “(2) The joint venture company may choose to exclude the excluded joint venturer from its worldwide group for an income year, despite sections FE 31 and FE 31B.
- “Ownership interests*
- “(3) For the purposes of this section, ownership interests are determined under sections FE 38 to FE 41.
- “Defined in this Act: company, excess debt entity, income year”.
- (2) ~~**Subsection (4)** applies for the 2009–10 and later income years:~~
 - (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

174B Identifying members of New Zealand banking group

- (1) Section FE 36(3), other than the heading, is replaced by the following:
- “(3) A resident person is included in the banking group if—
 - “(a) the person is part of the same group of companies as the registered bank:
 - “(b) the following conditions under generally accepted accounting practice are met:
 - “(i) for a resident registered bank with no non-resident ultimate parent, the consolidated group accounts include both the person and the registered

- bank, or would include both but for relevant materiality thresholds; or
- “(ii) for a non-resident registered bank with no non-resident ultimate parent, the consolidated group accounts would include the person and the registered bank if the bank were resident in New Zealand and the relevant materiality thresholds were met.” 5
- (2) In section FE 36(4)(a), “ultimate parent; and” is replaced by “ultimate parent:”. 10
- (3) In section FE 36(5)(a), “ultimate parent; and” is replaced by “ultimate parent:”.
- (4) In section FE 36(6)(a), “ultimate parent; and” is replaced by “ultimate parent:”.
- (5) **Subsections (1) to (4)** apply for the 2008–09 and later income years. 15
- 175 Subpart FF repealed**
- (1) Subpart FF is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 20
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 25
- 176 Consolidation rules**
- (1) Section FM 2(2)(g) is replaced by the following:
“(g) section 74 of the Tax Administration Act 1994.”
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 30
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 35

177 Some general rules for treatment of consolidated groups

- (1) Section FM 6(3)(b) is repealed.
- (2) Section FM 6(3)(c) is replaced by the following:
 - “(c) sections FM 8(3)(c), FM 27 to FM 30, GB 38, GB 40, and OP 3 to OP 50 (which relate to dividends and consolidated groups):”.
- (3) Section FM 6(3)(e) is replaced by the following:
 - “(e) section 74 of the Tax Administration Act 1994.”
- (4) In section FM 6(5), “YA 2(2)(e)” is replaced by “YA 2(7)”.
- (5) Section FM 6(5) is replaced by the following:
 - “*Balance of imputation credit account*
- “(5) Sections OA 3 (General rules for maintaining memorandum accounts) and YA 2(7) (Meaning of income tax varied) apply for the purposes of section GB 38, subpart OP, and section 74 of the Tax Administration Act 1994 as if the references to the imputation rules were references to sections OP 3 to OP 50.”
- (6) In section FM 6, in the list of defined terms, “FDP account” and “FDP rules” are omitted.
- (7) **Subsections (1) to (3), (5) and (6)** apply for the 2009–10 and later income years.
- (7) **Subsections (1) to (3) and (5)** apply for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

178 Heading and sections FM 24 to FM 26 repealed

- (1) Sections FM 24 to FM 26 are repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

178B Eligibility rules

- (1) Section FM 31(1), other than the heading, is replaced by the following:
- “(1) A company is eligible to form, join, and continue as part of a consolidated group at a particular time if, at the time,— 5
- “(a) it is resident in New Zealand; and
- “(b) it is not a foreign company; and
- “(c) it is not a company that derives only exempt income, except exempt income under sections CW 9 to CW 11 (which relate to income from equity); and 10
- “(d) it is incorporated in New Zealand or carrying on a business in New Zealand through a fixed establishment; and
- “(e) it is not, by the law of another country or territory, liable to income tax in that country or territory through domicile, residence, or place of incorporation; and 15
- “(f) when subsection (2) or (4) applies, it meets the relevant conditions; and
- “(g) subsections (5) and (6) do not apply to it.”
- (2) Section FM 31(3), other than the heading, is replaced by the following: 20
- “(3) The requirements of **subsection (1)(d) and (e)** do not apply to determine whether a grandparented consolidated company—
- “(a) is eligible to form or join a consolidated group:
- “(b) continues as part of the consolidated group.” 25
- (3) In section FM 31, in the list of defined terms, “income tax” is inserted.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

179 Imputation rules 30

In section FN 2(i), “YA 2(2)(d)” is replaced by “YA 2(7)(b)”.

179B Trans-Tasman imputation groups and resident imputation subgroups

- (1) Section FN 8(2), other than the heading, is replaced by the following: 35
- “(2) A company in a trans-Tasman imputation group that is not an Australian ICA company is treated as a resident imputation

subgroup of the trans-Tasman imputation group and is associated with that group.”

(2) Section FN 8(3) is replaced by the following:

“Single company

“(3) A resident imputation subgroup continues while a company in the trans-Tasman imputation group that is not an Australian ICA company remains in existence.” 5

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

179C Amortising property 10

(1) After section FO 16(1), the following is inserted:

“Treatment of amalgamating company

“(1B) The amalgamating company is treated as neither deriving income nor having a deduction under sections EE 24 to EE 53 (which relate to disposals of depreciable property) as a result of the deemed disposal.” 15

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

180 Treatment of interest payable under debentures issued before certain date 20

In section FZ 1(3), “Despite section FA 2(3)(c), section” is replaced by “Section”.

180B New sections GB 15B and GB 15C inserted

(1) After section GB 15, the following is inserted:

“GB 15B Supplies affecting default test for non-attributing active CFC 25

“When this section applies

“(1) This section applies when a CFC makes a supply—

“(a) to a person who would not meet the requirements of **section EX 21D(1)(a) to (c)** (Non-attributing active CFC: default test) for the person to be a member of a test group, under that section, with the CFC; and 30

“(b) with the purpose of increasing the amount given by the denominator in the formula in **section EX 21D(4)** for the CFC.

“Income from supply included in gross adjustment

“(2) The income from the supply is included in the item gross adjustments in **section EX 21D(9)(d)**. 5

“Defined in this Act: CFC

“GB 15C Arrangements related to accounting test for non-attributing active CFC

“When this section applies

10

“(1) This section applies when a person (the **party**) enters an arrangement having a purpose, that is more than incidental, of enabling a CFC to meet the requirements of **section EX 21E** (Non-attributing active CFC: test based on accounting standard) when the CFC would not meet the requirements of **section EX 21D** (Non-attributing active CFC: default test) to be a non-attributing active CFC. 15

“CFC not non-attributing active CFC

“(2) The CFC is not a non-attributing active CFC.

“Person not non-attributing active CFC if type of financial arrangement involved 20

“(3) A party who is a CFC associated with the CFC is not a non-attributing active CFC if—

“(a) the arrangement involves a financial arrangement producing a foreign exchange loss for the CFC; and 25

“(b) the foreign exchange loss decreases for the CFC the amount of the numerator in the formula in **section EX 21E(5)**.

“Defined in this Act: arrangement, associated, CFC, financial arrangement, loss, non-attributing active CFC”. 30

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June. 35

181 Attribution rule for income from personal services

- (1) In section GB 27(2)(c), “\$60,000” is replaced by “\$70,000”.
- (2) ~~In section GB 27(2)(e), “\$70,000” is replaced by “\$75,000”.~~
- (3) ~~In section GB 27(2)(e), “\$75,000” is replaced by “\$80,000”.~~
- (4) **Subsection (1)** applies for the 2008–09 and later income years. 5
- (5) **Subsection (2)** applies for the 2010–11 and later income years.
- (6) **Subsection (3)** applies for the 2011–12 and later income years. 10
- (2) In section GB 27(3)(d), “entity.” is replaced by “entity:” and the following is added:
 - “(e) if the associated entity is a CFC and the amount—
 - “(i) is an attributable CFC amount for the CFC under **section EX 20B(3)(h)** (Attributable CFC amount): 15
 - “(ii) gives rise to attributed CFC income under **section CQ 2(2B)** (When attributed CFC income arises) or attributed CFC loss under **section DN 2(2)** (When attributed CFC loss arises).” 20
- (3) In section GB 27, in the list of defined terms, “attributable CFC amount”, “attributed CFC income”, “attributed CFC loss”, and “CFC” are inserted.
- (4) **Subsection (1)** applies for the 2008–09 and later income years. 25
- (5) **Subsection (2)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 30

182 Interpretation of terms used in section GB 27

- (1) Section GB 28(2), other than the heading, is replaced by the following:
- “(2) A person is treated as being associated with another person if the person would be treated as associated under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 35

1990 version provisions) or the 1988 provisions, at the time the services are personally performed by the working person.”

- (2) **Section GB 28(2)**, other than the heading, is replaced by the following:

“(2) A person is treated as being associated with another person if they are associated at the time the services are personally performed by the working person.”

- (3) **Subsection (2)** applies for the 2009–10 and later income years:

- (3) **Subsection (2)** applies for the 2010–11 and later income years.

183 Benefits provided to employee’s associates

- (1) In section GB 32, the heading is replaced by “**Benefits provided through employment relationships**”.

- (2) Section GB 32(1)(a) is replaced by the following: 15

“(a) the benefit is provided to a person because of the existence of an employment relationship; and”.

- (3) In section GB 32(2), the heading is replaced by “*Exemption for shareholder-employees and corporates*”.

- (4) Section GB 32(2)(c) is replaced by the following: 20

“(c) the person receiving the benefit is a company; and”.

- (5) Section GB 32(4), other than the heading, is replaced by the following:

“(4) Section CX 18 (Benefits provided when both employment and shareholding relationships exist) applies to determine when a benefit provided to a person through both an employment relationship and a shareholding relationship is treated as a fringe benefit and not a dividend.” 25

- (6) **Subsections (1) to (5)** apply for the 2009–10 and later income years. 30

184 Section GB 39 repealed

- (1) Section GB 39 is repealed.

- (2) **Subsection (1)** applies for the 2009–10 and later income years:

- (2) **Subsection (1)** applies for— 35

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

185 Arrangements involving money not at risk 5
In section GB 45(3), in paragraph (f) of the definition of **acceptable property**, “CE 1(d)” is replaced by “CE 1(1)(d)”.

186 Defined terms for sections GB 45 and GB 46

- (1) Section GB 48(1)(b) is replaced by the following:
 - “(b) the persons are associated under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or of the 1988 version provisions.”
- (2) **Section GB 48(1)(b)** is replaced by the following:
 - “(b) the persons are associated persons.”
- (3) ~~In section GB 48(3)(d) and (e), “under subpart YB” is omitted in all places in which it appears.~~
- (4) **Subsections (2) and (3)** apply for the 2009–10 and later income years.
- (3) In section GB 48(3)(d) and (e), “under subpart YB” is omitted in each place where it appears.
- (4) **Subsections (2) and (3)** apply for the 2010–11 and later income years.

186B Disposals of trading stock at below market value 25

- (1) In section GC 1(4)(c), “share user.” is replaced by “share user.” and the following is added:
 - “(d) in the surrender of an emissions unit under the Climate Change Response Act 2002.”
- (2) In section GC 1, in the list of defined terms, “emissions unit” and “surrender” are inserted.

187 New section GC 4B inserted

After section GC 4, the following is inserted:

“GC 4B Disposals of emissions units at below market value

“When this section applies

“(1) This section applies when—

“(a) a person (the **transferor**) disposes of an emissions unit to another person (the **transferee**); and 5

“(b) the disposal is not a surrender or conversion under the Climate Change Response Act 2002; and

“(c) the disposal is for no consideration or an amount of consideration less than the market value of the emissions unit at the time of disposal. 10

“Disposal treated as being for market value

“(2) For the purposes of this Act, the consideration received by the transferor and provided by the transferee is treated as being equal to the market value of the emissions unit at the time.

“Defined in this Act: amount; convert; emissions unit; surrender”. 15

187 Section GC 4B repealed

Section GC 4B is repealed.

188 Leases for inadequate rent

(1) In section GC 5(5), in the definition of **related company**, the words before paragraph (a) are replaced by the following: 20

“**related company** means a company that is associated with—”.

(2) **Subsection (4)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for the 2010–11 and later income 25
years.

189 Insufficient amount receivable by person

(1) Section GC 8(1)(b) is repealed.

(2) **Subsection (4)** applies for the 2009–10 and later income 30
years.

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

190 Compensating arrangement: person receiving more than arm’s length amount

- (1) Section GC 10(2)(b) is repealed. 5
- ~~(2) **Subsection (1)** applies for the 2009–10 and later income years.~~
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

191 Requests for matching treatment

- (1) Section GC 11(2)(b) is replaced by the following: 15
- “(b) including, when the other party is a CFC, the calculation of net attributable CFC income or net attributable CFC loss in relation to the other party, and the resultant calculation of the attributed CFC income or an attributed CFC loss or attributed CFC net loss of a person.”
- (2) In section GC 11, in the list of defined terms,— 20
- (a) “branch equivalent income” and “branch equivalent loss” are omitted;
- (b) “net attributable CFC income” and “net attributable CFC loss” are inserted.
- ~~(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.~~ 25
- (3) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 30

192 Section GC 12 replaced

- (1) Section GC 12 is replaced by the following:

“GC 12 Effect on person’s withholding obligations

An adjustment under any of sections GC 7 to GC 10 has no effect on an obligation of the taxpayer to withhold under Part R (General collection rules) in relation to the amount other than to the extent to which section GC 11(2) applies. 5

“Defined in this Act: amount”.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

193 New section GZ 2 inserted

(1) After section GZ 1, the following is added: 15

“GZ 2 Arrangements involving cancellation of conduit tax relief credits

“What this section applies to

“(1) This section applies to a company with a CTRA that enters an arrangement involving a person who is a New Zealand resident if— 20

- “(a) the arrangement involves transactions giving rise to CTR credits in the CTRA and undertaken between 1 December 2007 and the beginning of the 2009–10 income year; and 25
- “(b) a purpose of the arrangement is to produce a benefit under a taxation law for the person.

“(2) The company has an income tax liability equivalent to the amount of CTR credits referred to in **subsection (1)(a)**.

“(1) This section applies to a company with a CTRA that enters an arrangement if— 30

- “(a) the arrangement involves transactions—
 - “(i) undertaken between 4 December 2007 and the beginning of the first affected tax year; and
 - “(ii) giving rise to CTR credits in the CTRA; and 35
- “(b) a purpose of the arrangement is to produce for a New Zealand resident, other than the company with the

- CTRA or a CTR holding company for that company, a benefit—
- “(i) under a taxation law; and
“(ii) relating to the CTR credits.
- “Income tax liability 5
- “(2) The company’s income tax liability for the income year of the arrangement is increased by the amount of CTR credits referred to in **subsection (1)(a)(ii).**
- “Defined in this Act: ~~amount, arrangement, CTR credit, CTRA, taxation law~~ amount, arrangement, company, CTR credit, CTR holding company, CTRA, income year, New Zealand resident, taxation law”. 10
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 15
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 194 Shareholding requirements**
- (1) After section HA 7(3), the following is added: 20
- “Shareholder continuity requirements*
- “(4) For the application of shareholder continuity requirements to the memorandum accounts of qualifying companies, *see* section OA 8(3B) (Shareholder continuity requirements).”
- (2) In section HA 7, in the list of defined terms, “memorandum account” is inserted. 25
- (3) **Subsection (1)** applies for the 2008–09 and later income years.
- 195 New section HA 8B inserted**
- (1) After section HA 8, the following is inserted: 30
- “HA 8B No CFC income interests or FIF direct income interests of 10% or more**
- A qualifying company must not have—
- “(a) income interests in a CFC:

“(b) attributing interests in a FIF that are a direct income interest of 10% or more.

“Defined in this Act: attributing interest, CFC, direct income interest, FIF, income interest, qualifying company”.

(2) **Subsection (4)** applies for the 2009–10 and later income years. 5

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June. 10

195B Limit on foreign non-dividend income

(1) In section HA 9(2), “order in Council” is replaced by “Order in Council”.

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

195C When requirements no longer met

(1) Section HA 11(5), other than the heading, is replaced by the following:

“(5) Despite subsection (1), a company’s status as a qualifying company is not ended merely because it does not comply with section HA 7(2) when— 20

“(a) all dividends that can, under general law, be distributed by the trustee are beneficiary income of a beneficiary other than— 25

“(i) a trustee beneficiary; or

“(ii) a beneficiary that is a company other than a qualifying company; and

“(b) some of the dividends derived by the trustee from the qualifying company have vested or have been distributed as beneficiary income of a beneficiary other than— 30

“(i) a trustee beneficiary; or

“(ii) a beneficiary that is a company other than a qualifying company.” 35

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

195D Dividends paid by qualifying companies

- (1) In section HA 14(2), “under section HA 15” is omitted.
 (2) In section HA 14, in the list of defined terms, “fully imputed” is inserted. 5

196 Fully imputed distributions

- (+) In section HA 15(1), the first sentence is replaced by “This section applies when a qualifying company with an imputation credit account or foreign dividend payment (FDP) account pays a dividend to a person resident in New Zealand.” 10
 (1) In section HA 15(1), the first sentence is replaced by “This section applies when a qualifying company with an imputation credit account or foreign dividend payment (FDP) account pays a dividend.” 15
 (2) Section HA 15(9) is replaced by the following:
“Relationship with sections HA 14 and HA 16
 “(9) If part of the dividend is exempt income under sections HA 14 and HA 16, an imputation credit or FDP credit is treated as attached to the part that is not exempt income. 20
 “(3) **Subsection (1)** applies for the 2008–09 and later income years.”

197 Section HA 16 replaced

Section HA 16 is replaced by the following:

“HA 16 Dividends paid by qualifying companies to trustee shareholders 25

If a dividend that is exempt income under section HA 14(2) is paid to a trustee shareholder, and it is or becomes beneficiary income of a beneficiary resident in New Zealand, the amount is exempt income of the beneficiary under section CW 15(2) 30
 (Dividends paid by qualifying companies) as if the beneficiary were the shareholder referred to in section HA 15.

“Defined in this Act: amount; dividend; exempt income; pay; resident in New Zealand; shareholder; trustee

“HA 16 Dividends paid by qualifying companies to trustee shareholders

“When this section applies

- “(1) This section applies when a dividend referred to in section HA 14(2) is derived by a trustee to the extent to which the dividend is exempt income of the trustee under section CW 15(1) (Dividends paid by qualifying companies).** 5

“Exempt income

- “(2) To the extent to which the dividend is also beneficiary income of a beneficiary resident in New Zealand, the dividend is exempt income of the beneficiary under section CW 15(2).** 10

“Defined in this Act: dividend, exempt income, resident in New Zealand, trustee”.

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

198 Credit accounts and dividend statements

- (1) Section HA 19(1), other than the heading, is replaced by the following:**

- “(1) This section applies when a qualifying company pays a dividend that is treated either as a fully imputed distribution under section HA 15 or as exempt income under sections HA 14 and HA 16.”** 20

- (2) In section HA 19, in the list of defined terms, “fully imputed” is inserted.**

199 Calculating qualifying company election tax 25

- (1) In section HA 41(4)(c), “relevant date:” is replaced by “relevant date.” and paragraph (d) is repealed.**

- (2) Section HA 41(8)(c) is replaced by the following:**

- “(c) if the company pays income tax with a purpose or intention of reducing the amount of election tax, the amount of credit in the imputation credit account is reduced by the amount of the credit arising from the company’s action, unless that purpose is merely incidental.”** 30

- (3) In section HA 41, in the list of defined terms, “FDP” is omitted.**

- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years.

200 Corpus of trust

- (1) Section HC 4(5)(b) is repealed.
- (2) Section HC 4(5)(c) is replaced by the following: 5
“(c) it would fall under paragraph (a) if the settlor were resident in New Zealand at the time of the settlement.”
- (3) In section HC 4, in the list of defined terms, “FDP” is omitted.
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years. 10

200B Trustee income

- (1) In section HC 7(2), “section HC 33” is replaced by “section HC 35”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 15

201 Taxable distributions from non-complying and foreign trusts

- (1) Section HC 15(5)(a)(ii) is replaced by the following:
“(ii) a capital gain derived by the trustee through a transaction or series of transactions between the trustee and a person associated with them under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or ~~under~~ the 1988 version provisions:”. 20 25
- (2) **Section HC 15(5)(a)(ii)** is replaced by the following:
“(ii) a capital gain derived by the trustee through a transaction or series of transactions between the trustee and a person associated with them:”. 30
- (3) **Subsection (2)** applies for the 2009–10 and later income years.
- (3) **Subsection (2)** applies for the 2010–11 and later income years.

201B Distributions from community trusts

- (1) In section HC 21(3), “if the person receives the amount as beneficiary of the trust” is omitted.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

5

202 Who is a settlor?

- (1) Section HC 27(1)(e) is replaced by the following:
“(e) subpart YB (Associated persons and nominees) as modified by **section YB 10** (Who is a settlor?).”
- (2) **Subsection (1)** applies, for the purposes of—
- (a) provisions other than the land provisions, for the 2009–10 and later income years:
- (b) the land provisions other than section CB 11, for land acquired on or after 1 April 2009:
- (c) section CB 11, for land on which improvements are begun on or after 1 April 2009:
- (2) Section HC 27(3), other than the heading, is replaced by the following:
- “(3) Despite subsection (2), a person resident in New Zealand who makes a settlement on a trust as an employer for the benefit of 1 or more employees is not a settlor of the trust if the following circumstances apply:
- “(a) the trust is established or created mainly to provide retirement benefits to natural persons; and
- “(b) the trust is neither a foreign superannuation scheme nor a superannuation fund.”
- (3) **Subsection (1)** applies, for the purposes of—
- (a) provisions other than the land provisions, for the 2010–11 and later income years:
- (b) the land provisions other than section CB 11, for land acquired on or after the date on which this Act receives the Royal assent:
- (c) section CB 11, for land on which improvements are begun on or after the date on which this Act receives the Royal assent.
- (4) **Subsection (2)** applies for the 2008–09 and later income years.

10

15

20

25

30

35

202B Liability of trustee as agent

- (1) In section HC 32(2), “a beneficiary of a community trust” is replaced by “a person who derives an amount from a community trust”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5

202C Beneficiary income of minors

- (1) In section HC 35(4)(a), “less than \$1,000” is replaced by “\$1,000 or less”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 10

203 Trusts and minor beneficiary rule

- (1) In section HC 36(5), the definition of **associated person** or **person associated** is replaced by the following:
 “**associated person** or **person associated** does not include a person associated only under **sections YB 4 and YB 5** (which relate to relatives who are treated as associated persons)”. 15
- (2) ~~**Subsection (1)**~~ applies for the 2009–10 and later income years.
- (2) In section HC 36(5), in the definition of **relative**, “paragraph (c)” is replaced by “paragraph (a)” in each place where it appears. 20
- (3) **Subsections (1) and (2)** apply for the 2010–11 and later income years.

203B Companies issuing debentures

25

- (1) Section HD 14(2)(a) is replaced by the following:
 “(a) it is a profit-related debenture or substituting debenture to which section FA 2 (Recharacterisation of certain debentures) applies or a stapled debt security to which **section FA 2B** (Stapled debt securities) applies; or”. 30
- (2) In section HD 14, in the list of defined terms, “stapled debt security” is inserted.

203C General provisions relating to disposals

- (1) In section HG 3(2), “if they choose that those sections do not apply by the small partnership furnishing a joint return of income that ignores the sections” is replaced by “if the entering partner, the exiting partner, and the partnership, furnish returns of income that ignore the sections”. 5
- (2) Section HG 3(3) is replaced by the following:
“Election in for specified livestock disposed of to entering partner
- “(3) Section HG 10 applies for an entering partner if the entering partner furnishes a return of income that applies the section.” 10
- (3) For a person who is not a limited partner of a limited partnership registered under the Limited Partnership Act 2008, **sub-sections (1) and (2)** apply for income years starting on and after 1 April 2008. 15

203D Disposal upon final dissolution

- (1) Section HG 4 is replaced by the following:
“HG 4 Disposal upon final dissolution
“When this section applies
- “(1) This section applies when a partnership is finally dissolved by agreement of the partners, court order, or otherwise, and the partnership’s business ignoring section HG 2 will not continue to be carried on in partnership. 20
- “Disposal and re-acquisition
- “(2) A partner of the partnership is treated as disposing of all of their partner’s interests in the partnership, immediately before the dissolution, to a single third party for a payment equal to the interests’ market value. The partner is treated as re-acquiring all of their partner’s interests immediately after the dissolution, from the third party for a payment equal to the interests’ market value. 25 30
- “Receipt upon dissolution
- “(3) Anything received by a partner in relation to the final dissolution of the partnership is ignored.

“Exclusion: actual disposal to third party

“(4) This section does not apply to the extent to which a partner of the partnership disposes of their partner’s interests in the partnership to persons who are not associated with them. For the purposes of testing association, the partners’ partnership capacity is ignored. 5

“Exclusion: partnerships of persons in marriage, civil union, or de facto relationships

“(5) This section does not apply if—

- “(a) immediately before the dissolution, there are only 2 partners of the partnership and they are married to each other, in a civil union together, or in a de facto relationship together; and 10
- “(b) the dissolution is caused by death of a partner, or the dissolution relates to the settlement of relationship property; and 15
- “(c) on dissolution, all partner’s interests of 1 person are transferred, ignoring any intervening transfer to an executor or administrator, to the other person; and
- “(d) the transfers of those partner’s interests are subject to provisions in subpart FB or FC (which relate to transfers of relationship property and gifts), and those provisions treat the transfers as disposals for amounts that are not the interests’ market values. 20

“Relationship with subject matter 25

“(6) This section overrides sections HG 5 to HG 10.

“Defined in this Act: amount, associated person, dispose, partner, partner’s interests, partnership, settlement of relationship property”.

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnership Act 2008, subsection (1) applies for income years starting on and after 1 April 2008. 30

203E Disposal of partner’s interests

(1) Section HG 5(2)(c) is replaced by the following:

- “(c) gross tax value is the total of— 35
 - “(i) the value under this Act of the current interests and other interests at the time the relevant inter-

- est is disposed of, to the extent to which the inter-
ests are revenue account property or depreciable
property, or financial arrangements:
- “(ii) the market value of the current interests and other
interests at the time the relevant interest is dis- 5
posed of, to the extent to which the interests
are not revenue account property or depreciable
property or financial arrangements:”.
- (2) In section HG 5(7), “if they choose that it does not apply, by
the small partnership furnishing a joint return of income that 10
ignores sections HG 5 to HG 9” is replaced by “if section
HG 3(2) applies”.
- (3) In section HG 5, in the list of defined terms, “depreciable prop-
erty”, “financial arrangement”, and “revenue account prop- 15
erty” are inserted.
- (4) For a person who is not a limited partner of a limited partner-
ship registered under the Limited Partnership Act 2008, **sub-
sections (1) and (2)** apply for income years starting on and
after 1 April 2008.
- 203F Disposal of trading stock 20**
- (1) In section HG 6(6), “if they choose that it does not apply, by
the small partnership furnishing a joint return of income that
ignores sections HG 5 to HG 9” is replaced by “if section
HG 3(2) applies”.
- (2) For a person who is not a limited partner of a limited partner- 25
ship registered under the Limited Partnership Act 2008, **sub-
section (1)** applies for income years starting on and after 1
April 2008.
- 203G Disposal of depreciable property 30**
- (1) In section HG 7(6), “if they choose that it does not apply, by
the small partnership furnishing a joint return of income that
ignores sections HG 5 to HG 9” is replaced by “if section
HG 3(2) applies”.
- (2) For a person who is not a limited partner of a limited partner- 35
ship registered under the Limited Partnership Act 2008, **sub-**

section (1) applies for income years starting on and after 1 April 2008.

203H Disposal of financial arrangements and certain excepted financial arrangements

- (1) In section HG 8(6), “if they choose that it does not apply, by the small partnership furnishing a joint return of income that ignores sections HG 5 to HG 9” is replaced by “if section HG 3(2) applies”. 5
- (2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnership Act 2008, **sub-section (1)** applies for income years starting on and after 1 April 2008. 10

203I Disposal of short-term agreements for the sale and purchase of property or services

- (1) In section HG 9,— 15
 - (a) in the heading to section HG 9, “**short-term agreements for the sale and purchase of property or services**” is replaced by “**short-term agreements for sale and purchase**”;
 - (b) in subsection (1), “short-term agreement for the sale and purchase of property or services” is replaced by “short-term agreement for sale and purchase”; 20
 - (c) in subsection (2), “short-term agreement for the sale and purchase of property or services” is replaced by “short-term agreement for sale and purchase”; 25
 - (d) in subsection (3), “short-term agreement for the sale and purchase of property or services” is replaced by “short-term agreement for sale and purchase”;
 - (e) in subsection (4), “short-term agreement for the sale and purchase of property or services” is replaced by “short-term agreement for sale and purchase”; 30
 - (f) in subsection (5), “short-term agreement for the sale and purchase of property or services” is replaced by “short-term agreement for sale and purchase” in both places where it appears. 35
- (2) In section HG 9(6), “if they choose that it does not apply, by the small partnership furnishing a joint return of income that

ignores sections HG 5 to HG 9” is replaced by “if section HG 3(2) applies”.

- (3) In section HG 9, in the list of defined terms, “short-term agreement for the sale and purchase of property or services” is replaced by “short-term agreement for sale and purchase”. 5
- (4) For a person who is not a limited partner of a limited partnership registered under the Limited Partnership Act 2008, **subsection (2)** applies for income years starting on and after 1 April 2008.

203J Section HG 10 replaced 10

- (1) Section HG 10 is replaced by the following:

“HG 10 Disposal of livestock

“When this section applies

- “(1) This section applies when a person disposes of some or all of their partner’s interests to an entering partner and **section HG 3(3)** applies, to the extent to which those interests include specified livestock and that specified livestock includes female breeding livestock and, for the income year, the partners use— 15
- “(a) the national standard cost scheme for specified livestock, described in section EC 22 (National standard cost scheme); or 20
- “(b) the cost price method for specified livestock, described in EC 25 (Cost price, replacement price, or market value).”

“Entering partner’s cost base

- “(2) **Section EC 26B** (Entering partners’ cost base) may apply to the entering partner for the purposes of determining the value of the specified livestock at the end of an income year for the purposes of section EC 2 (Valuation of livestock).” 25

“Defined in this Act: amount, cost price, dispose, income year, national standard cost scheme, partner, partner’s interest, specified livestock”. 30

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

204 Limitation on deductions by partners in limited partnerships

In section HG 11(8)(b), “under section HG 2” is omitted.

204B Scheme of subpart

- (1) Section HL 2(2)(b)(i) is replaced by the following: 5
- “(i) a company listed on a recognised exchange in New Zealand or an unlisted company choosing to become a portfolio listed company under section HL 12; and”.
- (2) After section HL 2(2), the following is inserted: 10
- “Portfolio listed company choosing to be portfolio tax rate entity
- “(2B) An entity that chooses to become a portfolio listed company as described in subsection (2)(b) may choose to become a portfolio tax rate entity as described in subsection (2)(a).” 15

205 Eligibility requirements for entities

- (1) Section HL 3(9), other than the heading, is replaced by the following:
- ~~“(9) The business requirement is that the entity must not carry on a business of life insurance. This requirement does not apply to a life fund PIE.”~~ 20
- “(9) The business requirement is that the entity must not carry on a business of life insurance. This requirement does not apply to a portfolio investment-linked life fund.”
- (2) In section HL 3(11), “HL 14(1)” is replaced by “HL 15(1)”. 25
- ~~(3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.~~

206 Effect of failure to meet eligibility requirements for entities

- (1) Section HL 4(1)(a) is replaced by the following: 30
- “(a) referred to in sections HL 2(2) and HL 3; and”.
- (2) Section HL 4(2)(a) is replaced by the following:
- “(a) the portfolio investor class of the entity fails to meet a requirement under section HL 6 or HL 9 on the last day of a quarter— 35

- “(i) beginning 6 months or more after the date on
which the portfolio investor class is formed; and
- “(ii) ending more than 3 months before an announce-
ment by the entity to its investors that the
portfolio investor class is winding up within 12 5
months of the announcement; and
- “(ab) the entity fails to meet a requirement under section
HL 10 on the last day of a quarter—
- “(i) beginning 6 months or more after the date on
which the entity becomes a portfolio investment 10
entity; and
- “(ii) ending more than 3 months before an announce-
ment by the entity to its investors that the entity
is winding up within 12 months of the announce-
ment; and”. 15
- (3) In section HL 4(2)(b)(ii), “paragraph (a)(ii)” is replaced by
“**paragraphs (a)(ii) and (ab)(ii)**”.

206B Meaning of investor and portfolio investor class

Section HL 5B(1)(d) is repealed.

- 207 Investor membership requirement** 20
- (1) Section HL 6(1)(a) is replaced by the following:
 - “(a) 20 persons, treating all interests held by associated per-
sons and included by subsection (4) as being held by 1
person.”.
 - (2) After section HL 6(1)(i), the following is inserted: 25
 - “(ib) Auckland Regional Holdings:
 - “(ic) a community trust.”.
 - (3) In section HL 6(1)(j)(iii), “entity:” is replaced by “entity.” and
section HL 6(1)(k) is repealed.
 - (3B) Section HL 6(3) is replaced by the following:** 30

“No investor membership requirement for public unit trusts
 - “(3) There is no investor membership requirement for a portfolio
investor class that, if treated as a unit trust, would meet the
requirements of 1 or more of paragraphs (a) and (c) to (e) of
the definition of public unit trust.** 35

“No investor membership requirement for certain superannuation funds and others

“(3B) There is no investor membership requirement for a portfolio investor class that includes an investor that is—

“(a) a superannuation fund established under the proposal for the restructuring of the National Provident Fund required by the National Provident Fund Restructuring Act 1990; 5

“(b) the fund established by the Government Superannuation Fund Act 1956; 10

“(c) 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 15

“(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class;

“(d) a public unit trust.” 20

(4) Section HL 6(4)(a) and (b) are replaced by the following:

“(a) the investor is not listed in subsection (1)(b) to **(ib)**; and

“(b) the associated person is not listed in subsection (1)(b) to **(ib)**; and”.

(5) ~~In section HL 6, in the list of defined terms, “1988 version provisions” is omitted.~~ 25

207B Investor return adjustment requirement: portfolio tax rate entity

After section HL 7(4), the following is added:

“Extending time limits 30

“(5) On application by a portfolio tax rate entity, the Commissioner may extend a time limit imposed under subsection (3)(a) if it is reasonable in the circumstances.”

208 Investor interest size requirement

(1) ~~After section HL 9(4)(h), the following is inserted:~~ 35

~~“(hb) Auckland Regional Holdings.”.~~

- (2) ~~Section HL 9(4)(j) is repealed.~~
- (3) ~~Section HL 9(6)(a) and (b) are replaced by the following:~~
~~“(a) the investor is not listed in subsection (4)(a) to **(hb)**; and~~
~~“(b) the associated person is not listed in subsection (4)(a) to **(hb)**; and”.~~ 5
- (1) Section HL 9(2) is replaced by the following:
“No investor interest size requirement for public unit trusts
“(2) There is no investor membership requirement for a portfolio
investor class that, if treated as a unit trust, would meet the
requirements of 1 or more of paragraphs (a) and (c) to (e) of
the definition of **public unit trust**.” 10
- (2) Section HL 9(4), other than the heading, is replaced by the
following:
“(4) An investor may hold a portfolio investor interest in a portfolio
investor class that would otherwise breach the investor interest
size requirement for the entity if the investor is— 15
“(a) a portfolio investment entity;
“(b) a foreign investment vehicle;
“(c) an entity that—
“(i) meets the requirements of section HL 3 that 20
would be relevant if the entity were choosing to
become a portfolio investment entity; and
“(ii) has not chosen to become a portfolio investment
entity;
“(d) a life insurer; 25
“(e) the New Zealand Superannuation Fund;
“(f) a superannuation fund established under the proposal
for the restructuring of the National Provident Fund re-
quired by the National Provident Fund Restructuring
Act 1990; 30
“(g) the fund established by the Government Superannu-
ation Fund Act 1956;
“(h) a superannuation fund that—
“(i) existed before 17 May 2006; and
“(ii) on or after 17 May 2006, if treated as a unit trust, 35
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:
- “(i) a public unit trust:
- “(j) the Accident Compensation Corporation: 5
- “(k) a Crown entity subsidiary of the Accident Compensation Corporation:
- “(l) the Earthquake Commission:
- “(m) Auckland Regional Holdings:
- “(n) a portfolio investor class of less than 20 persons, treating all interests held by associated persons and included by subsection (6) as being held by 1 person, if— 10
- “(i) the entity has 1 or more other portfolio investor classes that meet the requirements of section HL 6(1)(a); and 15
- “(ii) no investor in the class, other than the entity’s manager or trustee, can control the investment decisions relating to that class; and
- “(iii) investors for which the entity would not meet the investor membership requirement in the absence of this paragraph have portfolio investor interests with a total value of less than 10% of the total value of portfolio investor interests in the entity: 20
- “(o) a person who meets the requirements of subsection (5).”
- (3) Section HL 9(4)(o) is replaced by the following: 25
- “(o) a community trust:
- “(p) a person who meets the requirements of subsection (5).”
- (4) In section HL 9(5), “subsection (4)(a) to (h)” is replaced by “subsection (4)(a) to (n)”. 30
- (5) In section HL 9(5), “subsection (4)(a) to (n)” is replaced by “subsection (4)(a) to (o)”. 30
- (6) Section HL 9(6)(a) and (b) are replaced by the following:
- “(a) the investor is not listed in subsection (4)(a) to (n); and
- “(b) the associated person is not listed in subsection (4)(a) to (n); and”. 35
- (7) Section HL 9(6)(a) and (b) are replaced by the following:
- “(a) the investor is not listed in subsection (4)(a) to (o); and

- “(b) the associated person is not listed in subsection (4)(a) to (o); and”.
- (8) **Subsections (3), (5), and (7)** apply for the 2009–10 and later income years.
- 209 Further eligibility requirements relating to investments** 5
Section HL 10(2)(b)(iii) is replaced by the following:
“(iii) an amount of income from a lease of land, but this subparagraph does not apply if the lessee under the lease is associated with the entity deriving the amount.”. 10
- 210 Unlisted company choosing to become portfolio listed company**
In section HL 12(1)(a), “100 shareholders” is replaced by “at least 100 shareholders”.
- 211 Becoming portfolio investment entity** 15
Section HL 13(1)(b) is replaced by the following:
“(b) the entity, if treated as becoming a portfolio investment entity when the election would be effective, would cease under section HL 4 to be eligible through a failure to meet 1 or more of the requirements in section HL 6, HL 9, or HL 10 in each quarter of the 12-month period.” 20
- 211B Treatment of income from interest when entitlement conditional or lacking**
(1) After section HL 17(2), the following is added:
“Relationship with section CS 1 25
(3) For the purposes of subsection (1), if a superannuation fund that has chosen to become a portfolio tax rate entity derives income under section CS 1 (Withdrawals), the income is treated as income in which no investor has a portfolio investor interest.” 30
(2) **Subsection (1)** applies for the 2008–09 and later income years.

212 Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period

In section HL 20(3), the formula is replaced by the following:

class net income – class net loss – other loss used.

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

5

(1) In section HL 29(6)(a)(ii), “HL 21” is replaced by “HL 22”.

(2) In section HL 29(7), the words before paragraph (a) are replaced by the following:

“(7) The investor is treated as receiving for the allocated credits, for the tax year corresponding to the investor’s income year or, in the case of an investor having a portfolio investor exit period, for the quarter to which the portfolio investor exit period relates,—”.

10

(3) In section HL 29(11)(a)(i), “late” is replaced by “later”.

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

15

213B Portfolio entity formation loss

In section HL 30(7)(c), “schedule 1, part A, clause 5” is replaced by “schedule 1, part A, clause 2”.

214 Subpart HL replaced by subpart HM

20

(1) Subpart HL is replaced by the following:

“Subpart HM—Portfolio investment entities

“Introductory provisions

“HM 1 Outline of subpart and relationship with other Parts

“Subpart HM

25

“(1) This subpart sets out—

“(a) the entry and exit rules for portfolio investment entities, *see* **sections HM 7 to HM 30**:

“(b) who an investor is, and what an investor class is, *see* **sections HM 4 and HM 5**:

30

“(c) what a multi-rate PIE must do in relation to its investors and its investments, *see* **sections HM 31 to HM 62**:

- “(d) the treatment of losses by PIEs, *see* **sections HM 63 to HM 69**:
- “(e) how an entity makes an election to become a PIE, and the consequences of making the election, *see* **sections HM 70 to HM 75**. 5
- “*Relationship with Parts C and D*
- “(2) The following sections apply to portfolio investment entities:
- “(a) **section CB 26** (Disposal of certain shares by portfolio investment entities):
- “(b) **section CP 1** (Attributed income of investors in multi-rate PIEs): 10
- “(c) **section CX 55** (Proceeds from disposal of investment shares):
- “(d) **section CX 56** (Attributed income of certain investors in multi-rate PIEs): 15
- “(e) **section CX 56B** (Distributions to investors in multi-rate PIEs):
- “(f) **section CX 56C** (Distributions to investors by listed PIEs):
- “(g) **section CX 57** (Credits for investment fees): 20
- “(h) **section DB 53** (Attributed PIE losses of certain investors):
- “(i) ~~section DB 54 (Treatment of credits for investment fees)~~:
- “(i) **section DB 54** (Treatment of credits for investment fees): 25
- “(j) sections DV 2, DV 4, and DV 5 (which relate to transfers of expenditure to a master superannuation fund that is a PIE).
- “*Relationship with subpart LS* 30
- “(3) Subpart LS (Tax credits for multi-rate PIEs and investors) contains the rules relating to the amount and use of a tax credit arising under this subpart.
- “Defined in this Act: amount, investor, investor class, multi-rate PIE, PIE, portfolio investment entity, tax credit 35
- “Compare: 2007 No 97 ss HL 1, HL 2

“HM 2 What is a portfolio investment entity?”

“Meaning

“(1) A portfolio investment entity (a **PIE**) is a company or fund that—

- “(a) makes investments on behalf of 1 or more investors in the entity or in an investor class of the entity; and 5
- “(b) meets and maintains the requirements for PIE status; and
- “(c) chooses to become a PIE by notifying the Commissioner. 10

“PIE types

“(2) An entity that chooses to become a PIE must be 1 of the following types of entity:

- “(a) a multi-rate PIE:
- “(b) a listed PIE: 15
- “(c) a benefit fund PIE:
- “(d) a life fund PIE.

“Listed PIEs becoming multi-rate PIEs

“(3) Despite **subsection (2)**, an entity that chooses to become a listed PIE may choose to become a multi-rate PIE if it meets the requirements of the entry rules set out in **sections HM 7 to HM 30**. 20

“Defined in this Act: benefit fund PIE, Commissioner, company, investor, investor class, life fund PIE, listed PIE, multi-rate PIE, notify, PIE, portfolio investment entity 25

“Compare: 2007 No 97 s YA 1 ‘ portfolio investment entity’

“HM 3 Foreign PIE equivalents

A **foreign PIE equivalent** means an entity that—

- “(a) is not resident in New Zealand; and
- “(b) is— 30
 - “(i) a company:
 - “(ii) a superannuation scheme:
 - “(iii) the trustee of a trust that would be a unit trust if it had more than 1 subscriber, purchaser, or contributor participating as beneficiaries under the trust; and 35

~~“(c) meets the requirements relating to investment types, in-
come sources, and maximum shareholding in invest-
ments in **sections HM 11 to HM 13** applying the ex-
ception set out in **section HM 23(2)**; and~~

“(c) meets the requirements relating to investment types, in- 5
come sources, and maximum shareholding in invest-
ments in **sections HM 11 to HM 13**; and

“(d) has investors that would qualify as an investor class
under **section HM 14** taking into account the limita- 10
tions under **sections HM 21(2) and HM 22**; and

“(e) meets the requirements relating to investors’ interests
in **section HM 15** applying the exceptions set out in
section HM 21(3) to (5) and section HM 22.

“Defined in this Act: company, investor, investor class, investor interest, resi-
dent in New Zealand, superannuation scheme, trustee, unit trust 15

“Compare: 2007 No 97 s HL 5(1)

“HM 4 Who is an investor?

“Meaning of investor

“(1) An **investor** in a PIE or foreign PIE equivalent means—

“(a) for an entity that is a company, a shareholder in a com- 20
pany:

“(b) for a life fund PIE, a person whose benefits under the
relevant life insurance policy are directly linked to the
value of investments held in the PIE:

“(c) for an entity that is not a company or a life fund PIE, 25
a person who is entitled to a proportion of the funds
available for distribution by the entity—

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

“(ii) as if the entity were a company and the person 30
were a shareholder in the company.

“Proxies

- “(2) Despite **subsection (1)**, if a share, entitlement, or life insurance policy is held through a proxy referred to in **section HM 33**, the investor is the proxy.

“Defined in this Act: company, foreign PIE equivalent, investor, life fund PIE, life insurance policy, PIE, share, shareholder

“Compare: 2007 No 97 s HL 5B(1)

“HM 5 What is an investor class?

“Meaning of investor class

- “(1) An **investor class** of an entity means a group of 1 or more investors in the entity that meet the requirements of **subsections (2) to (4)**.

“Entitlement to distributions

- “(2) Each investor in the group must have an entitlement to a distribution by the entity of proceeds from the entity’s investments that means the requirements of **subsections (3) and (4)** are met.

“Same investments

- “(3) The investments must be the same for all investors in the group.

“Similar proportionate entitlement

- “(4) Each investor’s interest in the investment as a proportion of the value of their entitlement must not differ from the average value for the group and the investment by 2.5% or more unless—

“(a) the investment is an arrangement under which the PIE is assured of receiving sufficient proceeds from the investments to repay each investor in the group an amount contributed to it:

“(b) the excess in any difference between the proportion for the investor and the average value for the group arises from differences between the notified tax rates of those investors in the group.

“Defined in this Act: arrangement, investor, investor class, investor interest, notified tax rate, pay

“Compare: 2007 No 97 s HL 5B(2), (3)

“HM 6 Intended effects for multi-rate PIEs and investors

“Intended effects for entity

- “(1) ~~The intended effects for an entity that is using funds supplied by investors to make investments of certain types and who meets the requirements for multi-rate PIE status are that~~ The intended effects for an entity that is using funds supplied by investors to make investments of certain types and that meets the requirements for multi-rate PIE status are that— 5
- “(a) in relation to proceeds of the investments that are attributed to investors who are natural persons or certain trustees or other persons, the PIE has a tax liability— 10
- “(i) calculated using a tax rate for each investor; and
- “(ii) resembling the total tax liability the group of investors would have if the investors were to make the investments separately: 15
- “(b) the PIE has no tax liability on proceeds of the investments that are attributed to other investors:
- “(c) the PIE allocates to each investor amounts resembling the amounts that the investor would receive, after allowing for the tax paid by the PIE if making the investment separately. 20

“Intended effects for investors

- “(2) The intended effects for an investor in the multi-rate PIE are that—
- “(a) the investor has no tax liability on income arising from proceeds for which the PIE has a tax liability, unless the investor has given the PIE a rate that is lower than the correct rate: 25
- “(b) the investor is liable for tax on any assessable income arising from proceeds for which the PIE has a tax liability: 30
- “(c) the investor receives on the investment in the PIE an economic return that the investor would receive after payment of tax liabilities if personally making invest-

ments similar to those made by the PIE in which they have an investor interest.

“Defined in this Act: amount, assessable income, investor, investor interest, multi-rate PIE, pay, PIE, tax, trustee

“Compare: 2007 No 97 s HL 1(2)(a)

5

“Entry rules

“HM 7 Requirements

For an entity to be a PIE, it must—

“(a) ~~meet the requirements of the entry rules in **sections HM 8 to HM 10, HM 17, and HM 18**, as applicable;~~ 10
and

“(a) meet the requirements of the entry rules in **sections HM 8 to HM 10, HM 17, HM 18, and HM 20**, as applicable; and

“(b) be 1 of the types of entity referred to in **section HM 2(2)**; and 15

“(c) choose under **section HM 70** to become a PIE; and

“(d) maintain the requirements of the rules in **sections HM 8 to HM 20**, as applicable; and

“(e) not lose PIE status under the exit rules in **sections HM 24 to HM 30**. 20

“Defined in this Act: PIE

“Compare: 2007 No 97 ss HL 2(2), HL 15(1), (2)

“Requirements

“HM 8 Residence in New Zealand

25

The entity must be—

“(a) resident in New Zealand; and

“(b) not treated under a double tax agreement as not resident in New Zealand.

“Defined in this Act: double tax agreement, resident in New Zealand

30

“Compare: 2007 No 97 s HL 3(10)

“HM 9 Collective schemes

The entity must be—

- “(a) a company:
- “(b) a superannuation scheme:
- “(c) the trustee of a trust that would be a unit trust if there were more than 1 subscriber, purchaser, or contributor participating as beneficiaries under the trust: 5
- “(d) a separate identifiable fund forming part of a life insurer that holds investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund.

“Defined in this Act: company, life insurance policy, life insurer, superannuation scheme, trustee, unit trust 10

~~“Compare:~~

“HM 10 Exclusion: life insurance business

The entity must not carry on a business of life insurance unless it is a life fund PIE.

“Defined in this Act: life fund PIE, life insurance 15

“Compare: 2007 No 97 s HL 3(9)

“HM 11 Investment types

The entity’s investments, to the extent of 90% or more by value of its assets, must be—

- “(a) an interest in land: 20
- “(b) a financial arrangement:
- “(c) an excepted financial arrangement:
- “(d) a right or option in relation to property listed in **paragraphs (a) to (c)**.

“Defined in this Act: excepted financial arrangement, financial arrangement, land 25

“Compare: 2007 No 97 s HL 10(1)

“HM 12 Income sources

Income derived by the entity, to the extent of 90% or more, must— 30

- “(a) be derived from property referred to in **section HM 11**; and
- “(b) consist of the following:
 - “(i) a dividend:

- “(ii) a replacement payment:
- “(iii) an amount of income treated under subpart EW (Financial arrangements rules) as derived by the entity:
- “(iv) an amount of income derived from a lease of land, but this subparagraph does not apply if the lessee under the lease is associated with the entity receiving the amount: 5
- “(v) an amount derived from the disposal of property referred to in **section HM 11**: 10
- “(vi) FIF income:
- “(vii) attributed PIE income:
- “(viii) a distribution from a superannuation fund.

“Defined in this Act: amount, associated person, attributed PIE income, dividend, FIF income, income, land, lessee, replacement payment, superannuation fund 15

“Compare: 2007 No 97 s HL 10(2)

“HM 13 Maximum shareholdings in investments

“*When this section applies*

- “(1) This section applies when an entity has an investment consisting of shares in a company other than shares in— 20
 - “(a) a PIE, or an entity that qualifies for PIE status:
 - “(b) a foreign PIE equivalent:
 - “(c) a land investment company.

“*Voting interests: companies other than unit trusts* 25

- “(2) The investment must carry voting interests in the company of no more than 20%. This subsection does not apply to a unit trust. **Subsection (5)** overrides this subsection.

“*Investments in unit trusts*

- “(3) For an investment in a unit trust, the investment must have a market value no more than 20% of the market value of all interests in the unit trust. **Subsection (5)** overrides this subsection. 30

“*Class requirements*

- “(4) For each investment and each investor class of the entity, the percentage thresholds set out in **subsections (2) and (3)** ap- 35

ply to the investment by the class in the same way as they apply to the investment by the entity. **Subsection (5)** overrides this subsection.

“Exception for limited non-complying investments

- “(5) Despite **subsections (2) to (4)**, the 20% cap in those subsections can be exceeded if the total market value of all investments where the cap is exceeded is not more than 10% of the market value of the total investments of the entity or investor class. 5

“Defined in this Act: ~~company, foreign PIE equivalent, investor class, land investment company, market value, PIE, share, voting interest, unit trust~~company, foreign PIE equivalent, investor class, land investment company, market value, PIE, share, unit trust, voting interest 10

“Compare: 2007 No 97 s HL 10(3)–(5)

“**HM 14 Minimum number of investors** 15

“Requirement for entities other than listed companies

- “(1) If the entity is not a company listed on a recognised exchange in New Zealand, each investor class must include 20 or more persons.

“Requirements for listed companies 20

- “(2) If the entity is a company listed on a recognised exchange in New Zealand, it must have only 1 investor class of which each investor is a member. Each investor interest must be a share traded on the exchange. This subsection applies equally to an unlisted PIE that meets the requirements of **section HM 18**. 25

“Exceptions

- “(3) **Subsection (4) and sections HM 21(2) and HM 22** override **subsection (1)**.

“Exception for boutique classes

- “(4) **Subsection (1)** does not apply to an investor class (the ~~boutique investor class~~) of an entity if— 30

“(a) the investor class does not have 20 or more members; and

“(b) the entity has 1 or more other investor classes that meet the requirement of **subsection (1)**; and 35

- “(c) no investor in the boutique investor class, other than the manager or trustee of the entity, can control investment decisions relating to the class; and
- “(d) the interests of investors in all boutique investor classes of the entity add up to less than 10% of the total value of interests in the entity. 5

“Defined in this Act: ~~company, investor, investor class, investor interest, listed company, listed PIE, New Zealand, recognised exchange, share, trustee~~company, investor, investor class, investor interest, listed company, listed PIE, New Zealand, recognised exchange, share 10

“Compare: 2007 No 97 s HL 6(1A), (1), (2), (4)

“HM 15 Maximum investors’ interests

“Requirement for investors’ interests

- “(1) An investor in an investor class must not hold more than 20% of the total interests of investors in the class. 15

“Exceptions

- “(2) ~~Sections HM 21(3) to (5) and HM 22~~ override this section.
- “(2) Sections HM 21(3) to (5), HM 22, and HM 22B override this section.

“Defined in this Act: investor, investor class 20

“Compare: 2007 No 97 s HL 9(1), (6)

“HM 16 Associates combined

For the purposes of **sections HM 14 and HM 15**, if a person is associated with an investor, the person and the investor are treated as 1 person, but only if both the person and the investor hold an investor interest of 5% or more. **Section HM 21(6)** overrides this section. 25

“Defined in this Act: associated person, investor, investor interest

“Compare: 2007 No 97 s HL 9(6)

“HM 17 Same rights to all investment proceeds 30

“What this section does

- “(1) This section is an additional entry rule for a PIE that is not a life fund PIE.

“Same rights in relation to proceeds of investments

- “(2) All investor interests in the entity that give rights in relation to proceeds from a portfolio investment must give the same rights in relation to all types of proceeds from the investment.

“Category B income excluded

5

- “(3) This section does not apply if the proceeds are category B income.

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

“Compare: 2007 No 97 s HL 5C

10

“HM 18 Requirements for listed PIEs: unlisted companies

“Choosing to become listed PIE

- “(1) A company that is not listed on a recognised exchange in New Zealand may choose under **section HM 70** to become a listed PIE if it—

15

“(a) has 100 shareholders or more; and

“(b) has resolved to become a company listed on a recognised exchange in New Zealand if it were to obtain the required consents; and

“(c) has applied to the Securities Commission for an exemption to disclose in a prospectus its intention to become a listed company; and

20

“(d) satisfies the Commissioner that the company would apply to become a listed company if it were to obtain the required consents.

25

“Two-year period

- “(2) If the company is not listed within 2 years of the election, it loses PIE status from the last day of that period.

“Defined in this Act: Commissioner, company, listed company, listed PIE, New Zealand, PIE, recognised exchange, shareholder

30

“Compare: 2007 No 97 s HL 12

“HM 19 Requirements for listed PIEs: fully crediting distributions

“What this section does

- “(1) This section is an additional rule for an entity that is a listed PIE other than a life fund PIE. 5

“Fully crediting distributions

- “(2) When a listed PIE distributes an amount to an investor in an investor class, the distribution must be fully credited as described in section CD 43(26) (Available subscribed capital (ASC) amount) to the extent permitted by the imputation credits or FDP credits that the directors of the company determine are available. 10

“Relationship with section CX 56C

- “(3) For the treatment of imputation credits when a shareholder chooses to include the distribution as income in their return of income, *see* **section CX 56C(2)** (Distributions to investors by listed PIEs). 15

“Defined in this Act: amount, company, director, FDP credit, imputation credit, income, investor, investor class, life fund PIE, listed PIE, return of income, shareholder 20

“Compare: 2007 No 97 s HL 8

“HM 20 Re-entering as PIE: 5-year rule

If an entity loses PIE status through the application of **sections HM 24 to HM 29**, it cannot choose to become a PIE again until 5 years have passed from the date of loss of status to the date on which a new election takes effect. 25

“Defined in this Act: PIE

“Compare: 2007 No 97 s HL 3(11)

“Exceptions

“HM 21 Exceptions for certain investors 30

- “(1) ~~This section applies when an investor is—~~

~~“(a) a PIE, or an entity that qualifies for PIE status;~~

~~“(b) a foreign PIE equivalent;~~

~~“(c) a life insurer;~~

~~“(d) the New Zealand Superannuation Fund; 35~~

- “(e) the Accident Compensation Corporation, or a Crown entity subsidiary of the Corporation:
- “(f) the Earthquake Commission:
- “(g) Auckland Regional Holdings:
- “(2) **Section HM 14(1)** does not apply to an investor class of an entity if the class includes at least 1 investor listed in **subsection (1)**: 5
- “(3) **Section HM 15** does not apply in relation to an entity other than a listed PIE in the case of an investor listed in **subsection (1)**: 10
- “(4) **Section HM 15** does not apply in relation to a listed PIE in the case of an investor listed in **subsection (1)** that holds more than 20% but less than 40% of the total interests in the investor class:
- “(5) **Section HM 15** does not apply in the case of an investor in a listed PIE, other than an investor listed in **subsection (1)**, that holds more than 20% but less than 40% of the total interests in the investor class and held more than 20% and less than 40% of the total interests at all times from 17 May 2006 to the relevant time: 15 20
- “(6) **Sections HM 16** does not apply if either the associated person or the investor is an investor listed in **subsection (1)**:
- “Investor classes
- “(2) **Section HM 14(1)** does not apply to an investor class of an entity if the class includes at least 1 investor listed in **schedule 29, part A** (Portfolio investment entities: listed investors). 25
- “Certain investors in non-listed PIEs
- “(3) **Section HM 15** does not apply in relation to an entity other than a listed PIE in the case of an investor listed in **schedule 29, parts A and B**. 30
- “Certain investors in listed PIEs
- “(4) **Section HM 15** does not apply in relation to a listed PIE in the case of an investor listed in **schedule 29, parts A and B** that holds more than 20% but less than 40% of the total interests in the investor class. 35

“Transitional provision for investors in listed PIEs

“(5) **Section HM 15** does not apply in the case of an investor in a listed PIE, other than an investor listed in **schedule 29, parts A and B**, that holds more than 20% but less than 40% of the total interests in the investor class and held more than 20% and less than 40% of the total interests at all times from 17 May 2006 to the relevant time. 5

“Not combined associates

“(6) **Section HM 16** does not apply if either the associated person or the investor is an investor listed in **schedule 29, parts A and B**. 10

“Defined in this Act: ~~associated person; foreign PIE equivalent; investor; investor class; life insurer; listed PIE; PIE~~associated person, investor, investor class, listed PIE, PIE

“Compare: 2007 No 97 ss HL 6(4), HL 9 15

“HM 22 Exceptions for certain funds

“Public unit trust

“(1) **Sections HM 14(1) and HM 15** do not apply to an investor class of a PIE if, treating the class as a unit trust, it would meet the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**. 20

“Certain superannuation funds

“(2) **Sections HM 14(1) and HM 15** do not apply in the case of an investor class of an entity that is—

“(a) a superannuation fund established under the proposal for the restructuring of the National Provident Fund required by the National Provident Fund Restructuring Act 1990: 25

“(b) a fund established by the Government Superannuation Fund Act 1956: 30

“(c) a superannuation fund that—

“(i) was in existence before 17 May 2006; and

“(ii) would, if treated as a unit trust, meet the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**; and 35

~~“(iii) has no investor, other than its manager or trustee,
who can control the its investment decisions.~~

“(2) **Sections HM 14(1) and HM 15** do not apply in the case of
an investor class of an entity that is a fund, trust, or class listed
in **schedule 29, part B** (Portfolio investment entities: listed 5
investors).

~~“Defined in this Act: investor class, PIE, public unit trust, superannuation fund,
trustee, unit trust~~investor class, PIE, public unit trust, unit trust

“Compare: 2007 No 97 ss HL 6(3), HL 9(2)

“HM 23 Exceptions for foreign PIE equivalents 10

“Investor classes and investors’ interests

“(1) If an investor in a PIE is a foreign PIE equivalent,—

“(a) the requirement for investor classes under **section
HM 14(1)** is treated as met:

“(b) no limitation on investors’ interests under **section** 15
HM 15 applies in the case of that investor.

“Shareholding in investments

“(2) If a PIE holds an investment in a foreign PIE equivalent, no
maximum limit on shareholding in investments under **section**
HM 13 applies to that investment. 20

“Defined in this Act: foreign PIE equivalent, investor, investor class, investor
interest, PIE

“Compare: 2004 No 35 ss HL 9(4), HL 10(4)

“Exit rules

“HM 24 Ending of New Zealand residence 25

An entity loses PIE status immediately if it is no longer resi-
dent in New Zealand.

“Defined in this Act: PIE, resident in New Zealand

“Compare: 2007 No 97 s HL 4(1)

“HM 25 When entity no longer meets investment or investor requirements*“Effect*

- “(1) An entity loses PIE status if,—
- “(a) on the last day of a quarter (the **first quarter**),— 5
 - “(i) the entity no longer meets a requirement of **sections HM 11 to HM 13**; or
 - “(ii) an investor class of the entity no longer meets a requirement of **sections HM 13 to HM 15**; and
 - “(b) the failure to meet the requirements— 10
 - “(i) is significant and is within the control of the entity:
 - “(ii) is not remedied by the last day of the next quarter (the **second quarter**).
- “Date of loss of status 15*
- “(2) The date of loss of PIE status is—
- “(a) when **subsection (1)(b)(i)** applies, the last day of the first quarter:
 - “(b) when **subsection (1)(b)(i)** does not apply, the last day of the second quarter. 20
- “Transitional quarters disregarded*
- “(3) **Subsection (1)** does not apply if the start of the first quarter would be within—
- “(a) 6 months plus 1 day of the date on which the entity becomes a PIE, or the investor class is formed; or 25
 - “(b) 3 months before an announcement by the entity to its investors that it or the relevant investor class is winding up within 12 months of the announcement.
- “(3) **Subsection (1)** does not apply if—
- “(a) the start of the first quarter would be within 6 months plus 1 day of the date on which the entity becomes a PIE, or the investor class is formed; or 30
 - “(b) the first quarter ends more than 3 months before an announcement by the entity to its investors that it, or the relevant investor class, is winding up within 12 months of the announcement. 35

“Defined in this Act: investor class, PIE, quarter

“Compare: 2007 No 97 s HL 4(2)

“HM 26 Starting life insurance business

An entity that is not a life fund PIE loses PIE status immediately if it starts to carry on the business of life insurance.

“Defined in this Act: business, life fund PIE, life insurance, PIE

“Compare: 2004 No 35 s HL 4(1)

5

“HM 27 When multi-rate PIE no longer meets investor interest adjustment requirements

A multi-rate PIE loses PIE status immediately if it fails to meet a requirement of **section HM 48**.

“Defined in this Act: investor interest, multi-rate PIE, PIE

“Compare: 2004 No 35 s HL 4(1)

10

“HM 28 When listed PIE no longer meets crediting requirement

A listed PIE loses PIE status immediately if it fails to meet the requirements of **section HM 19**.

“Defined in this Act: listed PIE, PIE

“Compare: 2004 No 35 s HL 4(1)

15

“HM 29 Choosing to cancel status

An entity loses PIE status if it chooses to cancel PIE status by notifying the Commissioner under **section 31B** of the Tax Administration Act 1994. **Section HM 71(3)** applies to determine the date the election takes effect.

“Defined in this Act: Commissioner, notify, PIE

“Compare: 2004 No 35 s

20

“HM 30 When foreign PIE equivalent no longer meets requirements

25

“*Commencing New Zealand residence*

“(1) A foreign PIE equivalent loses its status immediately if it becomes resident in New Zealand.

“*Continued failure*

“(2) A foreign PIE equivalent loses its status if it no longer meets the requirements set out in **section HM 3(b) to (e)** at the end

30

of 2 consecutive quarters. The loss of status takes effect from the first day of the third quarter.

“Defined in this Act: foreign PIE equivalent, quarter, resident in New Zealand
 “Compare: 2007 No 97 s HL 5(2)

“Rules for multi-rate PIEs 5

“Introductory provisions

“HM 31 Rules for multi-rate PIEs

“Rules

- “(1) A multi-rate PIE must—
- “(a) attribute income arising from the proceeds of an investment to an investor, and pay tax on the income based on the investor’s tax rate, *see* **sections HM 34 to HM 40**: 10
 - “(b) calculate and pay its tax liability, choosing certain periods to do this, *see* **sections HM 41 to HM 47**:
 - “(c) adjust investors’ interests in the entity or distributions from the entity to reflect an amount of tax paid, *see* **section HM 48**: 15
 - “(d) use tax credits received to satisfy the entity’s tax liability, in some cases providing any surplus credits to certain investors by making an adjustment described in **paragraph (c)**, *see* **sections HM 49 to HM 55**. 20

“Further provisions related to payment options, tax rates, and exit periods

- “(2) ~~For the provisions relating to the options available to a multi-rate PIE for calculating and paying its tax liability, prescribed and notified tax rates for investors, and exit levels and periods, *see* **sections HM 56 to HM 60**.~~ 25
- “(2) For the provisions relating to the options available to a multi-rate PIE for calculating and paying its tax liability, prescribed and notified investor rates for investors, and exit levels and periods, *see* **sections HM 56 to HM 62**. 30

“Further provisions relating to use of losses

- “(3) For the provisions relating to the use of losses by multi-rate PIEs, *see* **sections HM 63 to HM 69**.

“Defined in this Act: ~~exit level, exit period, investor, investor interest, multi-rate PIE, notified tax rate, pay, prescribed tax rate, tax, tax credit~~
exit level, exit period, investor, investor interest, multi-rate PIE, notified investor rate, pay, prescribed investor rate, tax, tax credit

“Compare: 2007 No 97 s

“HM 32 Rules for and treatment of investors in multi-rate PIEs

“Tax rates

- “(1) An investor in a multi-rate PIE must notify the PIE of a tax rate applying to their investment income or have a default rate apply, *see* **sections HM 56 to HM 60**.

“Attributed income

- “(2) An amount of income attributed by a multi-rate PIE to an investor in the PIE is—

“(a) income of the investor under **section CP 1** (Attributed income of investors in multi-rate PIEs):

“(b) for certain investors, excluded income of the investor under **section CX 56** (Attributed income of certain investors in multi-rate PIEs).

“Defined in this Act: amount, excluded income, income, investor, multi-rate PIE, notify

“Compare: 2007 No 97 s

“HM 33 Proxies for PIE investors

“Proxies

- “(1) An entity may become a proxy for an investor in a multi-rate PIE for an attribution period if the entity—

“(a) holds an investor interest for the investor; and

“(b) notifies the PIE that it holds the interest as proxy.

“Role

- “(2) The proxy must perform the duties set out in **subsection (3)** in relation to amounts attributed to them for the period as holder of the interest as if—

“(a) the proxy were a multi-rate PIE; and

- “(b) the investor interest were an interest of the investor in the income of the proxy; and
- “(c) the amounts attributed and distributions received by the proxy were amounts of the proxy to which the investor is entitled as holder of the interest.

5

“Duties

“(3) The proxy’s duties are to—

- “(a) attribute amounts to the investor for the period; and
- “(b) distribute amounts and credits to the investor for the period; and
- “(c) pay income tax on the investment income for the period; and
- “(d) adjust the investor interest of the investor or distributions to the investor under **section HM 48**; and
- “(e) provide returns as required under **section 57B** of the Tax Administration Act 1994 to the Commissioner and any other information required by the Commissioner; and
- “(f) provide the investor with a notice under **section 31C** of that Act; and
- “(g) provide the PIE with information about the investor and investor interest that may be relevant to any eligibility requirements of the PIE.

10

15

20

“Defined in this Act: amount, attribution period, Commissioner, income, income tax, investor, investor interest, multi-rate PIE, notify, PIE

25

~~“Compare: 2007 No 97 s HL 33~~

“Attributing income to investors

“HM 34 Attribution periods

A multi-rate PIE must use 1 of the following periods for attributing an amount for a tax year to an investor and an investor class:

30

- “(a) ~~for an entity that uses the quarterly calculation option under **section HM 43**, but chooses the attribution period by notifying the Commissioner before the start of the tax year or on choosing to become a PIE; a day, a month, or a quarter;~~

35

“(b) for an entity that chooses under **section HM 44** to pay provisional tax and chooses the attribution period by notifying the Commissioner before the start of the tax year or on choosing to become a PIE, a day, a month, a quarter, or an income year: 5

“(a) for an entity that uses the quarterly calculation option under **section HM 43**, but chooses the attribution period by notifying the Commissioner before the start of the tax year or on choosing to become a PIE, a day, a month, or a quarter; or 10

“(b) for an entity that chooses under **section HM 44** to pay provisional tax and chooses the attribution period by notifying the Commissioner before the start of the tax year or on choosing to become a PIE, a day, a month, a quarter, or an income year; or 15

“(c) for an entity that does not make a choice under **paragraphs (a) and (b)**, a day.

“Defined in this Act: amount, attribution period, Commissioner, investor, investor class, multi-rate PIE, PIE, provisional tax, tax year

“Compare: 2007 No 97 s HL 16(2)

5

10

15

20

“HM 35 Determining net amounts and taxable amounts

“*What this section applies to*

“(1) This section applies for the purposes of a calculation under **section HM 36(2)**.

“*Net amounts*

25

“(2) The net amount for an investor class of a multi-rate PIE for an attribution period is calculated using the formula—

assessable income – deductions.

“*Definition of items in formula*

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

“(a) **assessable income** is the total amount of the PIE’s assessable income attributed to the class for the attribution period: 30

“(b) **deductions** is the total amount of the PIE’s expenditure or loss for which the PIE is allowed a deduction that is—

“(i) incurred by the PIE in deriving the assessable income referred to in **paragraph (a)**; and 5

“(ii) attributed to the class for the attribution period.

“Net income or net loss

“(4) If the result of the formula is positive, the amount is net income of the class for the period. If the result of the formula is negative, the amount is a net loss of the class for the period. 10

“Taxable amounts

“(5) The taxable amount for an investor class of a multi-rate PIE for an attribution period is calculated using the formula—

net income – net loss – other loss used.

“Definition of items in formula

“(6) In the formula in **subsection (5)**,— 15

“(a) **net income** is the amount of the PIE’s net income referred to in **subsection (4)**:

“(b) **net loss** is amount of the PIE’s net loss referred to in **subsection (4)**:

“(c) **other loss used** is the lesser of the following amounts: 20

“(i) the total amount for the class of formation loss that is attributable for the attribution period under **sections HM 65 to HM 69** and any amount of land loss under **section HM 64** that has not been used for an earlier period: 25

“(ii) the total amount of net income referred to in **paragraph (a)**.

“Taxable income or tax loss

“(7) If the result of the formula is positive, the amount is taxable income of the class for the period. If the result of the formula is negative, the amount is a tax loss of the class for the period. 30

“Use of valuations or financial statements

“(8) Income and deductions of the multi-rate PIE are allocated to investors and investor classes for attribution periods as—

- “(a) reflected in the PIE’s valuation of investors’ interests, if the PIE makes these valuations:
- “(b) shown in the PIE’s financial statements, if the PIE does not makes the valuations referred to in **paragraph (a)**.

“Defined in this Act: amount, assessable income, attribution period, deduction, 5
formation loss, income, investor class, investor interest, land loss, multi-rate
PIE, net income, net loss, PIE, tax loss, taxable income

“Compare: 2007 No 97 ss HL 19, HL 20

“HM 36 Calculating amounts attributed to investors

“*Calculating amount* 10

- “(1) The amount of attributed PIE income or attributed PIE loss for an income year for an investor and an investor class in a multi-rate PIE is the total of the amounts calculated using the formula in **subsection (2)** for—

- “(a) each attribution period in the income year; and 15
- “(b) each day in the attribution period; and
- “(c) each investor class to which the investor belongs on the day.

“*Formula*

- “(2) The formula is— 20

$$\frac{\text{percentage} \times (\text{income} - \text{loss})}{\text{days in period}} - (\text{expenses} - \text{credits for fees}).$$

“*Definition of items in formula*

- “(3) In the formula,—

- “(a) **percentage** is the percentage of the investor’s entitlement to a distribution by the PIE to the investor class:
- “(b) **income** is the amount of taxable income determined 25
under **section HM 35(5) and (7)** for the period:
- “(c) **loss** is the amount of tax loss determined under **section HM 35(5) and (7)** for the period:
- “(d) **days in period** is the number of days in the period:
- “(e) **expenses** is the total amount for the day in the period 30
of—

- “(i) fees for ongoing management and administration services paid from or charged to the account of the investor as a member of the investor class:
 - “(ii) expenditure of the investor as a member of the investor class and transferred under subpart DV (Expenditure specific to certain entities) to the PIE: 5
- “(f) **credits for fees** is the amount of the credit for the fee paid or credited by the PIE to the account of the investor as a member of the investor class on the day in the period. 10
- “*Treatment of attributed loss for PIEs paying provisional tax*

“(4) Despite **subsection (3)**, an investor in a multi-rate PIE that chooses under **section HM 44** to pay provisional tax has no attributed PIE loss. 15

“*When derived or incurred*

“(5) ~~The investor is treated as deriving the income or incurring the loss in the income year of the investor in which the end of the PIE’s income year falls.~~

“(5) The investor is treated as deriving the attributed PIE income or incurring the attributed PIE loss in the income year of the investor in which the end of the PIE’s income year falls. 20

“Defined in this Act: amount, attributed PIE income, attributed PIE loss, attribution period, income, income year, investor, investor class, multi-rate PIE, PIE, provisional tax, tax loss, taxable income 25

“Compare: 2007 No 97 s HL 26
- “**HM 37 When income cannot be attributed**

“*When this section applies*

“(1) This section applies when a multi-rate PIE has income or property in which no investor has an interest, or income or property in which no person has a conditional entitlement under **section HM 38**. 30

“*Sole investor*

“(2) The PIE is treated as the sole investor in an investor class having an interest in the income or property. 35

“Relationship with section CS 1

- “(3) For the purposes of **subsection (1)**, income derived under section CS 1 (Withdrawals) by a multi-rate PIE that is a superannuation fund is treated as income to which no investor has an investor interest.

5

“Defined in this Act: ~~income, investor, investor class, multi-rate PIE~~income, investor, investor class, investor interest, multi-rate PIE

“Compare: 2007 No 97 s HL 17(1)

“HM 38 When superannuation fund investor has conditional entitlement

10

“When this section applies

- “(1) This section applies for the purposes of **section HM 37** in relation to an attribution period when a person has a conditional entitlement to an investor interest in a multi-rate PIE that is a superannuation fund that meets the requirements of **subsection (4)** in income or property of the PIE.

15

“Attribution

- “(2) The investor interest is treated as held by the person for the attribution period.

“When conditional entitlement exists

20

- “(3) A person is treated as having a conditional entitlement to an investor interest if—

“(a) the investor interest is bought by or for the person’s employer; and

“(b) the person and the employer have agreed that the person will have an unconditional entitlement to the interest before the end of a vesting period that is no longer than 5 years; and

25

“(c) the agreement exists before the attribution period; and

“(d) the vesting period ends after the attribution period.

30

“Modifications to certain vesting periods

- “(4) For the purposes of **subsection (3)(b)**,—

“(a) for a PIE that exists on 17 May 2006, a vesting period longer than 5 years is allowed but the vesting period must not be longer than the longest vesting period al-

35

lowed by the PIE at that date for an interest created on that date:

- “(b) for a PIE that does not exist on 17 May 2006, but the investor interest has been transferred to it by a superannuation scheme in existence on that date without significant change to the interest, a vesting period of any length is allowed. 5

“Defined in this Act: attribution period, employer, income, investor interest, multi-rate PIE, PIE, superannuation fund, superannuation scheme

“Compare: 2007 No 97 s HL 17(2) 10

“HM 39 New investors in existing investor classes

“*When this section applies*

- “(1) This section applies when a person is a new investor in an existing investor class of a multi-rate PIE but, at the time of investing, the PIE holds insufficient investments for the person to qualify as an investor in the class. 15

“*Person treated as investor*

- “(2) ~~The PIE may treat the person as an investor in the class if the PIE acquires sufficient investments as soon after the investor’s acquisition of the interests as is practicable.~~ 20

- “(2) The PIE may treat the person as an investor in the class if the PIE acquires sufficient investments as described in **section HM 11** as soon after the investor’s acquisition of the interests as is practicable.

“Defined in this Act: investor, investor class, multi-rate PIE, PIE 25

“Compare: 2007 No 97 s HL 18

“HM 40 Deductions for attributed PIE losses for zero-rated and exiting investors

“*When this section applies*

- “(1) This section applies to an investor in a multi-rate PIE when— 30

- “(a) an amount of attributed PIE loss is attributed under **section HM 36** to the investor for an attribution period in a tax year; and

- “(b) either— 35
“(i) the investor is a zero-rated investor; or

~~“(ii) the PIE calculates its tax liability using the quarterly calculation option under **section HM 43** and the amount is attributed to the investor’s exit period:~~

“(ii) the PIE calculates its tax liability using the quarterly calculation option under **section HM 43** and the amount is attributed to an exiting investor to whom **section HM 60** applies. 5

“Deduction

“(2) In the investor’s income year in which the end of the PIE’s income year falls, the investor is allowed a deduction under **section DB 53** (Attributed PIE losses of certain investors). The amount of the deduction is equal to the amount attributed for the income year or exit period. 10

“Defined in this Act: amount, attributed PIE loss, attribution period, deduction, exit period, income year, investor, multi-rate PIE, PIE, tax year, zero-rated investor 15

“Compare: 2007 No 97 s HL 27

“Calculating and paying tax liability

“**HM 41 Options for calculation and payment of tax** 20

“Available options

“(1) The options available to a multi-rate PIE for calculating and paying its income tax liability are—

“(a) the payment of tax calculated under the exit calculation option, *see* **section HM 42**; or 25

“(b) the payment of tax calculated under the quarterly calculation option, *see* **section HM 43**; or

“(c) the payment of provisional tax and terminal tax calculated on an income-year basis, *see* **section HM 44**.

“Default option 30

“(2) The PIE must use the default option under **subsection (1)(b)** unless it chooses an option under **subsection (1)(a) or (c)** by notifying the Commissioner.

“Income tax liability

~~“(3) The income tax liability of the PIE for the tax year is equal to the total amount calculated under the relevant method for~~ 35

periods in the tax year or, in the case of the provisional tax option under **section HM 44**, for the PIE's income year corresponding to the tax year.

- “(3) The income tax liability of the PIE for the tax year is equal to the total amount calculated under the relevant method for periods in the tax year or, in the case of the provisional tax calculation option under **section HM 44**, for the PIE's income year corresponding to the tax year. 5

“Defined in this Act: amount, Commissioner, income tax liability, income year, multi-rate PIE, notify, pay, PIE, provisional tax, tax year, terminal tax 10

“Compare: 2007 No 97 ss HL 16(3), HL 22–HL 24

“HM 42 Exit calculation option

“When this section applies

- “(1) ~~This section applies when a multi-rate PIE chooses for a tax year to calculate its income tax liability for exiting investors and remaining investors. The PIE must notify the Commissioner under **section 31C** of the Tax Administration Act 1994 of this election.~~ 15

- “(1) This section applies when a multi-rate PIE chooses for a tax year to calculate its income tax liability for exiting investors and remaining investors. The PIE must notify the Commissioner under **section 31B** of the Tax Administration Act 1994 of this election. 20

“Calculation for exiting investors

- “(2) For an investor whose interest has reached the exit level during the tax year, the PIE must calculate its income tax liability under **section HM 47** for the investor and the relevant exit period. The exit level and exit periods are determined under **sections HM 61 and HM 62.** 25

“Calculations for investors for non-exit periods 30

- “(3) For investors and periods in the income year other than exit periods, the PIE must calculate its income tax liability under **section HM 47** for the relevant period.

“Payment to Commissioner

- “(4) The PIE must pay to the Commissioner— 35

- “(a) the amount of income tax liability for an exiting investor for the exit period—
 - “(i) within 1 month after the end of the month of withdrawal; or
 - “(ii) if the month of withdrawal is November, by the 5 following 15 January; and
- “(b) the rest of the PIE’s income tax liability for the tax year within 1 month after the end of the tax year for remain- ing investors in the PIE at the end of the tax year, after allowing for any payment under **paragraph (a)** or any 10 voluntary payment under **section HM 45**.

“Provisional tax rules

- “(5) The PIE is not required to pay provisional tax under subpart RC (Provisional tax) for the tax year.

“Defined in this Act: amount, Commissioner, exit level, exit period, income 15 tax liability, income year, investor, multi-rate PIE, pay, PIE, provisional tax, tax year

“Compare: 2007 No 97 s HL 24(1)–(4)

“HM 43 Quarterly calculation option

“Quarterly calculation 20

- “(1) A multi-rate PIE that does not choose to calculate and pay its income tax liability under the exit calculation or provisional tax options, must calculate its tax liability for each quarter of the tax year using the formula set out in **section HM 47**:

“Quarterly payment 25

- “(2) The PIE must pay to the Commissioner the amount of its in- come tax liability for the quarter within 1 month of the end of the quarter. The notice requirements are set out in **section 31C** of the Tax Administration Act 1994.

“Quarterly calculation 30

- “(1) A multi-rate PIE that does not choose to calculate and pay its income tax liability under the exit calculation or provisional tax calculation options, must calculate its tax liability for each quarter of the tax year using the formula set out in **section HM 47**. The notice requirements are set out in **section 31B** 35 of the Tax Administration Act 1994.

“Quarterly payment

“(2) The PIE must pay to the Commissioner the amount of its income tax liability for the quarter within 1 month of the end of the quarter.

“Exiting investors: zero-rated

5

“(3) If an investor’s interest in the PIE has reached the exit level, they are treated under **section HM 60** as a zero-rated investor for the exit period which includes a grace period of 5 working days after the end of the quarter. This subsection does not apply if the PIE voluntarily chooses to pay an amount under **section HM 45**.

10

“Exiting investors: remaining value to Commissioner

“(4) If an investor’s interest at the end of an exit period is more than zero, the PIE must pay an amount equal to the value of the interest to the Commissioner at the same time as the payment referred to in **subsection (2)**.

15

“Provisional tax rules

“(5) The PIE is not required to pay provisional tax under subpart RC (Provisional tax) for the tax year.

“Defined in this Act: amount, Commissioner, exit level, exit period, income tax liability, investor interest, multi-rate PIE, notice, pay, PIE, provisional tax, quarter, tax year, working day, zero-rated investor

20

“Compare: 2007 No 97 s HL 22

“HM 44 Provisional tax calculation option

“When this section applies

25

~~“(1) This section applies when a multi-rate PIE chooses to calculate its income tax liability on an income year basis and pay provisional tax by notifying the Commissioner before the start of the income year or when choosing to become a PIE. Notification is made under **section 31G** of the Tax Administration Act 1994.~~

30

“(1) This section applies when a multi-rate PIE chooses to calculate its income tax liability on an income year basis and pay provisional tax by notifying the Commissioner before the start of the income year or when choosing to become a PIE. Notifi-

35

cation regarding the type of PIE and attribution period is made under **section 31B** of the Tax Administration Act 1994.

“Application of subparts RB and RC

- “(2) The PIE must calculate its tax liability for the income year corresponding to the tax year under **section HM 47** and pay provisional tax for the tax year as required by subpart RC (Provisional tax) and terminal tax for the tax year as required by subpart RB (Terminal tax). 5

“Treatment of losses

- “(3) If the calculation of the liability results in a negative amount, the loss must be carried forward to a later tax year, and **section HM 63** does not apply. 10

“Defined in this Act: income tax liability, income year, multi-rate PIE, notify, pay, PIE, provisional tax, tax year

“Compare: 2007 No 97 s HL 23(1), (2)

15

“**HM 45 Voluntary payments**

“When this section applies

- “(1) This section applies when a multi-rate PIE pays an amount of tax under **section HM 42 or HM 43** and an investor reduces their investor interest in an investor class of the PIE. 20

“Voluntary payment

- “(2) The PIE may pay an amount of income tax to the Commissioner that represents an amount of its tax liability for the investor as a member of an investor class for the tax year.

“Time of payment

25

- “(3) The payment must be made—

“(a) within 1 month after, as applicable,—

“(i) ~~for calculation and payment of tax under the quarterly option, the end of the quarter; or~~

“(i) for calculation and payment of tax under the quarterly calculation option, the end of the quarter; or 30

“(ii) for the calculation and payment of tax under the exit calculation option, the month of the reduction; or 35

“(b) if the month is November, by the following 15 January.

“Defined in this Act: amount, Commissioner, income tax, investor, investor class, investor interest, multi-rate PIE, pay, PIE, quarter

“Compare: 2007 No 97 s HL 25

“**HM 46 Calculation process** 5

To calculate its tax liability, a multi-rate PIE must—

“(a) determine the net amount for each investor class of the PIE:

“(b) determine the taxable amount for each investor class of the PIE: 10

“(c) calculate its tax liability for each investor in an investor class for each day of an attribution period.

“Defined in this Act: amount, attribution period, investor, investor class, multi-rate PIE, PIE

“Compare: 2007 No 97 ss HL 19, HL 20 15

“**HM 47 Calculation of tax liability or tax credit of multi-rate PIEs**

“*What this section does*

“(1) This section quantifies the amount of the tax liability or tax credit of a multi-rate PIE for a calculation period. 20

“*Calculating amount*

“(2) The amount of the PIE’s tax liability or tax credit is the sum of the amounts calculated using the formula in **subsection (3)** for—

“(a) each investor class in which the investor has an interest: 25

“(b) each investor in an investor class:

“(c) each attribution period in the calculation period:

“(d) each day in an attribution period.

“*Formula*

“(3) The formula is— 30

rate × amount.

“*Definition of items in formula*

“(4) In the formula,—

“(a) **rate** is—

- “(i) the tax rate relating to the investor for the period;
or
“(i) the tax rate under **section HM 59** relating to the
investor for the period; or
“(ii) 30%, if the PIE is treated as the sole investor 5
under **section HM 37**:
“(b) amount is the amount calculated under **sections
HM 36(1) and (2) and HM 37**, as applicable, for the
investor.
“Result of formula: tax liability or tax credit 10
“(5) If the result of the formula in **subsection (3)** is positive, the
amount is the PIE’s tax liability for the calculation period. If
the result is negative, the amount is a tax credit of the PIE under
section LS 4 (Tax credits for multi-rate PIEs); *see section
HM 55*. 15
“(5) If the result of the formula in **subsection (3)** is positive, the
amount is the PIE’s tax liability for the calculation period. If
the result is negative, the amount is a tax credit of the PIE under
section LS 1 (Tax credits for multi-rate PIEs), *see section
HM 55*. However, a tax credit does not arise under **section** 20
LS 1 for a multi-rate PIE that chooses to use the provisional
tax calculation option.
“Defined in this Act: amount, attribution period, calculation period, investor,
investor class, investor interest, multi-rate PIE, PIE, tax credit
“Compare: 2007 No 97 ss EG 3, HL 21 25

“Adjusting investors’ interests

“HM 48 Adjustments to investors’ interests or to distributions

“Adjustment

- “(1) ~~When a multi-rate PIE pays a tax liability or receives a tax
credit under **section LS 4** (Tax credits for multi-rate PIEs) 30
in relation to an investor, it must make an adjustment to an
investor’s interest to reflect the investor’s prescribed investor
rate.~~ When a multi-rate PIE pays a tax liability or receives a tax
credit under **section LS 1** (Tax credits for multi-rate PIEs)
in relation to an investor, it must make an adjustment to an 35

investor's interest to reflect the rate applying under **section HM 59 or HM 60**. The PIE may choose to adjust—

- “(a) the investor's interest in an investor class; or
- “(b) the amount of a distribution paid to the investor; or
- “(c) the amount of a payment required from the investor to satisfy the PIE's tax liability. 5

“Investor's choice

- “(2) The PIE may offer the choice made under **subsection (1)** to the investor.

“Date of adjustment 10

- “(3) An adjustment under **subsection (1)(a)** must be made—

~~“(a) for the quarterly option, within 2 months of the end of the quarter; or~~

“(a) for the quarterly calculation option, within 2 months of the end of the quarter; or 15

“(b) for the exit calculation option, within 2 months of the end of the tax year; or

~~“(c) for the provisional tax option, within 3 months of the end of the income year.~~

“(c) for the provisional tax calculation option, within 3 months of the end of the income year. 20

“Extending time limits

- “(4) On application by a multi-rate PIE, the Commissioner may extend a time limit imposed under **subsection (3)** if it is reasonable in the circumstances. 25

“Defined in this Act: amount, income year, investor, investor interest, multi-rate PIE, pay, PIE, prescribed investor rate, provisional tax, quarter, tax year

“Compare: 2007 No 97 s HL 7

“Using tax credits

- “**HM 49 Tax credits: when sections HM 50 to HM 55 apply 30**

“When sections apply

- “(1) **Sections HM 50 to HM 55** apply in relation to the tax credits of a multi-rate PIE or proxy for an investor in a multi-rate PIE that has not chosen to calculate its income tax liability under **section HM 44** using the provisional tax option. 35

“(1) **Sections HM 50 to HM 55** apply in relation to the tax credits of a multi-rate PIE or proxy for an investor in a multi-rate PIE that has not chosen to calculate its income tax liability under **section HM 44** using the provisional tax calculation option.

“*Limitation*

5

“(2) The entity must not, other than under **sections HM 51 to HM 55**,—

“(a) use the credit to reduce the liability of the entity for income tax or to obtain a refund of income tax:

“(b) attach the credit to a distribution or transfer the credit to another person: 10

“(a) use the tax credit to reduce the liability of the entity for income tax or to obtain a refund of income tax:

“(b) attach the tax credit to a distribution or transfer the tax credit to another person. 15

“*Relationship with Part L*

“(3) **Sections HM 51 to HM 55** override Part L (Tax credits and other credits) other than **subpart LS** (Tax credits for multi-rate PIEs and investors).

“Defined in this Act: income tax, income tax liability, investor, multi-rate PIE, provisional tax, tax credit 20

“Compare: 2007 No 97 s HL 29(1), (2)

“HM 50 Attributing credits to investors

“*When this section applies*

“(1) This section applies when a multi-rate PIE has— 25

“(a) a credit for tax paid or withheld under subpart LB (Tax credits for payments, deductions, and family income):

“(b) an imputation credit under subpart LE (Tax credits for imputation credits):

“(c) a credit for tax paid in a foreign country or territory under subpart LJ (Tax credits for foreign income tax). 30

“*Attributing amount to investor*

“(2) The amount of the credit attributable to an investor in an investor class of the PIE for an attribution period is calculated using the formula in **subsection (3)**. The amount attributed 35

to the investor is the total of the amounts calculated for each investment of the PIE and each day in the attribution period.

“Calculation of amount

“(3) The formula is—

$$\frac{\text{credit} \times \text{class's percentage} \times \text{investor's percentage}}{\text{days in period.}}$$

“Definition of items in formula

5

“(4) In the formula,—

“(a) **credit** is amount of the credit the PIE has in relation to the investment that gives rise to the credit:

“(b) **class's percentage** is the amount of the proceeds from the investment to which the investor class is entitled, including related tax credits: 10

“(c) **investor's percentage** is the amount to which the investor is entitled of a distribution by the PIE to the investor class:

“(b) **class's percentage** is the percentage of the proceeds from the investment to which the investor class is entitled, including related tax credits: 15

“(c) **investor's percentage** is the percentage to which the investor is entitled of a distribution by the PIE to the investor class: 20

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

“Defined in this Act: amount, attribution period, imputation credit, investor, investor class, multi-rate PIE, pay, PIE, tax credit

“Compare: 2007 No 97 ss HL 29(3)–(5), YA 1 ‘portfolio class fraction’, ‘portfolio investor interest fraction’ 25

“HM 51 Use of foreign tax credits by PIEs

“When this section applies

“(1) This section applies when a multi-rate PIE has a tax credit under subpart LJ (Tax credits for foreign income tax) that is attributable in a tax year to an investor other than— 30

“(a) a zero-rated investor:

“(b) an exiting investor who is treated under **section HM 60** as zero-rated.

“*Using tax credit to satisfy income tax liability*

“(2) The multi-rate PIE may use the tax credit under **section LS 1** (Tax credits for multi-rate PIEs) to satisfy its income tax liability for the tax year in relation to the investor. The amount of the credit is determined under **subsection (3)**. 5

“*Amount*

“(3) The total amount of the credits able to be used is the lesser of— 10

“(a) the total amount of credits attributed to the investor as a member of any investor class for the calculation period together with any amount attributed to the investor in an earlier calculation period that remains unused:

“(b) the amount of the PIE’s tax liability in relation to the investor as a member of any investor class for the calculation period or an earlier calculation period, and not met by any credit allocated to the earlier period. 15

“*Use under exit calculation option*

“(4) For a multi-rate PIE that calculates its tax liability for a tax year using the exit calculation option under **section HM 42**, the amount may be used for calculation periods earlier or later in the tax year, and in relation to different classes for the same investor. 20

“*Use under quarterly option*

“(5) ~~For a multi-rate PIE that calculates its tax liability for a tax year using the quarterly option under **section HM 43**; the amount may be used only for the relevant calculation period and later periods in the tax year, and in relation to different classes for the same investor.~~ 25 30

“(5) For a multi-rate PIE that calculates its tax liability for a tax year using the quarterly calculation option under **section HM 43**, the amount may be used only for the relevant calcu-

lation period and later periods in the tax year, and in relation to different classes for the same investor.

“Defined in this section: amount, calculation period, income tax liability, investor, investor class, multi-rate PIE, PIE, quarter, tax credit, tax year, zero-rated investor

5

“Compare: 2007 No 97 s HL 29(10)–(12)

“HM 52 Use of foreign tax credits by zero-rated and certain exiting investors

“When this section applies

“(1) This section applies when a multi-rate PIE has a tax credit under subpart LJ (Tax credits for foreign income tax) that is attributable in a tax year to an investor who is—

“(a) a zero-rated investor:

“(b) an exiting investor who is treated under **section HM 60** as zero-rated.

15

“Using tax credit to satisfy income tax liability

“(2) The investor may use the tax credit under **section LS 3 or LS 4** (which relate to the use of tax credits) to satisfy their income tax liability for the tax year. The amount of the credit is determined under **subsection (3) or (4)**.

20

“Amount

“(3) The total amount of the credits able to be used is the lesser of—

~~“(a) the total amount of the attributed foreign tax credits for the income year or exit period, as applicable:~~

25

“(a) the total amount of the attributed foreign tax credits for the tax year or exit period, as applicable:

“(b) the amount calculated by multiplying the attributed PIE income of the investor from the PIE for the tax year by,—

30

~~“(i) for an exiting investor described in **subsection (1)(b)**, the prescribed investor rate notified in relation to the investor for the attribution period before their exit period; or~~

“(i) for an exiting investor described in **subsection (1)(b)**, the notified investor rate in relation to the

35

investor for the attribution period before their exit period; or

- “(ii) for a zero-rated investor, their basic tax rate set out in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the tax year. 5

“Amount for PIEs or proxies

- “(4) Despite **subsection (3)**, the amount of the credit is the attributed amount if the investor is—

- “(a) a multi-rate PIE; or 10

- “(b) a proxy for an investor in a multi-rate PIE.

“Defined in this Act: ~~amount, attributed PIE income, attribution period, exit period, foreign tax, income tax liability, income year, investor, multi-rate PIE, notify, PIE, prescribed investor rate, tax credit, tax year, zero-rated investor~~amount, attributed PIE income, attribution period, exit period, foreign tax, income tax liability, investor, multi-rate PIE, notified investor rate, notify, PIE, tax credit, tax year, zero-rated investor

“Compare: 2007 No 97 s HL 29(7), (8)

“**HM 53 Use of tax credits other than foreign tax credits by PIEs** 20

“When this section applies

- “(1) This section applies when a multi-rate PIE has—

- “(a) a tax credit under Part L (Tax credits and other credits) other than a tax credit under subpart LJ (Tax credits for foreign income tax); and 25

- “(b) the credit is attributable in a tax year to an investor in an investor class other than—

- “(i) a zero-rated investor:

- “(ii) an exiting investor who is treated under **section HM 60** as zero-rated. 30

“Using tax credit to satisfy income tax liability

- “(2) The PIE may use the tax credit under **section LS 1** (Tax credits for multi-rate PIEs) to satisfy its income tax liability for the tax year in relation to the investor as a member of the class or of another investor class. A tax credit under this section is used only after the use of any credit under **section HM 52**. 35

“Amount

“(3) The amount of the tax credit is the amount attributed.

“Defined in this Act: amount, income tax liability, investor, investor class, multi-rate PIE, tax credit, tax year, zero-rated investor

“Compare: 2007 No 97 s HL 29(13)

5

“HM 54 Use of tax credits other than foreign tax credits by investors

“When this section applies

“(1) This section applies when a multi-rate PIE has a tax credit under Part L (Tax credits and other credits) other than a tax credit under subpart LJ (Tax credits for foreign income tax), that is attributable in a tax year to an investor who is—

“(a) a zero-rated investor:

“(b) an exiting investor who is treated under **section HM 60** as zero-rated.

15

“Using tax credit to satisfy income tax liability

“(2) The investor may use the tax credit under **section LS 3 or LS 4** (which relate to the use of tax credits) to satisfy their income tax liability for the tax year.

“Amount

20

“(3) The amount of the tax credit is the amount attributed.

“Defined in this Act: amount, income tax liability, investor, multi-rate PIE, tax credit, tax year, zero-rated investor

“Compare: 2007 No 97 s HL 29(7)(b)

“HM 55 Tax credits for losses

25

“ ~~A multi-rate PIE that has a negative amount arising under **section HM 47(5)** and has not chosen to calculate its tax liability using the provisional tax option under **section HM 44** has a tax credit for a tax year under **section LS 4** (Tax credits for multi-rate PIEs).~~

30

“ A multi-rate PIE that has a negative amount arising under **section HM 47(5)** and has not chosen to calculate its tax liability using the provisional tax calculation option under **section**

HM 44 has a tax credit for a tax year under **section LS 1** (Tax credits for multi-rate PIEs).

“Defined in this Act: amount, multi-rate PIE, provisional tax, tax credit, tax year

“Compare: 2007 No 97 s HL 28

5

“Prescribed and notified rates for investors in multi-rate PIEs

“HM 56 Prescribed investor rates for investors, default and optional: 30%

“Investors generally

10

“(1) An investor in a multi-rate PIE has a prescribed investor rate of 30% unless **sections HM 57 to HM 60** apply.

“Certain trustees

“(2) An investor in a multi-rate PIE who is a trustee of a trust other than a trust referred to in **section HM 58(b)** may choose to have a tax rate of 30%. If they do not choose a rate, a default rate of 0% applies.

15

“Defined in this Act: investor, multi-rate PIE, prescribed investor rate, trustee

“Compare: 2007 No 97 s YA + “portfolio investor rate²; “prescribed investor rate²

20

“HM 56 Prescribed investor rates for investors generally

An investor in a multi-rate PIE has a prescribed investor rate of 30% unless **sections HM 56 to HM 60** apply.

“Defined in this Act: investor, multi-rate PIE, prescribed investor rate

“HM 57 Prescribed investor rates for certain natural person investors: 19.5%

25

An investor in a multi-rate PIE who is a natural person (other than a trustee) has a prescribed investor rate of 19.5% if—

“(a) they are resident in New Zealand; and

“(b) they have, in either of the 2 income years immediately before the tax year,—

30

“(i) \$38,000 or less in taxable income; and

- “(ii) a total amount of \$60,000 or less of taxable income and attributed PIE income less any attributed PIE loss.

“Defined in this Act: amount, attributed PIE income, income year, investor, multi-rate PIE, prescribed investor rate, resident in New Zealand, tax year, taxable income, trustee 5

“Compare: 2007 No 97 s YA 1 ‘portfolio investor rate’, ‘prescribed investor rate’

“HM 57B Optional investor rates for trustees: 30%, 19.5%

An investor in a multi-rate PIE who is a trustee of a trust other than a trust referred to in **section HM 58(b)** may choose to have an investor rate of either 30% or 19.5%. 10

“Defined in this Act: investor, multi-rate PIE, trustee

“HM 58 Prescribed investor rates for certain investors: 0%

An investor (a **zero-rated investor**) in a multi-rate PIE has a prescribed investor rate of 0% if they are resident in New Zealand and are— 15

- “(a) a company:
- “(b) an organisation or trust deriving exempt income under section CW 41 or CW 42 (which relate to charities): 20
- “(c) ~~a person who derives income as a trustee, other than a trustee who chooses the 30% rate under **section HM 56**:~~
- “(d) ~~an exiting investor referred to in **section HM 60**:~~
- “(e) ~~a PIE when an amount is attributed, other than a trustee who chooses the 30% rate under **section HM 56**:~~ 25
- “(f) ~~a proxy acting under **section HM 33**:~~
- “(g) ~~a superannuation fund, if the trustee chooses the 30% rate under **section HM 56**:~~
- “(c) a person who derives income as a trustee, other than a trustee who chooses the 30% rate under **section HM 57B**: 30
- “(d) a PIE when an amount is attributed, other than a trustee who chooses the 30% rate under **section HM 57B**:
- “(e) a proxy acting under **section HM 33**: 35

“(f) a superannuation fund, unless the trustee chooses the
30% or 19.5% rate under **section HM 57B**.

“Defined in this Act: amount, company, exempt income, investor, multi-rate
PIE, PIE, prescribed investor rate, resident in New Zealand, superannuation
fund, trustee

5

“Compare: 2007 No 97 s YA 1 ‘prescribed investor rate’

“HM 59 Notified rates

“*Notifying PIE*

“(1) ~~Despite **sections HM 56 to HM 58**, an investor who has pro-~~
~~vided their tax file number to a multi-rate PIE may notify the~~ 10
~~PIE of the prescribed investor rate to be applied for a period.~~
~~Section 28B of the Tax Administration Act 1994 sets out the~~
~~requirements for the notice.~~

“(1) Despite **sections HM 56 to HM 58**, an investor who has pro-
vided their tax file number to a multi-rate PIE may notify the 15
PIE of the investor rate to be applied for a period. Section 28B
of the Tax Administration Act 1994 sets out the requirements
for the notice.

“*Time of notification*

“(2) The investor must give notice before the end of the relevant 20
period.

“*Application of prescribed rate*

“(3) A multi-rate PIE must apply the prescribed investor rate last
notified by an investor in relation to every day of the period.
However, this subsection does not apply if the PIE has made 25
a voluntary payment of tax under **section HM 45** that is in-
tended to satisfy its income tax liability for the period in rela-
tion to the investor unless the rate last notified applies to the
voluntary payment.

“*When chosen rate lower than rate prescribed in sections HM 56 to HM 58* 30

“(4) If an investor notifies a prescribed investor rate that is lower
than the rate that would apply under **sections HM 56 to HM**
58, income attributed to them by the PIE is not excluded in-
come of the investor under **sections GX 56 and GX 56B** 35

(which relate to attributed income of and distributions to certain investors in multi-rate PIEs).

“When rate disregarded

“(5) The Commissioner may notify a PIE to disregard a prescribed investor rate notified by an investor if the Commissioner considers the rate is incorrect. The 30% default rate under **section HM 56** then applies. 5

“When no rate notified

“(6) If an investor does not notify a multi-rate PIE of their prescribed investor rate, the rate applying for a period is 30%. 10

“Application of rate

“(3) A multi-rate PIE must apply the investor rate last notified by an investor in relation to every day of the period. However, this subsection does not apply if the PIE has made a voluntary payment of tax under **section HM 45** that is intended to satisfy its income tax liability for the period in relation to the investor unless the rate last notified applies to the voluntary payment. 15

“When chosen rate lower than rate in sections HM 56 to HM 58

“(4) If an investor notifies an investor rate that is lower than their prescribed investor rate that would apply under **sections HM 56 to HM 58**, income attributed to them by the PIE is not excluded income of the investor under **sections CX 56 and CX 56B** (which relate to attributed income of and distributions to certain investors in multi-rate PIEs). 20 25

“When rate disregarded

“(5) The Commissioner may notify a PIE to disregard an investor rate notified by an investor if the Commissioner considers the rate is incorrect. The 30% default rate under **section HM 56** then applies. 30

“When no rate notified

“(6) If an investor does not notify a multi-rate PIE of their investor rate, the rate applying for a period is 30%.

“Defined in this Act: Commissioner, excluded income, income, investor, multi-rate PIE, notify, pay, PIE, prescribed investor rate, tax file num- 35

~~be~~ Commissioner, excluded income, income, investor, multi-rate PIE, notify, notified investor rate, pay, PIE, prescribed investor rate, tax file number
 “Compare: 2007 No 97 s YA 1 ‘portfolio investor rate’, ‘prescribed investor rate’

“**HM 60 Certain exiting investors zero-rated** 5

“ Despite ~~sections HM 56 to HM 59~~, the tax rate applying to an investor is 0% if—

- “(a) the investor exits from a multi-rate PIE in a quarter in which they are attributed income from the PIE; and
- “(b) the PIE calculates and pays tax using the quarterly option under ~~section HM 43~~; and 10
- “(c) the PIE does not choose to make voluntary payments under ~~section HM 45~~.

“ Despite ~~section HM 59~~, the tax rate applying to an investor is 0% if— 15

- “(a) the interest of the investor in a multi-rate PIE reaches the exit level or the investor has an exit period in a quarter in which they are attributed income from the PIE; and
- “(b) the PIE calculates and pays tax using the quarterly calculation option under **section HM 43**; and 20
- “(c) the PIE does not choose to make voluntary payments under **section HM 45**.

“Defined in this Act: income, investor, multi-rate PIE, pay, PIE, quarter

“Compare: 2007 No 97 s YA 1 ‘portfolio investor rate’, ‘prescribed investor rate’ 25

“Exit levels and periods

“**HM 61 Exit levels for investors**

An investor in a multi-rate PIE is treated as reaching the exit level when the PIE’s tax liability for the investor is equal to, 30
 or more than, the value of the investor’s interest in the PIE at the end of the exit period (the **exit level**).

“Defined in this Act: exit level, investor, investor interest, multi-rate PIE, PIE

“Compare: 2007 No 97 s

“HM 62 Exit periods

“When this section applies

- “(1) This section applies when an investor in a multi-rate PIE reaches the exit level during a tax year.

“Exit period: exit calculation 5

- “(2) For a PIE that calculates its tax liability using the exit calculation option under **section HM 42**, the investor’s exit period—

“(a) begins with the day that is the later of the start of the tax year and the day on which the investor last became an investor; and 10

“(b) ends on the day in the tax year when the exit level is reached.

“Exit period: quarterly calculation

- “(3) For a PIE that calculates its tax liability using the quarterly calculation option under **section HM 43**, the investor’s exit period is the quarter in which the exit level is reached plus a grace period of 5 working days after the end of the quarter. 15

“Voluntary payments of tax

- “(4) **Subsection (3)** does not apply if the PIE voluntarily pays tax under **section HM 45**. 20

“Defined in this Act: exit level, investor, multi-rate PIE, pay, PIE, quarter, tax year, working day

“Compare: 2007 No 97 s YA 1 ‘portfolio investor exit period’

“Treatment of losses by PIEs

“Losses of certain multi-rate PIEs 25

“HM 63 Use of investor classes’ losses

“When this section applies

- “(1) This section applies when an investor class of a PIE that calculates and pays tax using the exit calculation or quarterly calculation options under **section HM 42 and HM 43** has a tax loss under **section HM 35(7)** for a calculation period. But this section does not apply to a land loss as defined in **section HM 64(3)**. 30

“Amount not carried forward

- “(2) The amount is not included in a loss balance carried forward under Part I (Losses) to a later calculation period.

“Tax credits

- “(3) ~~To the extent to which the amount relates to an investor other than a zero-rated investor, the PIE has a tax credit under **section LS 1** (Tax credits for multi-rate PIEs) of an amount equal to the credit multiplied by the relevant prescribed investor rate.~~ 5
- “(3) To the extent to which the amount relates to an investor other than a zero-rated investor, the PIE has a tax credit under **section LS 1** (Tax credits for multi-rate PIEs). The amount of the credit is calculated under **section HM 47(5)**. 10

~~“Defined in this Act: amount, calculation period, investor class, land loss, loss balance, pay, PIE, prescribed investor rate, provisional tax, tax credit, zero-rated investor.~~ 15

amount, calculation period, investor class, land loss, loss balance, pay, PIE, tax credit, zero-rated investor

“Compare: 2007 No 97 s HL 32(1)

“HM 64 Use of land losses of investor classes

“When this section applies

- “(1) This section applies when an investor class of a multi-rate PIE that calculates and pays tax using the exit calculation option or the quarterly calculation option under **section HM 42 or HM 43** has a land loss for a calculation period. 20

“Amount carried forward

- “(2) The amount of land loss may be included in a loss balance carried forward under Part I (Losses) to a later calculation period and used under **section HM 35(5)** to reduce an amount of taxable income from the class. 25

“Meaning of land loss

- “(3) For the purposes of this section, a **land loss** means a tax loss under **section HM 35(7)** of an investor class of a PIE for a calculation period if, at the end of the period, the class has, through the investor interests of the members of the class, an entitlement to the distribution of the proceeds of the PIE’s investments that— 30 35

- “(a) are investments in land or shares in a land investment company; and
- “(b) have a value that is more than 50% of the market value of all the PIE’s investments in which the class has the entitlement.

5

“Defined in this Act: amount, calculation period, investor class, investor interest, land, land investment company, land loss, loss balance, market value, multi-rate PIE, pay, PIE, quarter, share, tax loss, taxable income

“Compare: 2007 No 97 s HL 32(2), (3)

“Formation losses

10

“HM 65 Formation losses carried forward to tax year

“What this section applies to

- “(1) This section applies to an entity that becomes a PIE, other than a multi-rate PIE that calculates and pays tax using the exit calculation or quarterly calculation option under **section HM 42 or HM 43**, when the entity has a formation loss.

15

“Amount carried forward

- “(2) The amount of formation loss may be included in a loss balance carried forward under Part I (Losses) to a tax year in which the entity is a PIE.

20

“Defined in this Act: amount, formation loss, loss balance, multi-rate PIE, pay, PIE, quarter, tax, tax year

“Compare: 2007 No 97 s HL 30(1), (2)

“HM 66 Formation losses carried forward to first quarter

“When this section applies

25

- “(1) This section applies when an entity becomes a multi-rate PIE that—

- “(a) calculates and pays tax using the exit calculation or quarterly calculation option under **section HM 42 or HM 43**; and

30

- “(b) has a formation loss.

“Amount carried forward

- “(2) The amount of formation loss may be carried forward under Part I (Losses) to the quarter in which the entity becomes a PIE.

“Defined in this Act: amount, formation loss, multi-rate PIE, pay, PIE, quarter 5

“Compare: 2007 No 97 s HL 30(1)

“HM 67 When formation losses carried forward are less than 5% of formation investment value

If the total amount of formation loss carried forward under **section HM 66** is less than 5% of the total market value of the PIE’s investments at the time it becomes a PIE, it may allocate to an attribution period the amount not already allocated, when calculating under **section HM 35(5)** the taxable amount of an investor class for the attribution period. 10

“Defined in this Act: amount, attribution period, formation loss, investor class, market value, PIE, taxable amount 15

“Compare: 2007 No 97 s HL 30(3)

“HM 68 When formation losses carried forward are 5% or more of formation investment value: 3 year spread

“What this section applies to 20

- “(1) This section applies to spread the formation loss over the period of 3 years from the date the entity becomes a PIE when the amount of formation loss carried forward under **section HM 66** is 5% or more of the total market value of the PIE’s investments at the time it becomes a PIE. 25

“Amount

- “(2) The maximum amount of formation loss that the PIE may allocate to an attribution period, when calculating under **section HM 35(5)** the taxable amount of an investor class for the attribution period, is the amount calculated using the formula— 30

$$\text{initial loss} \times \frac{\text{days}}{1095}.$$

“Definition of items in formula

“(3) In the formula,—

“(a) **initial loss** is the amount of formation loss:

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

“Unused formation losses

5

“(4) For the purposes of the calculation of the amount in **subsection (2)**, the formation loss includes any unused formation loss that was allocated to an earlier attribution period.

“Treatment after 3-year period

“(5) After the end of the period of 3 years referred to in **subsection (1)**, any residual formation loss may be carried forward to a tax year in which the entity is a PIE under **section HM 65**.

10

“Defined in this Act: ~~amount; attribution period; formation loss; investor class; market value; PIE; taxable amount~~ amount, attribution period, formation loss, investor class, market value, PIE, tax year, taxable amount

15

“Compare: 2007 No 97 s HL 30(4), (5)

“HM 69 Allocation of formation losses of multi-rate PIEs to investor classes
Maximum amount of formation losses allocated by multi-rate PIEs to investor classes

“Maximum amount for allocation

20

“(1) Despite **sections HM 67 and HM 68**, the maximum amount of formation loss that may be allocated, when calculating under **section HM 35(5)** the taxable amount of an investor class for an attribution period, is calculated using the formula—

25

$$\text{class net income} - \frac{\text{credits}}{\text{rate.}}$$

“Definition of items in formula

“(2) In the formula,—

“(a) **class net income** is the amount of the net income of the investor class for the period under **section HM 35(4)**:

“(b) **credits** is the total amount attributed to the investor class for the period of—

30

“(i) imputation credits:

“(ii) Maori authority credits:

“(iii) RWT credits:

“(iv) FDP credits:

“(c) **rate** is the basic rate for companies set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits). 5

“Defined in this Act: amount, attribution period, company, FDP credit, formation loss, imputation credit, investor class, Maori authority credit, net income, RWT

“Compare: 2007 No 97 s HL 30(6), (7) 10

“*Elections and consequences*

“**HM 70 Choosing to become PIE**

“ ~~An entity that, at the time of election, meets the requirements of **sections HM 8 to HM 20**, except to the extent to which the relevant requirement is said not to be applicable to the entity, may choose to become a PIE by notifying the Commissioner under **section 31B** of the Tax Administration Act 1994.~~ 15

“ An entity that, at the time of election, meets the requirements of the entry rules in **sections HM 8 to HM 10, HM 17, HM 18, and HM 20**, except to the extent to which the relevant requirement is said not to be applicable to the entity, may choose to become a PIE by notifying the Commissioner under **section 31B** of the Tax Administration Act 1994. 20

“Defined in this Act: Commissioner, notify, PIE

“Compare: 2007 No 97 s HL 11(1), (3) 25

“**HM 71 When elections take effect**

“*Notice of election*

“(1) An election under **section HM 70** to become a PIE takes effect on the latest of the following dates:

“(a) the date the entity is formed: 30

“(b) the date set out in the notice:

“(c) 30 days before the Commissioner receives the notice.

“When entity does not meet basic requirements

“(2) Despite **subsection (1)**, an entity’s election to become a PIE does not take effect if, in the period ending 12 months after the date on which the election would be effective,—

“(a) the entity cancels the election: 5

“(b) an event or situation arises that means the entity would lose PIE status under any of **sections HM 24 to HM 28**.

“Notice of cancellation

“(3) An election under **section HM 29** to cancel PIE status takes effect on the latest of the following dates: 10

“(a) the date the entity became a PIE:

“(b) the date set out in the notice:

“(c) the date on which the Commissioner receives the notice.

15

“Defined in this Act: Commissioner, notice, PIE

“Compare: 2007 No 97 ss HL 11(2), (2B), (4), HL 13(1), (4), HL 15(2)

“HM 72 Transition: provisional tax

“When this section applies

“(1) This section applies when an entity chooses to become a PIE in an income year and has an increased liability for provisional tax for the income year because of the election. 20

“Penalties and interest

“(2) The entity is not liable to pay any penalty or interest for which it would otherwise be liable for an inaccuracy arising from the increased liability in— 25

“(a) an estimate of provisional tax made before the election:

“(b) a payment of provisional tax due before the end of the 2-month period that starts when the election takes effect. 30

“Tax liability

“(3) An entity that becomes a PIE in a tax year and is liable to pay an amount of income tax because of the disposal and reacquisition referred to in **section HM 74** may satisfy the tax liability by paying the Commissioner at least— 35

“(a) one third of the liability in the tax year; and

- “(b) one half of the balance remaining after a payment under **paragraph (a)** in the tax year after that in which the entity became a PIE; and
- “(c) the balance owing after the payments under **paragraphs (a) and (b)** in the second tax year after that in which the entity became a PIE. 5

“Defined in this Act: amount, Commissioner, income tax, income year, pay, PIE, provisional tax, tax year

“Compare: 2007 No 97 s HL 14

“**HM 73 Transition: entities with non-standard income years** 10

“*When this section applies*

- “(1) This section applies when—
 - “(a) an entity with a non-standard income year chooses to become a PIE; and
 - “(b) the entity calculates and pays its tax liability using the exit calculation or quarterly calculation option under **section HM 42 or HM 43.** 15

“*Consequential changes in balance date*

- “(2) Section 39 of the Tax Administration Act 1994 applies as if—
 - “(a) the day before that on which the election takes effect were the original balance date of the entity; and 20
 - “(b) the next 31 March after the election takes effect were a new balance date approved by the Commissioner for the entity.

“Defined in this Act: Commissioner, non-standard income year, pay, PIE, quarter

“Compare: 2007 No 97 s HL 13(2)

“**HM 74 Transition: treatment of shares held in certain companies**

“*When subsection (2) applies* 30

- “(1) **Subsection (2)** applies when—
 - “(a) an entity chooses to become a PIE; and
 - “(b) before the election takes effect—
 - “(i) the entity holds a share in relation to which the proceeds of disposal would be excluded income 35

- under **section CX 55(3)(a) and (b)** (Proceeds from disposal of investment shares) once the entity becomes a PIE:
- “(ii) the entity is a share supplier in a returning share transfer in relation to that type of share; and 5
 - “(c) the share is in a company that is not a PIE and does not become a PIE within 6 months from the date on which the entity became a PIE.
- “Disposal and reacquisition*
- “(2) The entity is treated as— 10
 - “(a) disposing of the share to another person; and
 - “(b) receiving consideration of an amount that equals the market value of the share at the time; and
 - “(c) reacquiring the share from the other person for the same consideration. 15
- “Timing*
- “(3) The disposal and reacquisition is treated as occurring on the day before that on which the election takes effect.
- “When subsection (5) applies*
- “(4) **Subsection (5)** applies when an entity— 20
 - “(a) loses PIE status under any of **sections HM 24 to HM 28** or chooses to cancel PIE status under **section HM 29**; and
 - “(b) holds a share in relation to which the proceeds of disposal would be excluded income under **section CX 55(3)(a) and (b)** while the entity is a PIE. 25
- “Disposal and reacquisition*
- “(5) The entity is treated as—
 - “(a) disposing of the share to another person; and
 - “(b) receiving consideration of an amount that equals the market value of the share at the time; and 30
 - “(c) reacquiring the share from the other person for the same consideration.

“Timing

- “(6) The disposal and reacquisition is treated as occurring on the day before PIE status is lost.

“Defined in this Act: amount, company, exempt income, market value, PIE, returning share transfer, share, shareholder

5

“Compare: 2007 No 97 ss HL 13(3), HL 15(3)

“HM 75 Transition: FDPA companies

When an FDPA company becomes a PIE during a 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 PIE.

10

“Defined in this Act: FDP account, FDPA company, PIE, tax year

“Compare: 2007 No 97 s HL 13(3B)”.

15

- (2) **Subsection (4)** applies for the 2009–10 and later income years.

- (2) **Subsection (1)** applies for the 2010–11 and later income years.

214B Transitional residents

20

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

“Provisions under which transitional resident treated as non-resident

- “(1) When a foreign-sourced amount is derived by a transitional resident, the following provisions apply to produce a result for income tax purposes that is the same as if the transitional resident were non-resident:

25

“(a) sections CD 45, CE 2, CQ 2, CQ 5, and CW 27 (which relate to income):

“(b) sections DN 2 and DN 6 (which relate to deductions):

30

“(c) sections EW 5, EW 37, EW 41, EX 16, EX 41, and EX 64 (which relate to the financial arrangements rules and to the CFC and FIF rules):

“(d) sections HC 25, HC 26, and HC 30 (which relate to the trust rules):

35

- “(e) sections MC 5, MC 10, MD 7, and MF 5 (which relate to tax credits):
 - “(f) sections RE 2, RE 5 and RF 12 (which relate to the RWT and NRWT rules):
 - “(g) section YD 1 (Residence of natural persons): 5
 - “(h) section 41 of the Tax Administration Act 1994.”
- (2) In section HR 8(2),—
 - (a) paragraph (a) is replaced by the following:
 - “(a) they are resident in New Zealand through acquiring a permanent place of abode as described in section YD 1(2) or through the 183-day rule set out in section YD 1(3); and”: 10
 - (b) in paragraph (b), “section YD 1(2) to (4)” is replaced by “section YD 1(2) and (3), ignoring the rule in section YD 1(4).”: 15
- (3) In section HR 8(3),—
 - (a) in paragraph (a), “subsection (2)(b)” is replaced by “subsection (2)(a)”:
 - (b) in paragraph (b)(ii), “section YD 1(2) to (4)” is replaced by “section YD 1(2) and (3), ignoring the rule in section YD 1(4).”: 20
- (4) In section HR 8(4), “may choose by notice under subsection (5)” is replaced by “may choose by notice to the Commissioner or by notice under subsection (5)”.
- (5) After section HR 8(6), the following is added: 25

“Notice of election
- “(7) A notice under subsection (4) to stop being a transitional resident must be received by the Commissioner by—
 - “(a) the time within which the person’s return of income must be filed under section 37 of the Tax Administration Act 1994; or 30
 - “(b) if the person or their tax agent applies for it, a further time allowed by the Commissioner.”
- (6) **Subsections (1) to (5)** apply for the 2008–09 and later income years. 35

214C New sections HZ 5 and HZ 6 added

- (1) After section HZ 4, the following is added:

“HZ 5 Transitional provisions for PIE rules

“Intention of new law

- “(1)** The PIE rules are the provisions of the Income Tax Act 2007 relating to portfolio investment entities in rewritten form, and are intended to have the same effect as the relevant corresponding provisions of the Income Tax Act 2007. **Subsection (3)** overrides this subsection. 5

“Using old law as interpretation guide

- “(2)** Unless **subsection (3)** applies, in circumstances where the meaning of a PIE rule (the **new law**) is unclear or gives rise to absurdity— 10

- “(a)** the wording of the provisions of the Income Tax Act 2007 relating to portfolio investment entities that correspond to and are replaced by the PIE rules (the **old law**) must be used to determine the correct meaning of the new law; and 15

- “(b)** it can be assumed that a corresponding old law provision exists for each new law provision.

“Limits to subsections (1) and (2)

- “(3)** **Subsections (1) and (2)** do not apply in the case of— 20

- “(a)** a PIE rule that repeals an old law and replaces it with a new law;

- “(b)** a PIE rule that is amended after the commencement of **section 214(2)** of this Act, with effect from the date on which the amendment comes into force. 25

“Defined in this Act: PIE rules, portfolio investment entity

“HZ 6 Saving of binding rules relating to portfolio investment entities

“When, and extent to which, this section applies

- “(1)** This section applies when, and to the extent to which,— 30

- “(a)** before the commencement of this Act,—

- “(i)** an applicant has applied for a private ruling, a product ruling, or a status ruling, on an arrangement that is entered into, or that the applicant seriously contemplates will be entered into, before the commencement of this Act; 35

- “(ii) a public ruling is issued; and
 “(b) the binding ruling is about a provision of the Income Tax Act 2007 relating to portfolio investment entities (the **old law**) that corresponds to and is replaced by the PIE rules; and 5
 “(c) the PIE rules corresponding to the old law (the **new law**) come into force on 1 April 2010; and
 “(d) the binding ruling—
 “(i) continues to exist at the commencement of this Act; 10
 “(ii) is made after the commencement of this Act in relation to an old law before 1 April 2010;
 “(iii) is made in relation to an old law provision of the Income Tax Act 2004 to which section ZA 4 (Saving of binding rulings) of the Income Tax Act 2007 applies, that continues to exist at the commencement of this Act; and 15
 “(e) in the absence of this section, the commencement of this Act would mean that the binding ruling would cease to apply because of section 91G of the Tax Administration Act 1994. 20
- “Ruling about new law*
 “(2) The binding ruling is treated as if it were made about the new law, so that the effect of the ruling at the commencement of this Act is the same as its effect before the commencement. 25
- “No confirmation rulings*
 “(3) To the extent to which a binding ruling continued by **subsection (2)** exists and applies to an arrangement, or to a person and an arrangement, the Commissioner must not make a binding ruling on how— 30
 “(a) the new law applies to the arrangement or to the person and the arrangement; or
 “(b) this subsection applies to the arrangement or to the person and the arrangement.
- “Defined in this Act: arrangement, binding ruling, Commissioner, PIE rules, portfolio investment entity.” 35*
- (2) **Subsection (1)** applies for the 2010–11 and later income years.

215 Tax losses

Section IA 2(4)(f) is omitted.

216 Restrictions relating to ring-fenced tax losses

(1) Section IA 7(3) is repealed.

(1B) In section IA 7(5), “provisions that deal with this net loss” is replaced by “provisions that deal with this net loss, other than the surplus amount.”. 5

(2) In section IA 7(6), the first sentence is replaced by “The general rules do not apply to a FIF net loss.”

(2) In section IA 7(6), “IQ 3” is replaced by “IQ 3(3)”. 10

(3) Section IA 7(10) is replaced by the following:

“Net losses of multi-rate PIEs

“(10) The general rules do not apply to a multi-rate PIE’s net loss when the PIE does not calculate and pay tax using the provisional tax calculation option under **section HM 44** (Provisional tax calculation option).” 15

(4) In section IA 7, in the list of defined terms, “life insurer” and “policyholder net loss” are omitted.

(5) In section IA 7, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE”, “PIE”, and “provisional tax” are inserted. 20

(6) **Subsections (1) and (4)** apply for income years beginning on and after 1 April 2009.

(7) **Subsection (3) and (5)** applies for the 2009–10 and later income years. 25

(5) In section IA 7, in the list of defined terms,—

(a) “portfolio tax rate entity” is omitted;

(b) “multi-rate PIE”, “PIE”, and “provisional tax” are inserted.

(6) **Subsection (1)** applies— 30

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 35

(7) **Subsections (1B) and (2)** apply for the 2008–09 and later income years.

(8) **Subsection (3)** applies for the 2010–11 and later income years.

217 Restrictions relating to schedular income 5

(1) ~~Before section IA 8(1)(a), the following is inserted:~~After the opening words in section IA 8(1), the following is inserted:

“(aa) paragraph (a), which relates to life insurers’ schedular policyholder base income; or”.

(1B) Section IA 8(1)(a) is repealed. 10

(2) In section IA 8, in the list of defined terms, “schedular policyholder base income” is inserted.

(3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.

(3) **Subsections (1) and (2)** apply— 15

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 20

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

218 Common ownership: group of companies

(1) Section IC 3(2B) is replaced by the following: 25

“When multi-rate PIEs included in group

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

“(a) the PIE owns 100% of the voting interests in the other companies; and 30

“(b) the other companies in the group are not land investment companies.”

(2) In section IC 3, in the list of defined terms, “portfolio land company” and “portfolio tax rate entity” are omitted and “land investment company” and “multi-rate PIE” are inserted. 35

- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (1) Section IC 3(2B)(b) is replaced by the following:
“(b) the other companies in the group are either portfolio tax rate entities or portfolio land companies.” 5
- (2) Section IC 3(2B) is replaced by the following:
“When multi-rate PIEs included in group
“(2B) In relation to 2 or more companies of which 1 is a multi-rate PIE, the companies are treated as a group of companies at a particular time or for a particular period if— 10
“(a) the PIE owns 100% of the voting interests in the other companies; and
“(b) the other companies in the group are either multi-rate PIEs or land investment companies.”
- (3) In section IC 3, in the list of defined terms,— 15
(a) “portfolio land company” and “portfolio tax rate entity” are omitted;
(b) “land investment company”, “multi-rate PIE”, and “voting interest” are inserted.
- (4) **Subsection (1)** applies for the 2008–09 and 2009–10 income years. 20
- (5) **Subsection (2)** applies for the 2010–11 and later income years.
- 219 New section IC 13 added** 25
 After section IC 12, the following is added:
“IC 13 Variation of requirements for development companies in Niue
“When this section applies
 “(1) This section applies in relation to the required common ownership of group companies set out in sections IC 2(2), IC 3, and IC 5(1)(a) for the purposes of providing relief to company A for losses incurred in connection with development work in Niue. 30

“Order in Council

- “(2) The Governor-General may make an Order in Council varying the threshold in section IC 3(1)(a) and (b) applying to company A if satisfied that the company—
- “(a) is carrying on a business or enterprise that— 5
- “(i) has been or is carried on wholly or mainly for the development of Niue:
- “(ii) has been or is important to the development of Niue; and
- “(b) has incurred expenditure wholly or mainly in deriving 10
income from Niue or in the course of carrying on a business or enterprise in Niue for the purpose of deriving income.

“Named company

- “(3) For the purposes of **subsection (2)**, company A must be a 15
company named in the order.

“Application of order

- “(4) The order may specify a period or periods to which it applies. If no period is specified, the order applies to the whole commonality period. 20
- “Defined in this Act: business, commonality period, company, group of companies, income”.

219B Pre-consolidation losses: use by group companies

- (1) Section ID 3(1), other than the heading, is replaced by the following: 25
- “(1) This section applies in a tax year when—
- “(a) a company (**company A**) that is part of a consolidated group has a loss balance to which section ID 2 applies; and
- “(b) company A, in the continuity period relating to a tax 30
loss component included in the loss balance, does not have the required common ownership under section IC 3 (Common ownership: group of companies) with 1 or more companies in the consolidated group.”
- (2) In section ID 3, in the list of defined terms, “tax loss component” is inserted. 35

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

219C When this subpart applies

- (1) Section IP 1(1)(a) and (b) are replaced by the following:

- “(a) when commonality of ownership required by section IC 5(1)(a) (Company B using company A’s tax loss) is not met during a tax year (a **commonality breach**):
“(b) when continuity of ownership required by section IA 5(1) (Restrictions on companies’ loss balances carried forward) is broken during a tax year, or when a new or existing company joins a group of companies during a tax year (a **continuity breach**).”

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

220 Ring-fencing cap on attributed CFC net losses

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

“Attributed CFC net losses from 2009–10 or earlier income years

- “(1B) If a person’s attributed CFC net loss relates to the 2009–10 or a later income year and is carried forward to the tax year, the amount used for the tax year in reducing the person’s net income is equal to the amount of the reduction under subsection (1):

“Attributed CFC net losses from 2008–9 or earlier income years

- “(1C) If a person’s attributed CFC net loss relates to the 2008–09 or an earlier income year and is carried forward to the 2009–10 or a later tax year,—

- “(a) the maximum amount of the attributed CFC net loss (the **maximum useful loss**) that may be used in a reduction of the person’s net income for the tax year is the greater of the following amounts:

- “(i) the amount determined under subsection (1) (the **maximum income reduction**) for the tax year:

- “(ii) an amount equal to the branch equivalent income of the person for the tax year:

- “(b) the amount of the attributed CFC net loss (the **applied amount**) used for the tax year must be the lesser of the following amounts:
- “(i) the amount of the attributed loss carried forward:
 - “(ii) the maximum useful loss: 5
- “(e) the effect of the applied amount depends on whether the applied amount exceeds the amount (the **threshold amount**) calculated by subtracting the maximum income reduction from the maximum useful loss:
- “(d) the applied amount reduces the person’s net income for the tax year by an amount equal to— 10
- “(i) the maximum income reduction, if the applied amount is equal to the maximum useful loss; or
 - “(ii) the amount by which the applied amount exceeds the threshold amount, if the applied amount is less than the maximum useful loss and exceeds the threshold amount; or 15
 - “(iii) zero, if the applied amount is less than or equal to the threshold amount.
- “Attributed CFC net losses from year after transition” 20*
- “(1B) If a person’s attributed CFC net loss relates to an income year for which **section IQ 2B** applies to the person and is carried forward to the tax year, the amount used for the tax year in reducing the person’s net income is equal to the amount subtracted under subsection (1). 25
- “Attributed CFC net losses from income year before transition”*
- “(1C) If a person’s attributed CFC net loss relates to an income year before **section IQ 2B** applies to the person and is carried forward to a tax year in which **section IQ 2B** applies to the person,— 30
- “(a) the amount available in the tax year for reducing the person’s net income is equal to the equivalent CFC loss under **section IQ 2B**:
 - “(b) the amount of that attributed CFC net loss that is not available to the person after the tax year is equal to the converted BE loss under **section IQ 2B**.” 35
- (1B) Section IQ 2(3), other than the heading, is replaced by the following:

- “(3) If the person cannot use all of the maximum amount referred to in subsection (1) because there is insufficient net income, the surplus is no longer available to them as a CFC net loss, but becomes a tax loss component under section IA 2(4) (Tax losses).” 5
- (2) **Subsection (4)** applies for the 2009–10 and later income years:
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- (3) **Subsection (1B)** applies for the 2008–09 and later income years.
- 220B New section IQ 2B inserted** 15
- (1) After section IQ 2, the following is inserted:
- “IQ 2B Attributed CFC net loss from tax year before first affected year**
- “When this section applies*
- “(1) This section applies when a person has an amount (the **available BE loss**) of attributed CFC net loss, or FIF net loss calculated using the branch equivalent method, that— 20
- “(a) relates to a tax year before the first tax year for which this section applies to the person; and
- “(b) relates to a CFC or FIF that is resident in a country (the **jurisdiction**) in which the loss arose; and 25
- “(c) is carried forward to a tax year (the **conversion year**) in which this section applies to the person.
- “What this section does*
- “(2) In this section, **subsection (3)** gives the person an option that available BE loss for a jurisdiction not be carried forward and **subsections (4) to (7)** give, for whichever of the 4 possible alternative situations is relevant for the person,— 30
- “(a) the amount of the available BE loss (the **converted BE loss**) that is— 35

- “(i) treated as being converted into an amount referred to in **paragraph (b)** in the conversion year; and
 - “(ii) is not available to the person to be carried forward as available BE loss for a later tax year: 5
- “(b) the amount (the **equivalent CFC loss**) of attributed CFC net loss that, for the purposes of the rest of this subpart, is treated as arising on the last day of the conversion year.
- “*Option: loss not carried forward* 10
- “(3) A person may choose by giving a notice in a form and at a time acceptable to the Commissioner that the available BE loss for a jurisdiction not be carried forward under this section.
- “*Person not resident group member: more jurisdictional BE income* 15
- “(4) For a person who is not a resident group member and has jurisdictional BE income for the conversion year that is greater than zero and greater than the person’s jurisdictional attributed income for the conversion year,—
- “(a) the person’s converted BE loss in the conversion year is the lesser of— 20
 - “(i) the person’s jurisdictional BE income for the conversion year;
 - “(ii) the person’s available BE loss for the conversion year: 25
 - “(b) the person’s equivalent CFC loss is the lesser of—
 - “(i) the person’s jurisdictional attributed income for the conversion year;
 - “(ii) the amount calculated by dividing the person’s available BE loss for the conversion year by the person’s jurisdictional income ratio for the conversion year. 30
- “*Person not resident group member: more jurisdictional attributed income*
- “(5) For a person who is not a resident group member and has jurisdictional attributed income for the conversion year that is greater than or equal to zero and greater than or equal to the person’s jurisdictional BE income for the conversion year,— 35

- “(a) the person’s converted BE loss for the conversion year is the lesser of—
- “(i) the person’s available BE loss for the conversion year:
- “(ii) the person’s jurisdictional attributed income for the conversion year: 5
- “(b) the person’s equivalent CFC loss is equal to the person’s converted BE loss for the conversion year.
- “Resident group member: more jurisdictional BE income
- “(6) For a person who is a resident group member for a wholly-owned group of companies and has jurisdictional BE income for the conversion year that is greater than zero and greater than the person’s jurisdictional attributed income for the conversion year,— 10
- “(a) the person’s converted BE loss for the conversion year is the lesser of— 15
- “(i) the person’s available BE loss for the conversion year:
- “(ii) the greater of the person’s jurisdictional BE income for the conversion year and the amount calculated by multiplying the group’s jurisdictional income ratio for the conversion year by the person’s jurisdictional attributed income for the conversion year: 20
- “(b) the person’s equivalent CFC loss is the amount calculated by dividing the person’s converted BE loss for the conversion year by the group’s jurisdictional income ratio for the conversion year. 25
- “Resident group member: more jurisdictional attributed income 30
- “(7) For a person who is a resident group member and has jurisdictional attributed income for the conversion year that is greater than or equal to zero and greater than or equal to the person’s jurisdictional BE income for the conversion year,—
- “(a) the person’s converted BE loss for the conversion year is the lesser of— 35
- “(i) the person’s available BE loss for the conversion year:

- “(ii) the person’s jurisdictional attributed income for the conversion year multiplied by the group’s jurisdictional income ratio for the conversion year:
- “(b) the person’s equivalent CFC loss is equal to the amount calculated by dividing the person’s converted BE loss for the conversion year by the group’s jurisdictional income ratio for the conversion year. 5
- “Election by person or group to fix jurisdictional income ratio*
- “(8) A person or wholly-owned group may choose under this subsection by notice, in a form and at a time acceptable to the Commissioner, that the person or members of the group use a jurisdictional income ratio— 10
- “(a) equal to the average of the jurisdictional income ratios for the person or group, under **paragraph (b)** of the definition in **subsection (9)**, for 2 consecutive tax years— 15
- “(i) beginning at or after the beginning of the 2010–11 tax year; and
- “(ii) in each of which the person or group has jurisdictional BE income; and
- “(b) for all tax years after the 2 tax years referred to in **paragraph (a)**. 20
- “Some definitions*
- “(9) For a person or wholly-owned group and a tax year for which the person or members of the wholly-owned group have an income interest in a CFC that is resident in a country or territory (the **jurisdiction**),— 25
- “**jurisdictional attributed income** means,—
- “(a) for a person and the tax year, the amount that is the greater of zero and the amount calculated by—
- “(i) finding, for each CFC resident in the jurisdiction, the attributed CFC income or loss of the person from the CFC for the tax year: 30
- “(ii) finding, for each FIF resident in the jurisdiction for which the person uses the branch equivalent method, the FIF income or loss of the person from the FIF for the tax year: 35

- “(iii) subtracting the total of loss amounts under **sub-paragraphs (i) and (ii)** from the total of income amounts under **subparagraphs (i) and (ii)**:
- “(b) for a wholly-owned group and the tax year, the amount that is the greater of zero and the attributed CFC income or loss and FIF income or loss, treating losses as negative, of members of the group who are New Zealand residents from CFCs and FIFs that are resident in the jurisdiction for the tax year, consolidated for the purposes of the financial statements of the group 5 10
- “**jurisdictional BE income** means,—
- “(a) for a person and the tax year, the amount that is the greater of zero and the amount calculated by—
- “(i) multiplying, for each CFC resident in the jurisdiction, the person’s income interest in the CFC for the tax year by the branch equivalent income or loss of the CFC for the tax year or, if the person chooses, by the amount given by **subsection (10)** for the CFC for the tax year: 15
- “(ii) finding, for each FIF resident in the jurisdiction for which the person uses the branch equivalent method, the FIF income or loss of the person from the FIF for the tax year: 20
- “(iii) subtracting the total of loss amounts under **sub-paragraphs (i) and (ii)** from the total of income amounts under **subparagraphs (i) and (ii)**: 25
- “(b) for a wholly-owned group and the tax year, the amount that is the greater of zero and the amount calculated, treating losses as negative, by—
- “(i) multiplying, for each CFC resident in the jurisdiction, the income interest in the CFC of members of the group who are New Zealand residents for the tax year by the branch equivalent income or loss of the CFC for the tax year or, if the group chooses, by the amount given by **subsection (10)** for the CFC for the tax year: 30 35
- “(ii) consolidating the results for the purposes of the financial statements of the group

“jurisdictional income ratio,—

- “(a) for a person that has not made an election under **subsection (8)**, means the greater of 1 and the amount calculated by dividing the person’s jurisdictional BE income for the tax year by the person’s jurisdictional attributed income for the tax year: 5
- “(b) for a wholly-owned group that has not made an election under **subsection (8)** for the tax year, means the greater of 1 and the amount calculated by dividing the group’s jurisdictional BE income for the tax year by the group’s jurisdictional attributed income for the tax year: 10
- “(c) for a person or wholly-owned group that has made an election under **subsection (8)** for the tax year, means the amount given by **subsection (8)** for the person or group and the tax year 15

“resident group member means a person who is a member of a wholly-owned group that has other New Zealand residents as members.

“Option to determine jurisdictional BE income from accounts

- “(10) In determining the jurisdictional BE income of a person or wholly-owned group, the person or group may choose to use, instead of the branch equivalent income or loss of a CFC, the profit or loss of the CFC before taxation given by accounts— 20
- “(a) complying with generally accepted accounting practice in New Zealand or an equivalent standard for the consistent and undistorted reporting of net profits in the country in which the accounts are prepared; and 25
- “(b) audited by an accountant who is—
- “(i) a chartered accountant or an accountant of equivalent professional standard in the country in which the accounts are prepared; and 30
- “(ii) independent of the CFC and the person or wholly-owned group; and
- “(c) are given an unqualified opinion or an opinion of equivalent standard in the country in which the accounts are prepared. 35

“Defined in this Act: attributed CFC income, attributed CFC loss, branch equivalent income, branch equivalent loss, CFC, group of companies, income

interest, jurisdictional attributed income, jurisdictional BE income, jurisdictional income ratio, New Zealand resident, resident group member, tax year, wholly-owned group, wholly-owned group of companies”.

(2) Subsection (1) applies for—

- (a)** the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 5
- (b)** the 2010–11 and later income years, for persons having a balance date before 30 June.

220C Ring-fencing cap on FIF net losses

- (1)** Section IQ 3(1), other than the heading, is replaced by the following: 10

“(1) If a person’s FIF net loss is carried forward to a tax year, and they have calculated the amount of FIF net loss under the branch equivalent method, the maximum amount that they may subtract from their net income for the tax year must be no more than— 15

“(a) all attributed CFC income that they derive in the tax year in relation to a CFC resident in the country in which the loss arose; and

“(b) all FIF income calculated under the branch equivalent method that they derive in the tax year in relation to a FIF resident in the country in which the loss arose.” 20

- (2)** After section IQ 3(2), the following is added:

“Treatment of excess

“(3) If the person cannot use all of the maximum amount referred to in **subsection (1)** because there is insufficient net income, the surplus is no longer available to them as a FIF net loss, but becomes a tax loss component under section IA 2(4) (Tax losses).” 25

- (3)** In section IQ 3, in the defined terms list, “attributed CFC income” and “CFC” are inserted. 30

- (4)** **Subsections (1) and (2)** apply for the 2008–09 and later income years.

221 Group companies using attributed CFC net losses

- (1)** In section IQ 4(3)(a), the words before subparagraph (i) are replaced by the following: 35

- “(a) the amount of the tax loss that company A may make available to another group company (**company B**) in the tax year may not be greater than the amount that company B would require as attributed CFC net loss from the same income year or income years to produce a reduction in company B’s net income for the tax year equal to the total of—” 5
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 10
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 221B Group companies using FIF net losses** 15
- (1) Section IQ 5(3)(a) is replaced by the following:
- “(a) if the FIF net loss is calculated under the branch equivalent method, the maximum amount that may be made available in the tax year must be no more than—
- “(i) all attributed CFC income that another group company derives in the tax year in relation to a CFC resident in the country in which the loss arose; and 20
- “(ii) all FIF income calculated under the branch equivalent method that another group company derives in the tax year in relation to a FIF resident in the country in which the loss arose.” 25
- (2) In section IQ 5, in the defined terms list, “attributed CFC income” and “CFC” are inserted.
- (3) **Subsection (1)** applies for the 2008–09 and later income years. 30
- 222 Subpart IT replaced**
- Subpart IT is replaced by the following:

“Subpart IT—Cancellation of life insurer’s losses

“**IT 1 Cancellation of life insurer’s policyholder net losses**

“*When this section applies*

- “(1) This section applies to the amount of a life insurer’s tax loss 5
to be carried forward to the tax year corresponding to the first
income year beginning on or after 1 April 2009; to the ex-
tent to which the amount (the **cancelled amount**) would be
a ring-fenced tax loss for policyholder net losses under sec-
tion IA 7(3) (Restrictions relating to ring-fenced losses) if the 10
enactment of the Taxation (International Taxation, Life Insur-
ance, and Remedial Matters) Act **2008** were ignored.

“*Cancellation of life insurer’s policyholder net losses*

- “(2) The cancelled amount— 15
“(a) is removed from the life insurer’s available tax loss for
the tax year corresponding to an income year beginning
on or after 1 April 2009; and
“(b) must not be subtracted from the life insurer’s net income
under section BC 5 (Taxable income) for the tax year
corresponding to an income year beginning on or after 20
1 April 2009; and
“(c) is not a tax loss component; and
“(d) is cancelled.

“Defined in this Act: available tax loss; income year; life insurer; net income;
policyholder net loss; ring-fenced tax loss; tax loss; tax year 25

“**IT 2 Cancellation of life insurer’s tax loss when allowed into policyholder base**

“*When this section applies*

- “(1) This section applies to the amount of a life insurer’s tax loss 30
to be carried forward to a tax year corresponding to an income
year beginning on or after 1 April 2009.

“*Cancellation of life insurer’s tax loss*

- “(2) When the life insurer has for an income year an amount of pol-
icyholder base gross expenditure or loss as provided by **sec-**

tion EZ 62 (Allowance for cancelled amount: spreading); an equal amount—

- “(a) is removed from the life insurer’s available tax loss for the tax year corresponding to the income year; and
- “(b) must not be subtracted from the life insurer’s net income under section BC 5 for the tax year; and
- “(c) is not a tax loss component; and
- “(d) is cancelled.

“Defined in this Act: available tax loss; income year; life insurer; net income; tax loss; tax year

“IT 1 Cancellation of life insurer’s policyholder net losses

“What this section applies to

- “(1) This section applies to the amount of a life insurer’s tax loss to be carried forward to the tax year corresponding to the income year that includes 1 July 2010 (the **tax year**), to the extent to which the amount (the **cancelled amount**) would be a ring-fenced tax loss for policyholder net losses under section IA 7(3) (Restrictions relating to ring-fenced losses) if the enactment of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2009** were ignored.

“Cancellation of life insurer’s policyholder net losses

- “(2) The cancelled amount—
 - “(a) is removed from the life insurer’s available tax loss for the tax year; and
 - “(b) must not be subtracted from the life insurer’s net income under section BC 5 (Taxable income) for the tax year; and
 - “(c) is not a tax loss component; and
 - “(d) is cancelled.

“Defined in this Act: available tax loss; income year; life insurer; net income; policyholder net loss; ring-fenced tax loss; tax loss; tax loss component; tax year

“IT 2 Cancellation of life insurer’s tax loss when allowed into policyholder base

“What this section applies to

- “(1) This section applies to the amount of a life insurer’s tax loss to be carried forward to a tax year corresponding to an income year that includes 1 July 2010 and later tax years.** 5

“Cancellation of life insurer’s tax loss

- “(2) When the life insurer has for an income year a policyholder base allowable deduction as provided by **section EZ 61** (Allowance for cancelled amount: spreading), an equal amount—** 10
- “(a) is removed from the life insurer’s available tax loss for the tax year corresponding to the income year; and**
- “(b) must not be subtracted from the life insurer’s net income under section BC 5 for the tax year; and**
- “(c) is not a tax loss component; and** 15
- “(d) is cancelled.**

“Defined in this Act: available tax loss, income year, life insurer, net income, policyholder base deduction, tax loss, tax loss component, tax year”.

- (2) Subsection (1) applies—**
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:** 20
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.** 25

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

- (1) In section LA 6(1)(e), “~~authority credits.~~”“authority credits).” is replaced by “~~authority credits.~~” “authority credits).” and the following is added:** 30
- “(f) section LS 1 (Tax credits for portfolio tax rate entities and investors).”**
- (2) In **section LA 6(1)(f)**, “(Tax credits for portfolio tax rate entities and investors)” is replaced by “(Tax credits for multi-rate PIEs)”.** 35
- (3) **Subsection (2)** applies for the 2009–10 and later income years.**

224 Remaining refundable credits: tax credits for families

In section LA 7, the heading and subsection (1) are replaced by the following:

~~LA 7~~ Remaining refundable credits: tax credits under social policy schemes

5

“What this section applies to

~~1~~This section applies to a person’s tax credit remaining for a tax year under section LA 5(5); if it is a tax credit under—

“(a) section LB 4 (Tax credits for families):

10

“(b) section LD 1(5) (Tax credits for charitable and other public benefit gifts).”

(1) In section LA 7, the heading is replaced by **“Remaining refundable credits: tax credits under social policy schemes”**.

(2) Section LA 7(1) is replaced by the following:

15

“What this section applies to

~~(1)~~ This section applies to a person’s tax credit remaining for a tax year under section LA 5(5), if it is a tax credit under—

“(a) section LB 4 (Tax credits for families):

“(b) section LD 1(5) (Tax credits for charitable and other public benefit gifts).”

20

225 New section LA 8B inserted

(1) After section LA 8, the following is inserted:

~~LA 8B~~ General rules particular to life insurers

“Apportionment

25

~~(1)~~ For the purposes of this subpart a life insurer’s total tax credit is apportioned between their policyholder base and shareholder base, using the basis of apportionment in **section EY 4** (Apportionment of income of particular source or nature, and of tax credits):

30

“Unsatisfied income tax liability

~~(2)~~ Despite section LA 3,—

“(a) a life insurer has an unsatisfied income tax liability to the extent to which—

“(i) the tax credit apportioned to their policyholder base is less than their schedular income tax liability—

35

ity for schedular policyholder base income (**policyholder base income tax liability**); and

“(ii) the tax credit apportioned to their shareholder base is less than their income tax liability for the tax year, calculating their income tax liability (**shareholder base income tax liability**) as if they only had shareholder base gross income, expenditure, or loss: 5

“(b) the amount of unsatisfied income tax liability is the total of the difference, if any, described in **paragraph (a)(i)** and the difference, if any, described in **paragraph (a)(ii)**: 10

“(c) the amount of unsatisfied income tax liability under **paragraph (b)** is satisfied when the life insurer pays their terminal tax for the tax year. 15

“Use of credits

“(3) Despite section LA 4,—

“(a) if the tax credit apportioned to the policyholder base or the shareholder base is greater than the relevant **base income tax liability** described in **subsection (2)(a)(i) or (ii)**, the tax credit is used, in the order prescribed in section LA 4(1), to satisfy the relevant base income tax liability: 20

“(b) tax credits not used under **paragraph (a)** are treated as remaining tax credits referred to in section LA 4(2) and the life insurer must deal with the credits under section LA 5. 25

“Defined in this Act: income tax liability; policyholder base gross expenditure or loss; policyholder base gross income; shareholder base expenditure or loss; shareholder base income; tax credit; tax year 30

“LA 8B General rules particular to life insurers

“Apportionment

“(1) For the purposes of this subpart, a life insurer’s total tax credit is apportioned between their policyholder base and shareholder base, to the extent to which **section EY 4** (Apportionment of income of particular source or nature, and of tax credits) applies and apportions the credit. 35

“Unsatisfied income tax liability“(2) Despite section LA 3,—“(a) a life insurer has an unsatisfied income tax liability to the extent to which—“(i) the tax credit apportioned to their policyholder base is less than their schedular income tax liability for schedular policyholder base income (the **policyholder base income tax liability**):“(ii) the tax credit apportioned to their shareholder base is less than their income tax liability for the tax year, calculating their income tax liability (the **shareholder base income tax liability**) as if they only had shareholder base income and allowable deductions:“(b) the amount of unsatisfied income tax liability is the total of the difference, if any, described in **paragraph (a)(i)** and the difference, if any, described in **paragraph (a)(ii)**:“(c) the amount of unsatisfied income tax liability under **paragraph (b)** is satisfied when the life insurer pays their terminal tax for the tax year.“Use of credits“(3) Despite section LA 4,—“(a) if the tax credit apportioned to the policyholder base or the shareholder base is greater than the relevant base income tax liability described in **subsection (2)(a)(i) or (ii)**, the tax credit is used, in the order prescribed in section LA 4(1), to satisfy the relevant base income tax liability. There is no cross-crediting:“(b) tax credits not used under **paragraph (a)** are treated as remaining tax credits referred to in section LA 4(2) and the life insurer must deal with the credits under section LA 5.“Defined in this Act: income tax liability, life insurer, policyholder base, schedular policyholder base income, shareholder base, shareholder base allowable deduction, shareholder base income, tax credit, tax year”.(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

- (2) **Subsection (1)** applies—
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5
- 226 Use of tax credits**
- (1) In section LA 9, “Section OZ 11 (Tax credits for imputation credits and FDP credits) may apply to modify this section.” is omitted. 10
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 227 Section LB 1 replaced**
- Section LB 1 is replaced by the following: 15
- “LB 1 Tax credits for PAYE income payments**
- “When this section applies*
- “(1) This section applies in a tax year when an employer provides the Commissioner with an employer monthly schedule that shows an amount of tax withheld from a PAYE income payment of a person who is an employee. 20
- “Amount of credit*
- “(2) The person has a tax credit for the tax year equal to the amount of tax shown as withheld.
- “Application to close companies* 25
- “(3) Despite **subsection (2)**, the amount of the tax credit must be no more than the amount of tax paid to the Commissioner if—
- “(a) the employer is a close company; and
- “(b) the employer and the person are associated persons, or the employer and the spouse, civil union partner, or de facto partner of the person are associated persons; and 30
- “(c) the employer withheld the amount of tax for the PAYE income payment shown in the employer monthly schedule.

“Exclusions

- “(4) The person’s credit is extinguished if the Commissioner does not receive an employer monthly schedule for the relevant amount of tax, or when the relevant particulars of the schedule are incorrect. However, the credit is restored to the person if the relevant matter is corrected and, for the purposes of this section, it is as if the error had not been made. 5

“Defined in this Act: amount, amount of tax, associated person, close company, Commissioner, employee, employer, employer monthly schedule, pay, PAYE income payment, tax credit”. 10

228 Tax credits for resident withholding tax

- (1) Section LB 3(3) is replaced by the following:

“Multi-rate PIEs and their investors

- “(3) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under **subpart HM** (Portfolio investment entities).” 15
- (2) In section LB 3, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted.
- ~~(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.~~ 20
- (3) **Subsection (1)** applies for the 2010–11 and later income years.

228B Tax credits for families

- (1) In section LB 4, the following is inserted as a subsection heading: 25
“Tax credits under subparts MD and ME”.
- (2) In section LB 4, the following is added as subsection (2):
“Adjustments for credits used
- “(2) The person’s tax credit is adjusted if an instalment of the credit under subpart MF (Payment of credits) is used to satisfy an amount of tax for an earlier income year. The adjustment to the tax credit is equal to the total amount of instalments payable under section MF 1 (Application for payment of tax credit by instalment) that are recovered by the Commissioner under **section MF 6** (Overpayment of tax credit) as tax payable by the person.” 30 35

- (3) In section LB 4, in the list of defined terms, “amount of tax”, “corresponding income year”, and “pay” are inserted.
- (4) In section LB 4, in the compare note, “, MD 1(3A)” is added.
- (5) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

5

229 Tax credits related to personal service rehabilitation payments: providers

~~In section LB 7(4)(b), “schedule 4, part H,” is replaced by “schedule 4, part I.”~~

- (1) Section LB 7(4)(b) is replaced by the following: 10
 - “(b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under schedule 4, part I, clause 1 (Rates of tax for schedular payments) unless the payment is 1 of the following kinds, in which case the rate of tax is that set out in the subparagraph: 15
 - “(i) for a payment to which section RD 18 (Schedular payments without notification) applies, the rate under schedule 4, part I, clause 1 together with any additional amount required to be withheld under section RD 18, determined using the rates set out in that section: 20
 - “(ii) for a payment to which a special tax rate certificate applies, the rate applying to the payment as determined by the Commissioner under section 24N of the Tax Administration Act 1994.” 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

230 Tax credits related to personal service rehabilitation payments: payers

~~In section LB 8(3)(c), “schedule 4, part H,” is replaced by “schedule 4, part I.”~~ 30

- (1) Section LB 8(3)(c) is replaced by the following:
 - “(c) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under schedule 4, part I, clause 1 (Rates of tax for schedular payments) unless 35

- the payment is 1 of the following kinds, in which case the rate of tax is that set out in the subparagraph:
- “(i) for a payment to which section RD 18 (Schedular payments without notification) applies, the rate under schedule 4, part I, clause 1 together with any additional amount required to be withheld under section RD 18, determined using the rates set out in that section: 5
- “(ii) for a payment to which a special code applies, the rate applying to the payment as determined by the Commissioner under section 24N of the Tax Administration Act 1994.” 10
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 230B Tax credits for transitional circumstances** 15
- (1) In section LC 4(4), in the formula, “0.020” is replaced by “0.20”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 231 Tax credits for housekeeping** 20
- In section LC 6(4), “section LA 7 (Remaining refundable credits: tax credits for families)” is replaced by “**section LA 7** (Remaining refundable credits: tax credits under social policy schemes)”.
- 232 Subpart LD heading replaced** 25
- The heading to subpart LD is replaced by “**Tax credits for gifts and donations**”.
- 233 New heading inserted**
- Before section LD 1, “*Charitable and other public benefit gifts*” is inserted as a cross heading. 30
- 234 Tax credits for charitable or other public benefit gifts**
- In section LD 1(5), “section LA 7 (Remaining refundable credits: tax credits for families)” is replaced by “**section**

LA 7 (Remaining refundable credits: tax credits under social policy schemes)".

235 Exclusions

- (+) In section LD 2, the words before paragraph (a) are replaced by the following: 5
Section LD 1 does not apply to—".
- (1) In section LD 2, the words before paragraph (a) are replaced by "Section LD 1 does not apply to—".
- (2) In section LD 2(f), "trusts)." is replaced by "trusts).:", and the following is added: 10
"(g) in relation to the credit, a person who has a tax credit for a payroll donation."

236 New heading and sections LD 4 to LD 7 added
heading and sections LD 4 to LD 7 added

After section LD 3, the following is added: 15
"*Payroll donations*

"LD 4 Tax credits for payroll donations

"Who this section applies to

- "(1) This section applies to a person who—
- "(a) is an employee whose employer files by electronic means an employer monthly schedule that contains particulars relating to the person's PAYE income payments for a pay period; and 20
- "(b) chooses to make a payroll donation in the pay period:
- "(a) is an employee whose employer— 25
- "(i) files by electronic means an employer monthly schedule and a PAYE income payment form with particulars relating to the person's PAYE income payments for a pay period; and
- "(ii) agrees to offer payroll giving to their employees; 30
and
- "(b) chooses to make a payroll donation in the pay period from an amount derived as pay.

“Amount of credit

- “(2) The person has a tax credit for the pay period equal to an amount calculated using the formula—

$$\text{total donations} \times 33\frac{1}{3}\%.$$

“Definition of item in formula

- “(3) In the formula, **total donations** is the total amount of all payroll donations made by the person in the pay period. 5

“Maximum credit

- “(4) ~~Despite **subsection (2)**, the amount of the tax credit must not be more than the amount of tax for the person’s PAYE income payment for the period.~~ 10

- “(4) Despite **subsection (2)**, the amount of the tax credit must not be more than the amount of tax for the person’s pay for the period.

“Non-refundable credits

- “(5) A credit under this section is a non-refundable tax credit to which section LA 4(1) (When total tax credit more than income tax liability) applies for the tax year in which the period falls. 15

“No refunds for donations

- “(6) A person who has a tax credit under this section may not make an application under section 41A of the Tax Administration Act 1994 for any refund relating to the amount of a payroll donation. 20

“Meaning of pay for payroll donation purposes

- “(7) For the purposes of this section, and **sections LD 8(1) and 24Q** of the Tax Administration Act 1994, **pay**, for a person,— 25

“(a) means an amount referred to in section RD 5(1)(a) or (b)(i) (Salary or wages); and

“(b) includes any similar amount earned by an employee in the normal course of their employment; and 30

“(c) excludes a benefit or grant, a payment of fees, a payment of compensation for accident or loss of employment or

services, an amount paid for attendant care, or any other similar benefit in money.

“Defined in this Act: amount; amount of tax; employee; employer monthly schedule; non-refundable tax credit; pay period; PAYE income payment; payroll donation; tax credit; amount, amount of tax, employee, employer, employer monthly schedule, employment, non-refundable tax credit, pay, pay period, PAYE income payment, PAYE income payment form, payroll donation, salary or wages, tax credit

5

“LD 5 When tax credit incorrectly calculated

If an employer calculates the amount of a person’s tax credit under **section LD 4** for a pay period incorrectly, the credit is extinguished and the correct amount is included in the person’s tax credits for PAYE income payments under **section LB 1** (Tax credits for PAYE income payments) for the tax year in which the pay period falls.

10

15

“Defined in this Act: amount; employer; pay period; PAYE income payment; tax credit; tax year

“LD 5 Calculating amount of tax credit and filing particulars

“Employer’s responsibility

“(1) The employer of a person who makes a payroll donation in a pay period must calculate the amount of the person’s tax credit for the pay period under **section LD 4**, and include the amount in the particulars described in **section LD 4(1)(a)**.

20

“Credit extinguished

“(2) The tax credit is extinguished if—

25

“(a) the Commissioner does not receive an employer monthly schedule and PAYE income payment form for the relevant payroll donation;

“(b) the relevant particulars filed are incorrect.

“When matters corrected

30

“(3) Despite **subsection (2)**, the credit is restored to the person if the relevant matter is corrected and, for the purposes of this section, it is as if the error had never been made.

“Defined in this Act: amount, Commissioner, employer, employer monthly schedule, pay period, PAYE income payment form, payroll donation, tax credit

35

“LD 6 When donation is paid to ineligible recipient or not transferred*“When this section applies*

- “(1) This section applies for the purposes of **section LD 4** when—
- “(a) an employer fails to transfer a person’s payroll donation to the relevant recipient under **section 24Q** of the Tax Administration Act 1994: 5
- “(b) the recipient of a payroll donation is not an entity described in section LD 3(2) or listed in schedule 32 (Recipients of charitable or other public benefit gifts): 10

“Treatment of credit

- “(2) The tax credit is extinguished:

“When this section applies

- “(1) This section applies for the purposes of **section LD 4** when the employer or PAYE intermediary transfers the person’s payroll donation to an entity that is not a donee organisation. 15

“Credit extinguished

- “(2) The tax credit is extinguished.

“Consequences when credit extinguished

- “(3) The consequences that arise when a tax credit is extinguished under **subsection (2)** are— 20
- “(a) the amount of the credit is included in the person’s tax credits for PAYE income payments under **section LB 1** (Tax credits for PAYE income payments) for the tax year in which the pay period falls: 25
- “(b) when the extinguishing of the credit results in a shortfall in an amount of tax for a PAYE income payment, section RD 4 (Payment of amounts of tax to Commissioner) applies to the shortfall.

“Defined in this Act: ~~employer, payroll donation, tax credit~~ amount, amount of tax, donee organisation, employer, pay period, PAYE income payment, payroll donation, tax credit, tax year 30

“LD 7 When donation returned to person

“When this section applies

- “(1) This section applies for the purposes of **section LD 4** when the amount of a payroll donation is, for whatever reason, returned to the person.**

5

“Treatment of credit

- “(2) The tax credit is extinguished.**

“Consequences when credit extinguished

- “(3) The consequences that arise when a tax credit is extinguished under **subsection (2)** are—**

10

“(a) the amount of the credit is included in the person’s tax credits for PAYE income payments under **section LB 1 (Tax credits for PAYE income payments) for the tax year in which the pay period falls;**

“(b) when the extinguishing of the credit results in a shortfall in an amount of tax for a PAYE income payment, **section RD 4 (Payment of amounts of tax to Commissioner) applies to the shortfall.**

15

“Defined in this Act: amount, amount of tax, pay period, PAYE income payment, payroll donation, tax credit, tax year

20

“LD 7LD 8 Meaning and ranking of payroll donation

“Meaning

- “(1) A **payroll donation**, for a pay period, is an amount that a person asks their employer to transfer from the amount of the person’s PAYE income payment for the period to an entity described in **section LD 3(2)** or listed in **schedule 32** (Recipients of charitable or other public benefit gifts).**

25

“Priorities of amounts withheld and other deductions

- “(2) A person may make a payroll donation only after satisfying any tax obligation that they may have or any other statutory requirement that they may be obliged to meet from their PAYE income payment.**

30

- “(1) A **payroll donation**, for a pay period, is an amount that a person asks their employer to transfer from the amount of the person’s pay for the period to a donee organisation.**

35

“Priorities of amounts withheld and other deductions

“(2) A person may make a payroll donation for a pay period only after satisfying—

“(a) any tax obligation they may have:

“(b) any statutory or legal requirement they may be obliged to meet from their PAYE income payment. 5

“Defined in this Act: ~~amount, pay period, PAYE income payment, payroll donation~~ amount, donee organisation, pay, pay period, PAYE income payment, payroll donation”.

237 Tax credits for imputation credits 10

(1) In section LE 1(1), “Section OZ 11 (Tax credits for imputation credits and FDP credits) may apply to modify this section.” is added after “tax year.”

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

“Portfolio tax rate entities and their investors 15

“(1B) An investor in a portfolio tax rate entity who is allocated an imputation credit under **section HL 29(7)(b)** (Credits received by portfolio tax rate entity or portfolio investor proxy) has a tax credit for the tax year of an amount equal to the amount of the imputation credit.” 20

(3) **Section LE 1(1B)**, is replaced by the following:

“Multi-rate PIEs and their investors

“(1B) An investor in a multi-rate PIE who has an imputation credit attributed for use under **section HM 54** (Use of tax credits other than foreign tax credits by investors) has a tax credit for the tax year of an amount equal to the amount of the imputation credit.” 25

(4) Section LE 1(4) is repealed.

(5) In section LE 1, in the list of defined terms, “portfolio tax rate entity” is omitted, and “multi-rate PIE” is inserted. 30

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

~~(7) **Subsections (3) and (5)** apply for the 2009–10 and later income years.~~

(7) **Subsection (3)** applies for the 2010–11 and later income years. 35

238 Use of remaining credits by companies and trustees

(1) Section LE 2(1) is replaced by the following:

“When this section applies

“(1) This section applies when—

“(a) a person described in subsection (2) has an amount of tax credit remaining for a tax year under section LA 5(4) (Treatment of remaining credits):

“(b) a life insurer has an amount of tax credit remaining for a tax year under section LA 5(4), but only to the extent to which the amount is for their shareholder base.” 10

(2) In section LE 2(2),—

(a) in the words before the paragraphs, “subsection (1)” is replaced by “**subsection (1)(a)**”:

(b) in paragraph (a), “company” is replaced by “company that is not a life insurer”. 15

(3) In section LE 2(3), “The person” is replaced by “The person or the life insurer, as applicable,”.

(4) In section LE 2(4)(a), “section LA 5(4)” is replaced by “section LA 5(4), but, for a life insurer, only to the extent to which the amount is for their shareholder base”. 20

(5) In section LE 2, in the list of defined terms, “life insurer” and “shareholder base” are inserted.

~~(6) **Subsections (1) to (5)** apply for income years beginning on and after 1 April 2009.~~

(6) **Subsections (1) to (4)** apply— 25

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 30

239 New section LE 2B inserted

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

“LE 2B Use of remaining credits by life insurer on policyholder base*“When this section applies*

- “(1) This section applies to a life insurer who has an amount of tax credit remaining for a tax year (the **surplus credit year**) under section LA 5(4) (Treatment of remaining credits), but only to the extent to which the amount is for their policyholder base. 5

“Policyholder base gross expenditure or loss

- “(2) The life insurer has an amount of policyholder base gross expenditure or loss, treated as incurred in deriving policyholder base gross income, for the income year corresponding to the tax year after the surplus credit year equal to an amount calculated using the formula— 10

$$\frac{\text{policyholder remaining credit}}{\text{policyholder rate}}$$
“Policyholder base allowable deduction

- “(2) The life insurer has a deduction included as their policyholder base allowable deduction, for the income year corresponding to the tax year after the surplus credit year equal to an amount calculated using the formula— 15

$$\frac{\text{policyholder remaining credit}}{\text{policyholder rate}}$$
“Definition of items in formula

- “(3) In the formula,— 20

“(a) **policyholder remaining credit** is the amount of the tax credit remaining for the surplus credit year under section LA 5(4), but only to the extent to which the amount is for the life insurer’s policyholder base:

“(b) **policyholder rate** is the basic rate of income tax set out in schedule 1, part A, clause 8 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits). 25

“Defined in this Act: ~~amount, income tax, income year, life insurer, policyholder base, tax credit, tax year~~ amount, deduction, income tax, income year, life

insurer, policyholder base, policyholder base allowable deduction, tax credit, tax year”.

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

(2) **Subsection (1)** applies— 5

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 10

240 Use of remaining credits by others

(1) In section LE 3(1), “section LE 2(2)” is replaced by “section LE 2(2) or a life insurer”.

(2) In section LE 3, in the list of defined terms, “life insurer” is inserted. 15

(3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.

(3) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies: 20

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 25

241 Tax credits for FDP credits

(1) Section LF 1(4) is replaced by the following:

“Multi-rate PIEs and their investors

“(4) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under **subpart HM** (Portfolio investment entities).” 30

(2) ~~In section LF 1, in the list of defined terms, “portfolio tax rate entity” is omitted; and “multi-rate PIE” is inserted.~~

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 35

(2) In section LF 1, in the list of defined terms,—

- (a) “portfolio tax rate entity” is omitted:
- (b) “multi-rate PIE” is inserted.
- (3) **Subsection (1)** applies for the 2010–11 and later income years.

- 242 **Subpart LH—Tax credits for expenditure on research and development** 5
 In sections LH 1 to LH 17, the compare notes are repealed.

- 243 **Who this subpart applies to**
- (1) After section LH 1(2), the following is added: 10
“Excluded income
- “(3) A tax credit that a person has under this subpart is excluded income of the person.”
- (2) In section LH 1, in the list of defined terms, “excluded income” is inserted:
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 15

- 243 **Who this subpart applies to**
- (1) After section LH 1(1)(a), the following is inserted: 20
“(ab) is a New Zealand resident member of a group of companies, and another New Zealand resident member would meet the requirements described in paragraph (a):”.
- (2) After section LH 1(2)(a), the following is inserted: 25
“(ab) a Crown entity, as that term is defined in the Crown Entities Act 2004:”.
- (3) In section LH 1(2),— 30
 - (a) in paragraph (b), “paragraph (a)” is replaced by “paragraph (a) or (ab)”:
 - (b) in paragraph (c), “paragraph (a) or (b)” is replaced by “paragraph (a), (ab), or (b)”.
- (4) After section LH 1(2), the following is added:
“Excluded income
- “(3) A tax credit that a person has under this subpart is excluded income of the person.”

- (5) In section LH 1, in the list of defined terms, “excluded income”, “group of companies”, and “New Zealand resident” are inserted.
- (6) **Subsections (1) to (4)** apply for the 2008–09 and later income years.

5

244 Tax credits relating to expenditure on research and development

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

“Treatment when tax credit used under subsection (6)

- “(7) The amount of a tax credit used under subsection (6) is treated as excess tax for the purposes of section LA 6(2)(e) and Part 10B of the Tax Administration Act 1994.

10

“Statements

- “(8) Despite subsection (2), no amount of tax credit arises before the statements referred to in sections 68D or 68E of the Tax Administration Act 1994 are provided.”

15

- (1) After section LH 2(6), the following is added:

“Treatment when tax credit used under subsection (6)

- “(7) The amount of a tax credit used under subsection (6) is treated as excess tax for the purposes of Part 10B of the Tax Administration Act 1994.”

20

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

245 Requirements

- (1) After section LH 3(5), the following is added:

25

“Modifications of requirements

- “(6) The requirements of this section are modified as follows:

“(a) **section LH 5B** modifies the requirements in subsection (1)(a) in relation to certain research and development activities:

30

“(b) **section LH 5C** modifies the requirements in subsection (1)(e) in relation to the allocation of certain items of expenditure or depreciation loss.”

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

35

245 Requirements

- (1) After section LH 3(1)(a)(i), the following is inserted:
- “(ib) the business, or an intended business, of the relevant member of the group of companies that meets the requirements described in section LH 1(1)(a) for the purposes of **section LH 1(1)(ab)**.” 5
- (2) After section LH 3(5), the following is added:
- “Groups of companies
- “(6) A person is treated as meeting the requirements of— 10
- “(a) subsection (1)(b), if, for the relevant income year or period in the income year, the person is a New Zealand resident member of a group of companies and the requirements of subsection (1)(b) would be met by another New Zealand resident member: 15
- “(b) subsection (1)(d), if, for the relevant income year or period in the income year, the person is a New Zealand resident member of a group of companies and the requirements of subsection (1)(d) would be met by another New Zealand resident member, or by another member that is controlled by a New Zealand resident member.” 20
- (3) In section LH 3, in the list of defined terms, “control”, “group of companies”, and “New Zealand resident” are inserted.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 25

245B Adjustments to eligible expenditure

- (1) In section LH 5(4), paragraph (c) is replaced by the following:
- “(c) the expenditure is incurred by the person, and—
- “(i) the expenditure is incurred in the intended development of depreciable property that is intangible property or is tangible property intended only for use in the research and development activities: 30
- “(ii) the expenditure is—
- “(A) described in schedule 21, part A, clause 1, 3, or 9; and 35
- “(B) incurred solely in activities described in section LH 7(1)(a); and

- “(C) not incurred directly in the construction of
tangible property; and
- “(d) in the case of expenditure that is an amount of employ-
ment income, the amount has been paid at the end of—
- “(i) the 63rd day after the end of the person’s income 5
year, for an employee’s employment income; or
- “(ii) the last date by which the person could file a
return of income for the income year if the time
for filing were extended to its maximum under
section 37(5) of the Tax Administration Act 10
1994, for a shareholder-employee’s employment
income.”
- (2) In section LH 5, in the list of defined terms, “employee”, “em-
ployment income”, and “shareholder-employee” are inserted.
- (3) **Subsection (1)** applies for the 2008–09 and later income 15
years.
- 246 New sections LH 5B and LH 5C inserted**
- (1) After section LH 5, the following are inserted
- “LH 5B Modification: timing of research and development 20
activities**
- “When this section applies*
- “(1) This section applies for the purposes of section LH 3(1)(a) to
modify the rule that research and development activities must
be performed in the income year for which the person has the
tax credit. 25
- “First case: deferred pay for employees*
- “(2) The timing rule does not apply to research and development
activities in relation to which the payment to an employee of
an amount described in schedule 21, part A, clause 1(b) (Ex-
penditure and activities related to research and development) 30
is deferred to an income year that is later than the income year
in which the relevant research and development activities were
performed.
- “Second case: project becoming New Zealand-based project*
- “(3) The timing rule does not apply to research and development 35
activities performed outside New Zealand in an income year

in which the activities were not part of a research and development project because the requirements of section LH 6(4) were not met, but in a later income year the requirements of that section are met.

“Third case: when eligible expenditure increased in later income years 5

- “(4) The timing rule does not apply to research and development activities performed outside New Zealand in an income year in relation to which the expenditure was excluded by section LH 6(5)(e) in earlier income years, but in a later income year the requirements of that section are met. 10

“Defined in this Act: amount; employee; income year; New Zealand; pay; research and development activities; research and development project; tax credit

“LH5C Modification: allocation of expenditure

“When this section applies 15

- “(1) This section applies for the purposes of section LH 3(1)(e) to modify the rule that the expenditure must be incurred in the income year in which the research and development activities occurred.

“First case: deferred pay for employees 20

- “(2) The timing rule does not apply to expenditure relating to an employee that is an amount described in schedule 21, part A, clause 1(b) (Expenditure and activities related to research and development), the payment of which is deferred to an income year that is later than the income year in which the relevant research and development activities were performed. 25

“Second case: project becoming New Zealand-based project

- “(3) The timing rule does not apply to expenditure or an amount of depreciation loss incurred on research and development activities performed outside New Zealand in an income year in which the activities were not part of a research and development project because the requirements of section LH 6(4) were not met, but in a later income year the requirements of that section are met. 30

“Third case: when eligible expenditure increased in later income years

- “(4) The timing rule does not apply to expenditure or an amount of depreciation loss incurred on research and development activities performed outside New Zealand in an income year in relation to which the expenditure was excluded by section LH 6(5)(e) in earlier income years, but in a later income year the requirements of that section are met. The excess overseas eligible expenditure must be carried forward to the next income year and used to the extent allowed under that section. Any remaining excess must be carried forward to the next income year in the same way under this subsection, until the amount is fully used.

“Defined in this Act: amount; depreciation loss; employee; income year; New Zealand; pay; research and development activities; research and development project; salary or wages”.

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

247 New section LH 14B inserted

- (1) After section LH 14, the following is inserted: 20

“LH 14B Recovery of overpaid tax credit

“When this section applies

- “(1) This section applies when the Commissioner considers the amount of a tax credit under this subpart that is used under sections LA 2, LA 6(2), or LH 2(6) (which relate to tax credits) for a tax year is more than the proper amount. 25

“Recovery of overpayment

- “(2) The Commissioner may recover the excess as if it were income tax payable by the person.

“Defined in this Act: amount, Commissioner, income tax, pay, tax credit, tax year”. 30

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

248 What this subpart does

- (1) Section LJ 1(3) is repealed. 35

- (2) After section LJ 1(5), the following is added:
“Relationship with section YD 5
- “(6) Section YD 5 (Apportionment of income derived partly in New Zealand) applies to determine how an amount is apportioned to sources outside New Zealand.” 5
- (3) **Subsection (1)** applies for the 2008–09 and later income years.
- 249 Tax credits for foreign income tax**
- (1) Section LJ 2(5) is replaced by the following:
“Multi-rate PIEs and their investors 10
- “(5) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under **subpart HM** (Portfolio investment entities).”
- (2) In section LJ 2, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted. 15
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (1) Section LJ 2(2), other than the heading, is replaced by the following:
- “(2) The amount of the person’s credit in subsection (1) must not be more than the amount of New Zealand tax payable by the person in relation to the segment calculated under section LJ 5(2), modified as necessary under section LJ 5(4).” 20
- (2) Section LJ 2(5) is replaced by the following:
“Multi-rate PIEs and their investors 25
- “(5) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under **subpart HM** (Portfolio investment entities).”
- (3) After **section LJ 2(5)**, the following is added:
“When subsection (7) applies 30
- “(6) **Subsection (7)** applies to a person who derives an amount from an attributing interest in a FIF when the amount is treated as not being income under section EX 59(2) (Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method). 35

“Tax credit

- “(7) The person has a tax credit under this subpart for foreign income tax paid on or withheld in relation to the amount. The calculation of the amount of the maximum amount of the tax credit is made under section LJ 5(2), modified so that the item 5
segment in the formula is the amount of FIF income from the attributing interest that the person derives in the period referred to in section EX 59(2).”
- (4) In section LJ 2, in the list of defined terms,—
(a) “portfolio tax rate entity” is omitted: 10
(b) “multi-rate PIE” is inserted.
- (5) In section LJ 2, in the list of defined terms, “attributing interest”, “FIF”, “FIF income”, “income”, and “tax credit” are inserted.
- (6) **Subsections (1) and (3)** apply for the 2008–09 and later income years. 15
- (7) **Subsection (2)** applies for the 2009–10 and later income years.

249B Section LJ 3 replaced

Section LJ 3 is replaced by the following: 20

“LJ 3 Meaning of foreign income tax

For the purposes of this Part, **foreign income tax** means an amount of income tax of a foreign country.

“Defined in this Act: amount, income tax

“Compare: 2004 No 35 s LC 1(1).” 25

249C Calculation of New Zealand tax

- (1) In section LJ 5(4), in the formula, the denominator “NZ tax under subsection (2) for all segments” is replaced by “NZ tax”.
- (2) After section LJ 5(4), the following is inserted:
“Definition of item in formula 30
- “(4B) In the formula in subsection (4), **NZ tax** is the amount of New Zealand tax that would be calculated under subsection (2) if that subsection applied to all income of the person from all sources.”
- (3) Section LJ 5(6)(b) is replaced by the following: 35

- “(b) **losses**—
“(i) is the amount of the loss balance carried forward to the tax year that the person must subtract from their net income under section IA 4(1)(a) (Using loss balances carried forward to tax year): 5
“(ii) must be no more than the amount of the person’s net income:”.
- (4) In section LJ 5, in the list of defined terms, “New Zealand” is inserted.
- (5) **Subsections (1) to (3)** applies for the 2008–09 and later income years. 10
- 250 Repaid foreign tax**
- (1) Section LJ 7(3) is repealed.
- (2) In section LJ 7(4), the words before paragraph (a) are replaced by the following: 15
- “(4) The liability under subsection (2) is treated as income tax payable 30 days after the later of the following dates:”.
- 250 Section LJ 7 replaced by new sections LJ 7 and LJ 8**
- (1) Section LJ 7 is replaced by the following:
- “LJ 7 Repaid foreign tax: effect on income tax liability** 20
- “Who this section applies to
- “(1) This section applies to a person who has—
“(a) paid an amount of foreign income tax, or in relation to whom an amount of foreign income tax has been paid, on a segment of foreign-sourced income in relation to which they are entitled to a tax credit under section LJ 2; and 25
“(b) received a refund, amount, or benefit (the **refund**) determined directly or indirectly by reference to some or all of the payment of foreign income tax. 30
- “When refund received before assessment
- “(2) If the person receives the refund before they assess their income tax liability for a tax year, the amount of the tax credit for the foreign income tax paid is reduced by the lesser of—
“(a) the amount of the refund: 35

“(b) the amount of New Zealand tax payable on the foreign-sourced income calculated under section LJ 5.

“When refund received after assessment

“(3) If the person receives the refund after they have assessed their income tax liability for a tax year, have used an amount of foreign tax credit in satisfying that liability, and have not taken the refund into account in that assessment, the person is liable to pay the Commissioner the lesser of— 5

“(a) the amount of the refund:

“(b) the amount of New Zealand tax payable on the foreign income calculated under section LJ 5. 10

“Date for payment

“(4) In **subsection (3)**, the date for payment is the later of—

“(a) the date on which the person receives the refund:

“(b) 30 days after the date on which the person’s return of income for the tax year is filed. 15

“Associated persons

“(5) For the purposes of this section, the refund is treated as received by the person, whether it is received by the person, a person who paid the foreign income tax, or a person associated with either of them. 20

“Defined in this Act: amount, associated person, Commissioner, foreign income tax, income tax liability, New Zealand, New Zealand tax, pay, return of income, segment of foreign-sourced income, tax credit, tax year

“Compare: 2004 No 35 ss LC 1(3A), (3B), LC 3 25

“LJ 8 Repaid foreign tax: effect on FDP liability

“Who this section applies to

“(1) This section applies to a person who receives a foreign dividend from a foreign dividend company, and the person or the company has— 30

“(a) paid an amount of foreign income tax, or in relation to whom an amount of foreign income tax has been paid or withheld; and

“(b) received a refund, amount, or benefit (the **refund**) determined directly or indirectly by reference to some or all of the payment of foreign income tax. 35

“When refund received before calculation of FDP

- “(2) If the person or company receives the refund before the person calculates the amount of FDP payable under section RG 4 (Calculating amount of FDP) for a tax year, the formula is modified as follows: 5
- “(a) if the refund relates to foreign withholding tax on the dividend, the item **foreign tax** is the amount by which the foreign withholding tax paid is more than the amount of the refund:
- “(b) if the refund relates to foreign income tax taken into account in the item **total tax paid** in section LL 2(5) (Tax credits for underlying foreign tax) or the item **tax withheld** in section LL 6(3) (Foreign dividend company lower tier UFTCs), the foreign dividend company’s calculation of UFTC is modified as follows: 10 15
- “(i) the item **foreign tax paid** is the amount by which the total income tax or foreign income tax paid by the foreign dividend company is more than the amount of the refund:
- “(ii) the item **tax withheld** is the amount by which the tax withheld and paid in relation to the standard dividend is more than the amount of the refund. 20

“When subsection (4) applies

- “(3) **Subsection (4)** applies if—
- “(a) the person or company receives the refund after the person has calculated the amount of FDP payable for a tax year under section RG 4; and 25
- “(b) the person has taken the amount of foreign income tax paid or withheld into account in that calculation in the items **foreign tax** or **underlying credit** in section RG 4(1); and 30
- “(c) the person has not taken the refund into account in that calculation.

“When refund received after calculation of FDP

- “(4) The person must recalculate the FDP liability for the tax year and pay the difference to the Commissioner as FDP. 35

“Date for payment

“(5) For the purposes of **subsection (4)**, the date for payment is the later of—

“(a) the date the person or company receives the refund:

“(b) the date for payment of FDP to the Commissioner in relation to the foreign dividend received for which the recalculation is required. 5

“Associated persons

“(6) For the purposes of this section, the refund is treated as received by the person or company, whether it is received by the person or company, a person who paid or withheld the foreign income tax, or a person associated with any of them. 10

“Defined in this Act: amount, associated person, Commissioner, FDP, foreign dividend, foreign dividend company, foreign income tax, income tax, pay, tax year 15

“Compare: 2004 No 35 ss LC 1(3A), (3B), LC 3”.

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

251 Tax credits relating to attributed CFC income

(1) Section LK 1(1), other than the heading, is replaced by the following: 20

“(1) A person who has an amount of attributed CFC income for an income year has a tax credit for the tax year corresponding to the income year equal to the following amounts paid or payable in relation to the attributed CFC income: 25

“(a) the amount of income tax, including NRWT, paid by or on behalf of the CFC from which the income is derived:

“(b) the amount of foreign income tax paid by or on behalf of the CFC from which the income is derived:

“(c) the amount of foreign income tax paid by a foreign company in relation to the CFC under the legislation of another country or territory that is the equivalent of the international tax rules: 30

“(a) an amount of income tax paid by the CFC from which the income is derived: 35

“(b) an amount of tax withheld and paid on behalf of the CFC from which the income is derived:

- “(c) the amount of foreign income tax paid by the CFC from which the income is derived:
- “(d) the amount of foreign income tax paid by the person under legislation of another country or territory that is the equivalent of the international tax rules.” 5
- (2) ~~In section LK 1(3), the second sentence is omitted.~~
- (2) In section LK 1(3),—
- (a) “foreign country” is replaced by “foreign country or territory”:
- (b) the second sentence is omitted. 10
- (3) After section LK 1(4), the following are added:
- “When subsection (6) applies*
- “(5) **Subsection (6)** applies when—
- “(a) a person has a credit under **subsection (1)** in relation to an amount of income tax or foreign tax; and 15
- “(b) the credit has been used under section LA 2 (Satisfaction of income tax liability) or is carried forward under section LK 4; and
- “(c) the amount of income tax or foreign tax has been repaid:
- “Credit repayable or extinguished* 20
- “(6) The amount of the credit—
- “(a) must be paid to the Commissioner if it has been used under section LA 2:
- “(b) is extinguished, if it is carried forward under section LK 4. 25
- “When liability payable*
- “(7) The liability under **subsection (6)(a)** is treated as income tax payable 30 days after the later of the following dates:
- “(a) the date of the notice of assessment in relation to which the person has used the credit: 30
- “(b) the date on which the person who paid the tax, or a person associated with them, receives the repaid tax:
- “When subsection (7) applies*
- “(5) **Subsection (7)** applies when—
- “(a) a person has a credit under **subsection (1)** in relation to an amount of income tax or foreign income tax; and 35

- “(b) the credit has been used under section LA 2 (Satisfaction of income tax liability) or is carried forward under section LK 4; and
- “(c) the person has received a refund, amount, or benefit (the **refund**) determined directly or indirectly by reference to some or all of the tax paid. 5
- “When refund received before assessment*
- “(6) If the person receives the refund before they assess their income tax liability for a tax year, the amount of tax credit for the tax paid is reduced by the lesser of— 10
- “(a) the amount of the refund:
- “(b) the amount of New Zealand tax payable on the foreign-sourced income calculated under section LJ 5 (Calculation of New Zealand tax).
- “Credit repayable or extinguished* 15
- “(7) The amount of the credit—
- “(a) must be paid to the Commissioner if it has been used under section LA 2:
- “(b) is extinguished, if it is carried forward under section LK 4. 20
- “When liability payable*
- “(8) The liability under **subsection (7)(a)** is treated as income tax payable 30 days after the later of the following dates:
- “(a) the date of the notice of assessment in relation to which the person has used the credit: 25
- “(b) the date on which the person who paid the tax, or a person associated with them, receives the refund.
- “Associated persons*
- “(9) For the purposes of **subsections (5) to (8)**, the refund is treated as received by the person, whether it is received by the person, a person who paid the foreign income tax, or a person associated with either of them.” 30
- ~~“(4) In section LK 1, in the list of defined terms, “assessment”, “associated person”, “Commissioner”, “international tax rules”, “notice”, and “NRWT” are inserted.~~ 35
- (4) In section LK 1, in the list of defined terms, “assessment”, “associated person”, “Commissioner”, “international tax rules”,

- “New Zealand tax”, “notice”, “NRWT”, and “segment of foreign-sourced income” are inserted.
- (5) In section LK 1, in the list of defined terms, “conduit tax relief” and “CTR company” are omitted.
- (6) **Subsections (2) and (5)** apply for the 2009–10 and later income years. 5
- (6) **Subsection (2)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 10
- (7) **Subsections (1) and (3)** apply for the 2008–09 and later income years.
- 252 Calculation of amount of credit**
- (1) Section LK 2(2)(b) is replaced by the following: 15
- “(b) **tax paid** is the amount of income tax or foreign income tax paid or payable by the CFC (or by the foreign company referred to in subsection (1)(c) in relation to the CFC) for the accounting period corresponding to the tax year, including an amount withheld by another person and paid or payable on behalf of the CFC: 20
- “(b) **tax paid** is the amount of income tax or foreign income tax paid or payable by the CFC for the accounting period corresponding to the tax year, including an amount withheld by another person and paid or payable on behalf of the CFC:” 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 253 New section LK 5B inserted**
- (1) After section LK 5, the following is inserted: 30
- “LK 5B Effect of credits carried forward from tax year before 2009–10 tax year**
- “What this section applies to*
- “(1) This section applies to a tax credit—

“(a) arising for a person under section LK 1 in relation to attributed CFC income from a CFC for a tax year before the 2009–10 tax year; and

“(b) carried forward under section LK 4 to a tax year (the **credit use year**) that is the 2009–10 or a later tax year. 5

“Effect of credit under subpart LA

“(2) The amount of the credit for the purposes of subpart LA (General rules for tax credits) for the credit use year is—

“(a) zero; if the amount of the credit carried forward to the credit use year from the tax year in which the credit arose under section LK 1; (the **branch equivalent credit amount**) is less than the amount (the **non-attributed CFC liability**) that would be the person’s income tax liability for the credit use year if the person’s only assessable income were the amount of branch equivalent income of the person from the CFC— 10 15

“(i) for the credit use year; and

“(ii) in excess of the attributed CFC income of the person from the CFC for the credit use year; or 20

“(b) the amount that would be the person’s income tax liability for the credit use year if the person’s only assessable income were the attributed CFC income of the person from the CFC for the credit use year (the **attributed CFC liability**); if the branch equivalent credit amount is equal to or greater than the greater of— 25

“(i) the attributed CFC liability;

“(ii) the amount that would be the person’s income tax liability for the credit use year if the person’s only assessable income were the branch equivalent income of the person from the CFC for the credit use year (the **branch equivalent liability**); or 30

“(e) the lesser of the attributed CFC liability and the amount by which the branch equivalent credit amount exceeds the non-attributed CFC liability; if **paragraphs (a) and (b)** do not apply. 35

“Amount of credit treated as being used in credit use year

“(3) The amount deducted from the credit carried forward to the credit use year to determine the amount available to be carried forward under section LK 4 from the credit use year is—

- “(a) the branch equivalent credit amount, if that amount is less than or equal to the greater of the attributed CFC liability and the branch equivalent liability; or
- “(b) the amount that is the greater of the attributed CFC liability and the branch equivalent liability, if **paragraph (a)** does not apply.

“Defined in this Act: assessable income; attributed CFC income; branch equivalent CFC income; CFC; income tax liability; tax credit; tax year”.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

253 New section LK 5B inserted

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

“LK 5B Credits from tax year before first affected year

“When this section applies

“(1) This section applies when a person has a tax credit (the **available BE credit**) that—

- “(a) relates to a tax year before the first tax year for which this section applies to the person; and
- “(b) relates to a CFC or FIF that is resident in a country (the **jurisdiction**) in which the credit arose; and
- “(c) is carried forward to a tax year (the **conversion year**) for which this section applies to the person.

“What this section does

“(2) In this section, **subsection (3)** gives the person an option that an available BE credit for a jurisdiction not be carried forward and **subsections (4) to (7)** give, for whichever of the 4 alternative situations is otherwise relevant for the person,—

- “(a) the amount of the available BE credit (the **converted BE credit**) that is—
 - “(i) treated as being converted into an amount referred to in **paragraph (b)** in the conversion year; and

- “(ii) is not available to the person to be carried forward as available BE credit for a later tax year:
- “(b) the amount (the **equivalent tax credit**) of a tax credit that, for the purposes of the rest of this subpart, is treated as arising in relation to the jurisdiction in the conversion year. 5
- “Option: tax credit not carried forward
- “(3) A person may choose by giving a notice in a form and at a time acceptable to the Commissioner that the available BE credit for a jurisdiction not be carried forward under this section. 10
- “Person not resident group member: more jurisdictional BE income
- “(4) For a person who is not a resident group member and has jurisdictional BE income for the conversion year that is greater than zero and greater than the person’s jurisdictional attributed income for the conversion year,— 15
- “(a) the person’s converted BE credit in the conversion year is the lesser of—
- “(i) the amount that would be the person’s income tax liability if the person’s only assessable income were the person’s jurisdictional BE income for the conversion year: 20
- “(ii) the person’s available BE credit for the conversion year:
- “(b) the person’s equivalent tax credit in the conversion year is the lesser of— 25
- “(i) the amount that would be the person’s income tax liability if the person’s only assessable income were the person’s jurisdictional attributed income for the conversion year: 30
- “(ii) the amount calculated by dividing the person’s available BE credit for the conversion year by the person’s jurisdictional income ratio for the conversion year.
- “Person not resident group member: more jurisdictional attributed income 35
- “(5) For a person who is not a resident group member and has jurisdictional attributed income for the conversion year that is

- greater than or equal to zero and greater than or equal to the person's jurisdictional BE income for the conversion year,—
- “(a) the person's converted BE credit for the conversion year is the lesser of—
- “(i) the person's available BE credit for the conversion year: 5
- “(ii) the amount that would be the person's income tax liability if the person's only assessable income were the person's jurisdictional attributed income for the conversion year: 10
- “(b) the person's equivalent tax credit is equal to the person's converted BE credit for the conversion year.
- “Resident group member: more jurisdictional BE income
- “(6) For a person who is a resident group member for a wholly-owned group of companies and has jurisdictional BE income 15
- for the conversion year that is greater than zero and greater than the person's jurisdictional attributed income for the conversion year,—
- “(a) the person's converted BE credit for the conversion year is the lesser of— 20
- “(i) the person's available BE credit for the conversion year:
- “(ii) the amount that would be the person's income tax liability if the person's only assessable income were the greater of the person's jurisdictional BE 25
- income for the conversion year and the amount calculated by multiplying the group's jurisdictional income ratio for the conversion year by the person's jurisdictional attributed income for the conversion year: 30
- “(b) the person's equivalent tax credit is the amount calculated by dividing the person's converted BE credit for the conversion year by the group's jurisdictional income ratio for the conversion year.
- “Resident group member: more jurisdictional attributed income 35
- “(7) For a person who is a resident group member and has jurisdictional attributed income for the conversion year that is greater

than or equal to zero and greater than or equal to the person's jurisdictional BE income for the conversion year,—

“(a) the person's converted BE credit for the conversion year is the lesser of—

“(i) the person's available BE credit for the conversion year: 5

“(ii) the amount that would be the person's income tax liability if the person's only assessable income were the person's jurisdictional attributed income for the conversion year multiplied by the group's jurisdictional income ratio for the conversion year: 10

“(b) the person's equivalent tax credit is equal to the amount calculated by dividing the person's converted tax credit for the conversion year by the group's jurisdictional income ratio for the conversion year. 15

“Option to determine jurisdictional BE income from accounts

“(8) In determining the jurisdictional BE income of a person or wholly-owned group, the person or group may choose to use, instead of the branch equivalent income or loss of a CFC, the profit or loss of the CFC before taxation given by accounts— 20

“(a) complying with generally accepted accounting practice in New Zealand or an equivalent standard for the consistent and undistorted reporting of net profits in the country in which the accounts are prepared; and 25

“(b) audited by an accountant who is—

“(i) a chartered accountant or an accountant of equivalent professional standard in the country in which the accounts are prepared; and

“(ii) independent of the CFC and the person or wholly-owned group; and 30

“(c) are given an unqualified opinion or an opinion of equivalent standard in the country in which the accounts are prepared. 35

“Defined in this Act: attributed CFC income, attributed CFC loss, branch equivalent income, branch equivalent loss, CFC, group of companies, income interest, jurisdictional attributed income, jurisdictional BE income, jurisdictional income ratio, New Zealand resident, resident group member, tax year, wholly-owned group, wholly-owned group of companies”.

- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 5
- 254 Subpart LL repealed**
- (1) Subpart LL is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for— 10
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 254B Use of remaining credits** 15
- (1) In section LP 3(5), “subsection (3)” is replaced by “subsection (2) or (3)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 254C Continuity rules for carrying credits forward** 20
- (1) Section LP 4(2), other than the heading, is replaced by the following:
- “(2) The amount is available for use under section LP 3(4) if a group of persons exists that has, for the continuity period,—
- “(a) minimum voting interests in the company that add up to 49% or more; and 25
 - “(b) when a market value circumstance exists for the company in the continuity period, minimum market value interests in the company that add up to 49% or more.”
- (2) In section LP 4, in the list of defined terms, “market value circumstance” is inserted. 30
- (3) **Subsection (1)** applies for the 2008–09 and later income years.

255 Sections LQ 1 to LQ 4 repealed

- (1) Sections LQ 1 to LQ 4 are repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years.

- (2) **Subsection (1)** applies for— 5
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

255B Tax credits for certain investors in portfolio tax rate entities 10

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

- “(1) This section applies when a person has portfolio investor allocated income in a tax year from a portfolio tax rate entity if— 15
- “(a) the income would be excluded income of the person in the absence of section CX 56(1)(b);
- “(b) the income is not excluded income because section CX 56(4) applies.”

- (2) **Subsection (1)** applies for the 2009–10 and later income years. 20

256 Subpart LS replaced

- (1) Subpart LS is replaced by the following:
- “Subpart LS—Tax credits for multi-rate
PIEs and investors 25

“LS 1 Tax credits for multi-rate PIEs

“Tax credit

- “(1) A multi-rate PIE has a tax credit for a tax year for the amount determined—

- “(a) under **sections HM 51 and HM 53** (which relate to 30 certain tax credits) for an imputation credit or a credit for tax paid or withheld;
- “(b) under **section HM 55** (Tax credits for losses) arising from a tax loss attributed to an investor.

“When this section does not apply

- “(2) This section does not apply—
- “(a) in relation to—
- “(i) a zero-rated investor:
- “(ii) an exiting investor who is treated under **section HM 60** (Certain exiting investors zero-rated) as zero-rated: 5
- “(b) if the PIE pays tax using the provisional tax calculation option under **section HM 44** (Provisional tax calculation option). 10

“Amount of credit

- “(3) The amount of the tax credit equals the amount determined under the relevant section.

“Timing

- “(4) The PIE has the tax credit for the tax year in which the relevant calculation period falls. 15

“Exception: timing under exit calculation option

- “(5) If the PIE calculates its income tax liability using the exit calculation option under **section HM 42** (Exit calculation option), the amount of a credit attributable to an investor is able to be used to satisfy a tax obligation relating to the investor. 20

“Defined in this Act: amount, calculation period, imputation credit, income tax liability, investor, multi-rate PIE, pay, PIE, provisional tax, tax credit, tax loss, tax year, zero-rated investor

“Compare: 2007 No 97 s LS 1 25

“LS 2 Tax credits for investors in multi-rate PIEs

“When this section applies

- “(1) This section applies when—
- “(a) an investor has attributed PIE income from a multi-rate PIE for a tax year; and 30
- “(b) ~~the investor’s prescribed investor rate is more than zero; and~~
- “(b) the investor’s prescribed investor rate is—
- “(i) more than zero:
- “(ii) for an investor who is a trustee, 19.5%; and 35

“(c) the income is not excluded income of the investor because the test in **section CX 56(1)(b)** (Attributed income of certain investors in multi-rate PIEs) is not met.

“*Amount of credit*

“(2) The investor has a tax credit for the income year in which the PIE’s tax year ends. The amount of the credit is equal to the amount of income tax paid by the PIE in relation to the attributed PIE income, and may be used to satisfy the investor’s income tax liability for the tax year. 5

“Defined in this Act: amount, attributed PIE income, excluded income, income, income year, investor, multi-rate PIE, pay, PIE, prescribed investor rate, tax credit, tax year 10

“Compare: 2007 No 97 s LS 2

“LS 3 Tax credits for zero-rated investors

“*When this section applies* 15

“(1) This section applies when a zero-rated investor has attributed PIE income from a multi-rate PIE for a tax year.

“*Amount of credit*

“(2) The investor has a tax credit that may be used to satisfy their income tax liability for the tax year equal to the amount of income tax paid by the PIE for the attributed income for the tax year. 20

“*Credit for PIE’s foreign tax*

“(3) A zero-rated investor also has a tax credit for the tax year for the amount determined under **section HM 52** (Use of foreign tax credits by zero-rated and certain exiting investors) for foreign income tax paid by the PIE. 25

“*Credit for PIE’s other tax credits*

“(4) A zero-rated investor also has a tax credit for the tax year for the amount determined under **section HM 54** (Use of tax credits other than foreign tax credits by investors) for tax paid or withheld. 30

“Timing

- “(5) The investor has the tax credit for the tax year corresponding to the income year in which the PIE’s tax year ends.

“Defined in this Act: amount, attributed PIE income, income tax, income tax liability, income year, multi-rate PIE, pay, PIE, tax credit, tax year, zero-rated investor 5

“Compare: 2007 No 97 s LS 3

“LS 4 Tax credits for certain exiting investors

“When this section applies

- “(1) This section applies when an exiting investor in a multi-rate PIE who is treated under **section HM 60** (Certain exiting investors zero-rated) as zero-rated has attributed PIE income from the PIE for a tax year in which the exit period falls. 10

“Amount of credit

- “(2) The investor has a tax credit that may be used to satisfy their income tax liability for the tax year equal to any amount paid by the PIE under **section HM 43(4)** (Quarterly calculation option) to the Commissioner after the investor exits from the PIE for the residual value of the investor’s interest. 15

“Credit for PIE’s foreign tax 20

- “(3) An exiting investor also has a tax credit for the tax year for the amount determined under **section HM 52** (Use of foreign tax credits by zero-rated and certain exiting investors) for foreign income tax paid by the PIE.

“Credit for PIE’s other tax credits 25

- “(4) An exiting investor also has a tax credit for the tax year for the amount determined under **section HM 54** (Use of tax credits other than foreign tax credits by investors) for tax paid or withheld.

“Timing

- “(5) The investor has the tax credit for the tax year corresponding to the income year in which the PIE’s tax year ends.

“Defined in this Act: attributed PIE income, exit period, foreign income tax, income tax liability, income year, investor, investor interest, multi-rate PIE, pay, PIE, tax credit, tax year

“Compare: 2007 No 97 s LS 4”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

- (2) **Subsection (1)** applies for the 2010–11 and later income years.

256B Meaning of full-time earner for family scheme

- (1) In section MA 7(2), in the words before paragraph (a), “the purposes of subsection (1)(a)” is replaced by “the purposes of subsection (1)”.

- (2) In section MA 7(2)(b), “subsection (1)(a) to (c) or to the extent described in subsection (1)(d)” is replaced by “subsection (1)(a) and (b)”.

- (3) In section MA 7, in the list of defined terms, “employment” is inserted.

- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

256C Some definitions for family scheme

In section MA 8, in the list of defined terms, “full-time earner” is omitted.

257 Adjustments for calculation of family scheme income

- (1) Section MB 1(5) is replaced by the following:

“Investment income

- “(5) For the purposes of subsection (1), an amount of income attributed by a portfolio investment entity that is not excluded income of the person is not included in family scheme income.”

- (2) In section MB 1, “portfolio investor allocated income” is omitted and “income” and “portfolio investment entity” are inserted.

- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (2) In section MB 1, in the list of defined terms,—
 - (a) “portfolio investor allocated income” is omitted:
 - (b) “portfolio investment entity” is inserted. 5
- (3) **Subsection (1)** applies for the 2010–11 and later income years.

257B Family scheme income of major shareholders in close companies

- (1) Section MB 4(1), other than the heading, is replaced by the following: 10
 - “(1) This section applies for the purposes of determining the amount that represents the family scheme income of a person for an income year when the person is a major shareholder in a close company on the last day of the company’s balance date for financial purposes. If the company has paid the major shareholder a dividend in the income year, the amount of family scheme income calculated under subsection (2) is reduced by the total dividends paid for the income year.” 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20

257C What this subpart does

In section MC 1, in the compare note, “ss KD A1, KD 1A” is replaced by “s KD 1A”.

257D Third requirement: residence

- (1) Section MC 5(1), other than the heading, is replaced by the following: 25
 - “(1) The third requirement is that either the person referred to in section MC 2 or the child referred to in section MC 4 meets the residence requirements of subsections (2) and (3), as applicable.” 30
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

257E When person does not qualify

- (1) Section MC 6(b)(ii) is repealed.
- (2) In section MC 6, in the compare note, “s KD 3(1)” is replaced by “s KD 3(1), ‘qualifying person’”.
- (3) **Subsection (1)** applies for the 2008–09 and later income years. 5

257F Continuing requirements

- (1) In section MC 8, after the section heading, the following is inserted:
“Requirements for entitlement period”. 10
- (2) After section MC 8(f), the following is added as subsection (2):
“Relationship with section MD 6(2)
“(2) Section MD 6(2) (Second requirement: principal care) over-
rides this section in relation to the in-work tax credit.” 15
- (3) In section MC 8, in the list of defined terms, “in-work tax credit” is inserted.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

257G Principal caregiver 20

- (1) In section MC 10(4), “subsection (2)” is replaced by “subsection (3)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

257H Second requirement: principal care 25

- (1) After section MD 6(2), the following is added:
“Relationship with section MC 8
“(3) Subsection (2) overrides section MC 8 (Continuing require-
ments).”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 30

257I Third requirement: residence

(1) Section MD 7(1), other than the heading, is replaced by the following:

“(1) The third requirement for an entitlement to an in-work tax credit is that the person or child referred to in section MD 4 meet the residence requirements of subsections (2) and (3), as applicable.” 5

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

257J Fifth requirement: full-time earner

(1) Section MD 9(2), other than the heading, is replaced by the following: 10

“(2) The income referred to in subsection (1)(a) is—

“(a) a PAYE income payment that is—

“(i) not excluded under **subsection (3)**, although it does not matter if the person also derives income of the type described in **subsection (3)**; and 15

“(ii) not a benefit or allowance described in section MD 8; or

“(b) income to which section RD 3(2) to (4) (PAYE income payments) applies; or 20

“(c) income from a business carried on for profit.”

(2) In section MD 9(2)(c), “profit.” is replaced by “profit; or” and the following is added:

“(d) an amount paid or benefit provided— 25

“(i) by a person (the **claimant**), who receives a personal service rehabilitation payment from which an amount of tax has been withheld at the rate specified in schedule 4, part I (Rates of tax for schedular payments) or under section RD 18 (Schedular payments without notification); and 30

“(ii) to another person for providing to the claimant a key aspect of social rehabilitation referred to in paragraph (c) of the definition of **personal service rehabilitation payment** in section YA 1 (Definitions).” 35

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

“(3) The following PAYE income payments are excluded from income under subsection (2):

“(a) a payment referred to in paragraphs (a) to (c) of the definition of **accident compensation earnings-related payment**:

5

“(b) a PAYE income payment referred to in section RD 5(6)(a) (Salary or wages), other than a parental leave payment referred to in section CF 1 (Benefits, pensions, compensation, and government grants):

“(c) a PAYE income payment referred to in section RD 5(6)(b)(ii), (iii), or (iv):

10

“(d) a schedular payment that is a contract payment for a contract activity or service of a non-resident contractor:

“(e) an amount paid as a result of incapacity, suffered before 1 January 2006, due to personal injury by accident within the meaning of section 26 of the Injury Prevention, Rehabilitation, and Compensation Act 2001.”

15

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

257K Calculation of in-work tax credit

20

(1) In section MD 10(3)(d)(ii), “paragraph (a)” is replaced by “paragraph (i)”.

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

257L Meaning of employment for this subpart

25

In section ME 2, in the list of defined terms, “full-time earner” is inserted.

257M Meaning of net family scheme income

(1) In section ME 3(2), the formula is replaced by the following:

$$\frac{\text{adjusted income} - \text{adjusted liability} + \text{amount}}{\text{received} - \text{amount paid}}$$

(2) Section ME 3(3)(a)(i) is replaced by the following:

30

“(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 that is attributable to the number of weeks in which the person is a full-time earner, adjusted to an annualised amount that is found by multiplying the amount by the fraction that is 52 divided by the number of weeks in the relationship period for which the person is a full-time earner; and”. 5

(3) Section ME 3(3)(b) is repealed.

(4) **Subsections (1) to (3)** apply for the 2008–09 and later income years. 10

257N Recovery of overpaid tax credit

(1) Section MF 5(2), other than the heading, is replaced by the following:

“(2) The Commissioner may recover the excess as if it were income tax payable by the person. However, if, throughout the tax year, the person is in a relationship with a spouse, civil union partner, or de facto partner, the person and that spouse or partner are jointly and severally liable for the payment of the excess.” 15 20

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

257O Section MF 6 replaced

(1) Section MF 6 is replaced by the following:

“MF 6 Overpayment or underpayment of tax credit 25

“When this section applies

“(1) This section applies for the purposes of sections LA 3 and LA 4 (which relate to the treatment of a person’s total tax credits) when—

“(a) a person has an entitlement to a tax credit under section MD 1 (Abating WFF tax credit) or ME 1 (Minimum family tax credit); and 30

“(b) the person applies under section MF 1 to have the tax credit paid by instalment; and

“(c) the instalments of the estimated tax credit, or the total of those instalments, differs from the tax credit, or total tax 35

- credit, to which the person is entitled under the family scheme because the instalment has, or the total instalments have, either been overpaid resulting in an excess or underpaid resulting in a shortfall; and
- “(d) the Commissioner— 5
- “(i) gives the person a notice of entitlement for the tax year because an instalment of the estimated tax credit has been paid to the person during the tax year; or
- “(ii) finds out, otherwise than by way of a notice of entitlement, that an instalment of the estimated tax credit has been paid to the person for the tax year. 10
- “*Overpayment*
- “(2) For an overpayment of the person’s entitlement, an amount equal to the excess is— 15
- “(a) added to the tax payable by the person for the tax year; and
- “(b) recoverable by the Commissioner under **section 80KLB** of the Tax Administration Act 1994 as if it were tax payable by the person for the tax year. 20
- “*Underpayment*
- “(3) For an underpayment of the entitlement, an amount equal to the shortfall is used to satisfy the person’s income tax liability, and any balance remaining is treated as tax paid in excess and available for use under **section LA 7(2)** (Remaining refundable credits: tax credits under social policy schemes). 25
- “Defined in this Act: amount, Commissioner, family scheme, income tax liability, notice of entitlement, pay, tax, tax credit, tax year”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 30
- 258 Tax credits for superannuation contributions**
- In section MK 1(1), the second sentence is replaced by “Section MK 2 imposes some eligibility requirements for the year described in subsection (3) in relation to the person.” 35
- (2) ~~After section MK 1(2), the following is inserted:~~

“End of year square-up employer tax credit

- ~~“(2B)~~ An employer who has a tax credit calculated under section MK 10 for a tax year and who meets the requirements in **section MK 12B** may have an amount of tax credit (the **end of year square-up credit**) for a tax year, calculated under **section MK 12C**.²² 5
- ~~(3)~~ **Subsection (2)** applies for employer contributions made on or after 1 April 2008.

259 Eligibility requirements

In section MK 2(1), the words before paragraph (a) are replaced by the following: 10

- ~~“(1)~~ For the purposes of section MK 1(1), the requirements for the person for the year described in section MK 1(3) are the following.”.

260 New sections MK 12B to MK 12D inserted

15

- ~~(1)~~ After section MK 12, the following is inserted:

~~“MK 12B Eligibility requirements: end of year square-up credit~~

For the purposes of **section MK 1(2B)**, the requirements are that the employer—

- ~~“(a)~~ has, in the tax year, an amount of tax credit referred to in section MK 10 for an employee: 20
- ~~“(b)~~ claims their entitlement, if any, to an end of year square-up credit.

~~“Defined in this Act:~~

~~“MK 12C Amount of credit: end of year square-up credit~~

25

“End of year square-up credit: calculations

- ~~“(1)~~ For the tax year the amount of the end of year square-up credit is the lesser of the amounts calculated under **subsections (2) and (3)**, treating negative amounts as equal to zero:

“First amount

30

- ~~“(2)~~ For the purposes of **subsection (1)**, the amount is calculated using the formula—

employer contributions – ETC for tax year.

“Second amount

- “(3) For the purposes of **subsection (1)**, the amount is calculated using the formula—

$$\frac{1042.86}{365} \times \text{days in tax year} - \text{ETC for tax year.}$$

“Definition of items in formulas

- “(4) In the formulas in **subsections (2) and (3)**,— 5
- “(a) **employer contributions** is employer contributions for the employee to the extent to which the contributions are for the tax year:
- “(b) **ETC for tax year** is the total amount of tax credit referred to in section MK 10 for an employee for payment periods which start in the tax year: 10
- “(c) **days in tax year** is the number of days in the tax year on which the employee meets the requirements of section MK 9(1)(a) and for which salary and wages are paid to the employee: 15

“Defined in this Act:

“MK 12D Using tax credits: end of year square-up credit

The Commissioner must use an end of year square-up credit referred to in **section MK 12C** by applying section MK 12, treating the end of year square-up credit as a tax credit referred to in section MK 10. 20

“Defined in this Act.”:

- (2) **Subsection (1)** applies for employer contributions made on or after 1 April 2008.

260B When short payment and unpaid compulsory employer contributions found after tax credit used 25

- (1) In section MK 13(1)(a), “section MK 12(1)(b) and (c)” is replaced by “section MK 12(1)(c) and (d)”.

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

261 Employees opting out

(1) In section MK 14, “a tax credit for an employer contribution for the employee’s salary or wages” is replaced by “tax credits under section MK 1(2) and **(2B)**”. 5

(2) **Subsection (1)** applies for employer contributions made on or after 1 April 2008.

262 What this subpart does

Section ML 1(2)(b)(i) to (iii) are replaced by the following: 10

- “(i) to a director of a company by the company or a person associated with the company:
- “(ii) to a person by a person associated with them:
- “(iii) by a person to an employee who has been paid a redundancy payment by a person associated with the person.” 15

263 Section ML 2 replaced

Section ML 2 is replaced by the following:

“ML 2 Tax credit for redundancy payments

“Tax credit” 20

“(1) A person who derives a redundancy payment has a tax credit of an amount equal to 6 cents for every complete dollar of total redundancy payments derived by them. It does not matter whether—

- “(a) a redundancy payment is paid in a lump sum or by instalment: 25
- “(b) the total redundancy payments relate to 1 or more occasions of redundancy of the person.

“Maximum amount”

“(2) Despite **subsection (1)**, the maximum credit that the person has for each occasion of redundancy is \$3,600. 30

“Defined in this Act: amount, redundancy payment, tax credit”.

263B New section MZ 3 added

(1) After section MZ 2, the following is added:

“MZ 3 Exclusions from determination of family scheme income

“When this section applies

“(1) This section applies for the purposes of determining under section MB 1 (Adjustments for calculation of family scheme income) the entitlement and tax credit of a person under the family scheme. 5

“Refunds of main deposit

“(2) An amount of main deposit made in relation to the 2002–03 or earlier income year that is refunded to the person in the 2003–04 or later income year under any of sections EH 10, EH 13, EH 15, EH 17, and EH 23 (which relate to income equalisation accounts) is not included in family scheme income. 10 15

“Refunds of adverse event deposit

“(3) An amount of adverse event deposit made under section EH 39 (Adverse event income equalisation account) in relation to the 2002–03 or earlier income year that is refunded to the person in the 2003–04 or later income year under any of sections EH 45, EH 47, and EH 53 (which relate to refunds on application) is not included in family scheme income. 20

“Treatment of interest

“(4) The amount of a refund under **subsections (2) and (3)** does not include an amount of interest payable under section EH 6 or EH 40 (which relate to interest on deposits), as applicable. 25

“Defined in this Act: adverse event deposit, amount, family scheme, family scheme income, income year, interest, main deposit, tax credit

“Compare: 2004 No 35 s KD 1(1)(e)(i), (vi)”.

(2) **Subsection (1)** applies for the 2008–09 and later income years. 30

264 Memorandum accounts

(1) Section OA 2(1)(f) is repealed.

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 35

(2) **Subsection (1)** applies—

- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5

265 Credits

- (1) In section OA 5(2)(b), “groups.” is replaced by “groups:” and the following is inserted:
 “(c) credited under **section OZ 18** (Credit-back of PCA balance).” 10
- (2) Section OA 5(7) is repealed.
- ~~(3)~~ **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.
- (3) In section OA 5, in the list of defined terms, “policyholder credit” is omitted. 15
- (4) **Subsections (1) and (2)** apply—
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies:
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 20

266 Debits

- (1) Section OA 6(7) is repealed. 25
- ~~(2)~~ **Subsection (1)** applies for income years beginning on and after 1 April 2009.
- (2) In section OA 6, in the list of defined terms, “policyholder debit” is omitted.
- (3) **Subsection (1)** applies— 30
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies:
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 35

267 Opening balances of memorandum accounts

- (1) Section OA 7(2)(f) is repealed.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.
- (2) In section OA 7, in the list of defined terms, “policyholder credit account” is omitted. 5
- (3) **Subsection (1)** applies—
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies:
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 10

268 Shareholder continuity requirements for memorandum accounts

- (1) In section OA 8(2), “Subsections (4) and (5)” is replaced by “Subsections **(3B)** to (5)”. 15
- (2) After section OA 8(3), the following is inserted:
“*Exclusions: qualifying companies*”
- “(3B) Subsection (2) does not apply to a qualifying company. But, if section HA 11(1) (When requirements no longer met) applies to the company,—
 - “(a) an adjustment must be made under section HA 18 (Treatment of dividends when qualifying company status ends) to the company’s imputation credit account and FDP account, as applicable; and 25
 - “(b) ~~the shareholder continuity requirements apply to the company from the day before the date on which the status as a qualifying company ends.~~
 - “(b) the shareholder continuity requirements apply to the company from the day on which the status as a qualifying company ends.” 30
- (3) Section OA 8(4) is replaced by the following:
“*Exclusion: ASC accounts*”
- “(4) ~~Subsection (2) does not apply to an ASC account.~~ 35
- “(4) Subsection (2) does not apply to a person who maintains an ASC account.”

(4) **Subsection (3)** applies for income years beginning on and after 1 April 2009.

(4) In section OA 8, in the list of defined terms, “policyholder credit account” is omitted.

269 Section OA 12 repealed 5

(1) Section OA 12 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

270 Calculation of maximum permitted ratios

(1) In section OA 18(3), “for the income year” is replaced by “for the tax year corresponding to the income year”. 15

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

271 General rules for companies with imputation credit accounts 20

(1) Section OB 1(2)(f) is replaced by the following:
“(f) a multi-rate PIE.”

(2) In section OB 1, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted.

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 25

(1) In section OB 1(1), “Subsections (2) and (3) override” is replaced by “Subsection (2) overrides”.

(2) Section OB 1(2)(a)(i) is repealed.

(3) Section OB 1(2)(f) is replaced by the following: 30
“(f) a multi-rate PIE.”

(4) Section OB 1(3) is repealed.

(5) In section OB 1, in the list of defined terms, “Australian ICA company” and “resident in Australia” are omitted.

- (6) In section OB 1, in the list of defined terms,—
 (a) “portfolio tax rate entity” is omitted:
 (b) “multi-rate PIE” is inserted.
- (7) **Subsections (1), (2), and (4)** apply for the 2008–09 and later income years. 5
- (8) **Subsection (3)** applies for the 2010–11 and later income years.
- 271B Australian companies with imputation credit accounts**
- (1) Section OB 2(1) is replaced by the following:
“Company resident in Australia” 10
- “(1) A company that is resident in Australia may choose to establish and maintain an imputation credit account.”
- (2) In section OB 2, in the list of defined terms, “resident in New Zealand” is omitted.
- (3) **Subsection (1)** applies for the 2008–09 and later income years. 15
- 272 New section OB 3B inserted**
- (1) After section OB 3, the following is inserted:
“OB 3B General rule for life insurer’s policyholder base
 An imputation credit does not arise in relation to a life insurer’s policyholder base. Similarly, an imputation debit does not arise in relation to a life insurer’s policyholder base. 20
“Defined in this Act: imputation credit, imputation debit, life insurer, policyholder base”.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 25
- (2) **Subsection (1)** applies—
 (a) on and after 1 July 2010, unless paragraph (b) applies:
 (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 30

273 ICA payment of tax

- (1) Section OB 4(3)(c) is replaced by the following:
 - “(c) income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or”.
- (2) Section OB 4(3)(e) and (eb) are replaced by the following:
 - “(e) income tax paid under subpart LA and section LF 1 (which relate to tax credits for FDP credits and their use) by crediting a foreign dividend payment (FDP) credit; or
 - “(eb) income tax paid by a tax credit under subpart LA and section LH 2 (which relate to tax credits for research development and their use); or”.
- ~~(3) Section OB 4(3)(h) is repealed.~~
- (4) In section OB 4, in the list of defined terms, “branch equivalent tax account” is omitted.
- ~~(5) In section OB 4, in the list of defined terms, “policyholder base income tax liability” is omitted; and “schedular income tax liability”, and “schedular policyholder base income” are inserted.~~
- (5) In section OB 4, in the list of defined terms,—
 - (a) “policyholder base income tax liability” is omitted;
 - (b) “schedular income tax liability” and “schedular policyholder base income” are inserted.
- (6) **Subsection (2)** applies for the 2008–09 and later income years.
- ~~(7) **Subsections (1) and (5)** apply for income years beginning on and after 1 April 2009.~~
- ~~(8) **Subsections (3) and (4)** apply for the 2009–10 and later income years.~~
- (7) **Subsection (1)** applies—
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies;
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.
- ~~(8) **Subsection (3)** applies for—~~

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

274 ICA resident withholding tax withheld 5

- (1) In section OB 8(1), “by the company” is replaced by “by the company other than as policyholder base gross income”.
- (2) In section OB 8, in the list of defined terms, “policyholder base gross income” is inserted.
- (3) **Subsections (1) and (2)** applies for income years beginning on and after 1 April 2009. 10
- (1) In section OB 8(1), “by the company” is replaced by “by the company other than as policyholder base income”.
- (2) In section OB 8, in the list of defined terms, “policyholder base income” is inserted. 15
- (3) **Subsection (1)** applies—
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies;
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 20

275 New section OB 9B inserted

After section OB 9, the following is inserted:

“OB 9B ICA company allocated imputation credit with income from PTRE 25

“Credit

- “(1) An ICA company that is an investor in a portfolio tax rate entity has an imputation credit for the amount of an imputation credit allocated to it under section HL 29(7)(b). 30

“Table reference

- “(2) The imputation credit in **subsection (1)** is referred to in table O1: imputation credits, row 7B (imputation credit allocated with income from PTRE).

“Credit date

“(3) The credit date is the day the amount is allocated.

“Defined in this Act: amount, ICA company, imputation credit, portfolio tax rate entity”.

276 Section OB 9B replaced 5

(1) **Section OB 9B** is replaced by the following:

“OB 9B ICA attributed PIE income with imputation credit

“Credit

“(1) An ICA company that is an investor in a multi-rate PIE has an imputation credit for the amount of an imputation credit attributed to it under subpart LJ (Foreign tax credits) and determined under **section HM 54** (Use of tax credits other than foreign tax credits by investors). 10

“(1) An ICA company that is an investor in a multi-rate PIE has an imputation credit for the amount of an imputation credit attributed to it under **section HM 54** (Use of tax credits other than foreign tax credits by investors). 15

“Table reference

“(2) The imputation credit in **subsection (1)** is referred to in table O1: imputation credits, row 7B (attributed PIE income with imputation credit). 20

“Credit date

“(3) The credit date is the day the amount is attributed.

“Defined in this Act: amount, attributed PIE income, ICA company, imputation credit, multi-rate PIE”.

(2) **Subsection (1)** applies for the 2009–10 and later income years. 25

(2) **Subsection (1)** applies for the 2010–11 and later income years.

277 Section OB 11 repealed 30

(1) Section OB 11 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for dividends received in—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

278 Section OB 17 repealed 5

- (1) Section OB 17 is repealed.
- (2) ~~Subsection (1) applies for income years beginning on and after 1 April 2009.~~
- (2) **Subsection (1) applies—**
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies: 10
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 15

278B ICA transfer to master fund

- (1) In section OB 19(1), the first sentence is replaced by “An ICA company that is a master fund has an imputation credit for the transfer of an amount of expenditure under sections DV 5 to DV 7 (which relate to the transfer of expenditure to master funds).” 20
- (2) **Subsection (1) applies for the 2008–09 and later income years.**

279 ICA refund of income tax

- (1) After section OB 32(2)(a), the following is inserted: 25
 - “(ab) a refund of income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or”.
- (2) After section OB 32(6), the following is added: 30
 - “*Relationship with section OB 37* 30
 - “(7) This section does not apply to an amount that gives rise to a debit under section OB 37.”
- (3) ~~In section OB 32, in the list of defined terms, “life insurer”, “schedular policyholder base income”, and “schedular income tax liability” are inserted.~~ 35

- (4) **Subsections (1) and (3)** apply for income years beginning on and after 1 April 2009.
- (3) In section OB 32, in the list of defined terms, “life insurer”, “schedular income tax liability”, and “schedular policyholder base income” are inserted. 5
- (4) **Subsection (1)** applies—
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 10
- (5) **Subsection (2)** applies for the 2008–09 and later income years.
- 280 ICA amount applied to pay other taxes** 15
- (1) Section OB 33(1), other than the heading, is replaced by the following:
- “(1) An ICA company has an imputation debit for—
- “(a) an amount of overpaid income tax applied to pay an amount due under the Inland Revenue Acts: 20
- “(b) an increased amount of tax as described in **section RP 17B(3)** (Tax pooling accounts and their use) applied to pay an amount due under the Inland Revenue Acts other than income tax.”
- (2) After section OB 33(4), the following is added: 25
- “*Relationship with section OB 37*
- “(5) This section does not apply to an amount that gives rise to a debit under section OB 37.”
- (3) **Subsection (2)** applies for the 2008–09 and later income years. 30
- 281 ICA refund from tax pooling account**
- (1) Section OB 34(4) is replaced by the following:
- “*Debit date for companies other than qualifying companies*
- “(4) The debit date for a company that is not a qualifying company is— 35

- “(a) the last day of the previous tax year to the extent of
the amount of the debit that is no more than the credit
balance in the imputation credit account on that date; or
- “(b) the day the refund is made to the extent of the remain-
ing amount of the debit that is no more than the credit 5
balance in the imputation credit account on the day of
refund; or
- “(c) the last day of the previous tax year for the remainder
of the debit.
- “*Debit date for qualifying companies* 10
- “(5) The debit date for a qualifying company is the day the refund
is made:
- “(4) The debit date for a company that is not a qualifying com-
pany is the date found by applying the following paragraphs
in order: 15
- “(a) the last day of the previous tax year to the extent of
the amount of the debit that is no more than the credit
balance in the imputation credit account on that date:
- “(b) the day the refund or transfer is made to the extent of
the remaining amount of the debit that is no more than 20
the credit balance in the imputation credit account on
the day of refund or transfer:
- “(c) the last day of the previous tax year for the remainder
of the debit.
- “*Debit date for qualifying companies* 25
- “(5) The debit date for a qualifying company is the day the refund
or transfer is made.”
- (2) In section OB 34, in the list of defined terms, “company”,
“imputation credit account”, “qualifying company”, and “tax
year” are inserted. 30
- (3) **Subsection (1)** applies for a tax position taken on or after
1 April 2008 except for a tax position taken by a company
when—
- (a) the company has received a refund of the type referred
to in section OB 34(1); and 35
- (b) the refund is received in the company’s 2008–09 in-
come year but before 2 July 2008; and

- (c) the company has relied on section OB 34(4), as it was before the amendment made by this clause, to determine the date of the debit.

282 ICA transfer within tax pooling account

In section OB 35(4)(b), “refund” is replaced by “transfer”. 5

Section OB 35(4)(b) is replaced by the following:

- “(b) the day the transfer is made to the extent of the remaining amount of the debit that is no more than the credit balance in the imputation credit account on the day of the transfer; or”. 10

283 New section OB 35B inserted

- (1) After section OB 35, the following is inserted:

“OB 35B ICA debit for transfer from tax pooling account for policyholder base liability

“Debit” 15

- “(1) An ICA company has an imputation debit for the amount transferred from a tax pooling account to their tax account with the Commissioner, to the extent to which the company is a life insurer, and the amount satisfies its schedular income tax liability for schedular policyholder base income or its income tax liability for a life fund PIE that is a multi-rate PIE. 20

“Table reference

- “(2) The imputation debit in **subsection (1)** is referred to in table O2: imputation debits, row 7B (debit for transfer from tax pooling account for policyholder base liability). 25

“Debit date

- “(3) The debit date is the last day of the tax year.

“Defined in this Act: ICA company, imputation credit, imputation debit, life insurer, schedular income tax liability, schedular policyholder base income, tax year”.

30

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

- (2) **Subsection (1)** applies—

- (a) on and after 1 July 2010, unless **paragraph (b)** applies:

- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

5

284 ICA refund of tax credit

- (1) Section OB 37(1) is replaced by the following:

“Debit

- “(1) An ICA company has an imputation debit for—

“(a) the amount of a transfer to the company under section LA 6(2)(d) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the transfer does not lead to a refund of income tax: 10

“(b) the amount of a refund to the company under section LA 6(2)(e): 15

“(c) an amount used by the company under section LH 2(6) (Tax credits relating to expenditure on research and development) to pay an amount payable under an Inland Revenue Act to the extent to which the use does not lead to a refund of income tax. 20

“Exclusion: FDPA companies

- “(1B) Despite **subsection (1)**, an FDPA company does not have an imputation debit to the extent to which the amount transferred, refunded, or used is a tax credit under subpart LF (Tax credits for FDP credits).” 25

- (2) Section OB 37(3), other than the heading, is replaced by the following:

- “(3) The debit date is—

“(a) for a debit referred to in **subsection (1)(a)**, the day the amount is transferred: 30

“(b) for a debit referred to in **subsection (1)(b)**, the day the amount is refunded:

“(c) for a debit referred to in **subsection (1)(c)**, the day the amount is applied.”

- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 35

284B ICA transfer for net foreign attributed income

- (1) In section OB 39(1), “and a CTR company” is omitted.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

285 Section OB 47 replaced

5

- (1) Section OB 47 is replaced by the following:

“OB 47 Debit for policyholder base imputation credits

“Debit

- “(1) An ICA company has an imputation debit for the amount of an imputation credit attached to a dividend derived by the company, to the extent to which it is derived by it as a life insurer and apportioned to their policyholder base. 10

“Table reference

- “(2) The imputation debit in **subsection (1)** is referred to in table O2: imputation debits, row 20 (debit for policyholder base imputation credits). 15

“Debit date

- “(3) The debit date is the last day of the tax year.

“Defined in this Act: ICA company, imputation credit, imputation debit, life insurer, policyholder base, tax year”.

20

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

- (2) **Subsection (1)** applies—

- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 25

285B ICA benchmark dividend rules

30

- (1) Section OB 61(7) is repealed.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

285C Imputation additional tax on leaving wholly-owned group

- (1) Section OB 71(1)(b) is repealed.
- (2) In section OB 71(4)(a), “the amount is no more than the excess entitlement” is replaced by “the amount is no more than the excess tax payment for company A when company A has an excess entitlement”. 5
- (3) Section OB 71(5)(c) is replaced by the following:
“(c) the excess of the total of the amounts referred to in paragraph (a)(i) and (ii) over the credit balance, if paragraph (b) does not apply.” 10
- (4) In section OB 71(9), “section OB 13(5)” is replaced by “section OB 13(5). However, if subsections (3) or (4) apply to transfer a debit or treat an amount of tax as having been paid, company A must also provide a notice of agreement from company B in relation to the amount of excess tax payment.” 15
- (5) **Subsections (1) to (4)** apply for the 2008–09 and later income years.

286 Table O1: imputation credits

- (1) In table O1, after row 7, the following is inserted:

7B	Imputation credit allocated with income from PTRE	day of allocation	section OB 9B
----	---	-------------------	---------------

- (2) **Table O1, row 7B** is replaced by the following: 20

7B	Attributed PIE income with imputation credit	day of attribution	section OB 9B
----	--	--------------------	---------------

- (3) Table O1, row 9 is repealed.
- ~~(4) Table O1, row 15 is repealed.~~
- (5) ~~**Subsection (2)** applies for the 2009–10 and later income years.~~
- (6) ~~**Subsection (4)** applies for income years beginning on and after 1 April 2009.~~ 25
- (4) In table O1, row 14, “attributing company” is replaced by “qualifying company”.
- (5) Table O1, row 15 is repealed.

- (6) **Subsection (2)** applies for the 2009–10 and later income years.
- (7) **Subsection (3)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 5
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- (8) **Subsection (4)** applies for the 2008–09 and later income years.
- (9) **Subsection (5)** applies— 10
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 15

287 Table O2: imputation debits

- (1) In table O2, after row 7, the following is inserted:

7B	Debit for transfer from tax pooling account for policyholder base liability	31 March	section OB 35B
----	---	----------	----------------

- (2) Table O2, row 9 is replaced by the following:

9	Transfer, refund, or use of tax credit	day of transfer, refund, or use	section OB 37
---	--	---------------------------------	---------------

- (3) Table O2, row 12 is repealed. 20
- (4) In table O2, row 20 is replaced by the following:

20	Debit for policyholder base imputation credits	31 March	section OB 47
----	--	----------	---------------

- (5) **Subsection (1) and (4)** apply for income years beginning on and after 1 April 2009.

- (5) **Subsections (1) and (4)** apply— 25
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for

the tax year corresponding to the first relevant income year.

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

(7) **Subsection (3)** applies for the 2009–10 and later income years. 5

(7) **Subsection (3)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June. 10

288 General rules for companies with FDP accounts

(1) In section OC 1(1), “portfolio tax rate entity” is replaced by “multi-rate PIE”.

(2) Section OC 1(3) is repealed. 15

(3) ~~In section OC 1, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted.~~

(4) **Subsections (1) to (3)** apply for the 2009–10 and later income years.

(3) In section OC 1, in the list of defined terms,— 20

(a) “portfolio tax rate entity” is omitted;

(b) “multi-rate PIE” is inserted.

(4) **Subsection (1)** applies for the 2009–10 and later income years.

(5) **Subsection (2)** applies for— 25

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

289 New section OC 2B inserted 30

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

“OC 2B General rule for life insurer’s policyholder base

An FDP credit does not arise in relation to a life insurer’s policyholder base. Similarly, an FDP debit does not arise in relation to a life insurer’s policyholder base.

“Defined in this Act: FDP credit, FDP debit, life insurer, policyholder base”. 5

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 10

290 When company chooses to stop being FDPA company 15

(1) Section OC 4(3)(b) is replaced by the following:

“(b) pays any further income tax payable under section OC 30 or OC 31 for the year of election.”

(2) **Subsection (1)** applies for the 2009–10 and later income years. 20

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June. 25

291 When company emigrates

(1) Section OC 5(2)(b) is replaced by the following:

“(b) pays any further income tax payable under sections OC 30 to **OC 34** for the tax year.”

(2) **Subsection (1)** applies for the 2009–10 and later income years. 30

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June. 35

292 Section OC 6 repealed

- (1) Section OC 6 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for dividends received in— 5
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

293 Section OC 8 repealed

10

- (1) Section OC 8 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 15
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

294 Section OC 9 repealed

20

- (1) Section OC 9 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

295 Section OC 10 repealed

- (1) Section OC 10 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 30
- (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

296 FDPA refund of tax credit

- (1) Section OC 16(1), other than the heading, is replaced by the following: 5
- “(1) An FDPA company has an FDP debit for the amount of a transfer or refund to the company under section LA 6(2)(d) or (e) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the amount transferred or refunded is a tax credit under subpart LF (Tax credits for FDP credits).” 10
- (2) Section OC 16(3), other than the heading, is replaced by the following:
- “(3) The debit date is the day the transfer or refund is made.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 15

297 Section OC 20 replaced

- (1) Section OC 20 is replaced by the following:
- “OC 20 Debit for policyholder base FDP credits**
- “Debit”* 20
- “(1) An FDP company has an FDP debit for the amount of an FDP credit attached to a dividend derived by the company, to the extent to which it is derived by it as a life insurer and apportioned to their policyholder base.
- “Table reference”* 25
- “(2) The FDP debit in section (1) is referred to in table O4: FDP debits, row 9 (debit for policyholder base FDP credits).
- “Debit date”*
- “(3) The debit date is the last day of the tax year.
- “Defined in this Act: FDP company, FDP credit, FDP debit, life insurer, policyholder base, tax year”.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.
- (2) **Subsection (1)** applies—
- (a) on and after 1 July 2010, unless **paragraph (b)** applies: 35

- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

5

298 Section OC 23 repealed

- (1) Section OC 23 is repealed.
(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

- (2) **Subsection (1)** applies—

10

- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

15

299 Heading before section OC 30 replaced

The heading before section OC 30 is replaced by “*Further income tax*”.

300 Payment of further FDP for closing debit balance

20

- (1) In the heading to section OC 30, “**further FDP**” is replaced by “**further income tax**”.
(2) Section OC 30(1) and (2) are replaced by the following:

“*Liability*

- “(1) An FDPA company or consolidated FDP group is liable to pay further income tax for a closing debit balance in the FDP account of the company or the group.

25

“*Due date*

- “(2) The company or group must pay the further income tax to the Commissioner no later than the 20 June following the end of the tax year.”

30

- (3) Section OC 30(3) is repealed.

- (4) In section OC 30, in the list of defined terms,—

- (a) “FDP rules”, “further FDP”, and “income tax” are omitted:
 - (b) “further income tax” is inserted.
- (5) **Subsections (1) to (4)** apply for the 2009–10 and later income years. 5
- (5) **Subsections (1) to (3)** apply for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 10
- 301 Payment of further FDP when company no longer New Zealand resident**
- (1) In the heading to section OC 31, “**further FDP**” is replaced by “**further income tax**”.
- (2) Section OC 31(1) to (3) are replaced by the following: 15
 - “*Liability*
 - “(1) An FDPA company is liable to pay further income tax for a debit balance in the company’s FDP account when the company stops being resident in New Zealand.
 - “*Due date* 20
 - “(2) The company must pay the further income tax to the Commissioner by the day the company stops being resident in New Zealand.
 - “*Paramount section*
 - “(3) A company to which this section applies that stops being an FDPA company on the last day of a tax year is liable for further income tax under this section and not under section OC 30.” 25
- (3) Section OC 31(4) is repealed.
- (4) In section OC 31, in the list of defined terms,—
 - (a) “FDP rules” and “further FDP” are omitted: 30
 - (b) “further income tax” is inserted.
- (5) **Subsections (1) to (4)** apply for the 2009–10 and later income years.
- (5) **Subsections (1) to (3)** apply for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 35

- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

302 Reduction of further FDP

- (1) In the heading to section OC 32, “**further FDP**” is replaced by “**further income tax**”. 5
- (2) In section OC 32(1), the words before paragraph (a) are replaced by the following:
- “(1) An FDPA company’s liability for further income tax under section OC 30 or OC 31 may be reduced under subsection (2) if—”. 10
- (3) In section OC 32, in the list of defined terms,—
- (a) “further FDP” is omitted;
- (b) “further income tax” is inserted.
- (4) ~~Subsections (1) to (3) apply for the 2009–10 and later income years.~~ 15
- (4) Subsections (1) and (2) apply for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 20

303 Section OC 33 replaced

- (1) Section OC 33 is replaced by the following:
- “**OC 33 Income tax paid satisfying liability for further income tax**
- “Election”* 25
- “(1) On meeting the requirements of **subsection (2)**, an FDPA company that is liable for further income tax may choose to satisfy the liability through a payment of income tax.
- “Requirements”*
- “(2) The company must pay the income tax— 30
- “(a) after the end of the tax year in which the relevant debit balance arises; and
- “(b) for an income year corresponding to a tax year in which the company is an FDPA company.

“Payment credited

- “(3) The payment of income tax satisfies the company’s liability to pay further income tax.

“When treated as paid

- “(4) The further income tax is treated as paid on the day the Commissioner receives the payment of income tax. 5

“Defined in this Act: Commissioner, company, FDPA company, further income tax, income tax, income year, pay, tax year”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years. 10

- (2) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 15

304 Section OC 34 replaced

- (1) Section OC 34 is replaced by the following:

“OC 34 Further income tax paid satisfying liability for income tax

“Election

20

- “(1) A company that pays further income tax may choose to treat the payment as satisfying a liability of the company to pay income tax.

“FDPA company status

- “(2) The liability referred to in **subsection (1)** must be for an income year that corresponds with a tax year in which the company is an FDPA company. 25

“Alternative for consolidated group

- “(3) A company that is part of a consolidated FDP group may choose that the payment under **subsection (1)** satisfies a group liability for income tax owed by another group company when or after the payment is made. 30

“Defined in this Act: company, consolidated FDP group, FDPA company, further income tax, income tax, income year, pay, tax year”.

(2) **Subsection (4)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 5

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

305 Heading and sections OC 35 to OC 39 repealed

(1) The heading before section OC 35 and sections OC 35 to OC 39 are repealed. 10

(2) **Subsection (4)** applies for income years beginning on and after 1 April 2009.

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 15

306 Table O3: FDP credits

20

(1) Table O3, rows 2, 3, 5, 6, and 7 are repealed.

(2) **Subsection (4)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

307 Table O4: FDP debits

30

(1) In table O4, row 5 is replaced by the following:

5 Transfer or refund of tax credit day of transfer or refund section OC 16

(2) In table O4, row 9 is replaced by the following:

9 Debit for policyholder base FDP 31 March section OC 20
credits

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

(4) **Subsection (2)** applies for income years beginning on and after 1 April 2009.

(4) **Subsection (2)** applies— 5
(a) on and after 1 July 2010, unless **paragraph (b)** applies:
(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 10

308 General rules for companies with CTR accounts

(1A) In section OD 1(2), “a tax year” is replaced by “a tax year as set out in section OD 3(2)”.

(1) Section OD 1(3) is repealed. 15

(1B) **Subsection (1A)** applies for the 2008–09 and later tax years.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for— 20
(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

308B Choosing to become CTR company

(1) Section OD 3(1), other than the heading, is replaced by the following: 25

“(1) An FDPA company that chooses to become a CTR company must notify the Commissioner of its election and state the tax year for which the election is first to apply. The notification must be made no later than the day on which the company is required to file a return of income for the income year that corresponds to the first tax year for which the election is made.” 30

(2) Section OD 3(2) is replaced by the following:

“Maintaining CTR account

- “(2) A CTR company must maintain the CTR account referred to in section OD 1(2) from the first day of the tax year referred to in **subsection (1)**, whether or not the company is treated as a CTR company for the purposes of sections LQ 5, OD 20, or RG 7 (which relate to credits attached to dividends). The company must continue to maintain the account until it chooses to stop being a CTR company under section OD 4. 5

“Treatment of company for certain provisions

- “(3) Despite **subsection (1)**, the company is not treated as a CTR company for the purposes of applying sections LQ 5, OD 20, or RG 7 until the date on which the company notifies the Commissioner of its election.” 10
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later tax years. 15

308C When company stops being CTR company

- (1) In section OD 4(3), the words before paragraph (a) are replaced by the following:
- “(3) The company stops being a CTR company on the day after the day on which the election referred to in subsection (1)(a) is made but only if the company—” 20
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 25

309 Section OD 5 repealed

- (1) Section OD 5 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 30
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 35

310 Section OD 8 repealed

- (1) Section OD 8 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for— 5
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

311 Section OD 11 repealed 10

- (1) Section OD 11 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for— 15
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

311B CTRA increase in resident shareholding

- (1) In section OD 16(3)(b), “34% or more” is replaced by “34 percentage points or more”. 20
- (2) **Subsection (1)** applies for the 2008–09 and later tax years.

312 Section OD 23 repealed

- (1) Section OD 23 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years. 25
- (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 30

313 Section OD 24 repealed

- (1) Section OD 24 is repealed.

(2) **Subsection (4)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 5

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

314 Table O5: conduit tax relief credits

(1) Table O5, rows 2 and 5 are repealed.

(2) **Subsection (4)** applies for the 2009–10 and later income years. 10

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June. 15

315 Table O6: conduit tax relief debits

(1A) In table O6: conduit tax relief credits, row 2, “FDP credit attached” is replaced by “CTR credit attached”.

(1) Table O6, row 3 is repealed. 20

(1B) **Subsection (1A)** applies for the 2008–09 and later tax years.

(2) **Subsection (4)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

316 Branch equivalent tax accounts of companies

(1) Section OE 2(2) and (3) are repealed. 30

(2) **Subsection (4)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

317 Section OE 6 repealed 5
 (1) Section OE 6 is repealed.
 (2) **Subsection (1)** applies for the 2009–10 and later income years.

318 BETA payment of income tax 10
 (1) Section OE 7(3) and (3B) are replaced by the following:
 “Application of debit
 “(3) The company or company B must record a credit in the branch equivalent tax account with the debit balance of an amount equal to the greater of the following amounts:
 “(a) the income tax liability in relation to the attributed CFC income, limited to the amount of the debit balance: 15
 “(b) the income tax liability that would have been incurred on an amount of income equal to the branch equivalent income of the company for the same period as the attributed CFC income, limited to the amount of the debit balance: 20
 “Amount of income tax liability satisfied
 “(3B) The application of the credit required by **subsection (3)** is treated as an application of a credit under section BC 8 (Satisfaction of income tax liability) sufficient to satisfy the amount of income tax liability referred to in **subsection (3)(a)**.” 25
 (2) **Subsection (1)** applies for the 2009–10 and later income years.

319 Heading and sections OE 12 to OE 16 repealed 30
 (1) The heading before section OE 12 and sections OE 12 to OE 16 are repealed.
 (2) **Subsection (1)** applies for the 2009–10 and later income years.

319 Heading and sections OE 12 and OE 13 repealed

(1) The heading before section OE 12 and sections OE 12 and OE 13 are repealed.

(2) **Subsection (1)** applies for dividends received in—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 5
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

319B Sections OE 14 to OE 16 repealed

(1) Sections OE 14 to OE 16 are repealed. 10

(2) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 15

320 New heading and section OE 16B inserted

(1) Before the headings before section OE 17, the following is inserted:

***“Debit if credit balance at beginning of
2009–10 tax year*** 20

“OE 16B Company with credit balance at beginning of 2009–10 tax year

If a BETA company has a credit balance in its branch equivalent tax account at the beginning of the 2009–10 tax year, a branch equivalent tax debit of an amount equal to the credit balance arises in the branch equivalent tax account at that time. 25

“Defined in this Act: BETA company, branch equivalent tax account, branch equivalent tax debit, company, tax year”.

(2) **Subsection (1)** applies for the 2009–10 and later income years. 30

(1) Before the headings before section OE 17, the following is inserted:

“Debit if credit balance at beginning of first affected tax year

“OE 16B Company with credit balance at beginning of first affected tax year

If a BETA company has a credit balance in its branch equivalent tax account at the beginning of the first tax year for which this section applies to the company, a branch equivalent tax debit of an amount equal to the credit balance arises in the branch equivalent tax account at that time. 5

“Defined in this Act: BETA company, branch equivalent tax account, branch equivalent tax debit, company, tax year”. 10

(2) Subsection (1) applies for—

- (a) the 2010–11 and later income years, for persons having a balance date on or after 30 June; or**
- (b) the 2011–12 and later income years, for persons having a balance date before 30 June.** 15

321 Table O7: branch equivalent tax credits

(1) Table O7, row 2 is repealed.

(2) ~~Subsection (1)~~ applies for the 2009–10 and later income years. 20

(2) Subsection (1) applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or**
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.** 25

322 Table O8 repealed

(1) Table O8 is repealed.

(2) ~~Subsection (1)~~ applies for the 2009–10 and later income years.

(2) Subsection (1) applies for— 30

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or**
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.**

323 General rules for companies with ASC accounts

- (1) In section OF 1(1), the second sentence is replaced by “This section does not apply to a multi-rate PIE.”
- (2) ~~In section OF 1, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted.~~ 5
- (3) ~~Subsections (1) and (2) apply for the 2009–10 and later income years.~~
- (2) In section OF 1, in the list of defined terms,—
 - (a) “portfolio tax rate entity” is omitted:
 - (b) “multi-rate PIE” is inserted. 10
- (3) Subsection (1) applies for the 2010–11 and later income years.

324 Subpart OJ repealed

- (1) Subpart OJ is repealed.
- (2) ~~Subsection (1) applies for income years beginning on and after 1 April 2009.~~ 15
- (2) Subsection (1) applies—
 - (a) on and after 1 July 2010, unless paragraph (b) applies:
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 20

325 MACA payment of tax

- (1) Section OK 2(3)(cb) is replaced by the following: 25
 - “(cb) income tax paid by a tax credit under subpart LA (Tax credits and other credits) and section LH 2 (Tax credits relating to expenditure on research and development); or”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 30

326 MACA refund of income tax

- (1) After section OK 12(6), the following is added:

“Relationship with section OK 14B

“(7) This section does not apply to an amount that gives rise to a debit under **section OK 14B**.”

(2) **Subsection (1)** applies for the 2008–09 and later income years. 5

327 MACA payment of other taxes

(1) After section OK 13(4), the following is added:

“Relationship with section OK 14B

“(5) This section does not apply to an amount that gives rise to a debit under **section OK 14B**.” 10

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

328 New section OK 14B inserted

(1) After section OK 14, the following is inserted:

“OK 14B MACA refund of tax credit 15

“Debit

“(1) A Maori authority has a Maori authority debit for—

“(a) the amount of a transfer ~~to the authority~~ under section LA 6(2)(d) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the transfer does not lead to a refund of income tax: 20

“(b) the amount of a refund to the authority under section LA 6(2)(e):

“(c) an amount used under section LH 2(6) (Tax credits relating to expenditure on research and development) to pay an amount payable under an Inland Revenue Act to the extent to which the use does not lead to a refund of income tax. 25

“Exclusion

“(2) Despite **subsection (1)**, a Maori authority that is an FDPA company does not have a Maori authority debit to the extent to which the amount transferred, refunded, or used is a tax credit under subpart LF (Tax credits for FDP credits). 30

“Table reference

- “(3) The Maori authority debit in **subsection (1)** is referred to in table O18: Maori authority debits, row 6B (refund of tax credit).

“Debit date

5

- “(4) The debit date is—

“(a) for a debit referred to in **subsection (1)(a)**, the day the amount is transferred:

“(b) for a debit referred to in **subsection (1)(b)**, the day the amount is refunded:

10

“(c) for a debit referred to in **subsection (1)(c)**, the day the amount is applied.

“Defined in this Act: amount, FDPA company, Inland Revenue Acts, Maori authority, Maori authority debit, pay”.

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

329 Table O18: Maori authority debits

- (1) In table O18, after row 6, the following row is inserted:

6B	Transfer, refund, or use of tax credit	day of transfer, refund, or use	section OK 14B
----	--	---------------------------------	----------------

- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20

330 When credits and debits arise only in consolidated imputation group accounts

- (1) In section OP 5(2)(d), “credit:” is replaced by “credit.” and paragraph (e) is repealed.

- (2) After section OP 5(4)(d), the following is inserted: 25

“(db) **section OP 33B**, row 7B (debit for transfer from tax pooling account for policyholder base liability):”.

- (3) In section OP 5(4)(k), “ratio.” is replaced by “ratio:” and the following is added:

“(l) **section OP 44**, row 18 (debit for policyholder base imputation credits).” 30

- (4) **Subsection (1)** applies for the 2009–10 and later income years.
- (5) **Subsections (2) and (3)** apply for income years beginning on and after 1 April 2009.
- (5) **Subsections (2) and (3)** apply— 5
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies:
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 10

330B Provisions applying to consolidated imputation groups

- (1) Section OP 6(2)(a) is replaced by the following:
 - “(a) section OB 61 (ICA benchmark dividend rules); and
 - “(ab) sections OB 65 and OB 66 (which relate to further income tax); and 15
 - “(ac) sections OB 71 and OB 72 (which relate to imputation additional tax); and”.
- (2) After section OP 6(3), the following is added: 20

“*Tax advantage arrangements and determinations*”
- “(4) Sections GB 35 and GB 36 (which relate to tax advantage arrangements), LE 1(5) (Tax credits for imputation credits), OA 2(5) (Memorandum accounts), and sections 90AF and 104B of the Tax Administration Act 1994 apply, modified as necessary, in a case that involves accounts of a consolidated imputation group as if— 25
 - “(a) the group were a single company; and
 - “(b) references to the provisions of this Act or the Tax Administration Act 1994 were references to the equivalent provisions applicable to the equivalent accounts. 30
- “(5) Sections RM 13 to RM 17, RM 32, and RZ 6 (which relate to limits on refunds) apply, modified as necessary, in relation to income tax paid by a consolidated imputation group as if— 35
 - “(a) the group were a single company; and
 - “(b) a reference to that company when it stops being an ICA company were a reference to the consolidated group

- when it stops being a consolidated imputation group;
and
- “(c) references to the provisions of this Act or the Tax Administration Act 1994 were references to the equivalent provisions applicable to the equivalent accounts. 5
- “*Limits on refunds*
- “(6) Despite **subsection (5)**, sections RM 13 to RM 17, RM 32, and RZ 6 do not apply to limit a refund payable to a company that is part of a consolidated imputation group in relation to income tax paid individually by the company to the extent to which those sections would not have limited the refund if it had been a refund payable to the group in relation to income tax paid by the group. However, if an amount is refunded and would not have been payable but for this subsection, section RM 15(1) (Changes in credit balances) applies as if the refund were made in relation to income tax paid by the group. 10 15
- “*Applying for refunds*
- “(7) If a company that is part of an imputation group is entitled to a refund under sections RM 2 or RM 4 to RM 6 (which relate to refunds for overpaid income tax), the company must apply for a refund by notifying the Commissioner. Sections RM 13 to RM 17, RM 32, and RZ 6 apply to the entitlement as if— 20
- “(a) the imputation credit account of the group were the imputation credit account of the company;
- “(b) a credit in the imputation credit account for the purposes of those sections were reduced by the amount of a refund to a company that is part of the group.” 25
- (3) In section OP 6, in the list of defined terms, “Commissioner”, “consolidated group”, “ICA company”, “imputation additional tax”, “imputation group”, “income tax”, “notify”, and “tax” are inserted. 30
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 331 Consolidated ICA payment of tax**
- (1) Section OP 7(3)(d) is replaced by the following: 35

- “(d) income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or”.
- (2) Section OP 7(3)(fb) is replaced by the following:
- “(fb) income tax paid by a tax credit under subpart LA (Tax credits and other credits) and section LH 2 (Tax credits relating to expenditure on research and development); or”.
- (3) ~~In section OP 7, in the list of defined terms, “policyholder base income liability” is omitted, and “schedular income tax liability” and “schedular policyholder base income” are inserted.~~ 10
- (4) **Subsections (1) and (3)** apply for income years beginning on and after 1 April 2009.
- (3) In section OP 7, in the list of defined terms,—
- (a) “policyholder base income tax liability” is omitted; 15
- (b) “schedular income tax liability” and “schedular policyholder base income” are inserted.
- (4) **Subsection (1)** applies—
- (a) on and after 1 July 2010, unless **paragraph (b)** applies;
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 20
- (5) **Subsection (2)** applies for the 2008–09 and later income years. 25
- 332 Section OP 14 repealed**
- (1) Section OP 14 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 30
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 35

333 Consolidated ICA resident withholding tax withheld

- (1) In section OP 17, “by a group company” is replaced by “by a group company other than as policyholder base gross income”.
- (2) In section OP 17, in the list of defined terms, “policyholder base gross income” is inserted. 5
- (3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.
- (1) In section OP 17(1), “by a group company” is replaced by “by a group company other than as policyholder base income”.
- (2) In section OP 17, in the list of defined terms, “policyholder base income” is inserted. 10
- (3) **Subsection (1)** applies—
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies:
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 15

334 Section OP 20 repealed

- (1) Section OP 20 is repealed. 20
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.
- (2) **Subsection (1)** applies—
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies:
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 25

335 Section OP 21 repealed

- (1) Section OP 21 is repealed. 30
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.
- (2) **Subsection (1)** applies—
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies: 35

- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

5

336 Consolidated ICA refund of income tax

- (1) Section OP 30(2) is replaced by the following:

“No debit

- “(2) The debit in subsection (1) does not include—

- “(a) a refund of income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or
“(b) a refund of income tax paid before a debit arises under section OP 42 to the extent to which the amount of the refund is less than the amount of the debit.”

15

- (2) In section OP 30(3), “subsection (2)” is replaced by “**subsection (2)(b)**”.

- (3) After section OP 30(4), the following is added:

“Relationship with section OP 35

- “(5) This section does not apply to an amount that gives rise to a debit under section OP 35.”

20

- (4) In section OP 30, in the list of defined terms, “life insurer”, “schedular income tax liability”, and “schedular policyholder base income” are inserted.

- (5) **Subsections (1), (2), and (4)** apply for income years beginning on and after 1 April 2009.

25

- (5) **Subsections (1) and (2)** apply—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

30

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

35

337 Consolidated ICA amount applied to pay other taxes

(1) After section OP 31(4), the following is added:

“Relationship with section OP 35

“(5) This section does not apply to an amount that gives rise to a debit under section OP 35.” 5

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

338 New section OP 33B inserted

(1) After section OP 33, the following is inserted:

“OP 33B Consolidated ICA debit for transfer from tax pooling account for policyholder base liability” 10

“Debit

“(1) A consolidated imputation group has an imputation debit for the amount transferred from a tax pooling account to their tax account with the Commissioner, to the extent to which the amount satisfies its schedular income tax liability for schedular policyholder base income or its income tax liability for a life fund PIE that is a multi-rate PIE. 15

“Table reference

“(2) The imputation debit in **subsection (1)** is referred to in table O20: imputation debits of consolidated imputation groups, row 7B (debit for transfer from tax pooling account for policyholder base liability). 20

“Debit date

“(3) The debit date is the last day of the tax year. 25

“Defined in this Act: ICA company, imputation credit, imputation debit, life insurer, schedular income tax liability, schedular policyholder base income, tax year”.

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 30

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for 35

the tax year corresponding to the first relevant income year.

339 Consolidated ICA refund of tax credit

(1) Section OP 35(1) is replaced by the following:

“Debit

5

“(1) A consolidated imputation group has an imputation debit for—

“(a) the amount of a transfer under section LA 6(2)(d) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the transfer does not lead to a refund of income tax:

10

“(b) the amount of a refund under section LA 6(2)(e):

“(c) an amount used under section LH 2(6) (Tax credits relating to expenditure on research and development) to pay an amount payable under an Inland Revenue Act to the extent to which the use does not lead to a refund of income tax.

15

“Exclusion

“(1B) ~~Despite **subsection (1)**, a consolidated group does not have an imputation debit to the extent to which the amount transferred, refunded, or used is—~~

20

~~“(a) a tax credit for a payment of FDP relating to a dividend derived by a group company; and~~

~~“(b) the dividend was derived when the company did not have an FDP account and—~~

~~“(i) was not part of a consolidated group; or~~

25

~~“(ii) was part of a consolidated group without an FDP account.”~~

“(1B) Despite **subsection (1)**, a consolidated imputation group does not have an imputation debit to the extent to which—

“(a) the amount transferred, refunded, or used is a tax credit for a payment of FDP relating to a dividend derived by a group company; and

30

“(b) the dividend was derived when the company—

“(i) had an FDP account and was not part of a consolidated group; or

35

“(ii) was part of a consolidated group with an FDP account.”

- (2) Section OP 35(3), other than the heading, is replaced by the following:
- “(3) The debit date is—
- “(a) for a debit referred to in **subsection (1)(a)**, the day the amount is transferred: 5
- “(b) for a debit referred to in **subsection (1)(b)**, the day the amount is refunded:
- “(c) for a debit referred to in **subsection (1)(c)**, the day the amount is applied.”
- (2B) In section OP 35, in the defined terms list, “FDP”, “pay”, and “tax credit” are inserted. 10
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 340 Section OP 38 repealed** 15
- (1) Section OP 38 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years:
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 20
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 340B Consolidated ICA transfer to policyholder credit account**
- (1) After section OP 44(5), the following are added: 25
- “Mandatory transfer for group with non-standard accounting year
- “(6) Despite the absence of an election during the tax year, a consolidated imputation group that has adopted a non-standard accounting year is treated as having chosen at the end of the tax year to transfer the credit described in **subsection (7)** from the imputation credit account to the policyholder credit account. 30
- “Credit
- “(7) The consolidated imputation group is treated as having made an election for a tax year to the extent to which— 35

- “(a) during the tax year, or no later than the end of the accounting year corresponding to the tax year, a credit arises under—
- “(i) section OP 7: table O19 (imputation credits of consolidated imputation groups), row 2 (income tax paid for group tax liability) for a payment of provisional tax; or 5
- “(ii) section OP 14: table O19 (imputation credits of consolidated imputation groups), row 9 (FDP paid by group company) for a payment of FDP; and 10
- “(b) during the tax year, the credit has not been cancelled by a later debit arising under—
- “(i) section OP 30: table O20 (imputation debits of consolidated imputation groups), row 4 (refund of income tax or provisional tax to group) for a refund of provisional tax paid during the accounting year; 15
- “(ii) section OP 34: table O20 (imputation debits of consolidated imputation groups), row 8 (refund of FDP when no FDP account) for a refund of FDP paid during the accounting year; and 20
- “(c) the credit has not been included in a credit balance transferred by an election under subsection (3).
- “*Ordering rule* 25
- “(8) For the purpose of determining under **subsection (7)(b)** whether a debit has cancelled a credit, debits are treated as cancelling credits in the order in which the credits arise.”
- (2) In section OP 44, in the list of defined terms, “accounting year”, “FDP”, “pay”, “provisional tax”, and “tax year” are inserted. 30
- (3) **Subsection (1)** applies for the 2008–09 and later income years.
- 341 Section OP 44 replaced**
- (1) Section OP 44 is replaced by the following: 35

“OP 44 Consolidated ICA debit for policyholder base imputation credits

“Debit

- “(1) A consolidated imputation group has an imputation debit for the amount of an imputation credit attached to a dividend derived by a group company, to the extent to which it is derived by a group company that is a life insurer and apportioned to that life insurer’s policyholder base. 5

“Table reference

- “(2) The imputation debit in **subsection (1)** is referred to in table O20: imputation debits of consolidated imputation groups, row 18 (debit for policyholder base imputation credits). 10

“Debit date

- “(3) The debit date is the last day of the tax year.

“Defined in this Act: consolidated imputation group, imputation credit, imputation debit, life insurer, policyholder base, tax year”. 15

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

- (2) **Subsection (1)** applies—

- (a) on and after 1 July 2010, unless **paragraph (b)** applies: 20
(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 25

342 Table O19: imputation credits of consolidated imputation groups

- (1) Table O19, row 9 is repealed.
(2) Table O19, rows 15 and 16 are repealed.
(3) **Subsection (1)** applies for the 2009–10 and later income years. 30
(4) **Subsection (2)** applies for income years beginning on and after 1 April 2009.
(3) **Subsection (1)** applies for—
(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 35

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

(4) **Subsection (2)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

343 Table O20: imputation debits of consolidated imputation groups 10

(1) In table O20, after row 7, the following is inserted:

7B	Debit for transfer from tax pooling account for policyholder base liability	31 March	section OP 33B
----	---	----------	----------------

(2) Table O20, row 9 is replaced by the following:

9	Transfer, refund, or use of tax credit	day of transfer, refund, or use	section OP 35
---	--	---------------------------------	---------------

(3) Table O20, row 12 is repealed.

(4) ~~In table O20, row 18 is replaced by the following:~~ 15

18	Debit for policyholder base imputation credits	31 March	section OP 44
---------------	---	---------------------	--------------------------

(5) **Subsections (1) and (4)** apply for income years beginning on and after ~~1 April 2009~~.

(6) **Subsection (2)** applies for the 2008–09 and later income years:

(7) **Subsection (3)** applies for the 2009–10 and later income years: 20

(4) In table O20, row 18, “day of election” is replaced by “set out in section OP 44”.

(5) In table O20, row 18 is replaced by the following:

18	<u>Debit for policyholder base imputation credits</u>	<u>31 March</u>	<u>section OP 44</u>
----	---	-----------------	----------------------

(6) **Subsections (1) and (5)** apply— 25

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5
- (7) **Subsections (2) and (4)** apply for the 2008–09 and later income years.
- (8) **Subsection (3)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 344 When credits and debits arise only in consolidated FDP group accounts**
- (1) Section OP 54(2), other than the heading, is replaced by the following: 15
- “(2) The credit referred to in subsection (1) is a credit under section OP 58, described in table O21, row 4.”
- (2) In section OP 54(4)(d), “ratio)” is replaced by “ratio):” and the following is added: 20
- “(e) section OP 74, row 12 (debit for policyholder base FDP credits).”
- (3) **Subsection (1)** applies for the 2009–10 and later income years:
- (4) **Subsection (2)** applies for income years beginning on and after 1 April 2009. 25
- (3) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 30
- (4) **Subsection (2)** applies—
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for 35

the tax year corresponding to the first relevant income year.

345 Section OP 56 repealed

- (1) Section OP 56 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years. 5
- (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 10

346 Section OP 57 repealed

- (1) Section OP 57 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years. 15
- (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 20

347 Section OP 61 repealed

- (1) Section OP 61 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for— 25
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

348 Section OP 62 repealed

- (1) Section OP 62 is repealed. 30
- (2) **Subsection (4)** applies for the 2009–10 and later income years.

- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 5
- 349 Consolidated FDPA refund of tax credit**
- (1) Section OP 68(1), other than the heading, is replaced by the following:
- “(1) A consolidated FDP group has an FDP debit for the amount of a transfer or refund under section LA 6(2)(d) or (e) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the amount transferred or refunded is a tax credit under subpart LF (Tax credits for FDP credits) relating to a dividend derived by a group company that is part of the group at the time it derives the dividend.” 10 15
- (2) Section OP 68(3), other than the heading, is replaced by the following:
- “(3) The debit date is the day the transfer or refund is made.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 20
- 350 Section OP 70 repealed**
- (1) ~~Section OP 70 is repealed.~~
- (2) ~~**Subsection (1)** applies for the 2009–10 and later income years.~~
- 351 Section OP 74 replaced** 25
- (1) Section OP 74 is replaced by the following:
- “OP 74 Consolidated FDPA debit for policyholder base FDP credits**
- “Debit*
- “(1) A consolidated FDP group has an FDP debit for the amount of an FDP credit attached to a dividend derived by a group company, to the extent to which it is derived by a group company that is a life insurer and apportioned to that life insurer’s policyholder base. 30

“Table reference

- “(2) The FDP debit in **subsection (1)** is referred to in table O22: FDP debits of consolidated FDP groups, row 12 (debit for policyholder base FDP credits).

“Debit date

5

- “(3) The debit date is the last day of the tax year.

“Defined in this Act: consolidated FDP group, FDP credit, FDP debit, life insurer, policyholder base, tax year”.

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

10

- (2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

15

352 Table O21: FDP credits of consolidated FDP groups

- (1) Table O21, rows 2, 3, 7, and 8 are repealed.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

20

- (2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

25

353 Table O22: FDP debits of consolidated FDP groups

- (1) Table O22, row 8 is repealed.

- (2) In table O22, row 12 is replaced by the following:

12 Debit for policyholder base FDP credits	31 March	section OP 74
--	----------	---------------

- (3) **Subsection (1)** applies for the 2009–10 and later income years.

30

(4) **Subsection (2)** applies for income years beginning on and after 1 April 2009.

(4) **Subsection (2)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5

353B CTR accounts of consolidated groups 10

(1) In section OP 78(1), “has” is replaced by “must maintain”.

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

354 When credits and debits arise only in CTR group accounts 15

(1) Section OP 79(2), other than the heading, is replaced by the following:

“(2) The credit referred to in subsection (1) is a credit under section OD 7, described in table O5, row 4.”

(2) **Subsection (4)** applies for the 2009–10 and later income years. 20

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June. 25

355 Section OP 81 repealed

(1) Section OP 81 is repealed.

(2) **Subsection (4)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for— 30

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

356 Section OP 82 repealed

- (1) Section OP 82 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for— 5
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

357 Section OP 88 repealed 10

- (1) Section OP 88 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for— 15
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

358 Section OP 95 repealed

- (1) Section OP 95 is repealed. 20
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for— 25
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

359 Table O23: conduit tax relief credits of consolidated groups

- (1) Table O23, rows 2 and 3 are repealed. 30
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for— 35
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

360 Table O24: conduit tax relief debits of consolidated groups

- (1) Table O24, row 3 is repealed. 5
- (2) **Subsection (1)** applies for the 2009–10 and later income years:
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

361 Section OP 99 repealed

- (1) Section OP 99 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 15

362 Section OP 100 repealed

- (1) Section OP 100 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 20

363 Consolidated BETA payment of income tax

- (1) Section OP 101(2) and (2B) are replaced by the following:
- “Application of debit*
- “(2) The nominated company of the consolidated BETA group must record a credit in the branch equivalent tax account with the debit balance of an amount equal to the greater of the following amounts for a tax year corresponding to the income year referred to in subsection (1): 25
- “(a) the income tax liability of the group or group company B in relation to the attributed CFC income, limited to the amount of the debit balance: 30
- “(b) the income tax liability that the group or group company B would have incurred on an amount of income equal to the branch equivalent income of the company for the

same period as the attributed CFC income, limited to the amount of the debit balance.

“Amount of income tax liability satisfied

“(2B) The application of the credit required by **subsection (2)** is treated as an application of a credit under section BC 8 (Satisfaction of income tax liability) sufficient to satisfy the amount of income tax liability referred to in **subsection (2)(a)**.”²² 5

(2) **Subsection (1)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for— 10

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

364 Heading and sections OP 105 to OP 108 repealed 15

(1) The heading before section OP 105 and sections OP 105 to OP 108 are repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for— 20

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

365 New heading and section OP 108B inserted 25

(1) Before table O25, the following is inserted:

*“Debit if credit balance at beginning of
2009–10 tax year*

“OP 108B Consolidated BETA group with credit balance at beginning of 2009–10 tax year 30

If a consolidated BETA group has a credit balance in its branch equivalent tax account at the beginning of the 2009–10 tax year, a branch equivalent tax debit of an amount equal to the

credit balance arises in the branch equivalent tax account at that time:

“Defined in this Act: branch equivalent tax account; branch equivalent tax debit; consolidated BETA group; tax year”.

(2) **Subsection (4)** applies for the 2009–10 and later income years. 5

(1) Before table O25, the following is inserted:

***“Debit if credit balance at beginning of first
affected tax year***

**“OP 108B Consolidated BETA group with credit balance at
beginning of first affected tax year** 10

If a consolidated BETA group has a credit balance in its branch equivalent tax account at the beginning of the first tax year for which this section applies to the group, a branch equivalent tax debit of an amount equal to the credit balance arises in the branch equivalent tax account at that time. 15

“Defined in this Act: branch equivalent tax account; branch equivalent tax debit; consolidated BETA group; tax year”.

(2) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 20
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

366 Table O25: branch equivalent tax credits of consolidated BETA groups 25

(1) Table O25, row 2 is repealed.

(2) **Subsection (4)** applies for the 2009–10 and later income years:

(2) **Subsection (1)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 30
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

367 Table O26 repealed

(1) Table O26 is repealed. 35

~~(2)~~ **Subsection (4)** applies for the 2009–10 and later income years.

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

5

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

368 Headings and sections OP 109 to OP 116 repealed

(1) The headings before section OP 109 and sections OP 109 to OP 116 are repealed.

10

~~(2)~~ **Subsection (4)** applies for income years beginning on and after 1 April 2009.

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

15

369 Tables O27 and O28 repealed

20

(1) Tables O27 and O28 are repealed.

~~(2)~~ **Subsection (4)** applies for income years beginning on and after 1 April 2009.

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

25

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

30

370 ASCA lost excess available subscribed capital

(1) Section OZ 5(6)(a) is replaced by the following:

“(a) non-taxable gains and losses, including exempt income; and”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

371 Modifying ratios for imputation credits and FDP credits

- (1) In section OZ 10(2), “section OA 5(2) and (3) (Credits)” is replaced by “sections LE 8, LE 9, LF 6, and LF 7 (which relate to tax credits for imputation credits and FDP credits)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

372 New section OZ 18 added

After section OZ 17, the following is added:

“OZ 18 Credit-back of PCA balance

Immediately before the first day of the income year beginning on or after 1 April 2009,—

- “(a) the credit balance of a person’s policyholder credit account is credited as an imputation credit to the person’s imputation credit account; and the policyholder credit account is debited accordingly:
- “(b) the credit balance of a consolidated group’s policyholder credit account is credited as an imputation credit to the consolidated group’s imputation credit account; and the consolidated group’s policyholder credit account is debited accordingly.

“Defined in this Act: consolidated group; imputation credit; imputation credit account; income year; policyholder credit account

“OZ 18 Credit-back of PCA balance

“When this section applies

- “(1) This section applies for a life insurer immediately before a day (the **application day**) that is—

“(a) 1 July 2010, if the life insurer does not have an early life regime application day, or

“(b) their early life regime application day, if the life insurer does have an early life regime application day.

“Credit-back

- “(2) Immediately before the application day,—

“(a) the credit balance of a life insurer’s policyholder credit account is credited as an imputation credit to the life insurer’s imputation credit account, and the policyholder credit account is debited accordingly:

“(b) the credit balance of a consolidated group’s policyholder credit account is credited as an imputation credit to the consolidated group’s imputation credit account, and the consolidated group’s policyholder credit account is debited accordingly.

“Defined in this Act: early life regime application day, consolidated group, imputation credit, imputation credit amount, life insurer, policyholder credit account”.

373 What this Part does

- (1) Section RA 1(g) is repealed.
- (2) In section RA 1, in the list of defined terms, “FDP” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (3) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

373B Tax obligations for employment-related taxes

- (1) In section RA 5, the following is inserted after the section heading:

“Withholding and payment obligations”.
- (2) Section RA 5(c) is replaced by the following:

“(c) an employer’s superannuation cash contribution.”
- (3) In section RA 5, the following is added as subsection (2):

“Timing for PAYE income payments
- “(2) An amount of tax withheld from a PAYE income payment must be withheld at the time the person makes the payment.”
- (4) In section RA 5, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

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

374 Withholding and payment obligations for passive income

- (1) Section RA 6(3) is repealed.
- (2) In section RA 6, in the list of defined terms, “FDP, foreign dividend” is omitted. 5
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (2) After section RA 6(3), the following is added: 10
“Timing for payments of passive income
 “(4) An amount of tax withheld under subsections (1) and (2) must be withheld at the time the person makes the payment.”
- (3) In section RA 6, in the list of defined terms, “FDP” and “foreign dividend” are omitted.
- (4) **Subsection (1)** applies for— 15
 (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- (5) **Subsection (2)** applies for the 2008–09 and later income years. 20

375 When obligations not met

- (1) In section RA 10(1)(b), “the amount; or” is replaced by “the amount.” and paragraph (c) is repealed.
- (2) In section RA 10, in the list of defined terms, “FDP” is omitted. 25
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (1) In section RA 10(1)(a), “an employer’s superannuation contribution” is replaced by “an employer’s superannuation cash contribution”. 30
- (2) In section RA 10(1)(b), “the amount; or” is replaced by “the amount.” and paragraph (c) is repealed.
- (3) In section RA 10, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 35

- (4) In section RA 10, in the list of defined terms, “FDP” is omitted.
- (5) **Subsection (1)** applies for the 2008–09 and later income years.
- (6) **Subsection (2)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 5
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 376 Payment dates for interim and other tax payments**
- (1A) Section RA 15(2)(b) to (d) are replaced by the following: 10
- “(b) when the period for which the payment is made is a month or a period that is longer than a month but not a period referred to in **paragraph (c) or (d)**, by the 20th day of the month after the relevant end date:
- “(c) when the period for which the payment is made is an income year or a tax year other than that referred to in **paragraph (d)**, or both, or the last quarter of a tax year, by 31 May: 15
- “(d) for a close company that pays FBT on an income year basis, by terminal tax date.” 20
- (1) Section RA 15(2)(c) is replaced by the following:
- “(c) when the period for which the payment is made is a tax year or income year or both, by 31 May:
- “(cb) despite **subsection (3)(c)**, for FBT payable for the last quarter of a tax year, by 31 May:” 25
- (2) Section RA 15(3)(c) is replaced by the following:
- “(c) for FBT payable quarterly under sections RD 58, RD 59, and RD 62 (which set out the basis for payment of FBT), the last day of a quarter:”
- (3) In section RA 15, in the list of defined terms, “FDP” is omitted. 30
- (3B) **Subsection (1A)** applies for the 2008–09 and later income years. However, **subsection (1A)** does not apply to a person in relation to a tax position taken by the person—
- (a) in the period from 1 April 2008 to the date of Royal assent of this Act; and 35
- (b) in relation to the payment of FDP; and

- (c) relying upon section RA 15(2) prior to the amendment made by **subsection (1A)**.
- (4) **Subsections (2) and (3)** apply for the 2009–10 and later income years.
- (4) **Subsection (2)** applies for the 2009–10 and later income years. 5
- 376B Amalgamation of companies**
- (1) In section RA 20, the following is inserted after the section heading:
- “Amalgamated company’s obligation”.* 10
- (2) In section RA 20, the following is added as subsection (2):
- “Thresholds for close companies*
- “(2) For the purpose of determining whether the threshold under section RD 60 (Close company option) has been met, the amalgamated company is treated as paying the gross amounts of tax withheld under section RA 5(1)(a) and (c) by the amalgamating company in the income year before that in which the amalgamation takes place.”* 15
- (3) In section RA 20, in the list of defined terms, “amalgamation”, “close company”, “gross”, and “income year” are inserted. 20
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 376C Regulations**
- (1) In section RA 21(4), “subsection (2)” is replaced by “subsection (3)”. 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 377 Application of other provisions for purposes of ESCT rules and NRWT rules**
- (1) In section RA 23(2), “an amount of tax for an employer’s superannuation contribution” is replaced by “ESCT”. 30
- (2) Section RA 23(2) is repealed.
- (3) In section RA 23, in the list of defined terms, “employer’s superannuation contribution” is omitted.

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

377B Payment of terminal tax

- (1) In section RB 1, “section RA 3 (Terminal tax obligations)” is replaced by “section RA 13 (Payment dates for terminal tax)”. 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

377C Schedular income tax liability for filing taxpayers for non-resident passive income

- (1) In section RB 3(2), “paragraph (h)” is replaced by “paragraph (f)”. 10
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

378 Who is required to pay provisional tax?

- (1) Section RC 3(2)(d) is replaced by the following: 15
“(d) a multi-rate PIE that does not choose to calculate and pay tax using the provisional tax calculation option under **section HM 44** (Provisional tax calculation option).”
- (2) In section RC 3, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted. 20
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (2) In section RC 3, in the list of defined terms,— 25
(a) “portfolio tax rate entity” is omitted;
(b) “multi-rate PIE” is inserted.
- (3) **Subsection (1)** applies for the 2010–11 and later income years.

378B Attribution rule for income from personal services

- (1) Section RC 34(1) to (6) are replaced by the following: 30
“When this section applies
- (1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 for pro-

visional tax paid for income from personal services to which section GB 27 (Attribution rule for income from personal services) may apply. The references in this section to **working person** and **associated entity** reflect the terminology used in section GB 27.

5

“Associated entity transferring amount to working person

“(2) If, in a tax year, the associated entity pays an amount of tax that is more than the provisional tax payable for the tax year, the entity may transfer some or all of the overpayment to the working person to the extent to which the amount of provi-

10

sional tax paid by the person is less than their residual income tax for the tax year.

“(3) If, in a tax year, the working person pays an amount of tax that is more than the provisional tax payable for the tax year, they may transfer some or all of the overpayment to the associated entity to the extent to which the amount of provisional tax paid by the entity is less than their residual income tax for the tax year.

15

“When transfer made

20

“(4) The associated entity and the working person may transfer an amount under **subsection (2) or (3)**, as applicable, on or after the later of—

“(a) the day on which the overpayment of provisional tax is paid by the entity or person, as applicable;

25

“(b) the day on which the instalment of provisional tax payable for the tax year becomes payable by—

“(i) the person, if the entity is making the transfer; or

“(ii) the entity, if the person is making the transfer.

“Notice

30

“(5) The Commissioner must be notified of a transfer under **subsection (2) or (3)** in a notice that—

“(a) names the person to whom a transfer is made, and the amount to be transferred; and

“(b) states the date on which the overpayment is treated as transferred to the associated entity or working person, as applicable; and

35

- “(c) is provided within the time for filing a return of income for the tax year for the person to whom the transfer is made, or an extended time allowed by the Commissioner.
- “When transfer made and how transfer treated* 5
- “(6) For the purposes of this section,—
- “(a) a transfer under **subsection (2) or (3)** is treated as made on the day stated in the notice; and
- “(b) provisional tax transferred by the associated entity to the working person for a tax year is treated as provisional tax paid by the working person and not by the associated entity; and 10
- “(c) provisional tax transferred by the working person to the associated entity is treated as provisional tax paid by the associated entity and not by the working person.” 15
- (2) In section RC 34, in the list of defined terms, “amount of tax” and “associated person” are inserted.
- (3) **Subsection (1)** applies for the 2008–09 and later income years.
- 379 PAYE rules and their application** 20
- ~~In section RD 2(1), paragraph (b)~~Section RD 2(1)(b) is replaced by the following:
- “(b) sections LA 6, LB 1, and **LD 4** (which relate to tax credits); and”.
- 379B PAYE income payments** 25
- (1) Section RD 3(1)(b)(iii) is replaced by the following:
- “(iii) an amount paid or benefit provided, by a person (the **claimant**) who receives a personal service rehabilitation payment from which an amount of tax has been withheld at the rate specified in schedule 4, part I (Rates of tax for schedular payments) or under section RD 18 (Schedular payments without notification), to another person for providing a key aspect of social rehabilitation referred to in paragraph (c) of the definition of **per-** 30
- 35

**sonal service rehabilitation payment in section
YA 1 (Definitions)."**

- (2) Section RD 3(3), other than the heading, is replaced by the following:
- “(3) The person may choose to treat all amounts paid to them in the income year in their capacity as employee of the close company as income other than from a PAYE income payment.” 5
- (3) Section RD 3(4), other than the heading, is replaced by the following:
- “(4) All amounts paid to the person in later income years in their capacity as employee of the close company are treated as income other than from a PAYE income payment.” 10
- (4) **Subsections (2) and (3)** apply for the 2008–09 and later income years. However, **subsections (2) and (3)** do not apply to a person in relation to a tax position taken by the person— 15
- (a) in the period from 1 April 2008 to the date of Royal assent of this Act; and
- (b) relating to the treatment of an amount of income; and
- (c) relying upon section RD 3(3) and (4) as they were prior to the amendment made by **subsections (2) and (3)**. 20

380 Salary or wages

- (1) After section RD 5(7), the following is added:
- “Accommodation benefits*
- “(8) A benefit treated as income under **section GE 4(1)(c)** (Amounts derived in connection with employment) is included in salary or wages.” 25
- (2) In section RD 5, in the list of defined terms, “accommodation” is inserted:

380 Salary or wages

- (1) In section RD 5(1)(b)(ii), “subsections (2) to (7)” is replaced by “subsections (2) to (8)”. 30
- (2) Section RD 5(1)(c)(v) is replaced by the following:
- “(v) an employer’s superannuation contribution other than a contribution referred to in **subsection (8)**.” 35
- (3) Section RD 5(6)(a) is replaced by the following:

- “(a) a gratuitous payment as described in paragraph (a) of the definition of **pension** in section CF 1(2) (Benefits, pensions, compensation, and government grants):”.
- (4) In section RD 5(6)(c), “1987 or section 303 of the Education Act 1989” is replaced by “1987, section 303 of the Education Act 1989, or an enactment substituted for those sections”. 5
- (5) After section RD 5(7), the following is added:
“Accommodation benefits
- “(8) A benefit treated as income under **section CE 1(1)(c)** (Amounts derived in connection with employment) is included in salary or wages.” 10
- (6) After **section RD 5(8)**, the following is added:
“Cash contributions
- “(9) An amount of an employer’s superannuation cash contribution that an employee chooses to have treated as salary or wages under section RD 68 is included in salary or wages.” 15
- (7) In section RD 5, in the list of defined terms, “accommodation” is inserted.
- (8) In section RD 5, in the list of defined terms, “employer’s superannuation cash contribution,” is inserted. 20
- (9) **Subsections (1), (2), and (6)** apply for the 2008–09 and later income years.
- (10) **Subsections (3) and (4)** apply for the 2008–09 and later income years.
- 381 Certain benefits and payments** 25
- (1) Section RD 6(1)(a) and (b) are replaced by the following:
- “(a) an accommodation benefit treated as income under section CE 1(1)(c) (Amounts derived in connection with employment); or
- “(b) another benefit in kind that is included in their salary or wages; or” 30
- (2) In section RD 6, in the list of defined terms, “accommodation” is inserted.
- 382 Schedular payments**
- In section RD 8(1)(b)(v), “who does not have” is replaced by “who has” 35

382B Reduction in certain circumstances

- (1) After section RD 11(3), the following is added:
“When Commissioner makes determination under section RD 8(3)”
- ~~“(4)”~~ If the Commissioner makes a determination under section RD 8(3) in relation to the amount or proportion of expenditure that a person incurs in deriving a schedular payment, the basis for calculating the amount of tax for the schedular payment is the reduced amount found after subtracting the amount or proportion of expenditure determined by the Commissioner from the amount of the payment. This subsection overrides section RD 10(3).” 5 10
- (2) In section RD 11, in the list of defined terms, “amount” and “schedular payment” are inserted.
- (3) In section RD 11, in the compare note, “NC 13” is replaced by “NC 13, Income Tax (Withholding Payments) Regulations 1979, regulation 6(3)”. 15
- (4) **Subsection (1)** applies for the 2008-09 and later income years.

383 Multiple payments of salary or wages 20

- (1) Section RD 12(2)(b) is replaced by the following:
“(b) to salary or wages from employment as a casual agricultural employee, election day worker, or non-resident seasonal worker.”
- (2) In section RD 12, in the list of defined terms, “non-resident seasonal worker” is inserted. 25
- ~~(3) Subsections (1) and (2) apply for the 2009–10 and later income years.~~
- (3) **Subsection (1)** applies for the 2009–10 and later income years. 30

383B Advance payments of salary or wages

- (1) Section RD 13(1)(a) is replaced by the following:
“(a) an employee receives from an employer a payment of salary or wages referred to in section RA 5(1)(a) and (c) (Tax obligations for employment-related taxes); and” 35

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

384 New section RD 13B inserted

After section RD 13, the following is inserted:

“RD 13B Adjustments for payroll donations 5

“When this section applies

“(1) This section applies when an employee makes a payroll donation for a pay period for which they have a tax credit under **section LD 4** (Tax credits for payroll donations).

“Subtracting amount of tax credit 10

“(2) The employer or PAYE intermediary must subtract the amount of the tax credit from the amount of tax for the employee’s PAYE income payment for the pay period and record the information in the relevant employer monthly schedule.

“Defined in this Act: employee, employer, employer monthly schedule, pay period, PAYE income payment, PAYE intermediary, payroll donation, tax credit”.

384B Payments of extra pay with other PAYE income payments

(1) In section RD 17(1), “the sum of the extra pay and” is omitted.

(2) **Subsection (1)** applies for the 2008–09 and later income years. 20

385 Schedular payments without notification

(1) Section RD 18(3) is replaced by the following:

“Additional amount of tax

“(3) The person must withhold, in addition to the amount calculated under section RD 10(3), an amount of tax for the schedular payment determined as follows: 25

“(a) 5% of the amount of the schedular payment if—

“(i) the person receiving the payment is a company that is a non-resident contractor; and 30

“(ii) the non-resident contractor receives the payment other than as a result of a choice that is made for the purposes that include a purpose of defeating the intent and application of **paragraph (b)**:

“(b) 15% of the amount of the schedular payment in all other cases.

“Non-application to non-resident entertainers

“(4) This section does not apply if the schedular payment is made to a non-resident entertainer.” 5

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

386 **Schedular payments to non-resident entertainers**

Section RD 19(2) is repealed.

387 **PAYE income payment forms for amounts of tax paid to Commissioner** 10

(1) In section RD 22, the heading is replaced by “**Returns for amounts of tax paid to Commissioner**”.

(2) Section RD 22(1) is replaced by the following:

“Paying amount withheld with returns

“(1) An employer or a PAYE intermediary who withholds an amount of tax from a PAYE income payment must pay the amount to the Commissioner under section RD 4 and provide an employer monthly schedule and a PAYE income payment form in relation to the amount.” 15 20

(3) In section RD 22(2), the words before paragraph (a) are replaced by the following:

“(2) The employer or PAYE intermediary must provide the employer monthly schedule and PAYE income payment form referred to in **subsection (1)** by—” 25

(4) In section RD 22(3) and (4), “the employer monthly schedule and” is inserted before “PAYE income form” in both places where it appears.

(5) In section RD 22(3) and (4), “\$100,000” is replaced by “\$250,000” in all places where it appears. 30

(6) Section RD 22(6), other than the heading, is replaced by the following:

“(6) In addition to the requirements of subsections (2) to (4), if the employer stops carrying on a business in relation to which an amount of tax for a PAYE income payment has been withheld, they must notify the Commissioner of the cessation by the 15th 35

day of the second month following the month in which the business is ended.”

(4) Section RD 22(3) is replaced by the following:

“Returns when gross amounts of tax are less than \$100,000

“(3) Despite subsection (2), an employer who meets the requirements of **subsection (3B)** must provide the employer monthly schedule and the PAYE income payment form by the 20th day of the month following that in which an amount of tax is withheld. 5

“Requirements

“(3B) For the purposes of **subsection (3)**, the employer must— 10

“(a) not be a new employer; and

“(b) have gross amounts of tax of less than \$100,000 withheld under section RA 5(1)(a) and (c) (Tax obligations for employment-related taxes) for both— 15

“(i) PAYE income payments:

“(ii) employer’s superannuation cash contributions.”

(5) In the heading to **section RD 22(3)**, “\$100,000” is replaced by “\$500,000”.

(6) In **section RD 22(3B)**, “\$100,000” is replaced by “\$500,000”. 20

(7) Section RD 22(4), other than the heading, is replaced by the following:

“(4) Despite subsection (2), an employer who is a new employer must provide the employer monthly schedule and the PAYE income payment form by the 20th day of the month following that in which an amount of tax is withheld until their gross amounts of tax for PAYE income payments and employer’s superannuation cash contributions payable for the tax year are more than \$100,000.” 25 30

(8) In **section RD 22(4)**, “\$100,000” is replaced by “\$500,000”.

(9) Section RD 22(6), other than the heading, is replaced by the following:

“(6) In addition to the requirements of subsections (2) to (4), if the employer stops carrying on a business in relation to which an amount of tax for a PAYE income payment has been withheld, they must notify the Commissioner of the cessation by the 15th 35

day of the second month following the month in which the
business is ended.”

- (10) In section RD 22, in the list of defined terms, “employer
monthly schedule” and “employer’s superannuation cash
contribution” are inserted.

5

- (11) **Subsections (4) and (7)** apply for the 2008–09 and later in-
come years.

388 Calculation of all-inclusive pay

In section RD 51(3)(a), “or applied on their account” is omit-
ted.

10

388B Value of and payments towards fringe benefits

In section RD 54, in the compare note, “s ND 1S” is replaced
by “ss GC 15(3), (4), ND 1S”.

389 Close company option

~~Section RD 60(1), other than the heading, is replaced by the
following:~~

15

- ~~“(1) This section applies in an income year when an employer that
is a close company provides a fringe benefit to a shareholder-
employee if, in the preceding income year,—~~

~~“(a) the gross amounts of tax for both PAYE income pay-
ments and employer’s superannuation contributions for
the corresponding tax year were no more than \$250,000;
or~~

20

~~“(b) the only benefit provided by the employer was a fringe
benefit—~~

25

~~“(i) arising under section CX 6 (1) (Private use of
motor vehicle); and~~

~~“(ii) limited to making available to shareholder-em-
ployees 2 vehicles for their private use; or~~

~~“(c) the employer did not employ any employees.”~~

30

389 Close company option

- (1) Section RD 60(1)(a) is replaced by the following:

“(a) the gross amounts of tax for both PAYE income pay-
ments and employer’s superannuation cash contribu-

- tions withheld under section RA 5(1)(a) and (c) (Tax obligations for employment-related taxes) for the tax year were no more than \$100,000; or”.
- (2) In **section RD 60(1)(a)**, “\$100,000” is replaced by “\$500,000”. 5
- (3) In section RD 60(6), “referred to in subsection (1)” is replaced by “withheld under section RA 5(1)(a) and (c)”.
- (4) In section RD 60, in the list of defined terms,—
 (a) “employer’s superannuation contribution” is omitted;
 (b) “employer’s superannuation cash contribution” is inserted. 10
- (5) **Subsections (1) and (3)** apply for the 2008–09 and later income years.
- 390 Small business option**
 In section RD 61(1)(a), “\$100,000” is replaced by “\$250,000”. 15
- 390 Small business option**
 (1) Section RD 61(1)(a) is replaced by the following:
 “(a) the gross amounts of tax for both PAYE income payments and employer’s superannuation cash contributions withheld under section RA 5(1)(a) and (c) (Tax obligations for employment-related taxes) for the tax year were no more than \$100,000; or”. 20
- (2) In **section RD 61(1)(a)**, “\$100,000” is replaced by “\$500,000”.
- (3) In section RD 61(6), “referred to in subsection (1)” is replaced by “withheld under section RA 5(1)(a) and (c)”. 25
- (4) In section RD 61, in the list of defined terms, “employer’s superannuation cash contribution” is inserted.
- (5) **Subsections (1) and (3)** apply for the 2008–09 and later income years. 30
- 390B Employer’s superannuation contributions**
 (1) In section RD 65, the section heading is replaced by “Employer’s superannuation cash contributions”.

- (2) Section RD 65(1), other than the heading, is replaced by the following:
- “(1) An **employer’s superannuation cash contribution** means an employer’s superannuation contribution paid in money either to a superannuation fund or under the KiwiSaver Act 2006 to the Commissioner for later payment to a superannuation fund.” 5
- (3) In section RD 65(2), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 10
- (4) In section RD 65(2)(b), “amount of tax” is replaced by “amount of tax withheld”.
- (5) In section RD 65(3), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 15
- (6) In section RD 65(4), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (7) Section RD 65(4) is replaced by the following:
“Contributions to KiwiSaver schemes and complying superannuation funds” 20
- “(4) Subsection (3) and, as applicable, sections RD 67 to RD 69, do not apply to an employer’s superannuation cash contribution (the **current contribution**) to the extent to which the current contribution is— 25
- “(a) for an employee described in sections 101C(a) to (c) of the KiwiSaver Act 2006; and
- “(b) for the employee’s KiwiSaver scheme, or for their complying superannuation fund and subject to the complying fund rules; and 30
- “(c) no more than 2% of the payment of salary or wages to which the current contribution relates.”
- (8) In section RD 65(7), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 35
- (9) In section RD 65(11), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

- (10) Section RD 65(12) is repealed.
- (11) In section RD 65(13), the definition of **KiwiSaver calculation period** is replaced by the following:
“**KiwiSaver calculation period**, for a current contribution relating to an employer’s superannuation cash contribution, means a period— 5
“(a) beginning with the later of—
 “(i) 1 year before the date on which the employer makes the current contribution:
 “(ii) the date on which the employer is first required to withhold from the employee’s salary or wages a superannuation contribution to which the complying fund rules apply; and 10
“(b) ending with the date on which the employer makes the current contribution”. 15
- (12) In section RD 65, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (13) **Subsections (1) to (6) and (8) to (11)** apply for the 2008–09 and later income years. 20

390C Calculating amounts of tax for employer’s superannuation contributions

- (1) In section RD 67, the section heading is replaced by “**Calculating amounts of tax for employer’s superannuation cash contributions**”. 25
- (2) In section RD 67, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (3) Section RD 67(a) is replaced by the following:
“(a) if the employer chooses under section RD 69(1), the amount determined under schedule 1, part D, clause 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits); or”. 30
- (4) In section RD 67, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 35
- (5) **Subsections (1) to (3)** apply for the 2008–09 and later income years.

390D Choosing to have amount treated as salary or wages

(1) In section RD 68, the following is inserted after the section heading:

“Amount treated as salary or wages”.

(2) In section RD 68(1), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution” in both places where it appears. 5

(3) After section RD 68(1), the following is added as subsection (2):

“Revoking election

“(2) The employee’s election is valid until revoked in writing.” 10

(4) In section RD 68, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

(5) **Subsections (1) to (3)** apply for the 2008–09 and later income years. 15

390E Choosing different rates for employer’s superannuation contributions

(1) In section RD 69, the section heading is replaced by “**Choosing different rates for employer’s superannuation cash contributions**”. 20

(2) In section RD 69(1), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

(3) In section RD 69, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 25

(4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

390F Calculating amounts on failure to withhold

(1) Section RD 70(1), other than the heading, is replaced by the following: 30

“(1) This section applies when an employer or PAYE intermediary does not withhold under section RD 65(3) an amount of tax for an employer’s superannuation cash contribution.” 35

- (2) In section RD 70, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (3) **Subsection (1)** applies for the 2008–09 and later income years.

5

390G Amounts of tax treated as paid to and received by superannuation funds

- (1) In section RD 71(a), “an amount of tax” is replaced by “an amount of tax withheld”.
- (2) Section RD 71(c) is replaced by the following:
 - “(c) the payment referred to in paragraph (a) and the receipt referred to in paragraph (b) are treated as having occurred when the superannuation fund received the employer’s superannuation cash contribution.”
- (3) In section RD 71, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

10

15

390H Resident passive income

20

- (1) In section RE 2(1), “resident in New Zealand” is omitted.
- (2) In section RE 2(3)(c), “paid to a person resident in New Zealand who is acting as agent or nominee of a non-resident” is omitted.
- (3) In section RE 2, in the list of defined terms, “resident in New Zealand” is omitted.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years. However, **subsections (1) and (2)** do not apply to a person in relation to a tax position taken by the person—
 - (a) in the period from 1 April 2008 to 3 December 2008; and
 - (b) in relation to the payment of an amount of resident passive income to a non-resident engaged in business in New Zealand; and
 - (c) relying upon section RE 2 as it was prior to the amendment made by **subsections (1) and (2)**.

25

30

35

390I Obligation to withhold RWT

- (1) Section RE 3(1)(a) and (b) are replaced by the following:
- “(a) they have an obligation to withhold an amount of tax under section RE 4 and are not excluded under sections RE 5 and RE 6 from meeting the obligation.”. 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

391 Persons who have withholding obligations

- (1) In section RE 4(6), the words before paragraph (a) are replaced by the following: 10
- “(6) For the purposes of subsection (5), in the calculation of the amount of RWT to be credited against income tax, the amount must be converted to New Zealand currency at the option of the person deriving the resident passive income at either—”.
- (2) In section RE 4, in the list of defined terms, “FDP” is omitted. 15
- ~~(3) Subsections (1) and (2) apply for the 2009–10 and later income years.~~
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 20
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

392 Agents’ or trustees’ obligations in relation to certain dividends

- (1) Section RE 9(2), other than the heading, is replaced by the following: 25
- “(2) To the extent to which the resident passive income consists of a dividend other than a dividend treated as interest, an amount of tax that must be withheld under section RE 3 is treated as an amount to which the RWT rules apply.” 30
- (2) In section RE 9, in the list of defined terms, “FDP rules” is omitted.
- ~~(3) Subsections (1) and (2) apply for the 2009–10 and later income years.~~ 35
- (3) **Subsections (1) and (2)** apply for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

392B Notification by companies 5

- (1) In section RE 11(3), “schedule 1, part D, clause 5” is replaced by “schedule 1, part D, clause 4”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

392C Interest 10

- (1) In section RE 12(3)(a), “schedule 1, part D, clause 4 or 5” is replaced by “schedule 1, part D, clause 3 or 4”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

393 Non-resident passive income 15

- (1) In section RF 2(2)(b), “CX 56 (Portfolio investor allocated income and distributions of income by portfolio investment entities)” is replaced by “~~CX 56 to CX 56C~~ (which relate to attributed PIE income)”.
- (2) In section RF 2, in the list of defined terms, “attributed PIE income” is inserted. 20
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- (1) The heading to section RF 2(1) is replaced by “*Interest, certain dividends, and royalties*”. 25
- (2) Section RF 2(2)(b) is replaced by the following:
 - “(b) an amount of income to which section CV 17 (Non-resident film renters) applies:
 - “(c) an amount of excluded income under section CX 56 (Portfolio investor allocated income and distributions of income by portfolio investment entities).” 30
- (3) In **section RF 2(2)(c)**, “section CX 56 (Portfolio investor allocated income and distributions of income by portfolio investment entities)” is replaced by “**section CX 56C** (Distributions to investors by listed PIEs)”. 35

- (4) In section RF 2(5), “consisting of interest or an investment society dividend other than those described in subsection (3)(b) and (d)” is replaced by “consisting of interest, investment society dividends, or a royalty other than those described in subsection (3)”. 5
- (5) In section RF 2, in the list of defined terms, “excluded income” is inserted.
- (6) In section RF 2, in the list of defined terms, “attributed PIE income” is inserted.
- (7) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 10
- (8) **Subsection (4)** applies for the 2008–09 and later income years. However, **subsection (4)** does not apply to a person in relation to a tax position taken by the person— 15
- (a) in the period from 1 April 2008 to 3 December 2008;
and
- (b) in relation to a payment of non-resident passive income;
and
- (c) relying on section RF 2(5) as it was prior to the amendment made by **subsection (4)**. 20
- (9) **Subsection (3)** applies for the 2010–11 and later income years.

393B Certain dividends

In section RF 8, in the list of defined terms, “fully imputed” is inserted. 25

393C When dividends fully imputed or fully credited

- (1) In section RF 9(1), “section RF 8(1)(d) to (f)” is replaced by “sections RF 8 and RF 10”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 30

394 Non-cash dividends

In section RF 10(2), the formula is replaced by the following:

$$\frac{\text{rate A}}{1 - \text{rate A}} \times \text{dividend payment} + \text{rate B} \times \text{amount paid}$$

- (1) Section RF 10(1) is replaced by the following:
“When subsections (2) to (5) apply”
 “(1) Subsections (2) to (5) apply when a person makes a payment of non-resident passive income that consists of a non-cash dividend to the extent to which the amount is not fully imputed.” 5
 (2) In section RF 10(2), the formula is replaced by the following:

$$\frac{\text{rate A}}{1 - \text{rate A}} \times \text{dividend payment} + \text{rate B} \times \text{amount paid}$$

- (3) After section RF 10(5), the following is inserted:
“Fully imputed non-cash dividends
 “(5B) When a payment of non-resident passive income consists of a non-cash dividend, the rate of NRWT payable on the amount is 0% to the extent to which the amount is fully imputed.” 10
 (4) In section RF 10, in the list of defined terms, “fully imputed” is inserted.
 (5) In section RF 10, in the compare note, “s NG 9” is replaced by “ss NG 2(1)(b)(ii), NG 9”. 15
 (6) **Subsections (1) and (3)** apply for the 2008–09 and later income years.

395 Dividends paid to companies under control of non-residents

- (1) The heading to section RF 11 is replaced by “**Dividends paid to companies associated with non-residents**” 20
 (2) Section RF 11(1)(b) and (c) are replaced by the following:
 “(b) while the non-resident held the share, company A was associated with the non-resident; and
 “(c) the non-resident has disposed of the share to another company (**company B**) that is resident in New Zealand and associated with the non-resident; and” 25
 (3) ~~In section RF 11, in the list of defined terms, “control” is omitted.~~

- (4) **Subsections (1) and (2)** apply, for the purposes of—
- (a) provisions other than the land provisions, for the 2009–10 and later income years;
 - (b) the land provisions other than section CB 11, for land acquired on or after 1 April 2009; 5
 - (c) section CB 11, for land on which improvements are begun on or after 1 April 2009.
- (4) **Subsections (1) and (2)** apply for the 2010–11 and later income years.
- 395B Section RF 12 replaced by sections RF 12 to RF 12C** 10
- (1) Section RF 12 is replaced by the following:
- “RF 12 Interest paid by approved issuers or transitional residents**
- “When this section applies*
- “(1) This section applies in relation to an amount of non-resident passive income that consists of—** 15
- “(a) interest that—**
- “(i) is paid by an approved issuer under a registered security; and**
 - “(ii) is derived by a person not associated with the approved issuer; and** 20
 - “(iii) is not a payment to which **section RF 12B** applies:**
- “(b) interest that—**
- “(i) is paid by a transitional resident in relation to money borrowed by them while non-resident; and** 25
 - “(ii) is not paid in relation to a business carried on through a fixed establishment in New Zealand; and** 30
 - “(iii) is derived by a person not associated with the transitional resident; and**
 - “(iv) is not a payment to which **section RF 12B** applies.**
- “Zero-rating* 35
- “(2) The rate of NRWT payable on the amount is 0%.**

“Interest paid under registered securities

“(3) For the purposes of the NRWT rules, an amount of interest is paid by an approved issuer under a registered security only if it is treated as paid in respect of a registered security under section 86I of the Stamp and Cheque Duties Act 1971.

5

“Defined in this Act: amount, approved issuer, associated person, business, company, fixed establishment, income, interest, life insurer, New Zealand, non-resident, non-resident passive income, NRWT, NRWT rules, pay, registered security, resident in New Zealand, transitional resident

“Compare: 2004 No 35 s NG 2(1)(b)(i), (ib)

10

“RF 12B Interest derived jointly with residents

“When payment derived jointly with resident

“(1) If a person makes a payment of non-resident passive income that consists of interest derived by 2 or more persons jointly and at least 1 person deriving the interest is a New Zealand resident, the amount of tax for the payment is calculated using the formula—

15

$$\frac{(\text{tax rate} \times (\text{interest paid} + \text{foreign withholding tax}))}{- \text{foreign withholding tax.}}$$

“Definition of items in formula

“(2) In the formula,—

“(a) **tax rate** is the basic rate set out in schedule 1, part D, clause 3 or 4 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

20

“(b) **interest paid** is the amount of interest paid before the amount of tax is determined:

“(c) **foreign withholding tax** is the amount of foreign withholding tax paid or payable on the amount of interest paid.

25

“Treatment as filing taxpayer

“(3) For the purposes of this section, the New Zealand resident referred to in **subsection (1)** is treated as a filing taxpayer.

30

“Defined in this Act: amount, amount of tax, filing taxpayer, foreign withholding tax, interest, New Zealand resident, non-resident passive income, pay

“Compare: 2004 No 35 s NG 2(1)(ab)

**“RF 12C Amount derived from non-resident life insurer
becoming resident**

“When this section applies

- “(1) This section applies when an amount of non-resident passive income is—** 5
- “(a) derived by a life insurer from a company resident in New Zealand; and**
- “(b) treated as income as a result of the granting of the insurer’s application under section EY 49 (Non-resident life insurer becoming resident).** 10

“Zero-rating

- “(2) The rate of NRWT payable on the amount is 0%.**
- “Defined in this Act: amount, company, life insurer, New Zealand, non-resident passive income, NRWT, pay, resident in New Zealand**
- “Compare: 2004 No 35 s NG 2(1)(b)(iii)”.** 15
- (2) Subsection (1) applies for the 2008–09 and later income years.**

395C Credit balance in branch equivalent tax account

- (1) In section RG 5(2), “section RF 2(5) and (6) (Non-resident passive income)” is replaced by “section RG 4”.** 20
- (2) Subsection (1) applies for the 2008–09 and later income years.**

395D Using loss balances

- (1) In section RG 6(3)(a), “section RF 2(5) and (6) (Non-resident passive income)” is replaced by “section RG 4”.** 25
- (2) Subsection (1) applies for the 2008–09 and later income years.**

395E Reduction of payments for conduit tax relief

- (1) In section RG 7(2)(b), “section 32M of the Tax Administration Act 1994” is replaced by “section RG 6”.** 30
- (2) Subsection (1) applies for the 2008–09 and later income years.**

396 Subpart RG repealed

- (1) Subpart RG is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (3) **Subsection (1)** applies for— 5
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

397 Retirement scheme contributors 10

In section RH 4, “An entity is a retirement scheme contributor” is replaced by “An entity may choose to become a retirement scheme contributor”.

398 What this subpart does

- (1) Section RM 1(b) is repealed. 15
- (2) In section RM 1, in the list of defined terms, “foreign dividend” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

399 Refunds for overpaid tax 20

- (1) After section RM 2(1), the following is inserted:
“Refundable credits
 “(1B) An amount of tax under subsection (1) includes an amount of a refundable tax credit to which section LA 5(5) (Treatment of remaining credits) applies.” 25
- (2) In section RM 2, in the list of defined terms, “refundable tax credit” is inserted.

400 Overpayment on income statements

- (1) After section RM 5(1), the following is inserted:
“Refundable credits 30
- “(1B) An amount of tax under subsection (1) includes an amount of a refundable tax credit to which section LA 5(5) (Treatment of remaining credits) applies.”

- (2) In section RM 5, in the list of defined terms, “refundable tax credit” is added.

401 Using refund to satisfy tax liability

- (1A) Section RM 10(1), other than the heading, is replaced by the following: 5
- “(1) This section applies when a person is entitled to a refund of an amount of tax under sections RM 2 and RM 4 to RM 6. Section LB 4 (Tax credits for families) may apply to adjust the amount available.”
- (1) In section RM 10(1), “An amount of tax under this section includes an amount of a refundable tax credit under section LA 5(5) (Treatment of remaining credits).” is added after “RM 6.” 10
- (2) In section RM 10(4), “section LA 7 (Remaining refundable credits: tax credits for families)” is replaced by “**section LA 7** (Remaining refundable credits: tax credits under social policy schemes)” 15
- (3) In section RM 10, in the list of defined terms, “refundable tax credit” is added.
- (4) **Subsection (1A)** applies for the 2008–09 and later income years. 20

401B Operation of PAYE intermediaries’ trust accounts

- (1) In section RP 6(2)(b), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 25
- (2) In section RP 6(3)(b), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (3) In section RP 6(3)(d), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 30
- (4) In section RP 6, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (5) **Subsections (1) to (3)** apply for the 2008–09 and later income years. 35

401C General responsibility of employers

- (1) In section RP 7(3), “the employer’s superannuation contribution on the employee’s behalf” is replaced by “the employer’s superannuation cash contribution made on the employee’s behalf”. 5
- (2) In section RP 7, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (3) **Subsection (1)** applies for the 2008–09 and later income years. 10

402 Information required from employers

After section RP 8(a)(ii), the following is inserted:

- “(iii) the amount of any payroll donations for the pay period; and
 - “(iv) the amount of any tax credit under **section LD 4** (Tax credits for payroll donations); and”.
- 15

402B Employer’s superannuation contributions

- (1) In section RP 11, the section heading is replaced by “**Employer’s superannuation cash contributions**”.
- (2) In section RP 11, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 20
- (3) In section RP 11, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 25

402C General responsibilities of PAYE intermediaries

- (1) In section RP 13(2), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”. 30
- (2) In section RP 13, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (3) **Subsection (1)** applies for the 2008–09 and later income years. 35

403 Collection, payment, and information requirements

After section RP 14(a), the following is inserted:

“(ab) transfer the amount of any payroll donation to the relevant recipient within the period described in **section 24Q** of the Tax Administration Act 1994; and”.

5

404 Tax pooling intermediaries

In section RP 17, “provisional tax.” is replaced by “provisional tax, terminal tax, or an increase in an assessment of tax as described in **section RP 17B(3)**.”

405 New section RP 17B inserted

10

After section RP 17, the following is inserted:

“RP 17B Tax pooling accounts and their use

“Meaning

“(1) A **tax pooling account** means a trust account into which a tax pooling intermediary pays an amount that—

15

“(a) they receive in their role as intermediary from a person liable to pay provisional tax; and

“(b) is a payment for—

“(i) provisional tax;

“(ii) terminal tax;

20

“(iii) an increased amount of tax described in **subsection (3)**;

“Use of funds in tax pooling accounts

“(2) An amount held in a tax pooling account on behalf of a person may be used only to satisfy the person’s liability for income tax, provisional tax, or an increased amount of tax described in **subsection (3)**;

25

“(1) A tax pooling account means a trust account into which a tax pooling intermediary pays an amount that they receive from a person in their role as intermediary.

30

“Use of funds in tax pooling accounts

“(2) An amount held in a tax pooling account on behalf of a person may be refunded, transferred, sold, or used to satisfy a person’s liability for terminal tax, provisional tax, or an increased amount of tax described in **subsection (3)**.

35

“When original liability increased

“(3) For the purposes of this section, an increased amount of tax—

“(a) arises when a person’s previous assessed liability is increased after—

“(i) the Commissioner amends an assessment under section 113 of the Tax Administration Act 1994: 5

“(ii) the Commissioner makes a determination under section 119 of that Act:

“(iii) an assessment is made because the Commissioner or the person is treated under section 89H of that Act as having accepted a proposed adjustment: 10

“(iv) the person makes a voluntary disclosure:

“(v) a dispute between the Commissioner and the person is resolved: 15

“(b) does not include the amount of the previous assessment.

“(b) includes deferrable tax as defined in section 3(1) of the Tax Administration Act 1994 payable by the person:

“(c) does not include the amount of the previous assessment.

“Transfer within 60 days for provisional tax or terminal tax 20

“(4) If a person chooses to use funds in a tax pooling account to satisfy an obligation for provisional tax or terminal tax for a tax year, they must ask the tax pooling intermediary within 60 days from the person’s terminal tax date for the tax year to transfer the amount to the person’s tax account with the Commissioner. 25

“Transfer within 60 days for increased amounts

“(5) If a person chooses to use funds in a tax pooling account to satisfy an obligation for an increased amount of tax, they must ask the tax pooling intermediary within 60 days from the date on which the Commissioner issues the notice of assessment increasing the amount to transfer the amount to the person’s tax account with the Commissioner. 30

“Transfer within 60 days for provisional tax or terminal tax

“(4) If a person chooses to use funds in a tax pooling account to satisfy an obligation for provisional tax or terminal tax for a tax year, the tax pooling intermediary must ask the Commissioner within 60 days from the person’s terminal tax date for the tax 35

year to transfer the amount to the person's tax account with the Commissioner.

"Transfer within 60 days for increased amounts"

- "(5) If a person chooses to use funds in a tax pooling account to satisfy an obligation for an increased amount of tax under **subsection (3)(a)**, the tax pooling intermediary must ask the Commissioner within 60 days from the date on which the Commissioner issues the notice of assessment increasing the amount to transfer the amount to the person's tax account with the Commissioner.

"Transfer within 60 days for deferrable tax"

- "(6) If a person chooses to use funds in a tax pooling account to satisfy an obligation for deferrable tax under **subsection (3)(b)**, the tax pooling intermediary must ask the Commissioner within 60 days from the date on which the court proceedings are finally determined to transfer the amount to the person's tax account with the Commissioner. For the purposes of this subsection, court proceedings include proceedings before the Taxation Review Authority.

"Defined in this Act: amount, amount of tax, assessment, Commissioner, notice, pay, provisional tax, tax account with the Commissioner, tax pooling account, terminal tax".

406 Deposits in tax pooling accounts

- (1) In section RP 18(2)(c), "person." is replaced by "person:" and the following is added:

~~"(d) transferred at the person's request to another intermediary:~~

"(d) transferred at the person's request to another intermediary:

"(e) transferred at the intermediary's request to another intermediary."

- (2) After section RP 18(2), the following is inserted:

"Effective date"

- "(2B) For the purposes of this section and sections RP 17B and RP 19, a deposit that is transferred between intermediaries under **subsection (2)(d) or (e)** retains its pre-transfer date."

- (3) Section RP 18(4) is replaced by the following:

“Confirming receipt of deposit and details

“(4) On receiving the deposit and details described in subsection (3), the Commissioner must provide confirmation of receipt.”

407 Transfers from tax pooling accounts

(1) Section RP 19(1) is replaced by the following: 5

“Transferring amounts

~~“(1) A tax pooling intermediary may ask the Commissioner to transfer an amount in their tax pooling account to the tax account of a person who is their client:~~

“(1) A tax pooling intermediary may ask the Commissioner to transfer an amount in their tax pooling account to the tax account of a person who is their client or to another intermediary. 10

“Treatment of transferred amounts

“(1B) An amount transferred and credited to the tax account of a person is treated as follows: 15

“(a) for an amount credited on or before the person’s terminal tax date for a tax year, as income tax paid to meet a provisional tax obligation under the provisional tax rules: 20

“(b) for an amount credited after the person’s terminal tax date for a tax year,—

“(i) first, as applied under section 120F of the Tax Administration Act 1994 to pay interest that the person is liable to pay; and 25

“(ii) secondly, as income tax paid to meet the person’s provisional tax obligation.”

(1B) In section RP 19(2), “the person’s tax account” is replaced by “the person’s tax account or the account of another intermediary”. 30

(2) Section RP 19(3), other than the heading, is replaced by the following:

“(3) The credit date for an amount transferred to a person’s tax account is—

~~“(a) for a request made within the 60-day period referred to in section RP 17B(4) or (5); the date sought under subsection (2); or~~ 35

- “(a) for a request made within the 60-day period referred to in **section RP 17B(4) to (6)**, the date sought under subsection (2); or
“(b) for any other case, the date on which the Commissioner receives the request for the transfer.”

5

407B Standard method: 2008–09 and 2009–10 income years

- (1) In section RZ 3(3), “the preceding tax year” is replaced by “the tax year before the preceding tax year”.
(2) **Subsection (1)** applies for the 2008–09 and later income years.

10

407C GST ratio method: 2008–09 and 2009–10 income years

- (1) In section RZ 4(1)(c), “2007–08 income year” is replaced by “2007–08 income year or an earlier income year”.
(2) **Subsection (1)** applies for the 2008–09 and later income years.

15

408 Definitions

- (1) This section amends section YA 1.
 (2) The definition of **1973 version provisions** is repealed.
 (3) The definition of **1988 version provisions** is repealed.
 (4) The definition of **1990 version provisions** is repealed.
 (5) After the definition of **accident insurance contract**, the following is inserted:

20

~~“**accommodation** is defined in **section CE 1(2)** (Amounts derived in connection with employment) for the purposes of that section~~

25

“**accommodation** is defined in **section CE 1(2)** (Amounts derived in connection with employment) for the purposes of that section and **section CX 28** (Accommodation)”.

- (6) In the definition of **actuarial reserves**, “section EY 3” is replaced by “**section EZ 59**”.

30

- (7) Before the definition of **actuary**, the following is inserted:

~~“**actuarially determined**, for an amount and a person,—~~

- ~~“(a) means a requirement that is met when an actuary has—~~
~~“(i) calculated the amount:~~

- “(ii) certified that the amount is calculated no later than the last day for furnishing the return of income to which the amount relates:
- “(iii) provided to the Commissioner in writing, in the form prescribed by the Commissioner, if any, all assumptions, methodologies, bases and working calculations necessary to support the calculation of the amount: 5
- “(b) does not include when the calculation of the amount—
- “(i) does not accurately reflect the person’s business experience: 10
- “(ii) is not made according to usual business practice:
- “(iii) is, or is part of, a tax avoidance arrangement”.
- (7) Before the definition of **actuary**, the following is inserted: 15
- “**actuarially determined**, for an amount, means a requirement that is met when an actuary has calculated the amount using relevant actuarial standards and a proper and reasonable calculation methodology”.
- (8) The definition of **after-income tax earnings** is repealed.
- (9) The definition of **after-income tax loss** is repealed. 20
- (9B) In the definition of **agricultural, horticultural, or viticultural company**, “schedule 4, part C” is replaced by “schedule 4, part C, clause 1(b)”. 30
- (10) After the definition of **approved issuer**, the following is inserted: 25
- “**arm’s length amount**, for an arrangement that is a cross-border arrangement under section GC 6 (Purpose of rules and nature of arrangements) means an arm’s length amount of consideration under section GC 13 (Calculation of arm’s length amounts)”.
- (11) After the definition of **asset**, the following is inserted:
- “**asset base** means the asset base for a profit participation policy, described in **paragraph (a)** of the definition of **profit participation policy**
- “**asset base** means a segregated or identifiable group of assets or proportion of a group of assets attributable to profit participation policies”. 35

- (12) The definition of **associated, associated person, person associated** is replaced by the following:
“**associated, associated person, person associated**, and other expressions indicating the association of persons with each other are defined in **sections YB 1 to YB 16** (which relate to associated persons)”.
- (13) After the definition of **associated mining operations**, the following is inserted:
“**associated non-attributing active CFC**, for a CFC, means a person who is—
“(a) associated with the CFC under section YB 2 (Two companies with common control); and
“(b) subject with the CFC to the laws of the same country or territory under which, for each company,—
“(i) the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management;
“(ii) persons holding income interests in the company are liable for the income tax on its income and the country or territory is the source of 80% or more of that income; and
“(b) subject with the CFC to the laws of the same country or territory under which each company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and
“(c) a non-attributing active CFC”.
- (14) In the definition of **associated non-attributing active CFC**, **paragraph (a)** is replaced by the following:
“(a) associated with the CFC under **section YB 2** (Two companies); and”.
- (15) After the definition of **association rebate**, the following is inserted:
“**attributable CFC amount** is defined in **section EX 20B** (Attributable CFC amount)”.
- (16) After the definition of **attributed CFC net loss**, the following are inserted:

- “**attributed PIE income** means an amount of income attributed by a multi-rate PIE to an investor in the PIE under **section HM 36** (Calculating amounts attributed to investors) “**attributed PIE loss** means an amount of loss attributed by a multi-rate PIE to an investor in the PIE under **section HM 36** (Calculating amounts attributed to investors)”.
- (17) After the definition of **attributing interest**, the following is inserted:
- “**attribution period**, for a multi-rate PIE, means a period described in **section HM 34** (Attribution periods)”.
- (18) After the definition of **benefit**, the following is inserted:
- “**benefit fund PIE** means a defined benefit fund that—
- “(a) meets the requirements of **section HM 7** (Requirements); and
- “(b) ~~does not attribute amounts to investors~~
- “(b) chooses to become a PIE under **section HM 70** (Choosing to become PIE); and
- “(c) has not chosen to cancel PIE status under **section HM 29** (Choosing to cancel status); and
- “(d) does not attribute amounts to investors”.
- (19) After the definition of **benefit fund PIE**, the following is inserted:
- “**best estimate assumptions** means assumptions about the future that—
- “(a) are actuarially determined; and
- “(b) are made using professional judgement, training and experience; and
- “(c) are not deliberately overstated or understated”.
- (19B) After the definition of **bonus issue in lieu**, the following is inserted:
- “**boutique investor class**, for a portfolio investment entity, means an investor class of the entity if—
- “(a) the class does not have 20 or more members; and
- “(b) the entity has 1 or more other investor classes that include 20 or more persons; and
- “(c) no investor in the class described in **paragraph (a)**, other than the manager or trustee of the entity, can control investment decisions relating to the class; and

- “(d) the interests of investors in all investor classes described in **paragraph (a)** of the entity add up to less than 10% of the total value of interests in the entity”.
- (20) In the definition of **branch equivalent income**, “as that provision read immediately before being amended by **section 122** of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008**” is added. 5
- (21) In the definition of **branch equivalent loss**, “as that provision read immediately before being amended by **section 122** of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008**” is added. 10
- (22) After the definition of **calculation method**, the following is inserted:
- “**calculation period**, for a multi-rate PIE, means a period in which the entity calculates an amount under **section HM 47** (Calculation of tax liability or tax credit of multi-rate PIEs) that— 15
- “(a) consists of 1 or more attribution periods:
- “(b) for a calculation under the quarterly calculation option, is a quarter: 20
- “(c) for a calculation under the exit calculation or provisional tax calculation options, is an income year:
- “(d) for a calculation under the exit calculation option when an exit period arises, is the exit period”.
- (22B) In the definition of **cancellation**, “including on the liquidation of the company” is replaced by “including on the liquidation of a company, and when a stapled debt security ceases to be a share”. 25
- (23) In the definition of **charitable or other public benefit gift**, “subpart LD (Tax credits for charitable or other public benefit gifts)” is replaced by “sections LD 1 to LD 3 (which relate to tax credits for charitable or other public benefit gifts)”. 30
- (23B) After the definition of **class**, the following is inserted:
- “**class of policies** means life insurance policies that have substantially the same terms and conditions, and that are priced by the life insurer using substantially the same assumptions”. 35
- (23C) In the definition of **consideration**, before paragraph (a), the following is inserted:

- “(aa) includes the amount owing under a stapled debt security when the security ceases to be a share, in section CD 43 (Available subscribed capital (ASC) amount):”.
- (23D) In the definition of **consolidated FDPA group**, “**consolidated FDPA group**” is replaced by “**consolidated FDP group**”. 5
- (24) In the definition of **continuity provisions**, paragraph (i) is replaced by the following:
- ~~“(i) section OE 10 (which relates to BETA credits for loss of shareholder continuity); and~~ 10
- “(i) section OE 10 (BETA credit for loss of shareholder continuity); and”.
- (25) The definition of **control** is repealed.
- (26) ~~After the definition of **controlling shareholder**, the following is inserted:~~ 15
- ~~“**convert**, for a New Zealand emissions unit, means the transfer of the emissions unit to an account in the Registry established by the Climate Change Response Act 2002 used for the purpose of converting New Zealand emissions units into Kyoto emissions units”.~~ 20
- (26) The definition of **convert** is replaced by the following:
- “**convert**, for a New Zealand emissions unit, means convert as defined in section 4(1) of the Climate Change Response Act 2002”.
- (26B) After the definition of **counted associate**, the following is inserted: 25
- “**cover review period** is defined in **section EY 30** (Transitional adjustments: life risk)”.
- (27) In the definition of **credit account continuity provisions**, paragraph (c) is replaced by the following: 30
- ~~“(c) section OE 10 (which relates to BETA credits for loss of shareholder continuity)~~
- “(c) section OE 10 (BETA credit for loss of shareholder continuity)”.
- (27B) After the definition of **credit account continuity provisions**, the following is inserted: 35
- “**credit card repayment insurance** is defined in **section EY 30** (Transitional adjustments: life risk)”.

- (28) In the definition of **creditable membership**, after subparagraph (b)(i), the following is inserted:
- “(ib) the period beginning on the day which the Commissioner nominates when requested by the person, in circumstances where, due to matters outside the control of the person, the first deduction of KiwiSaver contributions was delayed, and ending on the day on which securities are first allotted by the KiwiSaver scheme for the person:”.
- (28) In the definition of **creditable membership**,—
- (a) in paragraph (b)(i), “first received” is replaced by “a contribution for the person is first received”:
- (b) after paragraph (b)(i), the following is inserted:
- “(ib) the period beginning on the day which the Commissioner nominates when requested by the person, in circumstances where, due to matters outside the control of the person, the first deduction of KiwiSaver contributions was delayed, and ending on the day on which securities are first allotted by the KiwiSaver scheme for the person:”.
- (29) The definition of **current accounting year** is repealed.
- (29B) After the definition of **debenture holder**, the following is inserted:
- “**debt security** is defined in **section FA 2B(4)** (Stapled debt securities)”.
- (30) After the definition of **debenture holder**, the following is inserted:
- “**deductible foreign equity distribution** means a distribution by a foreign company to a company, in relation to a share in the foreign company that is not a fixed-rate foreign equity,—
- “(a) for which a deduction is allowed in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the foreign company:
- “(b) sourced directly or indirectly out of an amount paid to the foreign company from another company if—
- “(i) the foreign company is not liable for income tax imposed by a country or territory other than New

~~Zealand on the amount paid to the foreign company; and~~

- ~~“(ii) the other company is allowed a deduction, in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the other company, for the amount paid to the foreign company”.~~ 5

(30) After the definition of **debt security**, the following is inserted:

“deductible foreign equity distribution means a distribution by a foreign company to a company, in relation to a share in the foreign company,— 10

“(a) for which a deduction is allowed in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the foreign company or on the income of a company in the same group as the foreign company: 15

“(b) sourced directly or indirectly out of an amount paid to the foreign company in relation to a financial arrangement or share by another company if—

“(i) the foreign company is not liable for income tax imposed by a country or territory other than New Zealand on the amount paid to the foreign company; and 20

“(ii) the other company is allowed a deduction, in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the other company, for the amount paid to the foreign company”. 25

(31) The definition of **derivative instrument** is replaced by the following: 30

“derivative instrument means a derivative as defined in NZIAS 39”.

(32) The definition of **direct income interest** is replaced by the following:

“direct income interest— 35

“(a) is defined in section EX 9 (Direct income interests) except for the FIF rules:

- “(b) is defined in section EX 30 (Direct income interests in FIFs) for the FIF rules”.
- (33) In the definition of **dividend**, paragraph (a) is replaced by the following:
- “(a) is defined in sections CD 3 to CD 20 (which relate to income from equity) for the purposes of this Act, except for the definition of **investment society dividend**.”.
- (34) In the definition of **dividend**, paragraph (c)(ii) is replaced by the following:
- “(ii) includes an amount paid to a shareholder that is a company and a person associated with the company paying the amount, if the amount is excluded from dividend treatment generally only as a result of sections CD 26(2)(b) (Capital distributions on liquidation or emigration) and CD 44; and”.
- (35) In the definition of **dividend**, paragraph (d)(i) is replaced by the following:
- “(i) includes an amount paid to a shareholder that is a company and a person associated with the company paying the amount, if the amount is excluded from dividend treatment generally only as a result of sections CD 26(2)(b) and CD 44; and”.
- (35) In the definition of **dividend**,—
- (a) paragraph (c)(ii) is replaced by the following:
- “(ii) includes an amount paid to a shareholder that is a company and a person associated with the company paying the amount, if the amount is excluded from dividend treatment generally only as a result of sections CD 26(2)(b) (Capital distributions on liquidation or emigration) and CD 44; and”.
- (b) paragraph (d)(i) is replaced by the following:
- “(i) includes an amount paid to a shareholder that is a company and a person associated with the company paying the amount, if the amount is excluded from dividend treatment generally only as a result of sections CD 26(2)(b) and CD 44; and”.

(35B) After the definition of **dividend treated as interest**, the following is inserted:

“**donee organisation** means an entity described in section LD 3(2) (Meaning of charitable or other public benefit gift) or listed in schedule 32 (Recipients of charitable or other public benefit gifts)”. 5

(35C) After the definition of **early balance date**, the following is inserted:

“**early life regime application day** means, for a life insurer that chooses to apply the new life insurance rules, as provided in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009, for an income year that includes 1 July 2010, the first day of that income year”. 10

(36) After the definition of **emigrating company**, the following is inserted: 15

“**emissions unit** means—

“(a) a New Zealand unit:

“(b) a Kyoto unit:

“(c) a unit issued by an overseas registry that is prescribed under the Climate Change Response Act 2002 as a unit that may be transferred to accounts in the Registry under that Act”. 20

(36) After the definition of **emigrating company**, the following is inserted:

“**emissions unit** means a unit as defined in section 4(1) of the Climate Change Response Act 2002”. 25

(36B) In the definition of **employee**, in paragraph (b), “sections CW 17 (Expenditure on account, and reimbursement, of employees) and CW 18 (Allowance for additional transport costs)” is replaced by “sections CW 17, **CW 17B**, **CW 17C**, and CW 18 (which relate to expenditure, reimbursement, and allowances of employees)” 30

(37) In the definition of **employee**, paragraph (c)(i) is replaced by the following:

“(i) a payment referred to in section RD 5(1)(b)(iii), (3), (6)(b) and (c), and (7) (Salary or wages):”. 35

- (37B) In the definition of **employee**, in paragraph (c)(ii), “schedule 4 (Rates of tax for schedular payments)” is replaced by “schedule 4, parts A and I (Rates of tax for schedular payments)”.
- (37C) In the definition of **employee’s superannuation accumulation**, paragraph (a) is replaced by the following: 5
“(a) employer’s superannuation cash contributions:”
- (37D) In the definition of **employer**,—
 (a) paragraph (c)(i) is replaced by the following:
“(i) a payment referred to in section RD 5(1)(b)(iii), (3), (6)(b) and (c), and (7) (Salary or wages):” 10
 (b) in paragraph (c)(ii), “schedule 4 (Rates of tax for schedular payments)” is replaced by “schedule 4, parts A and I (Rates of tax for schedular payments)”.
- (38) In the definition of **employer monthly schedule**, paragraph (e) is replaced by the following: 15
“(e) for each employee in the month to which the schedule relates,—
“(i) the amount of gross earnings:
“(ii) the total amount of tax withheld:
“(iii) the total amount of payroll donations: 20
“(iv) the total amount of tax credits under **section LD 4** (Tax credits for payroll donations):
“(v) the amount of earnings not liable to the earner premium; and”
- (38B) In the definition of **employer monthly schedule**, paragraph (h) is replaced by the following: 25
“(h) for each employee in the month to which the schedule relates, if applicable, the amount of employer’s superannuation cash contributions, less any ESCT payable under the ESCT rules; and” 30
- (38C) In the definition of **employer-sourced superannuation savings**,—
 (a) in paragraph (a), “employer’s superannuation contributions” is replaced by “employer’s superannuation cash contributions under section RA 5(1)(c) (Tax obligations for employment-related taxes)” 35
 (b) in paragraph (c),—
 (i) “that is, employer’s superannuation contributions” is replaced by “that is, employer’s

- superannuation cash contributions under section RA 5(1)(c)”:
- (ii) “the employer’s superannuation contributions” is replaced by “those employer’s superannuation cash contributions”. 5
- (38D) After the definition of **employer-sourced superannuation savings**, the following is inserted:
“**employer sponsored group policy** is defined in **section EY 30** (Transitional adjustments: life risk)”.
- (38E) The definition of **employer’s superannuation contribution** is replaced by the following: 10
“**employer’s superannuation cash contribution** is defined in section RD 65(1) (Employer’s superannuation cash contributions)
“**employer’s superannuation contribution** means a superannuation contribution made by an employer for the benefit of 1 or more of their employees”. 15
- (38F) The definition of **ESCT** is replaced by the following:
“**ESCT**—
“(a) means employer’s superannuation contribution tax; and 20
“(b) relates to an employer’s superannuation cash contribution; and
“(c) refers to an amount payable as income tax under the ESCT rules”.
- (38G) In the definition of **ESCT rate threshold amount**, the words before paragraph (a) are replaced by the following: 25
“**ESCT rate threshold amount**, for an employer’s superannuation cash contribution, means—”.
- (38H) The definition of **ETS unit** is repealed.
- (39) After the definition of **excess debt entity**, the following is inserted: 30
“**excess debt outbound company** is defined in **section FE 4** (Some definitions) for the purposes of subpart FE (Interest apportionment)”.
- (40) In the definition of **excluded ancillary tax**, paragraph (d) is repealed. 35

- (40B) In the definition of **excluded fixed rate security**, “substituting debenture” is replaced by “substituting debenture or stapled debt security”.
- (40C) After the definition of **excluded option**, the following is inserted: 5
“**excluded preference share** is defined in **section YC 18B** (Corporate reorganisations not affecting economic ownership) for the purposes of that section”.
- (40D) After the definition of **exemption certificate**, the following is inserted: 10
“**existing business** is defined in **section EY 28** (Shareholder base other profit: profit participation policies that are existing business) for the purposes of that section and **section EY 29** (Shareholder base other profit: profit participation policies that are new business)”. 15
- (41) After the definition of **existing privilege**, the following are inserted:
“**exit level**, for a multi-rate PIE, means the relationship of the entity’s tax liability to the value of the investor’s interest described in **section HM 61** (Exit levels for investors) 20
“**exit period**, for an investor in a multi-rate PIE, means a period set out in **section HM 62** (Exit periods)”.
- (41B) Before the definition of **expenditure**, the following is inserted:
“**expected life risk proportion** is defined in **section EY 25** 25
(Premium smoothing reserving amount: non-participation policies not annuities) for the purposes of that section ”.
- (42) The definition of **fair dividend rate method** is replaced by the following:
“**fair dividend rate method** means the method of calculating 30
FIF income or FIF loss under sections EX 52 (Fair dividend rate method: usual method) and EX 53 (Fair dividend rate method for unit-valuing funds and others by choice)”.
- (43) The definition of **FDP rules** is replaced by the following:
“**FDP rules** means— 35
“(a) section GB 41 (FDPA arrangements for carrying amounts forward):

- “(b) sections LF 1, LF 5, and LF 8 to LF 10 (which relate to tax credits for FDP credits):
- “(c) subpart OC (Foreign dividend payment accounts (FDPA)):
- “(d) section YA 2(2)(d) to (f) (Meaning of income tax varied)”.
- (44) After the definition of **financial arrangements rules**, the following is inserted:
 “**financial asset** has the same meaning as in NZIAS 32”.
- (45) After the definition of **financial assistance**, the following is inserted:
 “**financial risk** is defined in section EY 12 (Meaning of life reinsurance)”.
- (46) The definition of **financial statements** is replaced by the following:
 “**financial statements** is defined in section 8 of the Financial Reporting Act 1993, but the references in the definition to an entity and to a reporting entity are to be read as references to a person”.
- (47) The definition of **first tracking date** is repealed.
- (48) After the definition of **fixed principal financial arrangement**, the following is inserted:
 “**fixed-rate foreign equity** means an interest (the **equity**) in the capital of a foreign company held by a company (the **holder**) in relation to which the foreign company makes distributions—
 “(a) at a rate that is a specific fixed percentage of the amount subscribed for the issue of the equity; or
 “(b) at a rate that—
 “(i) is a percentage of the amount subscribed for the issue of the equity; and
 “(ii) has a fixed relationship to economic, commodity, industrial, or financial indices, to banking rates of interest, or to general commercial rates of interest; or
 “(c) at a rate that would be given by **paragraph (a) or (b)** but for variations due to—
 “(i) a fixed relationship to a rate of income tax:

- “(ii) compensation to the holder for default by the foreign company:
- “(iii) compensation to the holder for expenditure or loss related to the holding of the equity and suffered by the holder or by a person associated with the holder; or 5
- “(d) equivalent to the payment of interest for money lent, having regard to—
 - “(i) whether or not the equity is redeemable:
 - “(ii) any security provided to the holder, including put or call options over the equity or an amount payable determined by reference to the amount of distributions payable: 10
 - “(iii) the variability or lack of variability of the distributions payable”. 15
- (49) ~~In the definition of **fixed-rate share**, in paragraph (d)(iii), “subparagraphs (i) and (ii):” is replaced by “subparagraphs (i) and (ii)” and paragraph (e) is repealed.~~
- (49) In the definition of **fixed-rate share**,—
 - (a) in paragraph (e), “equity)” is replaced by “equity):”, and the following is added: 20
 - “(f) in **section FA 2B** (Stapled debt securities), this paragraph, and the definitions of **proportional-stapling company** and **stapled debt security**, means—
 - “(i) a share described in paragraph (a): 25
 - “(ii) a share that would be a share described in paragraph (a) but for any dividend or variation in the rate of dividend that may occur due to a gain arising when the share is converted into another share (the **other share**), if that gain is attributable solely to— 30
 - “(A) a change in value of the other share in a period, and that period finishes when the share is converted, starts not more than 30 days before when the share is converted, and was a term or condition of the share when the share was first issued: 35
 - “(B) a term or condition of the share that was a term or condition when the share was

- first issued, and that term or condition set, for the gain, a fixed percentage equal to 5%, or a lesser percentage, of the amount subscribed for the share:
- “(iii) a share for which the dividend payable is the equivalent of the payment of interest for money lent having regard to the factors in **paragraph (g)**: 5
- “(g) for the purposes of **paragraph (f)(iii)**, the factors are—
- “(i) whether or not the share is redeemable: 10
- “(ii) any security provided to the shareholder, including put or call options over the share or any amount payable determined by reference to the amount of dividend payable:
- “(iii) the variability or lack of variability of the dividend payable”: 15
- (b) paragraph (e) is repealed.
- (50) The definition of **foreign dividend** is repealed.
- (51) The definition of **foreign dividend company** is repealed.
- (52) The definition of **foreign dividend company net earnings** is 20
repealed.
- (53) The definition of **foreign group** is repealed.
- (54) After the definition of **foreign non-dividend income**, the following is inserted:
- “**foreign PIE equivalent** is defined in **section HM 3** (Foreign 25
PIE equivalents)”.
- (55) ~~After the definition of **foreign withholding tax**, the following is inserted:~~
- “**forest land emissions unit** means a pre-1990 forest land emissions unit or a post-1989 forest land emissions unit”. 30
- (55) The definition of **forest land unit** is replaced by the following:
- “**forest land emissions unit** means a pre-1990 forest land emissions unit or a post-1989 forest land emissions unit”.
- (56) After the definition of **forestry company**, the following is inserted: 35
- “**formation loss**, for a PIE, means an amount of tax loss or a loss balance arising from a period before the entity became a

PIE as described in **sections HM 65 to HM 69** (which relate to the treatment of formation losses)”.

(56B) After the definition of **fully credited for conduit tax relief**, the following is inserted:

“**fully imputed**,—

“(a) for the purposes of sections CB 26, EX 20B, RF 8, and RF 10 (which relate to distributions by PIEs and certain dividends), means the amount calculated under section RF 9(2) (When dividends fully imputed or fully credited):

“(b) for the purposes of sections CW 15, HA 14, HA 16, HA 19 (which relate to dividends paid by qualifying companies), means the amount calculated under section HA 15(2) (Fully imputed distributions)”.

(57) After the definition of **general insurance**, the following is inserted:

“**general insurance contract** has the meaning given in IFRS 4”.

(58) After the definition of **goods**, the following is inserted:

“**government screen production payment** means a payment that—

“(a) is in the nature of a large budget screen production grant or New Zealand screen production incentive; and

“(b) is authorised by the New Zealand Film Commission in relation to a company that—

“(i) is resident in New Zealand:

“(ii) has a permanent establishment in New Zealand”.

(58B) After the definition of **grandparented consolidated company**, the following is inserted:

“**grandparenting start day** is defined in **section EY 30** (Transitional adjustments: life risk)”.

(59) The definition of **grey list company** is replaced by the following:

“**grey list company** means a company that is resident under section YD 3 (Country of residence of foreign companies) in a grey list country if either—

“(a) the company is liable in the country to income tax on the company’s income because the company—

- “(i) is domiciled in the country:
- “(ii) is resident in the country:
- “(iii) is incorporated in the country:
- “(iv) has its place of management in the country:
- “(b) the company is organised under the laws of the country 5
and the country—
- “(i) imposes on persons holding income interests in
the company the liability for income tax on the
company’s income; and
- “(ii) under the laws of the country, is the source of 10
80% or more of the income of the company”.
- (60) The definition of **grey list dividend** is repealed.
- (60B) After the definition of **group investment fund**, the following
is inserted:
- “**group life master policy** is defined in **section EY 30** (Tran- 15
sitional adjustments: life risk)”.
- (61) In the definition of **holding company**, paragraph (a) is re-
placed by the following:
- “(a) for a forestry company, means a company associated 20
with the forestry company.”.
- (62) After the definition of **home vendor mortgage**, the following
is inserted:
- “**honorarium** is defined in **section CW 62B** (Voluntary ac-
tivities) for the purposes of that section and schedule 4, part B
(Rates of tax for schedular payments)”. 25
- (63) After the definition of **IFRS**, the following is inserted:
- “**IFRS 4** means the IFRS, numbered 4, that relates to insurance
contracts”.
- (64) After the definition of **IFRS 4**, the following is inserted:
- “**IFRSE** means an International Financial Reporting Standard 30
approved by the International Accounting Standards Board, as
amended from time to time”.
- (64B) In the definition of **income from employment**, the following
is added:
- “(d) in section DA 2(4), includes excluded income derived 35
by a person from employment”.

- (65) In the definition of **income interest**, in paragraph (b), “subpart OE” is replaced by “subparts FE (Interest apportionment on thin capitalisation) and OE”.
- (66) In the definition of **income tax liability**, paragraph (a)(ii) is replaced by the following: 5
 “(ii) income tax for the person and a tax year calculated under **subpart HM** (Portfolio investment entities), if the person is a multi-rate PIE; and”.
- (67) In the definition of **international tax rules**, paragraph (a)(xiii) is replaced by the following: 10
 “(xiii) section YA 2 (Meaning of income tax varied):”.
- (67B) In the definition of **international tax rules**, paragraph (a)(xiv) and (xv) are replaced by the following:
 “(xiv) the provisions of subpart YB (Associated persons and nominees) that apply for the purposes 15
 of the 1988 version provisions (which relate to the definition of associated persons):”.
- (68) ~~In the definition of **international tax rules**, paragraph (a)(xiv) is replaced by the following:~~
 “(xiv) subpart YB (Associated persons and nominees):”.
- (68) In the definition of **international tax rules**, paragraph (a)(xiv) is repealed. 20
- (68B) In the definition of **international tax rules**, paragraph (b) is repealed. 25
- (69) In the definition of **investor**, paragraph (b) is replaced by the following:
 “(b) for a portfolio investment entity, is defined in **section HM 4** (Who is an investor?)”.
- (70) After the definition of **investor**, the following are inserted: 30
 “**investor class**, for a portfolio investment entity, is defined in **section HM 5** (What is an investor class?)
 “**investor interest**, for an investor in a portfolio investment entity, means an interest in the entity that gives the holder an entitlement to a distribution of proceeds from the entity’s investments”.
- (70B) After the definition of **joint venture agreement**, the following is inserted: 35

- “jurisdictional attributed income is defined in **section IQ 2B(9)** (Attributed CFC net loss from tax year before first affected year) for the purposes of that section and **section LK 5B** (Credits from tax year before first affected year)
- “jurisdictional BE income is defined in **section IQ 2B(9)** (Attributed CFC net loss from tax year before first affected year) for the purposes of that section and **section LK 5B** (Credits from tax year before first affected year) 5
- “jurisdictional income ratio is defined in **section IQ 2B(9)** (Attributed CFC net loss from tax year before first affected year) for the purposes of that section and **section LK 5B** (Credits from tax year before first affected year)”. 10
- (71) After the definition of **KiwiSaver scheme**, the following is inserted:
- “**Kyoto emissions unit** means an emissions unit specified in accordance with the Protocol referred to in the Climate Change Response Act 2002”. 15
- (71) The definition of **Kyoto unit** is replaced by the following:
- “**Kyoto emissions unit** means an emissions unit that is a New Zealand unit as defined in section YA 1 (Definitions)”. 20
- (72) After the definition of **land**, the following is inserted:
- “land investment company** means a company that, in a tax year,—
- “(a) is not a portfolio investment entity:
- “(b) on 80% or more of the days in the tax year on which the company has assets of more than \$100,000, 90% of those assets consist of land or shares in a company that meets the description of this definition, and meet the requirements of **section HM 12** (Income sources) 25
- “(b) on 80% or more of the days in the tax year on which the company has property with a market value of more than \$100,000, 90% of that property consists of land or shares in a company that meets the description of this definition, and meets the requirements of **section HM 12** (Income sources) 30
- “land loss** is defined in **section HM 64(3)** (Use of land losses of investor classes) for the purposes of that section”.
- (73) After the definition of **land loss**, the following is inserted:

- “**land provisions** means the following provisions:
- “(a) sections CB 7 to CB 11 (which relate to certain land transactions), except CB 8 (Disposal: land used for landfill, if notice of election):
 - “(b) section CB 15 (Transactions between associated persons):
 - “(c) sections FB 3 to FB 5 (which relate to the transfer of land on a settlement of relationship property)”.
- (74) The definition of **large budget screen production grant** is repealed. 10
- (74B) In the definition of **lease**, in paragraph (f)(i), “paragraph (c)” is replaced by “paragraph (d)”.
- (75) After the definition of **licence-specific assets**, the following is inserted:
- “**life financial reinsurance** is defined in section EY 12 (Meaning of life reinsurance)”.
- (76) After the definition of **life financial reinsurance**, the following is inserted:
- “**life fund PIE** means a separate identifiable fund forming part of a life insurer that—
- “(a) meets the requirements of **section HM 7** (Requirements); and
 - “(b) ~~holds investment subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund~~ 25
 - “(b) chooses to become a PIE under **section HM 70** (Choosing to become PIE); and
 - “(c) has not chosen to cancel PIE status under **section HM 29** (Choosing to cancel status); and
 - “(d) holds investment subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund”. 30
- (77) After the definition of **life reinsurer**, the following is inserted:
- “**life risk** means an actuarially determined risk contingent on human life”. 35
- (77B) Before the definition of **limitation rule**, the following is inserted:

“life risk component—**“(a) means—**

“(i) for a premium paid under a life insurance policy, the amount of the premium that gives rise to income derived by the life insurer for providing services, including the bearing of life risk: 5

“(ii) for a claim payable under a life insurance policy, the amount of the claim that gives rise to deductions for the life insurer for providing services, including the bearing of life risk: 10

“(b) does not include an amount that is a savings component”.

(78) The definition of **limited partnership net deduction** is replaced by the following:

“limited partnership deduction is defined in section HG 11(12) (Limitations on deductions by partners in limited partnerships) for the purposes of that section”.

(78B) After the definition of **limited-recourse loan**, the following is inserted:

“lines trust means a trustee of a trust that— 20

“(a) has had shares allocated or transferred to or vested in it, being shares in—

“(i) an energy company as defined in section 2(1) of the Energy Companies Act 1992 under an approved establishment plan under that Act: 25

“(ii) a company under section 76 of the Energy Companies Act 1992:

“(iii) a company to which have been transferred assets and liabilities of the Crown under section 16 of the Southland Electricity Act 1993; and 30

“(b) continues to hold shares described in paragraph (a)”.

(79) After the definition of **listed PAYE intermediary**, the following is inserted:

“listed PIE means a company that—

“(a) is listed on a recognised exchange in New Zealand or meets the requirements of section HM 18 (Requirements for listed PIEs: unlisted companies); and 35

- “(b) meets the requirements of **section HM 7** (Requirements); and
- “(c) ~~is not a life fund PIE~~
- “(c) chooses to become a PIE under **section HM 70** (Choosing to become PIE); and 5
- “(d) has not chosen to cancel PIE status under **section HM 29** (Choosing to cancel status); and
- “(e) is not a life fund PIE; and
- “(f) has not chosen under **section HM 2(3)** (What is a portfolio investment entity?) to become a multi-rate PIE”. 10
- (80) In the definition of **loan**, in paragraph (b), “and subpart LL (Underlying foreign tax credits (UFTC)),” is omitted.
- (80B) In the definition of **market value circumstance**, paragraph (a)(ii), “applies” is replaced by “or **FA 2B** (Stapled debt securities) applies”. 15
- (80C) In the definition of **member credit contribution**,—
- (a) paragraph (a)(i) is replaced by the following:
- “(i) an employer’s superannuation cash contribution made for the person.”:
- (b) after paragraph (a)(ii), the following is inserted: 20
- “(iib) Crown contribution (as that term is defined in the KiwiSaver Act 2006) for the person.”:
- (c) paragraph (b) is replaced by the following:
- “(b) an amount received and held for the person by the Commissioner that is an amount to which section 73, 74, or 75 of the KiwiSaver Act 2006 applies, other than— 25
- “(i) an employer’s superannuation cash contribution made for the person:
- “(ii) an amount received and held by the Commissioner but not paid to the provider of the person’s KiwiSaver scheme in the relevant member credit year unless the amount has not been paid because of the person’s death or because of a refund under section 113 of the KiwiSaver Act 2006”. 30
- (81) The definitions of **mortality profit** and **mortality profit formula** are repealed. 35
- (82) After the definition of **motor vehicle**, the following is inserted:

- “**multi-rate PIE** means a company, superannuation fund, or group investment fund that—
- “(a) meets the requirements of **section HM 7** (Requirements); and
 - “(b) ~~is not a listed PIE; and~~ 5
 - “(c) ~~is not a benefit fund PIE~~
 - “(b) chooses to become a PIE under **section HM 70** (Choosing to become PIE); and
 - “(c) has not chosen to cancel PIE status under **section HM 29** (Choosing to cancel status); and 10
 - “(d) is not a benefit fund PIE; and
 - “(e) is not a life fund PIE”.
- (82B) In the definition of **multi-rate PIE**, **paragraph (e)** is repealed.
- (83) After the definition of **natural resource**, the following is inserted: 15
- “**net attributable CFC income**, for a foreign company and for an accounting period, means the amount calculated for the accounting period under **section EX 20C(1)(a)** (Net attributable CFC income or loss) 20
- “**net attributable CFC loss**, for a foreign company and for an accounting period, means the amount calculated for the accounting period under **section EX 20C(1)(b)** (Net attributable CFC income or loss)”.
- (83B) After the definition of **new asset**, the following is inserted: 25
- “**new business** is defined in **section EY 29** (Shareholder base other profit: profit participation policies that are new business) for the purposes of that section”.
- (84) In the definition of **new tax rate person**, in paragraph (b), “portfolio tax rate entity” is replaced by “multi-rate PIE”. 30
- (85) ~~After the definition of **New Zealand business**, the following is inserted:~~
- “**New Zealand emissions unit** means an emissions unit issued under the Climate Change Response Act 2002 and designated a New Zealand emissions unit”. 35
- (85) The definition of **New Zealand unit** is replaced by the following:

“New Zealand emissions unit means a New Zealand unit as defined in section 4(1) of the Climate Change Response Act 2002”.

- (86) After the definition of **nominee**, the following is inserted:
 “**non-attributing active CFC** is defined in **section EX 21B** (Non-attributing active CFCs)
 “**non-attributing Australian CFC** is defined in **section EX 22** (Non-attributing Australian CFCs)”.
- (87) The definition of **non-creditable dividend** is repealed.
- (88) In the definition of **non-filing taxpayer**, paragraph (b) is replaced by the following:
 “(b) a person whose only income derived from New Zealand is schedular payments derived in the person’s capacity as a non-resident entertainer and who chooses not to file a return for the relevant tax year; or”.
- (89) In the definition of **non-refundable tax credit**, the following is inserted after paragraph (a):
 “(ab) a tax credit under **section LD 4** (Tax credits for payroll donations):”.
- (90) In the definition of **non-refundable tax credit**, paragraph (g) is replaced by the following:
 “(g) a tax credit under **sections LS 3(3) and (4) and LS 4(3) and (4)** (which relate to multi-rate PIEs and certain of their investors) and under **section LS 1** (Tax credits for multi-rate PIEs) to the extent to which it arises under **section HM 51** (Use of foreign tax credits by PIEs)”.
- (90B) In the definition of **non-resident entertainer**, paragraphs (b) and (c) are replaced by the following:
“(b) undertakes a Part F activity”.
- (91) After the definition of **non-resident person**, the following is inserted:
 “**non-resident seasonal worker** means a non-resident person employed under the recognised seasonal employment scheme to undertake work in New Zealand”.
- (92) After the definition of **notice period**, the following is inserted:

“notified tax rate, for a multi-rate PIE and an investor, means a prescribed investor rate under **section HM 59** (Notified rates)

“notified investor rate, for a multi-rate PIE and an investor, means an investor rate notified under **section HM 59** (Notified rates)”.

(92B) After the definition of **NZIAS 17**, the following is inserted:

“NZIAS 23 means New Zealand Equivalent to International Accounting Standard 23, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place”.

(93) The definition of **offshore development** is repealed.

(94) The definition of **onshore development** is repealed.

(95) In the definition of **operating lease**, “means” is replaced by “means, except in **section EW 15I(1)(b)(iib)** (Mandatory use of yield to maturity method for some arrangements),”.

(96) After the definition of **outstanding balance**, the following is inserted:

“outstanding claims reserve means the actuarially determined amount of a person’s outstanding claims liability for general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general insurer) applies, as that liability is measured under Appendix D, paragraphs 5.1 to 5.2.12 of IFRS 4

“outstanding claims reserve means—

“(a) for an insurer who uses IFRS 4, the amount of the insurer’s outstanding claims liability for general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general insurer) applies, as that liability is measured under Appendix D, paragraphs 5.1 to 5.2.12 of IFRS 4 for the insurer’s financial statements;

“(b) for a life insurer, the amount that would be the life insurer’s outstanding claims reserve under **sections EY 24(3) and (4)** (Outstanding claims reserving amount: non-participation policies not annuities) for general insurance contracts, excluding contracts having premiums to which section CR 3 applies, if **sections**

EY 24(3) and (4) were modified so as to apply to general insurance contracts and reinsurance contracts, instead of to life insurance policies and reinsurance contracts”.

- (97) After the definition of **overseas pension** the following is inserted: 5
“overtime is defined in **section GW 17C(4)** (Payments for overtime meals) for the purposes of that section
“overtime is defined in **section CW 17C(4)** (Payments for overtime meals and certain other allowances) for the purposes 10
of that section”.
- (98) In the definition of **ownership interest**, “that section” is replaced by “that section and **section YC 18B** (Corporate re-organisations not affecting economic ownership)”.
- (98B) After the definition of **parental tax credit**, the following is inserted: 15
“**Part F activity** is defined in schedule 4, part F, clause 7 (Rates of tax for schedular payments)”.
- (98C) In the definition of **pay**, after paragraph (b), the following is inserted: 20
“(bb) is defined in **section LD 4(7)** (Tax credits for payroll donations) for the purposes of that section and **section LD 8(1)** (Meaning and ranking of payroll donation) and for **section 24Q** of the Tax Administration Act 1994”.
- (98D) In the definition of **PAYE income payment form**,— 25
 (a) paragraph (h) is replaced by the following:
“(h) the amount of an employer’s superannuation cash contribution and the amount of ESCT withheld and paid; and”:
 (b) paragraph (i) is replaced by the following: 30
“(i) the amount of an employer’s superannuation cash contribution and the amount of tax withheld and paid, other than that described in **paragraph (h)**; and”.
- (99) After the definition of **payment relating to incapacity to work** **payment relating to incapacity for work**, the following is inserted: 35
“payroll donation is defined in **section LD 7**~~section LD 8~~ (Meaning and ranking of payroll donation)”.

(99B) In the definition of **personal service rehabilitation payment**,—

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

“(a) under section 81(3), 372, or 374 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; and”: 5

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

“(c) in providing to a person—

“(i) a key aspect of rehabilitation referred to in section 81(1)(b), (c), (e), or (g) (relating to attendant care, child care, home help, and training for independence) of that Act: 10

“(ii) a key aspect of rehabilitation referred to in 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: 15

“(iii) similar rehabilitation referred to in an earlier Act corresponding to that Act”.

(100) After the definition of **petroleum mining company**, the following is inserted: 20

“**petroleum mining development** is defined in **section EJ 20** (Meaning of petroleum mining development) for the purposes of **sections EJ 12 and EJ 12B** (which relate to petroleum development expenditure)”.

(101) After the definition of **physical cost of production**, the following is inserted: 25

“**PIE** means a portfolio investment entity

“**PIE rules** means—

“(a) the following provisions:

“(i) **section BC 7(4)** (Income tax liability of person with schedular income): 30

“(ii) **section CB 26** (Disposal of certain shares by portfolio investment entities):

“(iii) **section CP 1** (Attributed income of investors in multi-rate PIEs): 35

“(iv) **sections CX 55 to CX 57** (which relate to excluded income of investors in PIEs):

“(v) **sections DB 53 and DB 54** (which relate to losses of certain investors in PIEs):

- “(vi) **subpart HM** (Portfolio investment entities):
- “(vii) **section IA 7(10)** (Restrictions relating to ring-fenced losses):
- “(viii) **section IC 3(2B)** (Common ownership: group of companies): 5
- “(ix) **subpart LS** (Tax credits for multi-rate PIEs and investors):
- “(x) **section OB 9B** (ICA company allocated imputation credit with income from PTRE):
- “(b) **sections 28B, 31B, 31C, 33(1C), 38(1B), 57B, and 61(1C)** of the Tax Administration Act 1994”. 10
- (102) After the definition of **plot**, the following is inserted:
- “**policy liabilities** is defined in **section EY 28(9)** (Shareholder base other profit: profit participation policies) for the purposes of **sections EY 17, EY 24, and EY 28** (which relate to profit participation policies)” 15
- (102) After the definition of **plot**, the following is inserted:
- “**policy liabilities** is defined in **section EY 29(8)** (Shareholder base other profit: profit participation policies that are new business) for the purposes of **section EY 29(8)**”. 20
- (103) The definition of **policyholder base** is replaced by the following:
- “**policyholder base** means, for a life insurer, the base for policyholder base gross income, expenditure or loss, and to which income of a particular source or nature, and tax credits received are apportioned under **section EY 4** (Apportionment of income of particular source or nature, and of tax credits) 25
- “**policyholder base gross expenditure or loss** means policyholder base gross expenditure or loss described in **section EY 2(2)** (Policyholder base) 30
- “**policyholder base gross income** means policyholder base gross income described in **section EY 2(1)** (Policyholder base)
- “**policyholder base** means, for a life insurer, the base for policyholder base income and allowable deductions and to which income of a particular source or nature, and tax credits received are apportioned under **section EY 4** (Apportionment of income of particular source or nature, and of tax credits) 35

“policyholder base allowable deductions means policyholder base allowable deductions described in **section EY 2(2)** (Policyholder base)

“policyholder base income means policyholder base income described in **section EY 2(1)** (Policyholder base)”. 5

- (104) The definitions of **policyholder base income tax liability**, **policyholder credit**, **policyholder credit account**, **policyholder debit**, **policyholder FDP ratio**, **policyholder income**, **policyholder income formula**, and **policyholder net loss** are repealed. 10

- (105) The definitions of **portfolio allocation period**, **portfolio calculation period**, **portfolio class fraction**, **portfolio class investment value**, **portfolio class net income**, **portfolio class net loss**, **portfolio class taxable income**, **portfolio class taxable loss**, **portfolio defined benefit fund**, **portfolio entity formation loss**, **portfolio entity investment**, **portfolio entity tax liability**, **portfolio investor allocated income**, **portfolio investor allocated loss**, **portfolio investor class**, **portfolio investor exit period**, **portfolio investor interest**, **portfolio investor interest fraction**, **portfolio investor proxy**, **portfolio investor rate**, **portfolio land company**, **portfolio listed company**, and **portfolio tax rate entity** are repealed. 15 20

- (106) The definition of **portfolio investment entity** is replaced by the following:

“**portfolio investment** means an investment of an entity in an item of property of a type to which **section HM 11** (Investment types) refers 25

“**portfolio investment entity** means—

“(a) a multi-rate PIE:

“(b) a listed PIE: 30

“(c) a benefit fund PIE:

“(d) a life fund PIE”.

- (107) In the definition of **portfolio investor rate**, in paragraph (b)(ii), “the time; or” is replaced by “the time; and” and the following is inserted: 35

“(iii) the Commissioner has not notified the entity to disregard the rate that the investor has notified to the entity; or”.

(107B) In the definition of **portfolio listed company**, in paragraph (e), “fund” is replaced by “fund; and”, and the following is added:

“(f) has not chosen under section HL 11 (Election to become portfolio investment entity and cancellation of election) to be a portfolio tax rate entity”.

(107C) In the definition of **portfolio tax rate entity**, in paragraph (c), “New Zealand; and” is replaced by “New Zealand that has chosen to become a portfolio listed company under section HL 12 (Unlisted company choosing to become portfolio listed company); and”.

(108) After the definition of **possession**, the following is inserted:

“**post-1989 forest land** means forest land that—

“(a) was not forest land on 31 December 1989; or

“(b) was forest land on 31 December 1989 but was deforested between 1 January 1990 and 31 December 2007; or

“(c) was pre-1990 forest land—

“(i) that was deforested on or after 1 January 2008; and

“(ii) for which any liability to surrender units arising under the Climate Change Response Act 2002 has been satisfied

“**post-1989 forest land emissions unit**, for a person, means an emissions unit—

“(a) issued to the person under the Climate Change Response Act 2002 for growing trees on post-1989 forest land; and

“(b) held continuously by the person since the issue”.

(108) The definitions of **post-1989 forest land** and **post-1989 forest land unit** are replaced by the following:

“**post-1989 forest land** means post-1989 forest land as defined in section 4(1) of the Climate Change Response Act 2002

“**post-1989 forest land emissions unit**, for a person, means an emissions unit—

“(a) transferred to the person under section 64 of the Climate Change Response Act 2002 for growing trees on post-1989 forest land; and

- “(b) held continuously by the person since the issue”.
- (109) After the definition of **pre-1983 investments**, the following is inserted:
- “**pre-1990 forest land** means forest land—
- “(a) that was forest land on 31 December 1989; and 5
- “(b) that remained as forest land on 31 December 2007; and
- “(c) where the forest species on the forest land consisted of exotic forest species
- “**pre-1990 forest land emissions unit**, for a person, means an emissions unit— 10
- “(a) issued to the person under the Climate Change Response Act 2002 in relation to pre-1990 forest land; and
- “(b) held continuously by the person since the issue”.
- (109) The definitions of **pre-1990 forest land** and **pre-1990 forest land unit** are replaced by the following: 15
- “**pre-1990 forest land** means pre-1990 forest land as defined in section 4(1) of the Climate Change Response Act 2002
- “**pre-1990 forest land emissions unit**, for a person, means an emissions unit— 20
- “(a) transferred to the person under Part 4 subpart 2 of the Climate Change Response Act 2002 in relation to pre-1990 forest land; and
- “(b) held continuously by the person since the issue”.
- (109B) In the definition of **premium**, in paragraph (a), the following is added: 25
- “(iii) does not include consideration received by a life insurer for the transfer of life insurance business.”.
- (110) The definitions of **premium loading** and **premium loading formula** are repealed. 30
- (110B) Before the definition of **prepaid expenditure**, the following is inserted:
- “**premium payback amount** means an amount of life risk component premium refunded in accordance with the terms and conditions of the relevant life insurance policy or the discretion of the life insurer”. 35

- (110C) In the definition of **prescribed investor rate**, paragraph (a)(i), “none of paragraphs (b) and (c)” is replaced by “none of paragraphs (b), **(bb)**, and (c)”.
- (111) In the definition of **prescribed investor rate**, paragraph (a)(ii) is replaced by the following: 5
- “(ii) the person is a resident who derives income as a trustee of a trust other than a trust referred to in paragraph (c)(i) and who chooses to be subject to this paragraph for the tax year; or”.
- (111B) In the definition of **prescribed investor rate**, after paragraph (b) the following is inserted: 10
- “(bb) 19.5%, unless paragraph (c) applies to the person, if the person is a resident who derives income as a trustee and chooses to be subject to this paragraph for the tax year; or”. 15
- (112) The definition of **prescribed investor rate** is replaced by the following:
- “**prescribed investor rate**, for a multi-rate PIE and an investor, means an applicable tax rate under **sections HM 56 to HM 58** (which relate to the default and other tax rates for investors)”.
- (113) After the definition of **prescribed rate of interest**, the following is inserted:
- “**present value** means,—
- “(a) a present value calculated using the risk-free rate of return as the discount rate, gross of tax; but 25
- “(b) face value, gross of tax, if the whole discount period is less than a year”.
- (113) After the definition of **prescribed rate of interest**, the following is inserted: 30
- “**present value (gross)** means—
- “(a) a present value calculated using the risk-free rate of return as the discount rate, gross of tax; but
- “(b) face value, if the whole discount period is less than a year 35
- “**present value (net)** means—
- “(a) a present value calculated using the risk-free rate of return as the discount rate, net of tax; but

“(b) face value, if the whole discount period is less than a year”.

(114) After the definition of **profit**, the following is inserted:

“profit participation policy—

“(a) means a class of life insurance policy having— 5

“(i) a segregated or identifiable asset base; and

“(ii) policyholders who are entitled to a share of profits that is distributed to, or vested in, the policyholders from the asset base, and the policies provide for the entitlement; and 10

“(iii) a fixed formula, expressed in terms of a proportion of a policyholder’s share of profits from the asset base, that calculates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base, and that fixed formula is consistently applied: 15

“(b) includes a class of life insurance policy that substantially meets the requirements of **paragraph (a) and that has a guarantee by the life insurer that capital invested will be returned or that a minimum return on capital will be paid, if—** 20

“(i) the life insurer has irrevocably chosen that the class be treated as a profit participation policy; and

“(ii) the Commissioner receives a notice of the election before the start of the first income year to which it relates”. 25

(115) In the definition of **profit-related debenture**, “for the purposes of that section” is omitted.

(115B) After the definition of **property**, the following is inserted: 30

“proportional-stapling company means a company if—

“(a) each share in the company that is not a stapled debt security and not a fixed-rate share (a **participating share) is stapled to a stapled debt security; and**

“(b) for each participating share in the company, the amount payable for the issue of its stapled debt security is the same proportion of the available subscribed capital calculated under the slice rule of the participating share as it is for each other participating share”. 35

- (115C) After the definition of **provisional tax rules**, the following is inserted:
“**PSR period** is defined in **section EY 23** (Reserving amounts for life insurers: non-participation policies)”.
- (116) After the definition of **recognised exchange**, the following is inserted: 5
“**recognised seasonal employment scheme** means the recognised seasonal employer policy published by the Department of Labour under section 13A of the Immigration Act 1987”.
- (117) The definition of **redundancy payment** is replaced by the following: 10
“**redundancy payment** means a PAYE income payment paid—
“(a) to a person whose employment in a position is terminated because the position has become superfluous to the 15
requirements of their employer; and
“(b) in compensation for the loss of the person’s employment”.
- (118) In the definition of **refundable tax credit**, in paragraph (d), “election)” is replaced by “election):” and the following is added: 20
“(e) a tax credit under section LS 1 (Tax credits for portfolio tax rate entities and their investors)”.
- (119) In the definition of **refundable tax credit**, paragraphs (d) and **(e)** are replaced by the following: 25
“(d) a tax credit under **sections LS 2, LS 3(2), and LS 4(2)** (which relate to multi-rate PIEs and certain of their investors):
“(e) a tax credit under **section LS 1** (Tax credits for multi-rate PIEs) to the extent to which it arises under **section** 30
HM 53 or HM 55 (which relate to the use of tax credits other than foreign tax credits)”.
- (119B) After the definition of **reinsurance contract**, the following is inserted:
“**reinsurance grandparenting start day** is defined in **section EZ 62** (Reinsurance transition: life financial reinsurance may be life reinsurance)”. 35
- (120) ~~The definition of **related person** is repealed.~~

- (120) The definition of **related person** is replaced by the following:
“**related person** is defined in **section CZ 9B** (Available capital distribution amount: 1988 to 2010) for the purposes of that section”.
- (121) The definition of **relative**, is replaced by the following: 5
“**relative**,—
 “(a) except in section HC 36 (Trusts and minor beneficiary rule), means a person connected with another person by—
 “(i) being within the second degree of blood relationship to the other: 10
 “(ii) being in a marriage, civil union, or de facto relationship with the other:
 “(iii) being in a marriage, civil union, or de facto relationship with a person who is within the second 15
 degree of blood relationship to the other:
 “(iv) being adopted as a child of the other or as a child of a person who is within the first degree of relationship to the other:
 “(v) being the trustee of a trust under which a relative 20
 has benefited or is eligible to benefit:
 “(b) is defined in section HC 36(5) for the purposes of that section”.
- (122) After the definition of **replaced area fraction**, the following 25
 is inserted:
“**replacement forest land emissions unit** means an emissions unit acquired by a person if—
 “(a) the person has previously disposed of a post-1989 forest land emissions unit; and
 “(b) the person has not since the disposal acquired another 30
 emissions unit that—
 “(i) replaces the post-1989 forest land emissions unit; and
 “(ii) does not replace another emissions unit”.
- (122) The definition of **replacement ETS unit** is replaced by the 35
following:

“replacement forest land emissions unit means an emissions unit acquired by a person if—

“(a) the person has previously disposed of a post-1989 forest land emissions unit other than by surrender under the Climate Change Response Act 2002; and

“(b) the person has not since the disposal acquired another emissions unit that replaces the post-1989 forest land emissions unit”.

(123) The definition of **required interest** is repealed.

(123B) After the definition of **resident foreign trustee**, the following is inserted:

“resident group member is defined in **section IQ 2B(9)** (Attributed CFC net loss from tax year before first affected year) for the purposes of that section and **section LK 5B** (Credits from tax year before first affected year)”.

(124) The definition of **retained earnings** is repealed.

(125) The definition of **revenue account property** is replaced by the following:

“revenue account property, for a person, means property that—

“(a) is trading stock of the person:

“(b) if disposed of, would produce income for the person other than income under section EE 48 (Effect of disposal or event), FA 5 (Assets acquired or disposed of after deductions of payments under lease), or FA 9 (Treatment when lease ends: lessee acquiring asset):

“(c) is an emissions unit of the person”.

(125B) In the definition of **salary or wages**, in paragraph (b), “for the purposes of that section” is replaced by “and schedule 28, clause 7 (Requirements for complying fund rules) for the purposes of those sections”.

(126) After the definition of **salary or wages**, the following is inserted:

“savings product policy means a life insurance policy, other than annuity, that has or will have a surrender value, but the policy may have a life risk component

- “savings component means,—
- “(a) for a premium paid under a life insurance policy, the actuarially determined amount of the premium that is like the policyholder making an investment and is accounted for as increasing policyholder liabilities: 5
- “(b) for a claim payable under a life insurance policy, the actuarially determined amount of the claim that is like the policyholder withdrawing an investment and is accounted for as reducing policyholder liabilities
- “savings product policy means a life insurance policy, other than annuity, that has or will have a surrender value greater than zero, but the policy may have a life risk component”. 10
- (127) In the definition of **schedular income**, paragraph (a) is replaced by the following:
- “(a) schedular policyholder base income:”. 15
- (128) In the definition of **schedular income**, paragraph (c) is repealed.
- (129) In the definition of **schedular income**, the following is inserted after paragraph (d):
- “(db) income derived by a multi-rate PIE:”. 20
- (129B) In the definition of **schedular income**, in paragraph (f), “section RE 4(4) (Persons who have withholding obligations)” is replaced by “section RF 2(3) (Non-resident passive income)”. 25
- (130) After the definition of **schedular payment**, the following is inserted:
- “**schedular policyholder base income** means schedular policyholder base income described in **section EY 2(3)** (Policyholder base)”. 30
- (130B) After the definition of **section 200**, the following is inserted: 35
- “**secured amounts** is defined in section HG 11(12) (Limitation on deductions by partners in limited partnerships) for the purposes of that section”. 30
- (131) In the definition of **settlor**, after paragraph (b), the following is added:
- “(e) is modified by **section YB 10** (Who is a settlor?) for the purposes of **sections YB 7 to YB 9** (which relate to associated persons)”. 35

- (131) In the definition of **settlor**, after paragraph (b), the following is added:
“(c) has the meaning given in paragraph (a) modified by **section YB 10** (Who is a settlor?) for the purposes of **sections YB 7 to YB 9** (which relate to associated persons)”. 5
- (132) In the definition of **share**, after paragraph (c), the following is inserted:
“(eb) does not include a fixed-rate foreign equity.”.
- (132) In the definition of **share**,— 10
(a) after paragraph (b), the following is inserted:
“(bb) includes a stapled debt security to which **section FA 2B(2)** (Stapled debt securities) applies.”.
(b) after paragraph (e), the following is inserted:
“(eb) does not include a fixed-rate foreign equity.”. 15
- (133) The definition of **share purchase agreement** is replaced by the following:
“share purchase agreement is defined in sections CE 7 (Meaning of share purchase agreement) and CZ 1 (Share purchase agreement income before 19 July 1968) for the purposes of sections CE 1 to CE 4 (which relate to employment income) and section EX 38 (Exemption for employee share purchase scheme of grey list company)”.
- (134) In the definition of **share reorganisation**, “held by the person, including the person, who holds attributing interests in the FIF” is replaced by “held by persons, including the person, who hold attributing interests in the FIF”.
- (134B) After the definition of **shareholder**, the following is inserted:
“**shareholder agreement**, for a company,— 30
“(a) includes an arrangement to which the shareholders of the company are parties, in their capacity as shareholders; but
“(b) does not include an arrangement that is—
“(i) the company’s constitution; 35
“(ii) the terms of a debt security;
“(iii) the terms of the company’s shares”.
- (135) After the definition of **shareholder**, the following is inserted:

“**shareholder base** means, for a life insurer, the base for shareholder base gross income, expenditure, or loss, and to which income of a particular source or nature, and tax credits received are apportioned under **section EY 4** (Apportionment of income of particular source or nature, and of tax credits) 5

“**shareholder base gross expenditure or loss** means shareholder base gross expenditure or loss described in **section EY 3(2)** (Shareholder base)

“**shareholder base gross income** means policyholder base gross income described in **section EY 3(1)** (Shareholder base)”. 10

(135) After the definition of **shareholder agreement**, the following is inserted:

“**shareholder base**, for a life insurer, means the base for shareholder income and allowable deductions and to which income of a particular source or nature, and tax credits received are apportioned under **section EY 4** (Apportionment of income of particular source or nature, and of tax credits) 15

“**shareholder base allowable deductions** means shareholder base allowable deductions described in **section EY 3(2)** (Shareholder base) 20

“**shareholder base income** means shareholder base income described in **section EY 3(1)** (Shareholder base)”. 25

(136) The definition of **shares of the same class** is replaced by the following: 25

“**shares of the same class** means any 2 or more shares of a company—

“(a) that carry—

“(i) the same shareholder decision-making rights; and 30

“(ii) the same rights, in terms of priority, amount payable per share, and otherwise, to be paid profits distributed by the company and distributions of assets of the company on a cancellation of its shares: 35

“(b) for which either the owner, or the amount paid for the issue, of each share is the same if—

“(i) the company gives notice to the Commissioner, in a form approved by the Commissioner, that the company chooses to treat the shares as a separate class; and

“(ii) the company can at all times from the time of issue of each share identify and distinguish the share from any other shares in the company”.

(136B) After the definition of **standing timber**, the following is inserted:

“**stapled**, for a debt security and a share, is defined in **section FA 2B(5)** (Stapled debt securities)

“**stapled debt security** means a debt security that is stapled to a share, if the share is not a fixed-rate share”.

(137) The definition of **starting date** is repealed.

(138) In the definition of **substituting debenture**, “for the purposes of that section” is omitted.

(138B) After the definition of **supply**, the following is inserted:

“**supporting asset base** is defined in **section EY 17** (Policyholder base income: profit participation policies)”.

(139) After the definition of **supply**, the following is inserted:

“**surrender**, for an emissions unit, means the transfer of the emissions unit to an account in the Registry established under the Climate Change Response Act 2002 for the purpose of holding emissions units that account holders have surrendered”.

(139) The definition of **surrender** is replaced by the following:

“**surrender**, for an emissions unit, means surrender as defined in section 4(1) of the Climate Change Response Act 2002”.

(140) After the definition of **surrender**, the following is inserted:

“**surrender value** means the amount paid when a life insurance policy is cancelled before it reaches the maturity or expiry date contracted for under the policy, but excluding an amount that is the repayment of unexpired premiums”.

(140) After the definition of **surrender**, the following is inserted:

“**surrender value** means the amount paid (the **surrender amount**) when a life insurance policy is cancelled before it reaches the maturity or expiry date contracted for under the

policy, excluding an amount that is the repayment of unexpired premiums. There is no netting off against the surrender amount of unpaid premiums, outstanding loans, or interest balances (the **debt obligations**) owed by an insured unless the policy is terminated by the insurer and the debt obligations are greater than the surrender amount”.

(140B) The definition of **taxation law** is replaced by the following:

“**taxation law**, in sections EZ 52 (References to new rules include old rules), **GZ 2** (Arrangements involving cancellation of conduit tax relief credits), ZA 3 (Transitional provisions), ZA 4 (Saving of binding rulings), and ZA 5 (Saving of accrual determinations), means—

“(a) a provision that is a taxation law under section 91B of the Tax Administration Act 1994:

“(b) a provision of the Income Tax Act 1994 or Income Tax Act 2004”.

(141) The definition of **tax pooling account** is replaced by the following:

“**tax pooling account** is defined in **section RP 17B** (Tax pooling accounts and their use)”.

(142) The definition of **tax withheld** is replaced by the following:

“**tax withheld** means an amount of tax—

“(a) withheld from a PAYE income payment under the PAYE rules to the extent to which it is a tax credit under **section LB 1** (Tax credits for PAYE income payments):

“(b) withheld and paid to the Commissioner under the RWT and NRWT rules to the extent to which it is a tax credit under section LB 3 or LB 5 (which relate to tax credits for passive income):

“(c) paid under regulations made under section 225 of the Tax Administration Act 1994”.

(143) After the definition of **technology**, the following is inserted:

“**telecommunications service** means a service, relating to information of any kind including pictures, sound, and data, that is—

“(a) the transmission, emission, or reception of such information in analogue or digital code by a technical system using any equipment, including a cable or satellite and

- associated equipment, for the transmission through any medium of energy in any form, including electric current or electromagnetic radiation:
- “(b) the transfer or assignment of the right to transmit, emit, or receive such information by a system referred to in **paragraph (a)**:
- “(c) the provision of access to a global network for the transmission, emission, or reception of such information”.
- (144) The definition of **tracking account** is repealed.
- (145) The definition of **tracking associate** is repealed. 10
- (145B) In the definition of **trading stock**,—
- (a) in paragraph (b), “in sections GC 6” is replaced by “in sections EB 24 (Apportionment on disposal of business assets that include trading stock), GC 6”:
- (b) paragraph (c) is replaced by the following: 15
- (c) for the purposes of section GC 1 (Disposals of trading stock at below market value), has an expanded meaning as set out in section GC 1(3):”.
- (146) The definition of **UFTC** is repealed.
- (147) The definition of **UFTC accounting period** is repealed. 20
- (148) After the definition of **unlisted**, the following is inserted:
- “**valuation premiums** is defined in **section EY 28(7)** (Shareholder base other profit: profit participation policies) for the purposes of **section EY 28**”.
- (148) After the definition of **unlisted widely-held trust**, the following is inserted: 25
- “**valuation premiums** is defined in **section EY 29(7)** (Shareholder base other profit: profit participation policies that are new business) for the purposes of that section”.
- (149) After the definition of **valuation premiums**, the following is inserted: 30
- “**volunteer** is defined in **section CW 62B** (Voluntary activities) for the purposes of that section”.
- (149) Before the definition of **voting interest**, the following is inserted: 35
- “**volunteer** is defined in **section CW 62B** (Voluntary activities) for the purposes of that section”.

(150) The definition of **widely-held GIF** is replaced by the following:

“**widely-held GIF** means a group investment fund that meets the requirements of—

- “(a) **section HM 14(1)** (Minimum number of investors),
treating the group investment fund as having 1 investor
class comprised of all investors in the fund: 5
- “(b) 1 or more of paragraphs (a) and (c) to (e) of the defin-
ition of **public unit trust**, treating the group investment
fund as a unit trust”. 10

(151) The definition of **widely-held superannuation fund** is replaced by the following:

“**widely-held superannuation fund** means a superannuation fund that meets the requirements of—

- “(a) **section HM 14(1)** (Minimum number of investors),
treating the superannuation fund as having 1 investor
class comprised of all investors in the fund: 15
- “(b) 1 or more of paragraphs (a) and (c) to (e) of the defin-
ition of **public unit trust**, treating the superannuation
fund as a unit trust”. 20

(152) After the definition of **working day**, the following is inserted:

“**work-related relocation** is defined in **section CW 17B(4)** (Relocation payments)”.

(153) The definition of **zero-rated portfolio investor** is replaced by the following: 25

“**zero-rated investor**, for an investor in an investor class of a PIE, means an investor referred to in **section HM 58** (Prescribed investor rates for certain investors: 0%).”

(154) **Subsections (7) and (96)** apply—

- (a) for an insurer who uses IFRS 4,— 30
 - (i) for the 2009–10 and later income years, unless
subparagraph (ii) applies:
 - (ii) for the first income year for which an insurer
adopts IFRSs for the purposes of financial report-
ing and later income years, if that first income 35
year is before the 2009–10 income year and the
person chooses to use IFRS 4 in a return of in-
come for that first year:

- (b) for a life insurer,—
- (i) on and after 1 July 2010, unless **subparagraph (ii)** applies:
- (ii) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5
- (155) **Subsections (5), (9B), (23D), (27C), (28), (32), (37), (37C), (38B), (38C), (38E), (38F), (38G), (40), (42), (56B), (59), (67B), (74B), (80C), (88), (90B), (98B), (98C), (98D), (129B), (130B), (133), (134), and (145B)** apply for the 2008–09 and later income years. 10
- (156) **Subsections (6), (11), (19), (23B), (26B), (27B), (35C), (38D), (40D), (41B), (45), (58B), (60B), (77), (77B), (81), (83B), (102), (103), (104), (109B), (110), (110B), (113), (114), (115C), (119B), (126), (127), (130), (135), (138B), (140), (148), and (149)** apply— 15
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 20
- (157) **Subsections (2), (3), (4), (12), (14), (25), (35), (61), (68), (68B), (73), 78B, (120), (121), and (131)** apply, for the purposes of— 25
- (a) provisions other than the land provisions, for the 2010–11 and later income years:
- (b) the land provisions other than section CB 11, for land acquired on or after the date on which this Act receives the Royal assent: 30
- (c) section CB 11, for land on which improvements are begun on or after the date on which this Act receives the Royal assent. 35
- (158) **Subsections (37B) and (37D)** apply for the 2008–09 and later income years. However, **subsections (37B) and (37D)** do not apply to a person in relation to a tax position taken by the person—

- (a) in the period from 1 April 2008 to 3 December 2008; and
- (b) in relation to the rate of tax applying to a schedular payment; and
- (c) relying on the definition of **employee** or **employer**, as applicable, as the definition was before the amendment made by **subsections (37B) and (37D)**. 5
- (159) **Subsections (8), (9), (10), (13), (15), (20), (21), (24), (27), (29), (30), (31), (33), (39), (43), (44), (47), (48), (50), (51), (52), (53), (60), (64), (65), (70B), (80), (83), (86), (87), (123), (123B), (124), (137), (140B), (143), (144), (145), (146), and (147) apply for—** 10
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 15

- 409 Meaning of income tax varied**
 - (1) Section YA 2(6) is repealed.
 - (2) **Subsection (4)** ~~applies for the 2009–10 and later income years:~~ 20
 - (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 25

- 410 Treatment of qualifying company election tax, FBT, FDP penalty tax, imputation penalty tax, and withdrawal tax**
 Section YA 3 is repealed.

- 411 Two companies with common control**
 In section YB 2(6), “This section” is replaced by “Subsection (3)”. 30

- 412 Two companies with common control: 1988 version provisions**
 After section YB 3(3), the following is inserted:

“Exception for government-related entities

“(3B) This section does not apply to make a company an associated person of another company if the first company is an entity referred to in section YB 2(6).”

413 Some definitions 5

Section YB 20(2)(d) is replaced by the following:

“(d) section DT 2 (Arrangement for petroleum exploration expenditure and sale of property):”.

414 Table, heading, and sections YB 1 to YB 20 replaced

(1) Table Y1, the heading before section YB 1, and sections YB 1 to YB 20 are replaced by the following: 10

“Associated persons

“YB 1 What this subpart does

“Associated person rules and nominee rules

“(1) This subpart sets out the rules that— 15

“(a) define when 2 persons are associated persons; and

“(b) determine how nominees are treated.

“Other references

“(2) If a rule in this subpart states that 2 persons are associated persons for 1 or more provisions in this Act, a reference in the relevant provision to persons who are associated with each other includes those persons. 20

“Tests

“(3) The tests of association are categorised as follows:

“(a) two companies, *see* **section YB 2**: 25

“(b) a company and a person other than a company, *see* **section YB 3**:

“(c) two relatives, *see* **section YB 4**:

“(d) a person and a trustee for a relative, *see* **section YB 5**:

“(e) a trustee and a beneficiary, *see* **section YB 6**: 30

“(f) trustees with a common settlor, *see* **section YB 7**:

“(g) a trustee and a settlor, *see* **section YB 8**:

“(h) a settlor and a beneficiary, *see* **section YB 9**:

“(i) a trustee and a person with a power of appointment or removal, *see* **section YB 11**: 35

- “~~(j)~~ a partnership and a partner, *see* **section YB 12**:
- “~~(k)~~ a partnership and an associate of a partner, *see* **section YB 13**:
- “(l) two persons who are each associated with the same third person, *see* **section YB 14**. 5
- “*Application*
- “(4) The sections in this subpart relating to associated persons apply for the purposes of the whole Act unless a section expressly states otherwise.
- “*Loss-attributing qualifying companies and shareholders* 10
- “(5) A special rule provides that a shareholder in a loss-attributing qualifying company and that LAQC are treated as associated persons for the purposes of section DS 4 (Meaning of film reimbursement scheme), *see* section DS 4(5).
- “*Low-turnover traders* 15
- “(6) A special rule applies for the purposes of subpart EB (Valuation of trading stock (including dealer’s livestock)) to determine when a low-turnover trader is associated with a company, *see* section EB 13(2) (Low-turnover valuation).
- “*Control interests in foreign companies* 20
- “(7) A special rule applies for the purposes of section EX 3 (Control interests: total of direct, indirect, and associated person interests) to determine when a New Zealand resident is associated with a non-resident relative, *see* section EX 4(1) (Limits to requirement to include associated person interests). 25
- “*Supplementary dividend holding companies*
- “(8) A special rule applies for the purposes of section LP 2 (Tax credits for supplementary dividends) to determine when a company is associated with a supplementary dividend holding company, *see* section LP 2(6). 30
- “Defined in this Act: associated person, company, loss-attributing qualifying company, low-turnover trader, New Zealand resident, nominee, non-resident, relative, settlor, shareholder, supplementary dividend holding company, trustee

“YB 2 Two companies

“Common voting interests

- “(1) Two companies are associated persons if a group of persons exists whose total voting interests in each company are 50% or more. 5

“Common market value interests

- “(2) Two companies are associated persons if—
 “(a) a market value circumstance exists for either company;
 and
 “(b) a group of persons exists whose total market value interests in each company are 50% or more. 10

“Common control by other means

- “(3) Two companies are associated persons if a group of persons exists who control both companies by any other means.

“Aggregation rule

- “(4) For the purposes of **subsections (1) to (3)**, if a person (**person A**) and another person (**person B**) are associated under any of **sections YB 4 to YB 14**, person A is treated as holding anything held by person B. 15

“Exception for certain government entities

- “(5) **Subsection (3)** does not apply to a company that is **Subsection (3)** does not apply to 2 companies if either or both are— 20

“(a) a state enterprise:

“(b) A Crown Research Institute: 25

“(c) A Crown health enterprise:

“(d) a company that is part of the same group of companies as an entity referred to in any of **paragraphs (a) to (c)**.

“Exception for international tax rules

- “(6) In the international tax rules, 2 companies are not associated 30
 persons if 1, but not both, is a non-resident.

“(7) For the purposes of the land provisions, 2 companies are not associated persons if 1 is a portfolio investment entity or an entity that qualifies for PIE status.

“YB3 Company and person other than company

“(1) **Subsections (2) and (3)** apply for the purposes of the Act other than the land provisions.” 15

“(2) A company and a person other than a company are associated persons if the person has a voting interest in the company of 25% or more.

“(3) A company and a person other than a company are associated persons if—

- “General aggregation rule*

- ~~“Application: land provisions~~

- ~~“(5) Subsections (6) and (7) apply for the purposes of the land provisions.~~

“Aggregation rule for land provisions

- “(5) For the purposes of the land provisions, if a person (**person A**) and another person (**person B**) are associated under any of **sections YB 4(1)(b) and (2) to (4), YB 7, YB 8, and YB 10 to YB 14**, person A is treated as holding anything held 5
by person B.

“Voting interests

- “(6) A company and a person other than a company are associated 10
persons if a voting interest in the company of 25% or more is held by—
- “(a) the person:
 - “(b) the person’s spouse, civil union partner, or de facto partner:
 - “(c) the person’s infant child:
 - “(d) the trustee of a trust under which the person, their 15
spouse, their civil union partner, their de facto partner, or their infant child has benefited or is eligible to benefit:
 - “(e) any 2 or more of the persons referred to in **paragraphs (a) to (d)**: 20

“Market value interests

- “(7) A company and a person other than a company are associated 25
persons if—
- “(a) a market value circumstance exists for the company; and
 - “(b) a market value interest in the company of 25% or more is held by— 30
 - “(i) the person:
 - “(ii) the person’s spouse, civil union partner, or de facto partner:
 - “(iii) the person’s infant child:
 - “(iv) the trustee of a trust under which the person, their 35
spouse, their civil union partner, their de facto partner, or their infant child has benefited or is eligible to benefit:
 - “(v) any 2 or more of the persons referred to in **sub-paragraphs (i) to (iv)**:

“Person other than company

- “(8) In this section, a person other than a company includes a company acting in its capacity as a trustee of a trust.

~~“Defined in this Act: associated person, company, land provisions, market value circumstance, market value interest, trustee, voting interest~~
~~associated person, company, land provisions, market value circumstance, market value interest, voting interest~~

5

“YB 4 Two relatives

“Degree of relationship

- “(1) Two persons are associated persons if — 10
- “(a) they are within 2 degrees of blood relationship:
- “(b) they are married, in a civil union, or in a de facto relationship:
- “(c) 1 person is within 2 degrees of blood relationship to the other person’s spouse, civil union partner, or de facto partner. 15

~~*“Land provisions: blood relationships*~~

- “(2) For the purposes of the land provisions, **subsection (1)(a) and (c)** does not apply, and persons are associated persons because of a blood relationship only if 1 is the infant child of the other. 20

~~*“Treatment of adoption*~~

- “(3) For the purposes of this section, a child by adoption is treated as a natural child.

~~*“Exception: blood relationships*~~

25

- “(2) For the purposes of the land provisions and sections EB 13 (Low turnover valuation) and EC 5 (Transfer of livestock because of self-assessed adverse event), **subsection (1)(a) and (c)** does not apply, and persons are associated persons because of a blood relationship only if 1 is the infant child of the other. 30

~~*“Treatment of adoption*~~

- “(3) For the purposes of this section, a child by adoption is treated as a natural child of the adoptive parents and not as a natural child of the birth parents.

“Exception

“(4) A person is not associated with another person under this section if the person cannot reasonably be expected to know that—

“(a) the other person exists:

5

“(b) the person is within 2 degrees of blood relationship to the other person.

“Defined in this Act: associated person, land provisions

“**YB 5 Person and trustee for relative**

“Association

10

“(1) Two persons (**person A** and **person B**) are associated persons if person A is the trustee of a trust under which a person associated under **section YB 4** with person B has benefited or is eligible to benefit.

“Land provisions

15

“(2) This section does not apply for the purposes of the land provisions.

“Defined in this Act: ~~associated person, trustee~~ associated person, land provisions, trustee

“**YB 6 Trustee and beneficiary**

20

“Association

“(1) A trustee of a trust and a person who has benefited or is eligible to benefit under the trust are associated persons.

“Land provisions

“(2) This section does not apply for the purposes of the land provisions.

25

“Defined in this Act: associated person, land provisions

“**YB 7 Two trustees with common settlor**

“Association

“(1) A trustee of a trust and a trustee of another trust are associated persons if the same person is a settlor of both trusts.

30

“Treatment of spouses and partners

“(2) For the purposes of this section, 2 persons who are married, in a civil union, or in a de facto relationship are treated as the same single person.

“Defined in this Act: associated person, settlor, trustee 5

“YB 8 Trustee and settlor

“Association

“(1) A trustee of a trust and a settlor of the trust are associated persons.

“Exclusion 10

“(2) This section does not apply if the trust is a charitable trust.

“Defined in this Act: ~~associated person, settlor, trustee~~ associated person, charitable trust, settlor, trustee

“YB 9 Settlor and beneficiary

“Association 15

“(1) A settlor of a trust and a person who has benefited or is eligible to benefit under the trust are associated persons.

“Land provisions

“(2) This section does not apply for the purposes of the land provisions. 20

“Defined in this Act: associated person, land provisions, settlor, trustee

“YB 10 Who is a settlor?

For the purposes of **sections YB 7 to YB 9**, settlor has the meaning set out in section HC 27 (Who is a settlor?) but does not include a person who provides services to a trust for less than market value. 25

“Defined in this Act: settlor

“YB 11 Trustee and person with power of appointment or removal

A trustee of a trust and a person who has a power of appointment or of removal of the trustee are associated persons.

“Defined in this Act: associated person, trustee

5

“YB 12 Partnership and partner

“Association

“(1) A partnership and a partner in the partnership are associated persons.

“Limited partnerships

10

“(2) **Subsection (1)** does not apply in the case of a limited partnership, and a limited partnership and a limited partner are associated persons only if the limited partner has a partnership share of 25% or more in a right, obligation, or other property, status, or thing of the limited partnership.

15

“(2) **Subsection (1)** does not apply if the partner is a limited partner. Instead a limited partnership and a limited partner are associated persons if the limited partner has a partnership share of 25% or more in a right, obligation, or other property, status, or thing of the limited partnership.

20

“Aggregation rule for limited partnerships

“(3) For the purposes of **subsection (2)**, if a person (**person A**) and another person (**person B**) are associated under any of **sections YB 2 to YB 11 and YB 14**, person A is treated as holding anything held by person B.

25

“Defined in this Act: associated person, limited partner, limited partnership, partnership share

“YB 13 Partnership and associate of partner

“Association

“(1) A partnership and a person associated with a partner other than under this section are associated persons.

30

“Limited partnerships

“(2) **Subsection (1)** does not apply in the case of a limited partnership, and a limited partnership and a limited partner are as-

sociated persons only if the limited partner has a partnership share of 25% or more in a right, obligation, or other property, status, or thing of the limited partnership.

“Defined in this Act: associated person; limited partner; limited partnership; partnership share

5

“YB 14 Tripartite relationship

“Test

“(1) Two persons (**person A** and **person B**) are associated persons if—

“(a) person B is associated with a third person (**person C**) under any of **sections YB 2 to YB 13**; and

“(b) ~~person C is associated with person A under any of **sections YB 2 to YB 13**.~~

“(b) person C is associated with person A under any of **sections YB 2 to YB 13**, excluding the section under which person B is associated with person C.

“Exceptions

“(2) **Subsection (1)** does not apply if 2 persons are both associated with a third person under—

“(a) **section YB 2** (which relates to the association of 2 companies);

“(b) **section YB 3** (which relates to the association of a company and a person other than a company);

“(c) **section YB 4** (which relates to the association of 2 relatives);

“(d) **section YB 12** (which relates to the association of a partner and a partnership);

“(e) **section YB 13** (which relates to the association of a partnership and an associate of a partner);

“Exception: *companies tests*

“(2) **Subsection (1)** does not apply if—

“(a) person B is associated with person C under **section YB 2**; and

“(b) person C is associated with person A under **section YB 3**.

“Association for purposes of research and development tax credits

- “(3) **Subsection (1)** does not apply in relation to the association of a company and a person, for the purposes of section LH 1(2) (Who this subpart applies to). 5

“Defined in this Act: associated person, company, tax credit

“YB 15 Exceptions for employee trusts

“Beneficiaries

- “(1) **Section YB 6(1)** does not apply if—
- “(a) the trust is only for the benefit of employees of an employer; and 10
 - “(b) neither the beneficiary nor any person associated with the beneficiary directly or indirectly controls the trust.

“Non-corporate settlors

- “(2) For a settlor that is not a company, **sections YB 7, YB 8, and YB 9(1)** do not apply if— 15
- “(a) the settlor settles property on the terms of the trust only for the benefit of employees of the settlor; and
 - “(b) neither the settlor nor any person associated with the settlor directly or indirectly controls the trust. 20

“Corporate settlors

- “(3) For a settlor that is a company, **sections YB 7, YB 8, and YB 9(1)** do not apply if—
- “(a) the settlor settles property on the terms of the trust only for the benefit of its employees; and 25
 - “(b) none of the following directly or indirectly controls the trust:
 - “(i) the settlor:
 - “(ii) a person associated with the settlor:
 - “(iii) an executive of the settlor: 30
 - “(iv) a director of the settlor:
 - “(v) a person holding a direct voting interest of 25% or more in the settlor:
 - “(vi) if a market value circumstance exists for the settlor, a person holding a direct market value interest of 25% or more in the settlor. 35

“Persons with power of appointment or removal

- “(4) Section YB 11 does not apply if—
- “(a) the trust is only for the benefit of employees of an employer; and
 - “(b) neither the person (person A) who has a power of appointment or of removal of a trustee nor a person associated with person A directly or indirectly controls the trust.
- “Defined in this Act: associated person, company, direct voting interest, employee, employer, market value circumstance, market value interest, settlor

“YB 16 Exceptions for certain trusts and charitable organisations

“Trustee and beneficiary and trustee for relative tests: certain trusts

- “(1) Sections YB 5 and YB 6(1) do not apply to a trustee and another person if the trust is—
- “(a) a lines trust established under the Energy Companies Act 1992;
 - “(b) an approved unit trust referred to in clause 2 of the Income Tax Act (Exempt Unit Trusts) Order 1990.

“Trustee and beneficiary and settlor and beneficiary tests: charitable organisation

- “(2) Sections YB 6(1) and YB 9(1) do not apply to a trustee and a beneficiary or a settlor and a beneficiary if the beneficiary is a charitable organisation.

“Defined in this Act: charitable organisation, lines trust, unit trust”.

- (2) Subsection (1) applies, for the purposes of—
- (a) provisions other than the land provisions, for the 2009–10 and later income years;
 - (b) the land provisions other than section CB 11, for land acquired on or after 1 April 2009;
 - (c) section CB 11, for land on which improvements are begun on or after 1 April 2009.
- (2) Subsection (1) applies, for the purposes of—
- (a) provisions other than the land provisions, for the 2010–11 and later income years;

- (b) the land provisions other than section CB 11, for land acquired on or after the date on which this Act receives the Royal assent:
- (c) section CB 11, for land on which improvements are begun on or after the date on which this Act receives the Royal assent. 5

414B Transparency of nominees

In section YB 21, in the compare note, “s OD 9” is replaced by “ss HH 1(1), OD 9”.

414C Heading for subpart YC

10

The heading for subpart YC is replaced by “**Measurement of company ownership**”.

415 Section YC 1 repealed

(1) Section YC 1 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years. 15

415 Heading and section YC 1 repealed

(1) The heading before section YC 1, and section YC 1, are repealed.

(2) **Subsection (1)** applies for the 2010–11 and later income years. 20

415B Look-through rule for corporate shareholders

In section YC 4, in the compare note, “OD 4(4)” is replaced by “OD 4(3)(d), (4)”.

415C Disregarding certain securities

25

(1) In section YC 6(4), “section YC 19” is replaced by “section YC 20”.

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

415D Reverse takeovers

30

(1) In section YC 18(6),—

- (a) in paragraph (a), “, if paragraph (b) does not apply” is omitted:
 - (b) in paragraph (b), “, if a market value circumstance exists for the company” is omitted.
- (2) In section YC 18, in the list of defined terms, “market value circumstance” is omitted. 5

- 416 New section YC 18B inserted**
 After section YC 18, the following is inserted:
“YC 18B Corporate reorganisations not affecting economic ownership” 10
“When subsection (3) applies
“(1) Subsection (3) applies if —
 - “(a) a company (the **initial parent**) executes an arrangement described in **subsection (2)** (the **arrangement**); and**
 - “(b) the initial parent is a limited attribution company that is treated under section YC 11(3) as holding all ownership interests in another company immediately before the beginning of the arrangement’s execution; and** 15
 - “(c) as a result of the arrangement the ownership of the initial parent is reorganised so that another company (the **new parent**) holds all ownership interests in the initial parent; and** 20
 - “(d) the new parent continues to hold all ownership interests in the initial parent after end of the execution of the arrangement.”** 25*“Description of arrangement*
“(2) The description of the arrangement for the purposes of **subsection (1) is as follows:**
 - “(a) as a result of the arrangement, the ownership of the initial parent is reorganised so that the new parent holds all ownership interests in the initial parent:** 30
 - “(b) the ownership interests in the new parent are all held by those people who held ownership interests in the initial parent immediately before the beginning of the arrangement’s execution. Ownership interests in the new parent that are not held by those people are ignored for the purposes of this paragraph; if the Commissioner decides** 35

it is reasonable to ignore those ownership interests; and the interests—

“(i) are for the facilitation of the arrangement only; and

“(ii) have a market value that is merely nominal relative to the value of the ownership interests in the new parent held by those people: 5

“(c) no person holding ownership interests in the new parent receives a dividend, gift, or other benefit as a result of the arrangement’s execution: 10

“(d) as a result of the arrangement, the new parent is; immediately after the end of the arrangement’s execution; a limited attribution company that is treated under section YC 11(3) as holding all ownership interests in the initial parent: 15

“Loss balance and credit account continuity

“(3) For the purposes of Part I and subparts OB, OC, and OP (which relate to loss balances and memorandum accounts), starting from when the initial parent is first treated under section YC 11(3) as holding all ownership interests in another company, the new parent is treated as— 20

“(a) existing and having the shareholders it has after the end of the arrangement’s execution:

“(b) holding all ownership interests that the initial parent holds: 25

“(c) holding all ownership interests in the initial parent.

“Effect of subsection (3)

“(4) **Subsection (3)** does not prevent a change in shareholders; the holdings of ownership interests; or other circumstances after the end of the arrangement’s execution from having an effect on the application of the continuity provisions after the end of the arrangement’s execution: 30

“Meaning of ownership interest

“(5) In this section, **ownership interest** has the same meaning as in section YC 18(6): 35

“Defined in this Act: company; continuity provision; dividend; limited attribution company; ownership interest; shareholder

“YC 18B Corporate reorganisations not affecting economic ownership*“When subsection (3) applies*

“(1) Subsection (3) applies if a company (the initial parent) enters into an arrangement described in subsection (2).

5

“Description of arrangement

“(2) The description of the arrangement for the purposes of subsection (1) is as follows:

“(a) the initial parent is a limited attribution company that is treated under section YC 11(3) and (4) as holding ownership interests in another company before the arrangement is entered into; and

10

“(b) the ownership of the initial parent is reorganised so that another company (the new parent) is a limited attribution company that is treated under section YC 11(3) and (4) as holding ownership interests in the initial parent after the arrangement is implemented; and

15

“(c) the percentage ownership interests (the final percentage) that a person receives in the new parent is the same as their percentage ownership interests (the initial percentage) in the initial parent that they cease to hold as a result of the arrangement. For the purposes of this paragraph, a difference between the initial and final percentages is ignored if the difference is caused by a transfer or non-transfer of ownership interests that—

20

25

“(i) facilitates the arrangement, and the relevant ownership interests have a market value that is merely nominal relative to the value of the ownership interests in the new parent;

“(ii) is the direct result of impossibility or impracticability caused by securities law requirements; and

30

“(d) a person holding ownership interests in the initial parent before the arrangement is entered into does not receive a dividend, gift, or other direct benefit as a result of the arrangement. For the purposes of this paragraph,—

35

“(i) ownership interests in the initial parent for which paragraph (c)(ii) applies are excluded from a person’s holding of ownership interests:

“(ii) ownership interests in the new parent are excluded from being a dividend, gift, or other direct benefit.”

“Loss balance and credit account continuity

“(3) For the purposes of the tests of ownership and control in Part I and subparts LP, OA, OB, OC, OE, and OP (which relate to loss balances, tax credits, and memorandum accounts), starting from when the initial parent is first treated under section YC 11(3) and (4) as holding the ownership interests in another company, the new parent is treated as—

“(a) existing and having the shareholders it has immediately after the arrangement’s implementation:

“(b) holding the ownership interests that the initial parent is treated under section YC 11(3) and (4) as holding:

“(c) holding all ownership interests in the initial parent.”

“Effect of subsection (3)

“(4) **Subsection (3)** does not prevent a change in shareholders, the holdings of ownership interests, or other circumstances, after the implementation of the arrangement from having an effect on the application of the continuity provisions and the provisions described in **subsection (3)** after the implementation of the arrangement.

“Definitions

“(5) In this section,—

“(a) **ownership interest** has the same meaning as in section YC 18(6), except that for the purposes of this section, excluded preference shares are ignored:

“(b) **excluded preference share** means a share that is disregarded, under section 703–37 of the Income Tax Assessment Act 1997 (Aust), in determining whether a company can be a subsidiary member of a consolidated group for the purposes of that Act.

“Defined in this Act: arrangement, company, continuity provision, dividend, excluded preference share, limited attribution company, ownership interest, share, shareholder”.

417 Residence of natural persons

(1) Section YD 1(9) and (10) are repealed.

- (2) After section YD 1(8), the following is added:
“Treatment of non-resident seasonal workers
 “(11) Despite subsection (3), a non-resident seasonal worker is treated for the duration of their employment under the recognised seasonal employment scheme as a non-resident.” 5
- (3) In section YD 1, in the list of defined terms, “transitional resident” is omitted.
- (4) In section YD 1, in the list of defined terms, “non-resident seasonal worker” and “recognised seasonal employment scheme” are inserted. 10
- (5) **Subsections (2) and (4)** apply for the 2009–10 and later income years.
- (5) **Subsection (2)** applies for the 2009–10 and later income years.
- 417B Country of residence of foreign companies** 15
- (1) In section YD 3(4)(b), “head” is replaced by “head office”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 418 Classes of income treated as having New Zealand source**
- In the compare note to section YD 4, “s OE 1(4)” is replaced by “ss FB 2(2), OE 1(4)”.
- In the compare note to section YD 4, “s OE 4(1)” is replaced by “ss FB 2(2)”.
- 419 Apportionment of income derived partly in New Zealand**
- (1) After section YD 5(1), the following is inserted: 25
“Relationship with source rules
 “(1B) This section does not apply to limit the effect of—
 “(a) any of the source rules in section YD 4 other than those in section YD 4(2) and (3); or
 “(b) the source rules in section YD 4(2) and (3) to the extent 30
 to which the income referred to is also income referred to in any source rule other than those in section YD 4(2) and (3).”

(1B) In section YD 5(3), “The result of the apportionment” is replaced by “The result of the apportionment, to the extent consistent with subsection (2),”.

(2) In section YD 5, in the compare note, “FB 2” is replaced by “FB 2(1A)”. 5

420 General rules for currency conversion

(1) Section YF 1(1)(c) is replaced by the following:

“(c) this Act does not contain a specific currency conversion rule that requires the conversion of the amount into New Zealand currency under a method other than those in this section.” 10

(2) In section YF 1(3), the heading is replaced by “*Alternative use of monthly average rates*”.

(3) Section YF 1(3)(b) is replaced by the following:

“(b) a provision in this Act specifically allows it.” 15

(4) Section YF 1(4) is repealed.

420B New section YZ 2 inserted

(1) After section YZ 1, the following is added:

“YZ 2 Saving of effect of section 394L(4A) of Income Tax Act 1976 20

Section 394L(4A) of the Income Tax Act 1976 continues to apply in the same manner as it applied immediately before the repeal of that Act by the Income Tax Act 1994.

“Compare: 2004 No 35 s YA 5B”.

(2) **Subsection (1)** applies for the 2008–09 and later income years. 25

421 Schedule 1—Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits

(1) In schedule 1, part A, clause 8,—

(a) in the heading “policyholder income” is replaced by “schedular policyholder base income”: 30

(b) in the words after the heading, “policyholder income” is replaced by “schedular policyholder base income”.

(2) In schedule 1, part E, the list of sections is replaced by “CB 28, CD 53, CS 1, EK 8, EK 12, EK 23, EX 20, EX 50, EY 43, FE 35

22, FM 28, HA 15, HA 24, HC 22, HC 34, HF 1, HL 29, LC 1, LC 2, LE 2, LJ 5, LP 8, LP 10, OA 18, OB 19, OB 42, OB 46, OB 69, OB 73, OB 75, OB 78, OB 80, OC 36, OC 38, OE 7, OE 8, OP 100, OP 102, RD 50, RD 51, RD 66, RD 67, RD 69, RD 70, RD 72, RE 11–RE 19, RF 9, RF 12, RM 21, YA 1.” 5

(3) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

(4) **Subsection (2)** applies for the 2009–10 and later income years: 10

(3) Subsection (1)(applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 15

(4) **Subsection (2)** applies for—

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 20

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

422 **Schedule 2—Basic tax rates for PAYE income payments**

(1) In schedule 2, part A, the following is inserted after clause 7:

“8 If an employee has notified their employer that the employee’s tax code is ‘NSW’ under section 24B(3) of the Tax Administration Act 1994, the basic tax rate amount for a payment for employment as a non-resident seasonal worker is set by applying the rate of 0.19 for each dollar of the payment. 25

“8 **‘NSW’ tax code** 30

“ If an employee has notified their employer that the employee’s tax code is ‘NSW’ under section 24B(3) of the Tax Administration Act 1994, the basic tax rate amount for a payment for employment as a non-resident seasonal worker is set by applying the rate of 0.15 for each dollar of the payment.” 35

(2) **Subsection (1)** applies for the 2009–10 and later income years:

422B Schedule 4—Rates of tax for schedular payments

- (1) In schedule 4, part C, clause 1,—
 - (a) paragraph (b) is replaced by the following:
“(b) cultivation contract work:”:
 - (b) paragraph (e) is repealed. 5
- (2) In schedule 4, part C, clause 2, the definition of **horticultural contract work** is repealed and the following is inserted before the definition of **farming contract work**:
“**cultivation contract work**—
 - “(a) means work or services provided under a contract or arrangement on or in connection with land that is used for the cultivation of fruit crops, vegetables, orchards, or vineyards: 10
 - “(b) includes work or services provided—
 - “(i) under a contract or arrangement for the supply of labour, or substantially for the supply of labour: 15
 - “(ii) in relation to land that is intended to be used for the cultivation of fruit crops, vegetables, orchards, or vineyards:
 - “(c) does not include work or services provided by— 20
 - “(i) a post-harvest facility:
 - “(ii) a management entity under a formal management agreement under which the entity is responsible for payment for the work or services provided”.
- (3) In schedule 4, the heading to Part F is replaced by “**Payments for activities related to sports, media, entertainment, and public speaking**”. 25
- (4) In schedule 4, part F, clause 4, “**schedular entertainment activities**” is replaced by “a Part F activity”.
- (5) In schedule 4, part F, clauses 5 and 6, “**schedular entertainment activities**” is replaced by “a Part F activity” in both places where it appears. 30
- (6) In schedule 4, part F, clause 7, the following is inserted after the definition of **modelling fee**:
“**Part F activity** means an activity or performance— 35
 - “(a) connected with—
 - “(i) a sporting event or competition:

- “(ii) making speeches or giving lectures or talks for any purpose:
- “(iii) acting, singing, playing music, dancing, or entertaining generally, for any purpose and whether alone or not; and 5
- “(b) undertaken by a person who meets the requirements of any of the following paragraphs:
- “(i) they are not fully or partly sponsored under a cultural programme of an overseas government or the Government of New Zealand: 10
- “(ii) they are not an official representative of a body that administers a game or sport in an overseas country:
- “(iii) they are not undertaking an activity or performance under a programme of a foundation, trust, or organisation outside New Zealand which exists for the promotion of a cultural activity and is not carried on for individual profit of the member or shareholder: 15
- “(iv) if they are an employee, officer, or principal of a company, firm, or other person, includes the company, firm, or other person”. 20
- (7) In schedule 4, part F, clause 7, the definition of **schedular entertainment activities** is repealed.
- (8) **Subsections (3) to (7)** apply for the 2008–09 and later income years. 25
- 422C Schedule 5—Fringe benefit values for motor vehicles**
- (1) Schedule 5, clause 3(c) is replaced by the following:
- “(c) determined under clause 4 if, in the period of 2 years before the vehicle’s acquisition by the person (**person A**) providing it to the employee, the vehicle is owned by person A or by a person (**person B**) associated with them.” 30
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 35
- 423 Schedule 13—Depreciable land improvements**
- (1) In schedule 13, after item 16, the following is added:

- 17 ~~pipes and conduits~~^{pipes}
- (2) In schedule 13, after **item 17**, the following is added:
- 18 ~~purpose-built surfaces for outdoor sports grounds~~^{purpose-built surfaces for outdoor sports facilities}
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 423B Schedule 20—Expenditure on farming, horticultural, aquacultural, and forestry improvements** 5
- (1) In schedule 20, clause 1, “unless clause 2 applies” is replaced by “unless clause 2 applies, preparation”.
- (2) In schedule 20, clause 2, column 2, “6” is replaced by “45”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 10
- 424 Schedule 21—Expenditure and activities related to research and development**
- (1) Schedule 21, part A, clause 8 is replaced by the following:
- “8 Expenditure on materials to be processed or transformed for the purposes of testing or trialling as part of the research and development activities: 15
- “8 Expenditure or an amount of depreciation loss incurred in acquiring or producing things which are inputs subjected to a process or transformation for the purposes of testing or trialling as part of the research and development activities.” 20
- (2) In schedule 21, part B, clause 7 is replaced by the following:
- “7 Expenditure or amount of depreciation loss incurred in producing materials or items (other than a trial model or preliminary version of a product or plant) for the purposes of testing or trialling as part of the research and development activities 25
- to the extent to which it is less than or equal to—
- “(a) the sale proceeds of the materials or items sold other than to an associated person: 30
- “(b) the market value of the materials or items not sold or sold to an associated person: 30

- “7 Expenditure or an amount of depreciation loss that is described in **schedule 21, part A, clause 8**, if what results from the relevant process or transformation are things that are not a trial model of, or a preliminary version of, an item of depreciable property, but only to the extent to which the expenditure or amount of depreciation loss is less than or equal to the total of— 5
- “(a) the amount paid for the disposal of things that result from the process or transformation, if the things are disposed of to a person who is not an associated person: 10
- “(b) the market value of things that result from the process or transformation, if the things are not disposed of, or are disposed of to a person who is an associated person.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 15
- 425 Schedule 24—International tax rules: grey list countries**
- (1) ~~In schedule 24, the shoulder reference is replaced by the following: “ss DZ 1, YA 1”.~~
- (2) ~~**Subsection (4)** applies for the 2009–10 and later income years: 20~~
- (1) In schedule 24, the shoulder reference is replaced by “ss DZ 11, YA 1”.
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 425B Schedule 25—Foreign investment funds**
- (1) In schedule 25, the shoulder references are replaced by “ss CQ 5, DN 6, EX 28, EX 29, EX 31, EX 32, EX 35–EX 39, EX 46, EZ 32”. 30
- (2) In schedule 25, the heading to part B is replaced by “**Foreign entities to which the FIF exemptions do not apply**”.
- (3) **Subsection (2)** applies for the 2008–09 and later income years. 35

**426 Schedule 27—Countries and types of income with
unrecognised tax**

(1) ~~In schedule 27, the shoulder reference is replaced by the fol-~~
~~lowing: “ss LJ 1, LK 2”.~~

(2) **Subsection (1)** applies for the 2009–10 and later income 5
years:

In schedule 27, the shoulder reference is replaced by “ss LJ 1,
LK 2”.

426B Schedule 28—Requirements for complying fund rules

Schedule 28, clause 7 is replaced by the following:

10

“7 The sixth requirement is that the rules require, as a minimum,
contributions to be deducted for an employee at the rate of
2% of gross salary or wages (as defined in section 4 of the
KiwiSaver Act 2006).”

**426C New schedule 29—Portfolio investment entities: excepted
investors**

15

After schedule 28, the following is inserted:

“Schedule 29

ss HM 21, HM 22

**Portfolio investment entities: listed
investors”**

20

Part A

1 A PIE or an entity that qualifies for PIE status.

2 A foreign PIE equivalent.

3 A life insurer.

4 The New Zealand Superannuation Fund.

5 The Accident Compensation Corporation, or a Crown entity
subsidiary of the Corporation.

6 The Earthquake Commission.

- 7 Auckland Regional Holdings.
- 8 A boutique investor class, treating interests combined under **section HM 16** as held by 1 person.

Part B

- 1 A superannuation fund established under the proposal for the restructuring of the National Provident Fund required by the National Provident Fund Restructuring Act 1990.
- 2 The fund established by the Government Superannuation Fund Act 1956.
- 3 A public unit trust.
- 4 A community trust.
- 5 A superannuation fund that—
- (i) was in existence before 17 May 2006; and
 - (ii) would, if treated as a unit trust, meet 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 its manager or trustee, who can control its investment decisions.”

427 Schedule 32—Recipients of charitable or other public benefit gifts

- (1) In schedule 32, the following is omitted: “Bright Hope International Trust”.
- (2) In schedule 32, the following are inserted: “Educational Aid 5
for International Development Trust Board”, “Global Hope”,
“Ingwavuma Orphan Trust Fund of New Zealand”, “Kyrgyzs-
tan New Zealand Rural Trust”, “L Women of Africa Fund”,
“Partners Relief and Development NZ”, “Tender Trust”, “The
Band Aid Box”, “The Destitute Children’s Home, Pokhara, 10
Charitable Trust”, “The Palestine Children’s Relief Fund

Charitable Trust”, “Triyog Himalaya Trust”, and “UNHCR (United Nations High Commissioner for Refugees)”.

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

428 Schedule 49—Enactments amended 5

In the amendments to the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49),—

- (a) the second item amending section 204(1)(b) relating to section HG 16 of the Income Tax Act 2004 is omitted:
- (b) in the item amending schedule 4, clause 1(c), “an amount of tax, amount of tax” is replaced by “an amount of tax, which amount”.

429 Schedule 50—Amendments to Tax Administration Act 1994

- (1) The item amending section 3(4)(b) is repealed. 15
- (2) The item inserting the new Part 2B is repealed.
- (3) The item amending section 125(d) is repealed.

429B Schedule 51—Identified changes in legislation

In schedule 51, the following is inserted in the table:

MC 6	<u>The reference to veteran’s pension is omitted because the in-work tax credit is an incentive to return to work.</u>
------	--

430 Schedule 52—Comparative tables of old and rewritten provisions 20

- (1) In schedule 52, part A, the entry for “FB 2(1); (2)” is replaced by—
- (a) an entry for “FB 2(1); (1A)” having “YD 5” in the second column: 25
- (b) an entry for “FB 2(2)” having “YD 4” in the second column.
- (2) In schedule 52, part A, the entry for “HH 1(1)–(4); (8); (10)” is replaced by—

- (a) an entry for “HH 1(1)” having “YB 21” in the second column:
 - (b) an entry for “HH 1(2)–(4), (8), (10)” having “HC 28” in the second column:
- (3) In schedule 52, part B, in the second column of the entry for YB 21, “OD 9” is replaced by “HH 1(1), OD 9”. 5
- (4) In schedule 52, part B, in the second column of the entry for YD 4, “OE 4(1)” is replaced by “FB 2(2)”. 5
- (5) In schedule 52, part B, in the second column of the entry for YD 5, “FB 2” is replaced by “FB 2(1A)”. 10
- (1) In schedule 52, part A, the entry for “FB 2(1), (2)” is replaced by—
 - (a) an entry for “FB 2(1), (1A)” having “YD 5” in the second column:
 - (b) an entry for “FB 2(2)” having “YD 4” in the second column. 15
- (2) In schedule 52, part A, in the first column of the entry for “GC 15(1)–(3), “GC 15(1)–(3)” is replaced by “GC 15”.
- (3) In schedule 52, part A, in the second column of the entry for “GC 15(3), (4), “CX 18” is replaced by “CX 18, RD 54”. 20
- (4) In schedule 52, part A, the entry for “HH 1(1)–(4), (8), (10)” is replaced by—
 - (a) an entry for “HH 1(1)” having “YB 21” in the second column:
 - (b) an entry for “HH 1(2)–(4), (8), (10)” having “HC 28” in the second column. 25
- (5) In schedule 52, part A, in the second column of the entry for “KD A1”, “MC 1(2)” is replaced by “omitted”.
- (6) In schedule 52, part A, in the first column of the entry for “KD 3(1), “KD 3(1)” is replaced by “KD 3(1) ‘qualifying person’”. 30
- (7) In schedule 52, part A, in the second column of the entry for “KD 3(1), “MC 4” is replaced by “MC 3”.
- (8) In schedule 52, part A, in the second column of the entry for “ND 1”, “RA 5(b), RA 10” is replaced by “RA 5(1)(b), RA 10”. 35

- (9) In schedule 52, part A, in the second column of the entry for “NE 3”, “RA 5(c), RD 66(3)–(7), (13)” is replaced by “RA 5(1)(c), RD 66(3)–(7), (13)”.
- (10) In schedule 52, part A, the entry for “NG 2(1)(ab), (b)(ib), (c)” is replaced by— 5

 - (a) an entry for “NG 2(1)(b)(i), (ib)” having “RF 12” in the second column:
 - (b) an entry for “NG 2(1)(ab)” having “RF 12B” in the second column:
 - (c) an entry for “NG 2(1)(b)(iii)” having “RF 12C” in the second column: 10
 - (d) an entry for “NG 2(1)(b)(ii)” having “RF 10(5B)” in the second column.
- (11) In schedule 52, part A, in the first column of the entry for “OD 4(4)”, “OD 4(4)” is replaced by “OD 4(3)(d), (4)”. 15
- (12) In schedule 52, part A, the entry for “OD 4(5A)–(5C)” is omitted.
- (13) In schedule 52, part A, after the entry for “OD 5(5)”, a new entry is inserted for “OD 5(5A)–(5C)” having “YC 12” in the second column. 20
- (14) In schedule 52, part B, in the second column of the entry for “GB 32”, “GC 15(1)–(3)” is replaced by “GC 15”.
- (15) In schedule 52, part B, in the second column of the entry for “IC 7”, “IG 2(d), (11)” is replaced by “IG 2(2)(d), (11)”.
- (16) In schedule 52, part B, in the second column of the entry for “MC 1”, “KD A1, KD 1A” is replaced by “KD 1A”. 25
- (17) In schedule 52, part B, in the second column of the entry for “MC 6”, “KD 3(1)” is replaced by “KD 3(1) ‘qualifying person’”.
- (18) In schedule 52, part B, in the second column of the entry for “RD 54”, “ND 1S” is replaced by “GC 15(3), (4), ND 1S”. 30
- (19) In schedule 52, part B, in the second column of the entry for “RF 10”, “NG 9” is replaced by “NG 2(1)(b)(ii), NG 9”.
- (20) In schedule 52, part B, in the second column of the entry for “RF 12”, “NG 2(1)(ab), (b)(ib), (c)” is replaced by “NG 2(1)(b)(i), (ib), (iii)”. 35
- (21) In schedule 52, part B, after the entry for RF 12, the following are inserted:

- | | | | |
|---------|------------|---|--------|
| | <u>(a)</u> | an entry for “RF 12B” having “NG 2(1)(ab)” in the second column: | |
| | <u>(b)</u> | an entry for “RF 12C” having “NG 2(1)(b)(iii)” in the second column. | |
| (22) | | In schedule 52, part B, in the second column of the entry for “YB 21”, “OD 9” is replaced by “HH 1(1), OD 9”. | 5 |
| (23) | | In schedule 52, part B, the second column of the entry for “YC 4” is replaced by “OD 3(3)(d), OD 4(3)(d), (4)”. | |
| (24) | | In schedule 52, part B, the second column of the entry for “YC 12” is replaced by “OD 5(5A)–(5C)”. | 10 |
| (25) | | In schedule 52, part B, in the second column of the entry for YD 4, “OE 4(1)” is replaced by “FB 2(2)”. | |
| (26) | | In schedule 52, part B, in the second column of the entry for YD 5, “FB 2” is replaced by “FB 2(1A)”. | |
|
431 | | Consequential amendments: associated person and list of defined terms |
15 |
| | | In the sections listed in schedule 1 , the list of defined terms is amended in the manner indicated in the schedule. | |

- | | | |
|---------------|---|----|
| Part 2 | | |
| | Amendments to Tax Administration Act 1994 | 20 |
| 432 | Tax Administration Act 1994 | |
| | This Part amends the Tax Administration Act 1994. | |
| 433 | Interpretation | |
| (1) | This section amends section 3(1). | 25 |
| (2) | After the definition of disclosure notice , the following is inserted: | |
| | “ discovery obligation means an order of a court or Taxation Review Authority, or notice of discovery in proceedings before a court or Authority, requiring the disclosure of information to the Commissioner in relation to proceedings before the court or Authority”. | 30 |
| (2B) | The definition of late filing penalty is replaced by the following: | |

- “late filing penalty means a civil penalty imposed under section 139A or 139AAA for not providing on time a tax return described in section 139A(1) or 139AAA(1), as applicable”.
- (3) In section 3(1), the definition of **response period**, is replaced by the following: 5
- “**response period** is defined in **section 89AB**”.
- (3) The definition of **response period**, is replaced by the following:
- “**response period** is defined in **section 89AB**”.
- (4) In the definition of **tax**, paragraphs (a)(iii)(A) and (d)(iii)(A) are repealed. 10
- (5) **Subsection (2)** applies for challenges commenced on or after the date on which this Act receives the Royal assent.
- (5) **Subsection (2)** applies for a challenge—
- (a) commenced on or after the date on which this Act receives the Royal assent: 15
- (b) commenced before the date on which this Act receives the Royal assent if,—
- (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and 20
- (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing. 25
- (5B) **Subsection (2B)**, for a tax return required to be filed under sections 16 to 18 of the Goods and Services Tax Act 1985, applies for a return due on or after 1 April 2008. 30
- (6) **Subsection (3)** applies for the 2008–09 and later income years. 35

~~(7)~~ **Subsection (4)** applies for the 2009–10 and later income years.

(7) **Subsection (4)** applies for—

- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 5
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

434 Construction of certain provisions

- (1) Section 4A(2)(a) is repealed.
- (2) In section 4A(2)(c), “paragraph (a) or” is omitted. 10
- (3) In section 4A(2)(d), “paragraph (a) or” is omitted.
- (4) In section 4A(2)(d), “unpaid tax.” is replaced by “unpaid tax.” and the following is added:
 “(e) despite paragraph (d), and only for the purposes of Part 10B, the amount of tax deemed to be withheld referred to in paragraph (b) is treated as tax paid although it may not have been paid to the Commissioner by the due date.” 15
- (5) In section 4A(4), in the words before paragraph (a), “RF 13, RG 3, or RG 6” is replaced by “or RF 13”. 20
- ~~(6)~~ **Subsections (1) to (3) and (5)** apply for the 2009–10 and later income years.
- (6) **Subsections (1) to (3) and (5)** apply for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

435 New Part 2B

- ~~(1)~~ After section 15B, the following is inserted:

~~Part 2B~~

**~~Intermediaries for PAYE, provisional
tax, and resident passive income~~**

~~PAYE intermediaries~~

~~15C PAYE intermediaries and listed PAYE intermediaries~~ 5

~~“(1) A person who meets the requirements of **section 15F** may apply under **section 15D** to the Commissioner for approval to become a PAYE intermediary.~~

~~“(2) A PAYE intermediary may apply under **section 15G** to the Commissioner to become a listed PAYE intermediary. To make an application, the PAYE intermediary must meet, on a continuing basis, the requirements for a PAYE intermediary.~~ 10

~~“Compare: 2004 No 35 ss NBA 1, NBB 3~~

~~15D Application for approval as PAYE intermediary~~

~~“(1) In order to become a PAYE intermediary, a person must—~~ 15

~~“(a) meet the requirements of **section 15F**; and~~

~~“(b) have established a trust account that meets the requirements of section RP 6 of the Income Tax Act 2007; and~~

~~“(c) operate systems to protect the personal information and payment details that are obtained in the course of running the account.~~ 20

~~“(2) The Commissioner may approve an application if the Commissioner is satisfied that the applicant—~~

~~“(a) will comply with the PAYE rules and the ESCT rules if they assume an employer’s obligations under those rules; and~~ 25

~~“(b) has systems to allow them to make payments and provide information in the format required by the Commissioner.~~

~~“(3) The Commissioner may approve a person as a PAYE intermediary for a set period.~~ 30

~~“Compare: 2004 No 35 s NBA 2(1)(a)–(c); (2); (3)~~

~~15E Revocation of approval~~

~~“(1) The Commissioner may revoke an approval given under **section 15D** if the person—~~ 35

~~“(a) does not comply with the PAYE rules:~~

- “(b) does not comply with the ESCT rules when they have assumed an employer’s obligations under those rules:
- “(c) is no longer fit to be a PAYE intermediary because they do not meet the requirements of **section 15F**:
- “(d) when they are not a natural person, has been put into liquidation or receivership: 5
- “(e) when they are a company, is no longer registered in New Zealand:
- “(2) If the Commissioner revokes an approval under **subsection (1)(b)**, the Commissioner must notify the person, and any employer for whom the person is a PAYE intermediary, of the revocation and its effective date. The effective date must not be less than 14 days from the date of notification. 10
- “(3) A decision by the Commissioner under this section is not open to challenge. 15

“Compare: 2004 No 35 s NBA 2(4)

“15F Fitness of applicants

- “(1) This section applies for the purposes of **section 15D** to the following:
- “(a) an applicant who is a natural person or a corporation sole: 20
- “(b) each member of an applicant that is an unincorporated body:
- “(c) an officer of an applicant that is a body corporate:
- “(d) a principal of an applicant. 25
- “(2) The applicant, member, officer, or principal, as applicable,—
- “(a) must not be a discharged or undischarged bankrupt; or
- “(b) must not have been convicted of an offence involving fraud; or
- “(c) must be eligible to be a company director. 30

“Compare: 2004 No 35 s NBA 2(1)(e)

“15G Application for approval as listed PAYE intermediary

- “(1) In order to become a listed PAYE intermediary, a PAYE intermediary must—
- “(a) meet the requirements of **section 15D**; and 35
- “(b) have completed and filed the returns of income required from them; and

- “(c) paid the required amounts of tax due from them.
- “(2) A PAYE intermediary is a listed PAYE intermediary only for a period that is no more than the period for which they have been approved as a PAYE intermediary.
- “(3) On approval of an application under this section and before acting as a listed PAYE intermediary for an employer, the listed PAYE intermediary must inform an employer who contracts their services as a listed PAYE intermediary that the Commissioner does not guarantee payment by the intermediary to an employee of the employer, or the performance of a service provided by them.
- “(4) The Commissioner may approve a PAYE intermediary as a listed PAYE intermediary for a set period.
- “Compare: 2004 No 35 s NBB 2
- “15H Grounds for revocation of listing**
- The Commissioner may revoke the listing of a listed PAYE intermediary if—
- “(a) an approval of the person as PAYE intermediary is revoked;
- “(b) the person no longer meets the requirements of **section 15F**;
- “(c) the person does not provide a subsidy claim form by the date and in the format required by the Commissioner;
- “(d) the person does not comply with an obligation of a listed PAYE intermediary;
- “(e) the Commissioner considers revocation is necessary in order to protect the integrity of the tax system.
- “Compare: 2004 No 35 s NBB 4(1)
- “15I Procedure for revocation of listing**
- “(1) The Commissioner must notify a listed PAYE intermediary of an intended revocation under **section 15H**, and must provide reasons for the intended revocation.
- “(2) If the listed PAYE intermediary who is notified by the Commissioner under **subsection (1)** does not resolve the matters set out in the notice to the satisfaction of the Commissioner

within 30 days of the date on which they are notified, the Commissioner may give 14 days notice of revocation.

“(3) At the end of the 14-day notice period under **subsection (2)**, the listing of the listed PAYE intermediary is revoked.

“(4) A decision by the Commissioner under this section is not open to challenge under Part 8A. 5

“Compare: 2004 No 35 s NBB 4(2)–(5)

“15J Employers’ arrangements with PAYE intermediaries

“(1) An employer who wishes to enter an arrangement with a PAYE intermediary must notify the Commissioner of the proposed arrangement, providing— 10

“(a) the name of the PAYE intermediary;

“(b) the period for which the PAYE intermediary is to act for the employer;

“(c) the bank account number of the PAYE intermediary into which the employer will deposit amounts; 15

“(d) whether the proposed arrangement requires the PAYE intermediary to collect amounts under the ESCT rules.

“(2) On approval of the arrangement, the Commissioner must notify the employer, and the approval applies to pay periods that begin on or after 14 days after the date on which the notice is given. 20

“(3) An employer or a PAYE intermediary may end the arrangement by notifying the other party and the Commissioner. The notice must state the date that is after the notification for the end of the arrangement. 25

“(4) An employer or a listed PAYE intermediary may end an arrangement by notifying the other party and the Commissioner. The notice must state the date on which the arrangement is to end that must begin on or after 14 days after the date on which the notice is given. 30

“Compare: 2004 No 35 ss NBA 3; NBA 8; NBB 7

~~“15K Privacy requirements~~

The PAYE intermediary must operate and maintain systems to protect the personal information and payment details that they acquire in running the systems.

~~“Compare: 2004 No 35 s NBA 5(3)~~

5

~~“15L Amended monthly schedules~~

The PAYE intermediary may make an amended monthly schedule relating to the employee and a pay period, and is then responsible for the accuracy of the amendments.

~~“Compare: 2004 No 35 s NBA 5(4)~~

10

~~“15M Subsidy claim forms~~

~~“(1) A listed PAYE intermediary must file a subsidy claim form within 1 month of the date of filing an employer monthly schedule to which the form relates.~~

~~“(2) The Commissioner may amend the details in a subsidy claim form to correct an error. The amendment must be made within 2 years of receiving the form.~~

15

~~“(3) For the purposes of **subsection (2)**, the Commissioner must give the listed PAYE intermediary 14 days notice of a proposed amendment.~~

20

~~“(4) For the purposes of section 22, a listed PAYE intermediary must keep the necessary records to verify the information in a subsidy claim form.~~

~~“Compare: 2004 No 35 ss NBB 3(2), NBB 5(1)–(3)~~

~~“Tax pooling intermediaries~~

25

~~“15N Establishing tax pooling accounts~~

A person who meets the requirements of **section 15Q** may apply under **section 15P** to the Commissioner to establish a tax pooling account.

~~“Compare: 2004 No 35 s MBA 3(1)~~

30

~~“15O Role of Commissioner~~

~~“(1) The Commissioner is not required to oversee or audit the operation of a tax pooling account.~~

- “(2) The Commissioner is not liable for any loss related to the operation of a tax pooling account through—
- “(a) the failure of a tax pooling intermediary to deposit in a tax pooling account an amount paid to them by a taxpayer: 5
 - “(b) the unauthorised withdrawal by a tax pooling intermediary from a tax pooling account:
 - “(c) the failure of a tax pooling intermediary to ask for a transfer of funds from a tax pooling account to a taxpayer’s tax account with the Commissioner. 10
- “Compare: 2004 No 35 s MBA 4(5), (6)

“15P Applications to establish tax pooling accounts

- “(1) In order to establish and maintain a tax pooling account, an intermediary must—
- “(a) hold the account in their name; and 15
 - “(b) operate systems to protect the personal information and payment details that are obtained in the course of running the tax pooling account; and
 - “(c) record the balance in the tax pooling account contributed by each taxpayer. 20
- “(2) A tax pooling account continues until it is wound up under **section 15S**.
- “Compare: 2004 No 35 s MBA 4

“15Q Fitness of applicants

- “(1) This section applies for the purposes of **section 15P** to— 25
- “(a) an applicant who is a natural person; and
 - “(b) an officer of an applicant who is not a natural person; and
 - “(c) a principal of an applicant.
- “(2) The applicant— 30
- “(a) must not be a discharged or undischarged bankrupt; or
 - “(b) must not have been convicted of an offence involving dishonesty; or
 - “(c) must be eligible to be a company director. 35
- “Compare: 2004 No 35 s MBA 3(d)

**“15R Requirements for applications to establish tax pooling
accounts**

- “(1) An application to establish a tax pooling account must contain—
- “(a) the applicant’s full name; address; and tax file number; 5
and
 - “(b) a statement that the applicant—
 - “(i) will operate systems that allow them to meet the 10
requirements set out in **section 15P(1)**; and
 - “(ii) will maintain and operate the systems to meet
those requirements; and
 - “(c) confirmation that the applicant will establish a trust ac-
count into which they agree to pay amounts received in
their role as intermediary; and
 - “(d) an undertaking that, before acting as intermediary for a 15
taxpayer, the applicant will inform the taxpayer of the
following matters:
 - “(i) the operation of the tax pooling account is not
subject to the Commissioner’s oversight or audit;
 - “(ii) the Commissioner has no liability for any loss 20
related to the tax pooling account;
 - “(iii) the applicant is fit to operate the tax pooling ac-
count as required by **section 15Q**;
 - “(iv) the applicant has met the requirements set out in 25
paragraphs (a) to (c);
- “(2) The Commissioner may approve an application to establish a
tax pooling account if the Commissioner is satisfied that the
applicant—
- “(a) is able to operate the account correctly; and
 - “(b) has systems to allow them to make payments and pro- 30
vide information in the format required by the Commis-
sioner.

“Compare: 2004 No 35 s MBA 3

“15S Winding up tax pooling accounts

- “(1) An intermediary may wind up their tax pooling account at any 35
time.
- “(2) The Commissioner may require an intermediary to wind up
their tax pooling account if—

- “(a) the intermediary’s actions are preventing a taxpayer from effectively managing their liability to pay provisional tax and use of money interest; or
 - “(b) the intermediary is or has breached their obligations under this Part; or 5
 - “(c) the tax pooling account is in deficit; or
 - “(d) fewer than 100 taxpayers are, or are likely to be, making deposits in the tax pooling account; or
 - “(e) the intermediary does not meet the requirements of **section 45P**; or 10
 - “(f) when they are not a natural person, the intermediary has been put into liquidation or receivership.
- “(3) For the purposes of **subsection (2)**,—
- “(a) the Commissioner may require the winding up immediately or may set another date for the winding up: 15
 - “(b) the Commissioner must give 30 days’ notice to the intermediary of any intended action using **subsection (2)(d)**.
- “(4) On the winding up of a tax pooling account, the Commissioner may refund the balance of the account to the former holder 20 of the account, or may apply to a court for directions for the disposal of the balance of the account.
- “Compare: 2004 No 35 s MBA 8

“*RWT proxies*”

- “**15T RWT proxies**” 25
- “(1) If the requirements in **subsection (2)** are met, a person may choose to become an RWT proxy for a person who pays resident passive income that consists of a dividend by notifying the Commissioner.
- “(2) The requirements are that— 30
- “(a) the person paying the resident passive income is a non-resident unit trust; and
 - “(b) the person receiving the resident passive income is a natural person or a trustee of a qualifying trust who has asked the person referred to in **subsection (1)** to act as 35 an RWT proxy in relation to the payment; and
 - “(c) the person has agreed to act as the RWT proxy; and

- “(d) the payment of resident passive income is made while the notice is effective:
- “(3) For the purposes of **subsection (1)**, the notification to the Commissioner must contain the person’s election; their name; postal address; and the date from which the election applies. 5
- “(4) The RWT proxy may cancel their election by notifying the Commissioner. The election stops applying from the later of—
- “(a) the date set out in the notice of cancellation:
- “(b) the date on which the Commissioner receives a notice of cancellation. 10
- “Compare: 2004 No 35 s NF 2AA”.
- (2) **Subsection (1)** applies for the tax on income derived in the 2008–09 or later income years.

435 Part 2B replaced

- (1) Part 2B is replaced by the following: 15

“Part 2B

**“Intermediaries for PAYE, provisional
tax, and resident passive income**

“PAYE intermediaries

“15C PAYE intermediaries and listed PAYE intermediaries 20

- “(1) A person who meets the requirements of **section 15F** may apply under **section 15D** to the Commissioner for approval to become a PAYE intermediary.

- “(2) A PAYE intermediary may apply under **section 15G** to the Commissioner to become a listed PAYE intermediary. To 25
make an application, the PAYE intermediary must meet, on a continuing basis, the requirements for a PAYE intermediary.

“Compare: 2004 No 35 ss NBA 1, NBB 3

“15D Application for approval as PAYE intermediary

- “(1) In order to become a PAYE intermediary, a person must— 30
- “(a) meet the requirements of **section 15F**; and
- “(b) have established a trust account that meets the requirements of section RP 6 of the Income Tax Act 2007; and

- “(c) operate systems to protect the personal information and payment details that are obtained in the course of running the account.
- “(2) The Commissioner may approve an application if the Commissioner is satisfied that the applicant— 5
- “(a) will comply with the PAYE rules and the ESCT rules if they assume an employer’s obligations under those rules; and
- “(b) has systems to allow them to make payments and provide information in the format required by the Commissioner. 10
- “(3) The Commissioner may approve a person as a PAYE intermediary for a set period.
- “Compare: 2004 No 35 s NBA 2(1)(a)–(c), (2), (3)
- “15E Revocation of approval** 15
- “(1) The Commissioner may revoke an approval given under **section 15D** if the person—
- “(a) does not comply with the PAYE rules:
- “(b) does not comply with the ESCT rules when they have assumed an employer’s obligations under those rules: 20
- “(c) is no longer fit to be a PAYE intermediary because they do not meet the requirements of **section 15F**:
- “(d) when they are not a natural person, has been put into liquidation or receivership:
- “(e) when they are a company, is no longer registered in New Zealand. 25
- “(2) If the Commissioner revokes an approval under **subsection (1)(b)**, the Commissioner must notify the person, and any employer for whom the person is a PAYE intermediary, of the revocation and its effective date. The effective date must not be less than 14 days from the date of notification. 30
- “(3) A decision by the Commissioner under this section is not open to challenge.
- “Compare: 2004 No 35 s NBA 2(4)

“15F Fitness of applicants

“(1) This section applies for the purposes of **section 15D to the following:**

“(a) an applicant who is a natural person or a corporation sole: 5

“(b) each member of an applicant that is an unincorporated body:

“(c) an officer of an applicant that is a body corporate:

“(d) a principal of an applicant.

“(2) The applicant, member, officer, or principal, as applicable,— 10

“(a) must not be a discharged or undischarged bankrupt; or

“(b) must not have been convicted of an offence involving fraud; or

“(c) must be eligible to be a company director.

“Compare: 2004 No 35 s NBA 2(1)(c)

15

“15G Application for approval as listed PAYE intermediary

“(1) In order to become a listed PAYE intermediary, a PAYE intermediary must—

“(a) meet the requirements of **section 15D; and**

“(b) have completed and filed the returns of income required from them; and 20

“(c) paid the required amounts of tax due from them.

“(2) A PAYE intermediary is a listed PAYE intermediary only for a period that is no more than the period for which they have been approved as a PAYE intermediary. 25

“(3) On approval of an application under this section and before acting as a listed PAYE intermediary for an employer, the listed PAYE intermediary must inform an employer who contracts their services as a listed PAYE intermediary that the Commissioner does not guarantee payment by the intermediary to an employee of the employer, or the performance of a service provided by them. 30

“(4) The Commissioner may approve a PAYE intermediary as a listed PAYE intermediary for a set period.

“Compare: 2004 No 35 s NBB 2

35

“15H Grounds for revocation of listing

The Commissioner may revoke the listing of a listed PAYE intermediary if—

- “(a) an approval of the person as a PAYE intermediary is revoked: 5
- “(b) the person no longer meets the requirements of **section 15F**:
- “(c) the person does not provide a subsidy claim form by the date and in the format required by the Commissioner:
- “(d) the person does not comply with an obligation of a listed PAYE intermediary: 10
- “(e) the Commissioner considers revocation is necessary in order to protect the integrity of the tax system.

“Compare: 2004 No 35 s NBB 4(1)

“15I Procedure for revocation of listing

15

- “(1) The Commissioner must notify a listed PAYE intermediary of an intended revocation under **section 15H**, and must provide reasons for the intended revocation.
- “(2) If the listed PAYE intermediary who is notified by the Commissioner under **subsection (1)** does not resolve the matters set out in the notice to the satisfaction of the Commissioner within 30 days of the date on which they are notified, the Commissioner may give 14 days’ notice of revocation. 20
- “(3) At the end of the 14-day notice period under **subsection (2)**, the listing of the listed PAYE intermediary is revoked. 25
- “(4) A decision by the Commissioner under this section is not open to challenge under Part 8A.

“Compare: 2004 No 35 s NBB 4(2)–(5)

“15J Employers’ arrangements with PAYE intermediaries

- “(1) An employer who wishes to enter an arrangement with a PAYE intermediary must notify the Commissioner of the proposed arrangement, providing— 30
 - “(a) the name of the PAYE intermediary:
 - “(b) the period for which the PAYE intermediary is to act for the employer: 35
 - “(c) the bank account number of the PAYE intermediary into which the employer will deposit amounts:

- “(d) whether the proposed arrangement requires the PAYE intermediary to collect amounts under the ESCT rules.
- “(2) On approval of the arrangement, the Commissioner must notify the employer, and the approval applies to pay periods that begin on or after 14 days after the date on which the notice is given. 5
- “(3) An employer or a PAYE intermediary may end the arrangement by notifying the other party and the Commissioner. The notice must state the date that is after the notification for the end of the arrangement. 10
- “(4) An employer or a listed PAYE intermediary may end an arrangement by notifying the other party and the Commissioner. The notice must state the date on which the arrangement is to end that must begin on or after 14 days after the date on which the notice is given. 15
- “Compare: 2004 No 35 ss NBA 3, NBA 8, NBB 7
- “15K Privacy requirements**
- The PAYE intermediary must operate and maintain systems to protect the personal information and payment details that they acquire in running the systems. 20
- “Compare: 2004 No 35 s NBA 5(3)
- “15L Amended monthly schedules**
- The PAYE intermediary may make an amended monthly schedule relating to the employee and a pay period, and is then responsible for the accuracy of the amendments. 25
- “Compare: 2004 No 35 s NBA 5(4)
- “15M Subsidy claim forms**
- “(1) A listed PAYE intermediary must file a subsidy claim form within 1 month of the date of filing an employer monthly schedule to which the form relates. 30
- “(2) The Commissioner may amend the details in a subsidy claim form to correct an error. The amendment must be made within 2 years of receiving the form.

“(3) For the purposes of **subsection (2)**, the Commissioner must give the listed PAYE intermediary 14 days’ notice of a proposed amendment.

“(4) For the purposes of section 22, a listed PAYE intermediary must keep the necessary records to verify the information in a subsidy claim form. 5

“Compare: 2004 No 35 ss NBB 3(2), NBB 5(1)–(3)

“RWT proxies

“15N RWT proxies

“(1) If the requirements in **subsection (2)** are met, a person may choose to become an RWT proxy for a person who pays resident passive income that consists of a dividend by notifying the Commissioner. 10

“(2) The requirements are that—

“(a) the person paying the resident passive income is a non-resident unit trust; and 15

“(b) the person receiving the resident passive income is a natural person or a trustee of a qualifying trust who has asked the person referred to in **subsection (1)** to act as an RWT proxy in relation to the payment; and 20

“(c) the person has agreed to act as the RWT proxy; and

“(d) the payment of resident passive income is made while the notice is effective.

“(3) For the purposes of **subsection (1)**, the notification to the Commissioner must contain the person’s election, their name, postal address, and the date from which the election applies. 25

“(4) The RWT proxy may cancel their election by notifying the Commissioner. The election stops applying from the later of—

“(a) the date set out in the notice of cancellation;

“(b) the date on which the Commissioner receives a notice of cancellation. 30

“Compare: 2004 No 35 s NF 2AA”.

(2) After **section 15N**, the following is inserted:

“Tax pooling intermediaries

“15O Establishing tax pooling accounts

A person who meets the requirements of **section 15R** may apply under **section 15Q** to the Commissioner to establish a tax pooling account.

5

“Compare: 2004 No 35 s MBA 3(1)

“15P Role of Commissioner

“(1) The Commissioner is not required to oversee or audit the operation of a tax pooling account.

“(2) The Commissioner is not liable for any loss related to the operation of a tax pooling account through— 10

“(a) the failure of a tax pooling intermediary to deposit in a tax pooling account an amount paid to them by a taxpayer;

“(b) the unauthorised withdrawal by a tax pooling intermediary from a tax pooling account; 15

“(c) the failure of a tax pooling intermediary to ask for a transfer of funds from a tax pooling account to a taxpayer’s tax account with the Commissioner.

“Compare: 2004 No 35 s MBA 4(5), (6) 20

“15Q Applications to establish tax pooling accounts

“(1) In order to establish and maintain a tax pooling account, an intermediary must—

“(a) hold the account in their name; and

“(b) operate systems to protect the personal information and payment details that are obtained in the course of running the tax pooling account; and 25

“(c) record the balance in the tax pooling account contributed by each taxpayer.

“(2) A tax pooling account continues until it is wound up under **section 15T**. 30

“Compare: 2004 No 35 s MBA 4

“15R Fitness of applicants

“(1) This section applies for the purposes of **section 15Q** to—

“(a) an applicant who is a natural person; and 35

- “(b) an officer of an applicant who is not a natural person; and
 - “(c) a principal of an applicant.
- “(2) The applicant—
 - “(a) must not be a discharged or undischarged bankrupt; or 5
 - “(b) must not have been convicted of an offence involving dishonesty; or
 - “(c) must be eligible to be a company director.
 - “Compare: 2004 No 35 s MBA 3(d)
- “15S Requirements for applications to establish tax pooling accounts** 10
- “(1) An application to establish a tax pooling account must contain—
 - “(a) the applicant’s full name, address, and tax file number; and 15
 - “(b) a statement that the applicant—
 - “(i) will operate systems that allow them to meet the requirements set out in **section 15Q(1)**; and
 - “(ii) will maintain and operate the systems to meet those requirements; and 20
 - “(c) confirmation that the applicant will establish a trust account into which they agree to pay amounts received in their role as intermediary; and
 - “(d) an undertaking that, before acting as intermediary for a taxpayer, the applicant will inform the taxpayer of the following matters: 25
 - “(i) the operation of the tax pooling account is not subject to the Commissioner’s oversight or audit;
 - “(ii) the Commissioner has no liability for any loss related to the tax pooling account; 30
 - “(iii) the applicant is fit to operate the tax pooling account as required by **section 15R**;
 - “(iv) the applicant has met the requirements set out in **paragraphs (a) to (c)**.
- “(2) The Commissioner may approve an application to establish a tax pooling account if the Commissioner is satisfied that the applicant— 35
 - “(a) is able to operate the account correctly; and

“(b) has systems to allow them to make payments and provide information in the format required by the Commissioner.”

“Compare: 2004 No 35 s MBA 3

“15T Winding up tax pooling accounts 5

“(1) An intermediary may wind up their tax pooling account at any time.”

“(2) The Commissioner may require an intermediary to wind up their tax pooling account if—

“(a) the intermediary’s actions are preventing a taxpayer from effectively managing their liability to pay provisional tax and use of money interest; or 10

“(b) the intermediary is or has breached their obligations under this Part; or

“(c) the tax pooling account is in deficit; or 15

“(d) fewer than 100 taxpayers are, or are likely to be, making deposits in the tax pooling account; or

“(e) the intermediary does not meet the requirements of **section 15Q**; or

“(f) when they are not a natural person, the intermediary has been put into liquidation or receivership.” 20

“(3) For the purposes of **subsection (2)**,—

“(a) the Commissioner may require the winding up immediately or may set another date for the winding up:

“(b) the Commissioner must give 30 days’ notice to the intermediary of any intended action using **subsection (2)(d)**.” 25

“(4) On the winding up of a tax pooling account, the Commissioner may refund the balance of the account to the former holder of the account, or may apply to a court for directions for the disposal of the balance of the account.” 30

“Compare: 2004 No 35 s MBA 8”.

(3) **Subsection (1)** applies for the tax on income derived in the 2008–09 or later income years.

436 Information to be furnished on request of Commissioner

- (1) In section 17(1C)(a)(ii), “paragraph (b)” is replaced by “paragraph (a)”.
- (2) Section 17(1C)(a) is replaced by the following:
 - “(a) in determining whether a non-resident is controlled by a New Zealand resident, the New Zealand resident is treated as holding anything held by a person who is resident in New Zealand, or is a controlled foreign company, and is associated with the New Zealand resident; and”.

10

437 No requirement to disclose tax advice document

- (1) In section 20B(1), “or under a discovery obligation” is inserted after “under 1 or more of sections 16 to 19”.
- (2) ~~**Subsection (1)** applies for challenges commenced on or after the date on which this Act receives the Royal assent.~~ 15
- (2) **Subsection (1)** applies for a challenge—
 - (a) commenced on or after the date on which this Act receives the Royal assent;
 - (b) commenced before the date on which this Act receives the Royal assent if,— 20
 - (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and 25
 - (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing. 30

438 Treatment of book or document

- (1) In section 20C(1), “request for information” is replaced by “request for, or discovery obligation for disclosure of, information”.
- (2) Section 20C(2)(a) is replaced by the following: 5
 - “(a) from the time of the request for, or discovery obligation for disclosure of, information:”.
- (3) Section 20C(3)(a) is replaced by the following: 10
 - “(a) the book or document is ruled not to be a tax advice document for the person by—
 - “(i) the District Court:
 - “(ii) a court or Taxation Review Authority, if the claim is made in response to a discovery obligation in proceedings before the court or Authority:”.
- (4) **Subsections (1) to (3) apply for challenges commenced on or after the date on which this Act receives the Royal assent:** 15
- (4) **Subsections (1) to (3) apply for a challenge—**
 - (a) commenced on or after the date on which this Act receives the Royal assent:
 - (b) commenced before the date on which this Act receives the Royal assent if,— 20
 - (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and 25
 - (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing. 30 35

439 Claim that book or document is tax advice document

- (1) In section 20D(4)(d), “information.” is replaced by “information:” and the following is added:

- “(e) if the requirement to disclose information is under a discovery obligation, by the date by which the discovery obligation requires the disclosure of information.”
- (2) ~~Subsection (4) applies for challenges commenced on or after the date on which this Act receives the Royal assent.~~ 5
- (2) Subsection (1) applies for a challenge—
- (a) commenced on or after the date on which this Act receives the Royal assent:
- (b) commenced before the date on which this Act receives the Royal assent if,— 10
- (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and 15
- (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing. 20
- 440 Person must disclose tax contextual information from tax advice document** 25
- (1) In section 20F(2)(d), “information.” is replaced by “information.” and the following is added:
- “(e) if the requirement to disclose information is under a discovery obligation, by the date by which the discovery obligation requires the disclosure of information.” 30
- (2) In section 20F(5), the words before paragraph (a) are replaced by the following:
- “(5) The Commissioner may apply to a District Court Judge, or to a court or Taxation Review Authority in relation to a tax advisor making a statutory declaration considered in proceedings before the court or Authority, that a tax advisor be barred from 35

making statutory declarations under this section, if the tax advisor is convicted of an offence under—”.

- (3) After section 20F(5), the following is added:
- “(6) An application under subsection (5) may be made in the course of proceedings before a court or Taxation Review Authority.” 5
- (4) ~~Subsections (1) to (3) apply for challenges commenced on or after the date on which this Act receives the Royal assent.~~
- (4) Subsections (1) to (3) apply for a challenge—
 - (a) commenced on or after the date on which this Act receives the Royal assent: 10
 - (b) commenced before the date on which this Act receives the Royal assent if,—
 - (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and 15
 - (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing. 20 25

441 Challenge to claim that book or document is tax advice document

- (1) In section 20G(1), in the words before paragraph (a), “District Court Judge” is replaced by “District Court Judge, or to the court or Taxation Review Authority hearing the proceedings giving rise to the claim,”. 30
- (2) Section 20G(1)(b) is replaced by the following:
 - “(b) information provided or withheld by the person is tax contextual information in relation to the book or document:”. 35

- (3) In section 20G(2), in the words before paragraph (a), “District Court Judge” is replaced by “District Court Judge, court, or Taxation Review Authority” in both places where it appears.
- (3) In section 20G(2), “District Court Judge” is replaced by “District Court Judge, court, or Taxation Review Authority” in both places where it appears. 5
- (4) After section 20G(3), the following is added:
- “(4) An application under this section may be made in the course of proceedings before a court or Taxation Review Authority.”
- (5) **Subsections (1) to (4)** apply for challenges commenced on or after the date on which this Act receives the Royal assent. 10
- (5) **Subsections (1) to (4)** apply for a challenge—
- (a) commenced on or after the date on which this Act receives the Royal assent:
- (b) commenced before the date on which this Act receives the Royal assent if,— 15
- (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and 20
- (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing. 25 30
- 442 Keeping of business and other records**
- (1) After section 22(2)(ec), the following is inserted:
- ~~“(ed) is an employer to whom **section RD 13B** of the Income Tax Act 2007 applies in relation to the treatment of a tax credit for a payroll donation:”~~ 35
- “(ed) is an employer to whom **section RD 13B** of that Act applies in relation to the treatment of a tax credit for a payroll donation:”.

- (2) Section 22(2)(j) is repealed.
 - (3) After section 22(2)(kd), the following is inserted:
~~“(ke) the transfer under **section 24Q** of an amount of an employee’s payroll donation to the recipient of the donation;~~
“(ke) the transfer under **section 24Q** of an amount of an employee’s payroll donation to the recipient of the donation; and”.
 - (4) **Subsection (2)** applies for the 2009–10 and later income years.
- 443 Records to be kept by employer or PAYE intermediary**
In section 24(1), “withheld from it” is replaced by “withheld from it, and the amount of any payroll donation”.
- 444 PAYE tax codes**
- (1) In section 24B(3), the following is inserted after paragraph (g):
“(gb) ‘NSW’ for salary or wages for employment as a non-resident seasonal worker.”
 - (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 445 Special tax code certificates**
- (1) After section 24F(5), the following is inserted:
“(5B) This section does not apply to an employee who is a non-resident seasonal worker.”
 - (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 446 Variation of requirements**
In section 24P, “sections 24B, 24H, and 24I” is replaced by “sections 24B, 24H, 24I, and 24L”.
- 446 Variation of requirements**
- (1) In section 24P, “24B, 24H, and 24I” is replaced by “RD 22 of the Income Tax Act 2007, and 24B, 24H, 24I, and 24L”.
 - (2) **Subsection (1)** applies for the 2008–09 and later income years.

447 New heading and section 24Q inserted

After section 24P, the following is inserted:

“Payroll donations

“24Q Transfer of payroll donations by employers

- “**(1)** This section applies for a pay period when a person asks their employer to transfer an amount of a payroll donation from the person’s PAYE income payment to an entity described in section LD 3(2) of the Income Tax Act 2007 or listed in schedule 32 of that Act. 5
- “**(2)** The employer or PAYE intermediary must transfer the amount to the recipient of the donation within 3 months from the end of the pay period. 10
- “**(3)** Before making the transfer referred to in **subsection (2)** the employer must also ensure that the recipient is an entity described in section LD 3(2) or listed in schedule 32. 15
- “(1) This section applies for a pay period when a person asks their employer to transfer an amount of a payroll donation from the person’s pay to a donee organisation. 20
- “(2) The employer or PAYE intermediary must transfer the amount to the recipient of the donation on or by the relevant date required by sections RA 15 and RD 4 of the Income Tax Act 2007 that occurs nearest to the expiry of 2 months after the end of the pay period. Until transferred to the recipient, the amount is held on trust for the person. 25
- “(3) Before the transfer referred to in **subsection (2)** is made, the person must— 25
 - “(a) ensure that the recipient of the donation is a donee organisation; and
 - “(b) supply the employer with sufficient details of the recipient to enable the transfer to be made.” 30

448 Section 28B replaced

- (1) Section 28B is replaced by the following:

“28B Notification of investors’ tax rates

A New Zealand resident who is an investor in a multi-rate PIE must provide their tax file number to the PIE within 1 month of the date of a request from the PIE for the number.” 35

- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for the 2010–11 and later income years.

449 Portfolio tax rate entity to give statement to investors and request information 5

- (1) Section 31B(1) is repealed.
- (1B) Section 31B(2B) is replaced by the following:
- “(2B) A portfolio tax rate entity must give a notice required by sub-
section (2)—
- “(a) by the end of the month following the quarter in which
an investor has a portfolio exit period, if the investor has
a prescribed investor rate of more than zero and invests
in an entity that pays tax under section HL 22 of the
Income Tax Act 2007: 10 15
- “(b) by 30 June, if the investor is not an investor referred
to in **paragraph (a)** and invests in a portfolio tax rate
entity that pays tax under section HL 22 or HL 24 of
that Act:
- “(c) by 30 June, or 2 months after the end of the entity’s
income year if that date is after 30 June, if the investor
invests in a portfolio tax rate entity that pays tax under
section HL 23 of that Act. 20
- “(2C) For the purposes of **subsection (2B)(a)**, if the quarter is a
second or third quarter, the portfolio tax rate entity may pro-
vide a combined notice for the affected period.” 25
- (2) In **section 31B(2B)**, “subsection (1) or (2)” is replaced by
“subsection (2)”.
- (3) In section 31B(3), “subsections (1) and (2) do not apply” are
replaced by “subsection (2) does not apply”. 30

450 Section 31B replaced

- (1) Section 31B is replaced by the following:
- “31B Notification requirements for PIEs**
- “(1) An entity choosing under **section HM 70** of the Income Tax
Act 2007 to become a PIE must notify the Commissioner of 35

the election. The notice must be in the prescribed electronic format.

~~“(2) A PIE choosing under **section HM 29** of that Act to cancel PIE status must notify the Commissioner of the election. The notice must be in the prescribed electronic format.~~ 5

“(2) A PIE choosing under **section HM 29** of that Act to cancel PIE status must notify the Commissioner of the election. The notice must be in the prescribed electronic format and be provided within 1 month of the cancellation of PIE status.

“31C Notification requirements for multi-rate PIEs 10

~~“(1) This section sets out the notice requirements for a multi-rate PIE in relation to its investors or a proxy for investors in a multi-rate PIE. The notices must contain the information that the Commissioner considers relevant for a calculation period.~~

~~“(2) For an exiting investor and a PIE that calculates and pays tax using the quarterly calculation option under **section HM 43** of the Income Tax Act 2007, the notice must be provided for each calculation period in which the exit period falls. The notice must be given by the end of the month following the quarter in which the exit period ends.~~ 15 20

~~“(3) For a zero-rated investor and a PIE that calculates and pays tax using the exit calculation or quarterly calculation options under **section HM 42 or HM 43** of that Act, other than an exiting investor that is zero-rated under **section HM 60**, the notice must be provided—~~ 25

~~“(a) for each quarter in which the exit period falls, if the calculation period is more than 1 day; and~~

~~“(b) for each tax year in which the exit period falls, if the calculation period is a day.~~

~~“(4) For an investor to whom **subsection (3)** applies, the PIE must provide the notice by the end of the 1-month period that starts after the end of the period to which the notice relates.~~ 30

~~“(5) For an investor to whom **subsection (2) or (3)** does not apply, the PIE must notify the investor of the relevant information by the 30 June after the end of the tax year or, if the PIE’s corresponding income year ends after the tax year, by the end of~~ 35

the second month after the month in which that corresponding income year ends:

- “(6) The PIE must, at least once in a tax year, ask an investor to provide their prescribed investor rate under **sections HM 56 to HM 58** of that Act. 5
- “(7) The PIE must ask a person when they become an investor to provide their tax file number to the PIE. For each investor for whom no tax file number is held, the PIE must, at least once in a tax year, ask the investor to provide their tax file number.
- “(3) For an investor not referred to in **subsection (2)** who invests in a PIE that calculates and pays tax using the provisional tax calculation option under **section HM 44** of that Act, the PIE must notify the investor by 30 June after the end of the tax year, or within 2 months after the end of the PIE’s income year if that date is after 30 June. 10 15
- “(4) For an investor not referred to in **subsections (2) and (3)** who invests in a PIE that calculates and pays tax using the quarterly or exit calculation options under **sections HM 42 and HM 43** of that Act, the PIE must notify the investor by 30 June after the end of the tax year. 20
- “(5) The PIE must, at least once in a tax year, ask an investor to provide their tax rate under **sections HM 56 to HM 58** of that Act.
- “(6) The PIE must ask a person when they become an investor to provide their tax file number to the PIE. For each investor for whom no tax file number is held, the PIE must, at least once in a tax year, ask the investor to provide their tax file number.” 25
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for the 2010–11 and later income years. 30

450B Records to be provided by employer who contributes to superannuation fund

- (1) In section 32A(1), “employer’s superannuation contributions” is replaced by “employer’s superannuation cash contributions”. 35

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

450C Certification requirements for withdrawals subject to section CS 1 of Income Tax Act 2007

- (1) In section 32B(1)(a), (b), (c), (k), and (l), “employer’s super-annuation contributions” is replaced by “employer’s super-annuation cash contributions”. 5

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

451 Applications for RWT exemption certificates 10

- (1) After section 32E(2)(eb), the following is inserted:
“(ec) the trustee of the Niue International Trust Fund:
“(ed) the trustee of the Tokelau International Trust Fund:”.
- (2) Section 32E(2)(i)(ii) is replaced by the following:
“(ii) whose annual gross income for the tax year for which they last filed a return of income is more than \$2,000,000:”.

452 Section 32N repealed

- (1) Section 32N is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 20

452 Heading and section 32N repealed

- (1) The heading before section 32N and section 32N are repealed.
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 25

453 Returns of income

- (1) Section 33(1) is replaced by the following: 30
- “(1) In each tax year, a taxpayer, other than a taxpayer to whom section 33A applies or a multi-rate PIE that calculates income tax using the exit calculation or quarterly options under **sections**

HM 42 and HM 43 of the Income Tax Act 2007, must furnish to the Commissioner a return of income in the prescribed form for the preceding tax year, together with such other particulars as may be prescribed.

- “(1) In each tax year, a taxpayer, other than a taxpayer to whom section 33A applies or a multi-rate PIE that calculates income tax using the exit calculation or quarterly calculation option under **sections HM 42 and HM 43** of the Income Tax Act 2007, must furnish to the Commissioner a return of income in the prescribed form for the preceding tax year, together with such other particulars as may be prescribed.” 5 10
- (2) Section 33(1C) is replaced by the following:
- “(1C) A multi-rate PIE or a proxy for an investor in the entity that calculates income tax using the exit calculation or quarterly calculation options under **sections HM 42 and HM 43** of that Act must provide returns for which the entity is responsible under **section 57B**.” 15
- ~~(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.~~
- (3) **Subsections (1) and (2)** apply for the 2010–11 and later income years. 20

454 Annual returns of income not required

- (1) After section 33A(1)(b)(ixa), the following is inserted:
- “(ixb) salary or wages from employment as a non-resident seasonal worker if the employee has used the ‘NSW’ tax code; and”.
- (2) After **section 33A(1)(b)(ixb)**, the following is inserted:
- “(ixc) salary or wages from employment as a non-resident seasonal worker; and”.
- (3) In section 33A(1)(i), “Student Loan Scheme Act 1992.” is replaced by “Student Loan Scheme Act 1992; and” and the following is added:
- “(j) is a non-resident seasonal worker.”
- (4) Section 33A(2)(a) is replaced by the following:
- “(a) is a non-resident other than a non-resident seasonal worker employed under the recognised seasonal employment scheme; or”.

- (5) **Subsections (1) and (4)** apply for the 2009–10 and later income years.
- (6) **Subsection (2)** applies for the 2008–09 income year.
- (7) **Subsection (3)** applies for the 2008–09 and later income years.

5

455 Electronic format of employer monthly schedule and PAYE income payment form

(1) In section 36A(2), “that certificate in an electronic format” is replaced by “that payment form in electronic format”.

(2) Section 36A(2B) is replaced by the following: After section 36A(2), the following is inserted: 10

“(2B) An employer or PAYE intermediary to whom section RD 22(1) of the Income Tax Act 2007 applies must provide their employer monthly schedules and PAYE income payment forms to the Commissioner by electronic means and in the required format. But the requirement to file electronically does not apply if the employer—

15

“(a) is not a new employer and has gross amounts of tax for PAYE income payments and employer’s superannuation contributions payable for the preceding tax year of less than \$100,000: 20

“(b) is a new employer but only in relation to the months in the income year for which the total amounts of tax for PAYE income payments and employer’s superannuation contributions remain under the \$100,000 threshold: 25

“(c) is authorised under section 36B to provide the schedule and form in a format other than an electronic format.”

(3) **Subsection (1)** applies for the 2008–09 and later income years. 30

456 Section 36AB replaced

(1) Section 36AB is replaced by the following:

“36AB Electronic return requirements for multi-rate PIEs

The Commissioner must prescribe 1 or more electronic formats in which a return required under **section 57B** must be provided by a multi-rate PIE or a proxy for an investor in the 35

PIE. The Commissioner may specify conditions relating to the format, either general or in a particular case.”

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

457 Returns to annual balance date 5

- (1) Section 38(1B) is replaced by the following:

“(1B) A multi-rate PIE that does not calculate and pay tax using the provisional tax calculation option under **section HM 44** of the Income Tax Act 2007 must not make an election under subsection (1).” 10

- (2) ~~**Subsection (1)**~~ applies for the 2009–10 and later income years.

- (2) **Subsection (1)** applies for the 2010–11 and later income years.

458 Returns by persons with tax credits for housekeeping payments and charitable or other public benefit gifts 15

- (1) Section 41A(1) is replaced by the following:

“(1) A person who has a tax credit under section LC 7 or sections LD 1 to LD 3 of the Income Tax Act 2007 may apply to the Commissioner for 1 or more refunds.” 20

- (2) Section 41A(3) is replaced by the following:

“(3) The sum of the housekeeping payments under section LC 7 of that Act and charitable or other public benefit gifts under sections LD 1 to LD 3 of that Act made by a person must be no more than their taxable income in the tax year in which the payment or gift, or both, is made.” 25

- (3) Section 41A(5)(b) is replaced by the following:

“(b) the amount of a charitable or other public benefit gift to which sections LD 1 to LD 3 of that Act apply.”

- (4) Section 41A(10) is replaced by the following: 30

“(10) When the Commissioner has considered an application, the Commissioner must notify the person of the amount of the tax credit under section LC 7 or sections LD 1 to LD 3 of that Act and of the amount of refund allowed.”

459 Return by person claiming rebate on redundancy payment

- (1) The section heading to section 41B is replaced by “**Return by person applying for tax credit on redundancy payment**”.
- (2) Section 41B(1) is replaced by the following: 5
- “(1) A person who has a tax credit under **section ML 2** of the Income Tax Act 2007 may apply to the Commissioner for a refund.”
- (3) Section 41B(4) is replaced by the following:
- “(4) When the Commissioner has considered an application for a 10
refund, the Commissioner must, by notice, inform the taxpayer of the amount of the tax credit the taxpayer has under sections ML 1 to ML 3 of the Income Tax Act 2007 and the amount of refund allowed.”

460 Portfolio tax rate entities and portfolio investor proxies to make returns, file annual reconciliation statement 15

- (1) ~~After section 57B(3), the following is inserted:~~ The subsection between section 57B(3) and section 57B(4) is replaced by the following:
- “(3B) A person who is required to perform responsibilities under 20
subsection (3)(a) for a portfolio investor exit period must perform them by the day that is—
- “(a) the end of the 1-month period beginning from the end of the portfolio investor exit period, if **paragraphs (b) and (c)** do not apply; or 25
- “(b) ~~the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November, or~~
- “(c) the end of the month beginning from the end of the month in which the portfolio investor exit period ends, 30
if the day given by **paragraph (a)** does not exist.
- “(b) the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November.”
- (2) In section 57B(6)(c), “by the end of the second month” is replaced by “by the end of the third month”. 35
- (3) ~~Section 57B(7) is repealed.~~

461 Section 57B replaced

(1) Section 57B is replaced by the following:

“57B Return requirements for multi-rate PIEs

“(1) This section sets out the return requirements for a multi-rate
PIE or a proxy for an investor in the PIE. 5

“(2) The responsibilities for each period are—

“(a) to file a return in the prescribed form showing—

“(i) the amount of the tax liability of the entity for the
period; and

“(ii) further information that the Commissioner con- 10
siders relevant; and

“(b) to pay an amount of tax equal to the PIE’s tax liability
for the investor for the period.

“(3) If the PIE does not calculate and pay its tax liability using the
exit calculation or provisional tax calculation option in **sec-** 15
tion HM 42 or HM 44 of the Income Tax Act 2007 for a tax
year, the PIE must carry out their responsibilities for a calcula-
tion period in the tax year by the end of the month that follows
the month in which the calculation period ends.

“(4) If the PIE calculates and pays its income tax liability using 20
the provisional tax calculation option under **section HM 44**
of that Act for a tax year, the PIE must carry out their respon-
sibilities for the tax year as a person with a provisional tax
liability under the provisional tax rules.

“(5) If the PIE calculates and pays its income tax liability using the 25
exit calculation option under **section HM 42** of that Act for a
tax year, the PIE must carry out their responsibilities—

“(a) for an exiting investor whose exit period falls in the tax
year, for the exit period by—

“(i) the end of the month that follows the month in 30
which the exit period ends:

“(ii) 15 January after the end of the exit period, if the
period ends in November; and

“(b) for an investor who holds an investor interest at the end
of the tax year, for the tax year by the end of the month 35
after the end of the tax year.

“(6) If the PIE voluntarily makes a payment of income tax under
section HM 45 of that Act for a period in a tax year that is

- not included in a return required under **subsection (5)**, the PIE must file a return in the prescribed form as described in **subsection (2)**—
- “(a) the end of the month that follows the month in which the period ends: 5
- “(b) 15 January after the end of the period, if the period ends in November.
- “(7) For a tax year, the PIE must file a return in the prescribed form in relation to information prescribed by the Commissioner— 10
- “(a) by the 30 June after the end of the tax year if— 10
- “(i) the PIE has a corresponding income year that does not end after the end of the tax year; and
- “(ii) the PIE continues to meet the requirements for PIE status at the end of the corresponding income year; or 15
- “(b) by the end of the 2nd month after that in which the PIE’s corresponding income year ends, if—
- “(i) the PIE has a corresponding income year that ends after the end of the tax year; and
- “(ii) the PIE continues to meet the requirements for 20
- PIE status at the end of the corresponding income year; or
- “(c) by the end of the 3rd month after that in which the PIE loses PIE status, if the cessation occurs in the corresponding income year.” 25
- (2) **Subsection (4)** applies for the 2009–10 and later income years.
- (2) **Subsection (1)** applies for the 2010–11 and later income years.
- 462 Disclosure of trust particulars 30**
- In section 59(2),—
- (a) “sections HC 27(4) and YB 21” is replaced by “section YB 21”;
- (b) “section HH 1(1) of that Act” is replaced by “section YB 21 of that Act”. 35

463 Disclosure of interest in foreign company or foreign investment fund

(1) In section 61(1), the words before paragraph (a) are replaced by the following:

“(1) Where any person has at any time in an income year an income interest or a control interest in a foreign company or an attributing interest in a foreign investment fund, that person shall disclose to the Commissioner, in the prescribed form and with that person’s return of income for the relevant tax year,—”.

(2) In **section 61(1)**, the words before paragraph (a) are replaced by the following:

“(1) Where any person has at any time in an income year an income interest or a control interest in a foreign company or an attributing interest in a foreign investment fund, that person shall disclose to the Commissioner, in the prescribed form and within the time allowed by section 37 for providing the person’s return of income for the relevant tax year,—”.

(2B) In **section 61(1)**, in the proviso, “EX 3(b) or (d)” is replaced by “EX 3(1)(b) or (d)”.

(3) Section 61(1C) is replaced by the following:

~~“(1C) A portfolio tax rate entity that does not make payments of tax under section HL 23 of the Income Tax Act 2007 is required to make a disclosure under **subsection (1)** in the prescribed form by the due date for the entity’s return under section 57B(5) for the tax year.~~

“(1C) A portfolio tax rate entity that does not make payments of tax under section HL 23 of the Income Tax Act 2007 is required to make a disclosure under **subsection (1)** in the prescribed form by the due date for the entity’s return under section 57B(7) for the tax year.”

(4) **Section 61(1C)** is replaced by the following:

~~“(1C) A multi-rate PIE that does not calculate and pay tax using the provisional tax calculation option under **section HM 44** of the Income Tax Act 2007 must make a disclosure under **subsection (1)** in the prescribed form within the time allowed by section 37 for filing its return for the corresponding tax year under **section 57B(5)**.~~

- “(1C) A multi-rate PIE that does not calculate and pay tax using the provisional tax calculation option under **section HM 44** of the Income Tax Act 2007 must make a disclosure under **subsection (1)** in the prescribed form within the time allowed by section 37 for filing its return for the corresponding tax year under **section 57B(7).**” 5
- (5) **Subsection (4)** applies for the 2009–10 and later income years.
- (5) **Subsection (4)** applies for the 2010–11 and later income years. 10
- 464 Section 66 repealed**
- (1) Section 66 is repealed.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.
- (2) **Subsection (1)** applies— 15
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 20
- 465 Tax credit relating to KiwiSaver and complying superannuation fund members: member credit form**
- Section 68C(3)(b) is repealed.**
- (1) In section 68C(2),— 25
- (a) in the words before the paragraphs, “section KJ 1 of the Income Tax Act 2004” is replaced by “section MK 1(1) of the Income Tax Act 2007”:
- (b) in paragraph (b), “meets the requirements of section KJ 2(d) of that Act” is replaced by “resides mainly in New Zealand”: 30
- (c) in paragraph (c), “section KJ 2(a) to (c), and (e) and (f)” is replaced by “section MK 2(1)(a) to (c), and (d)(i) and (ii)”.
- (2) Section 68C(3)(b) is repealed. 35

466 Statements in relation to research and development tax credits: single persons

- (1) Section 68D(1) is repealed.
- (2) In section 68D(2), “The person” is replaced by “A person who is not a member of an internal software development group”. 5
- (2B) In section 68D(3)(b)(i), “or 2009–10” is omitted.
- (3) Section 68D(4) is repealed.
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years.

467 Section 68E replaced

10

- (1) Section 68E is replaced by the following:

“68E Statements in relation to research and development tax credits: internal software development groups

- “(1) The nominated member of an internal software development group must furnish, in the electronic format prescribed by the Commissioner, a statement relating to the research and development tax credits that the members of the group have under section LH 2 of the Income Tax Act 2007 for a tax year. 15
- “(2) The statement described in **subsection (1)** must be furnished to the Commissioner no later than— 20
 - “(a) the day that is—
 - “(i) 30 days after the latest day for a member of the group to furnish a return of income or joint return of income under section 37 for the relevant tax year; or 25
 - “(ii) a later day allowed by the Commissioner, if the Commissioner considers that a failure to meet the requirements of **subparagraph (i)** is a result of simple oversight; or
 - “(b) the day that is 2 years after the latest day for a member of the group to furnish a return of income under section 37 for the relevant tax year if— 30
 - “(i) ~~the tax year is the 2008–09 or 2009–10 tax year; and~~
 - “(i) the tax year is the 2008–09 tax year; and 35

- “**(ii)** no member has an amount of a research and development tax credit under section LH 2 in a return of income for that tax year.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5
- 467B New section 68F inserted**
- (1) After section 68E, the following is inserted:
- “68F Requirements for statements in relation to research and development tax credits**
- “(1) A person making a statement in relation to a research and development tax credit under section 68D or **68E** is excluded from the following requirements:
- “**(a)** the requirement under section 23(1) to retain a copy of their statement for 7 years;
- “**(b)** the requirement under section 36(3) to print off and sign a copy of the statement. 15
- “(2) A person making a statement in relation to a research and development tax credit under section 68D or **68E** is not taking a tax position in relation to which a liability to a tax shortfall under section 141 may arise.” 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 468 Section 78E repealed**
- (1) Section 78E is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 25
- (2) **Subsection (1)** applies for—
- (a)** the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b)** the 2010–11 and later income years, for persons having a balance date before 30 June. 30
- 469 Section 78F repealed**
- (1) Section 78F is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 35

- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 5
- 469B New section 80KLB inserted**
- (1) After section 80KL, the following is inserted:
- “80KLB Recovery of excess tax credits**
- “(1) This section applies when—**
- “(a) the Commissioner pays a person a tax credit by instalment under section MF 1 of the Income Tax Act 2007 in a tax year; and** 10
 - “(b) in paying a tax credit by instalment in an earlier tax year, the Commissioner has overpaid the tax credit as described in **section MF 6** of that Act.** 15
- “(2) The Commissioner may use the amount of an instalment payable to the person to satisfy an amount added under section MF 6(2) of that Act to the tax payable by the person for the earlier tax year.”**
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20
- 469C Effect of extra instalment on entitlement to tax credit**
- (1) Section 80KW(1)(b) is replaced by the following:
- “(b) receives a payment under either section 80KI or 80KN of an instalment of the credit for each period of a fortnight or a week in the tax year, as applicable; and.** 25
- (2) In section 80KW(2)(b), “under section 80KI” is omitted.
- (3) In section 80KW(5)(b), “under section 80KN” is omitted.
- (4) In section 80KW(6), the formula is replaced by the following:
- $$\frac{(\text{tax credit} - \text{parental tax credit})}{52} \times 53.$$
- (5) Section 80KW(7)(b) is replaced by the following: 30
- “(b) **parental tax credit** is the total amount of parental tax credit to which the person is entitled for the tax year**

calculated under section MD 12 of the Income Tax Act 2007.”

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

470 Officers to maintain secrecy 5

- (1) Section 81(4)(p) is replaced by the following:
- “(p) communicating, for the purpose of section 85F, information to a person who is an officer, employee, or agent of the New Zealand Film Commission responsible for the administration of a scheme under which government screen production payments are made and who is authorised to receive the information by the Chief Executive of the New Zealand Film Commission:” 10
- (2) In section 81(4)(s)(ii), “section 85K.” is replaced by “section 85K:” and the following is added: 15
- “(t) communicating to any person who is an employee of the Treasury (as defined in section 2 of the Public Finance Act 1989), any information communicated to that person for the purposes of section LH 15 of the Income Tax Act 2007.” 20

471 Disclosure of information for verification of large budget screen production grant entitlement

- (1) In the heading to section 85F, “**large budget screen production grant**” is replaced by “**government screen production payment**”. 25
- (2) Section 85F(1) and (2) are replaced by the following:
- “(1) The purpose of this section is to facilitate the exchange of information between the Commissioner and the Commission for the purpose of providing to the Commission information which the chief executive considers necessary to enable the Commission to determine the entitlement of a company to a government screen production payment. 30
- “(2) For the purposes of **subsection (1)**, on request from the chief executive, the Commissioner may, at any time, provide to any authorised officer of the Commission all of the following information that is held by the Department: 35

- “(a) particulars relating to the amount of expenditure incurred in relation to a project that is the subject of an application for a government screen production payment:
- “(b) particulars relating to the amount of expenditure incurred in New Zealand in relation to a project that is the subject of an application for a government screen production payment: 5
- “(c) the Commissioner’s opinion as to the accuracy of any information provided by an applicant in relation to the application for a government screen production payment.” 10
- (3) In section 85F(3), in the definition of **company**, “refers:” is replaced by “refers.” and the definition of **large budget screen production grant** is repealed.
- 472 Disclosure of information in relation to Working for Families tax credits 15**
- (1) ~~In section 85G(1)(b), “sections MD 1, or MD 1 and ME 1” is replaced by “sections MD 1, or MD 1 and ME 1 of the Income Tax Act 2007”.~~
- (1) In section 85G(1)(b), “sections MD 1, or MD 1 and ME 1 of that Act” is replaced by “section MD 1, or sections MD 1 and ME 1, of the Income Tax Act 2007”. 20
- (2) In section 85G(1)(c), “of that Act” is omitted.
- (3) **Subsection (2)** applies for the 2008–09 and later income years. 25
- 473 Further secrecy requirements**
- Section 87(5)(d) is replaced by the following:
- “(d) being a person who is an officer, employee, or agent of the New Zealand Film Commission responsible for the administration of a scheme under which government screen production payments are made and who is authorised to receive information provided under section 85F; or” 30
- 474 New section 89AB inserted**
- (1) After section 89A, the following is inserted: 35

“89AB Response periods

- “(1) This section applies for the purposes of Parts 4A and 8A to set the period for a notice in response to another notice (the **initiating notice**). The period is called the **response period**. 5
- “(2) When the initiating notice is a notice of proposed adjustment, the response period is a 2-month period starting on the date of issue of the notice. 5
- “(3) When the initiating notice is a notice of assessment issued by a taxpayer, the response period for a notice of proposed adjustment under section 89DA is— 10
- “(a) ~~a 4-month period starting on the date on which the initiating notice is received in an office of the department; or~~ 10
- “(b) ~~if the notice of proposed adjustment relates solely to the amount of a tax credit under section LH 2 of the Income Tax Act 2007, a period starting on the date the initiating notice is received in an office of the department and ending 1 year after the latest date to provide a return of income for the relevant tax year.~~ 15
- “(a) a 4-month period starting on the date of issue of the initiating notice; or 20
- “(b) if the notice of proposed adjustment relates solely to the amount of a tax credit under section LH 2 of the Income Tax Act 2007, a period starting on the date the initiating notice is received in an office of the department and ending 2 years after the latest date to provide a return of income for the relevant tax year. 25
- “(4) When the initiating notice is either a notice of disputable decision or a notice revoking or varying a disputable decision that is not an assessment, the response period for a notice is— 30
- “(a) ~~a 2-month period starting on the date the initiating notice is received in an office of the department, unless paragraphs (b) or (c) apply; or~~ 30
- “(b) ~~for a notice of proposed adjustment to which paragraph (c) does not apply, a 4-month period starting on the date the initiating notice is received in an office of the department; or~~ 35

- “(a) a 2-month period starting on the date of issue of the initiating notice, unless **paragraph (b) or (c)** applies;
or
- “(b) for a notice of proposed adjustment to which **paragraph (c)** does not apply, a 4-month period starting on 5
the date of issue of the initiating notice; or
- “(c) for a notice of proposed adjustment relating solely to the amount of a tax credit under section LH 2 of that Act, a period starting on the date the notice of proposed adjustment is received in an office of the department and 10
ending on the later of—
- “(i) 4 months after the date of the initiating notice:
- “(ii) 1 year after the latest date to provide a return of income for the relevant tax year.
- “(ii) 2 years after the latest date to provide a return of income for the relevant tax year. 15
- “(5) When the initiating notice is a disclosure notice, a notice issued by the Commissioner rejecting an adjustment proposed by a disputant, or a disputant’s statement of position, the response period is a 2-month period starting on the date of issue of the 20
initiating notice.
- “(6) For the purposes of **subsections (3)(b) and (4)(c)(ii)**, if the taxpayer is a member of an internal software development group to which section 68E applies, the latest date for providing a return means the latest date for any member of the group. 25
- “(7) ~~In **subsections (3)(b) and (4)(c)(ii)**, a temporary extension applies for tax credits for research and development expenditure arising in the 2008–09 and 2009–10 income years, with the time limit of 1 year extended to 2 years.~~ 25
- (2) **Subsection (1)** applies for the 2008–09 and later income 30
years.

475 Taxpayers and others with standing may issue notices of proposed adjustment

- (1) After section 89D(2D), the following is added:
- “(2E) If the Commissioner makes an assessment of an amount of 35
research and development credit, a taxpayer who has not provided a statement under section 68D or 68E in relation to an assessment period may dispute the assessment only by provid-

ing a statement for the period within the time allowed under section 68D or 68E, as applicable.”

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

476 Taxpayer may issue notice of proposed adjustment for taxpayer assessment 5

- (1) After section 89DA(2), the following is added:

“(3) A taxpayer who makes an assessment of an amount of research and development credit but does not provide a statement under section 68D or 68E in relation to the tax year referred to in subsection (1), may dispute the assessment only by providing a statement for the tax year within the time allowed under section 68D or 68E, as applicable.” 10

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

477 Completing the disputes process

- (1) Section 89N(1)(c)(iii) is replaced by the following:

“(iii) the Commissioner has reasonable grounds to believe that a person who is an associated person of the disputant may take steps in relation to the existence or location of the disputant’s assets to avoid or delay the collection of tax from the disputant.” 20

- (2) Section 89N(1)(c)(v) is replaced by the following:

“(v) a person who is an associated person of the disputant and is involved in another dispute with the Commissioner involving similar issues has begun judicial review proceedings in relation to the other dispute.” 25

478 Determination on economic rate 30

- (1) After section 91AAF(1), the following is inserted:

“(1B) For the purposes of subsection (1), the rate set by the Commissioner may be a default rate for kinds of items of depreciable property.”

- (2) Section 91AAF(4)(b) is replaced by the following: 35

- ~~“(b) is, for an item of property to which section EE 27, EE 28, EE 30, or EZ 23 of the Income Tax Act 2007 applies, reacquired after the date on which the new determination is issued, by the person who disposed of it before the date on which the new determination is issued.”~~ 5
- “(b) is reacquired after the date on which the new determination is issued, by the person who disposed of it before the date on which the new determination is issued.”
- (3) ~~After section 91AAF(5), the following is inserted:~~ After section 91AAF(5), the following is added: 10
- “(6) The Commissioner may revoke a determination setting an economic rate. The revocation takes effect on the day after the date of publication of the *Gazette* in which notification under section 91AAK is made.”
- (4) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 15
- (5) **Subsection (3)** applies for the 2008–09 and later income years.
- 479 Determination on special rates and provisional rates**
- (1) Section 91AAG(1)(b) is replaced by the following: 20
- “(b) a provisional rate when no applicable rate, other than a default rate, is set in a determination under section 91AAF.”
- (2) In section 91AAG(3), the words before the paragraphs are replaced by the following: 25
- “(3) The Commissioner may issue a determination setting a special rate or a provisional rate using, as applicable,—”.
- (3) After section 91AAG(3)(c), the following is inserted:
- “(cb) the formula in section EZ 23 of that Act; or”.
- (4) Section 91AAG(4)(a) is replaced by the following: 30
- “(a) determining a figure using the applicable formula from subsection (3); and”.
- (5) After section 91AAG(6), the following is added:
- “(7) The Commissioner may revoke a provisional determination if it no longer applies to an item or if the item is no longer 35
in use or available for use. The revocation takes effect on

the day after the date of publication of the *Gazette* in which notification under section 91AAM(4) is made.”

- (6) **Subsections (1) to (4)** apply for the 2005–06 and later income years.
- (7) **Subsection (5)** applies for the 2008–09 and later income 5 years.

480 Commissioner may decline to issue special rate or provisional rate

- (1) Section 91AAH(3)(a) is replaced by the following:
 - “(a) an economic rate, other than a default rate, already ap- 10 plies to the item; or
 - “(ab) if a default rate applies to the item, the provisional rate would differ from the default rate by an amount that is less than 50% of the amount by which the next highest or lowest rate, as applicable, set out in schedule 12 of 15 the Income Tax Act 2007 is more or less than the default rate; or”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

481 Notice of setting of economic rate 20

- (1) In section 91AAK, “of issuing a determination” is replaced by “of issuing or revoking a determination”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

482 Applications for determinations 25

- (1) In section 91AAM(4), “of issuing a determination under section 91AAG(4)” is replaced by “of issuing a determination under section 91AAG(4) or revoking a determination under section 91AAG(7)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income 30 years.

483 Determination on type of interest in FIF and use of fair dividend rate method

- (1) In section 91AAO(1), “section EX 40 of the Income Tax Act 2004” is replaced by “section EX 46 of the Income Tax Act 2007”. 5
- (2) Section 91AAO(2)(b)(i) is replaced by the following:
“*(i)* are loans, fixed-return foreign equity as defined in section YA 1 of the Income Tax Act 2007, or arrangements with a fixed economic return.”.
- ~~(3) **Subsection (2)** applies for the 2009–10 and later income years.~~ 10
- (3) After section 91AAO(3B), the following is inserted:
“(3C) **Subsection (3D)** applies to a portfolio tax rate entity that makes payments of tax under section HL 22 of the Income Tax Act 2007. 15
- “(3D) A determination does not apply for the portfolio tax rate entity for a quarter beginning before the date of the determination unless the PIE chooses that the determination apply for the quarter.”
- (4) **Section 91AAO(3C) and (3D)** are replaced by the following: 20
- “(3C) **Subsection (3D)** applies to a multi-rate PIE that calculates and pays its income tax liability under the quarterly calculation option as set out in **section HM 43** of the Income Tax Act 2007.
- “(3D) A determination does not apply for the multi-rate PIE for a quarter beginning before the date of the determination unless the PIE chooses that the determination apply for the quarter and all following quarters in the income year.” 25
- (5) **Subsection (2)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 30
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- (6) **Subsection (4)** applies for the 2010–11 and later income years. 35

484 New heading and section 91AAQ inserted

After section 91AAP, the following is inserted:

*“Determinations relating to non-attributing
active CFCs***“91AAQ Determination on insurer as non-attributing active
CFC**

- “(1)** A person may apply in writing to the Commissioner for a de- 5
termination that a CFC is a non-attributing active CFC for the
purposes of **section EX 24B** of the Income Tax Act 2007 if
the CFC—
- “(a)** is controlled by a company resident in New Zealand 10
that—
 - “(i)** has a business of insurance registered and rated
under the Insurance Companies (Ratings and In-
spection) Act 1994;
 - “(ii)** is in the same group of companies as a company 15
resident in New Zealand that has a business of in-
surance registered and rated under the Insurance
Companies (Ratings and Inspection) Act 1994;
and
 - “(b)** has a business of insurance in a country or territory out- 20
side New Zealand that is registered under the legislation
of the country or territory relating to the business of in-
surance; and
 - “(c)** had the business before 1 October 2008.
- “(2)** In deciding whether or not to grant an application, the Com- 25
missioner must consider whether the CFC’s business—
- “(a)** is carried on with the main purpose of producing a com-
mercial return on the CFC’s capital; and
 - “(b)** produces all or nearly all of the CFC’s income from—
 - “(i)** premiums from insurance contracts covering 30
risks in the country or territory in which the
CFC’s business is located;
 - “(ii)** proceeds from investment assets having a total
value commensurate with the value of those in-
surance contracts.
- “(3)** For the purposes of **subsection (2)**, the Commissioner may 35
take into account the following:
- “(a)** the nature and extent of the activities undertaken by the
CFC in the business of insurance;

- “(b) the nature and extent of the risks arising in the country or territory that are assumed by the CFC in the business: 5
- “(c) the nature and value of the assets used by the CFC in the business compared with the nature and extent of the risks assumed by the CFC in the business: 5
- “(d) the nature and amount of deductions that the company controlling the CFC has for expenditure or loss incurred in giving support in relation to the business compared with the nature and amount of the assessable income that the company has from the CFC in relation to the business: 10
- “(4) A determination may be made for tax years specified in the determination: 15
- “(5) A determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination: 15
- “(6) A determination must be published in the *Gazette* within 30 days of the making of the determination: 15
- “(1) A person may apply in writing to the Commissioner for a determination that, for the purposes of **section EX 21B** of the Income Tax Act 2007,— 20
 - “(a) a CFC is a non-attributing active CFC, if the CFC satisfies **subsection (2)**; or
 - “(b) the members of a group of CFCs are non-attributing active CFCs, if the members satisfy **subsection (3)**. 25
- “(2) A CFC satisfies this subsection if—
 - “(a) the CFC is controlled by a company resident in New Zealand that—
 - “(i) has a business of insurance registered and rated under the Insurance Companies (Ratings and Inspection) Act 1994: 30
 - “(ii) is in the same group of companies as a company resident in New Zealand that has a business of insurance registered and rated under the Insurance Companies (Ratings and Inspection) Act 1994; 35
 - “(b) the CFC has a business of insurance in a country or territory outside New Zealand that is registered under

- the legislation of the country or territory relating to the business of insurance; and
- “(c) the CFC, or a company in the wholly-owned group to which the CFC belongs, had the business of insurance in the country or territory before 30 June 2009.” 5
- “(3) A group of CFCs satisfies this subsection if each member of the group—
- “(a) is controlled by a company resident in New Zealand that—
- “(i) has a business of insurance registered and rated under the Insurance Companies (Ratings and Inspection) Act 1994; 10
- “(ii) is in the same group of companies as a company resident in New Zealand that has a business of insurance registered and rated under the Insurance Companies (Ratings and Inspection) Act 1994; 15
- and
- “(b) is incorporated in the same country or territory as the other members of the group; and
- “(c) is subject to the laws of the country or territory; and 20
- “(d) is liable in the country or territory to income tax on its income; and
- “(e) derives its income mainly from the country or territory; and
- “(f) has a main business that is insurance or is related to insurance; and 25
- “(g) had the business in the country or territory before 30 June 2009.”
- “(4) In deciding whether or not to grant an application, the Commissioner must consider whether the business of the CFC or group of CFCs— 30
- “(a) is carried on with the main purpose of producing a commercial return on the capital of the CFC or group; and
- “(b) produces all or nearly all of the income of the CFC or group from— 35
- “(i) premiums from insurance contracts, other than reinsurance contracts, covering risks arising in the country or territory in which the business of the CFC or group is located:

- “(ii) proceeds from investment assets having a total value commensurate with the value of those insurance contracts.”
- “(5) For the purposes of **subsection (4)**, the Commissioner may take into account the following: 5
- “(a) the nature and extent of the activities undertaken by the CFC or group in the business of insurance:
- “(b) the nature and extent of the risks arising in the country or territory that are assumed by the CFC or group in the business: 10
- “(c) the nature and value of the assets used by the CFC or group in the business compared with the nature and extent of the risks assumed by the CFC or group in the business:
- “(d) the nature and amount of deductions that the company controlling the CFC or group has for expenditure or loss incurred in giving support in relation to the business compared with the nature and amount of the assessable income that the company has from the CFC or group in relation to the business.” 15 20
- “(6) A determination may be made for tax years specified in the determination.”
- “(7) A determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.” 25
- “(8) A determination must be published in the *Gazette* within 30 days of the making of the determination.”

485 New heading and section 91AAR inserted

- (1) After **section 91AAQ**, the following is inserted:
- “Determinations relating to relocation payments”*** 30
- “91AAR Determination relating to eligible relocation expenses**
- “(1) The Commissioner may determine that a type of expenditure is an eligible relocation expense for the purposes of **section CW 17B** of the Income Tax Act 2007, **section CW 13B** of the Income Tax Act 2004, and **section CB 12(1B)** of the Income Tax Act 1994.** 35

- “(2) The determination may set out the income year or income years for which it is to apply, but may not apply for income years before the 2002–03 income year.
- “(3) In determining whether a type of expenditure is an eligible relocation expense, the Commissioner may take into account whether the expenditure necessarily arises from a work-related relocation of an employee, rather than arising as a cost, including a private or capital cost, that an employee has incurred, or will incur, gradually over time irrespective of whether the employee would have relocated. In this regard, the Commissioner may bear in mind—
- “(a) whether the expenditure amounts to a substitution for an employee’s salary or wages:
 - “(b) whether employers generally treat the type of expenditure as a relocation expense:
 - “(c) the difficulty of and costs in measuring any element of private benefit.
- “(4) The determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination. The Commissioner must give at least 30 days’ notice of the implementation date of any change to the determination.
- “(5) A person affected by a determination made under this section may dispute or challenge the determination under Parts 4A and 8A.
- “(6) Within 30 days of issuing or changing a determination under this section, the Commissioner must publish a notice in the *Gazette* that—
- “(a) gives notice that the determination has been issued or changed, as applicable; and
 - “(b) states where copies of the determination can be obtained.”
- (2) **Subsection (1)** applies for the 2002–03 and later income years.

485B Assessment of shortfall penalties

- (1) In section 94A(2), “separately from the tax.” is replaced by “separately from the tax. However, this subsection does not apply to a penalty under section 141ED.”

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

486 Section 102 repealed

- (1) Section 102 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income 5
years:
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having
a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having 10
a balance date before 30 June.

487 Section 103 repealed

- (1) Section 103 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income 15
years:
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having
a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having 20
a balance date before 30 June.

488 Section 103A repealed

- (1) Section 103A is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income
years:
- (2) **Subsection (1)** applies for— 25
- (a) the 2009–10 and later income years, for persons having
a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having
a balance date before 30 June.

489 Section 104 repealed 30

- (1) Section 104 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income
years:

- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June. 5
- 490 Time bar for amendment of income tax assessment**
- (1) Section 108(1B)(b) is replaced by the following:
- “(b) 1 year has passed from the latest date to provide a return of income for the relevant tax year and, for a member of an internal software development group to which section 68E applies, the latest date means the latest date for any member of the group; and 10
 - “(b) 2 years have passed from the latest date to provide a return of income for the relevant tax year and, for a member of an internal software development group to which section 68E applies, the latest date means the latest date for any member of the group; and”. 15
- (2) Section 108(1B)(c) is replaced by the following:
- “(c) the taxpayer—
 - “(i) has not issued a notice of proposed adjustment to the Commissioner for an amount of a tax credit for research and development expenditure for the relevant tax year within the relevant response period; and 20
 - “(ii) has not asked for an assessment to be amended under section 113, having provided a detailed research and development statement under section 68D or 68E, as applicable, within the time limit referred to in paragraph (b).” 25
- (3) ~~After section 108(1B), the following is inserted;~~ 30
- “(1C) ~~In **subsection (1B)(b)**, a temporary extension applies for tax credits for research and development expenditure arising in the 2008–09 and 2009–10 income years, with the time limit of 1 year extended to 2 years.”~~
- (4) ~~**Subsections (1) to (3)** apply for the 2008–09 and later income years.~~ 35
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

490B Extension of time bars

- (1) In section 108B(3)(d), “section 108(1)” is replaced by “section 108(1) and (1A)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

5

491 Amended assessments for research and development tax credits

- (1) In section 113D, the following is added as subsection (2):
- “(2) If a taxpayer asks for an assessment to be amended under section 113, having provided a detailed research and development statement under section 68D or 68E, as applicable, within the time limit referred to in section 108(1B)(b), the Commissioner may not increase the amount of the credit by more than the amount set out in the taxpayer’s request.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

10

15

492 Definitions

In section 120C(1), the definition of **tax paid**, is replaced by the following:

- “**tax paid**, at a time, means—
- “(a) an amount of tax that—
- “(i) is paid or credited by the time for a tax liability; and
- “(ii) has not been refunded or applied by the Commissioner to satisfy another tax liability:
- “(b) an amount credited by the time to a tax pooling account under sections RP 17 to RP 21 of the Income Tax Act 2007:
- “(c) an amount credit or transferred by the time to a taxpayer’s account with the Commissioner from a tax pooling account under sections RP 17 to RP 21 of that Act”.

20

25

30

493 Section 120EA repealed

- (1) Section 120EA is repealed.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

35

- (2) **Subsection (1)** applies—
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year. 5
- 493B Provisional tax instalments in transitional years**
- (1) In section 120KD, in the example to the section, the entry “Three interest start dates apply: 16 January, 29 April, and 29 June (s 120KD(2)).” is replaced by “Three interest start dates apply: 16 January, 8 May, and 29 June (s 120KD(2)).” 10
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 494 Instalments of and due dates for provisional tax** 15
- In section 120KE(1)(b), “\$35,000” is replaced by “\$50,000”.
- 495 Where provisional tax paid by company does not count as overpaid tax**
- In section 120M(a), “but for that section” is replaced by “but for those sections”. 20
- 496 Variation to definition of date interest starts**
- (1) Section 120O(e) is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years:
- (2) **Subsection (1)** applies for— 25
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 496B Interest paid on deposits in tax pooling accounts** 30
- Section 120OE(1), is replaced by the following:
- “(1) Interest paid by the Commissioner on an amount deposited in a tax pooling intermediary’s tax pooling account accrues to the

benefit of the intermediary from the date of the deposit to, as
applicable,—

- “(a) the date the amount is refunded; or
“(b) the date of a transfer under section RP 19 of the Income
Tax Act 2007.”

5

497 Section 120R repealed

- (1) Section 120R is repealed.
(2) **Subsection (1)** applies for the 2009–10 and later income
years.

- (2) **Subsection (1)** applies for— 10

- (a) the 2009–10 and later income years, for persons having
a balance date on or after 30 June; or
(b) the 2010–11 and later income years, for persons having
a balance date before 30 June.

498 Certain rights of objection not conferred 15

Section 125(d) is replaced by the following:

- “(d) any decision or determination of the Commissioner ap-
proving or not approving a sickness, accident, or death
benefit fund for the purposes of section CW 34 of the
Income Tax Act 2007; or”.

20

498B Certain rights of challenge not conferred

In section 138E(1)(e)(iv), “34B,” is inserted in the list of sec-
tions.

498C Non-electronic filing penalty

- (1) In section 139AA(1)(a), “RD 23(2)” is replaced by “RD 25
22(2)”.

- (2) **Subsection (1)** applies for tax on income derived in the
2008–09 and later income years.

498D Late payment penalty

- (1) After section 139B(5A), the following is inserted: 30

- “(5B) A taxpayer is liable to pay a late payment penalty under sub-
section (2) in relation to a default date if—

- “(a) the Commissioner has given the taxpayer a notice of a further date for the payment of unpaid tax under subsection (1)(c)(i); and
- “(b) after giving the notice, the Commissioner becomes aware of a default by the taxpayer that arose before the date of the notice; and 5
- “(c) the further date for payment referred to in **paragraph (a)**—
- “(i) falls outside the period referred to in subsection (1)(b); and 10
- “(ii) should have been given in relation to the default referred to in **paragraph (b)**.
- “(5C) If the taxpayer enters into an instalment arrangement for the default under section 177B and a late payment penalty is imposed under section 139BA(1), the taxpayer is treated for the purposes of this section as paying on time, to the extent of the default, the amount of tax due for payment.” 15
- (2) Section 139B(6)(c) is replaced by the following:
- “(c) The term **unpaid tax** includes an amount of tax that must be withheld or deducted and paid to the Commissioner under a tax law but does not include a late payment penalty or a shortfall penalty imposed under section 141ED.” 20
- (3) **Subsection (1)** applies for unpaid tax that becomes due for payment on or after 1 April 2008. 25
- (4) **Subsection (2)** applies for a tax position taken on or after 1 April 2008.
- 499 Imposition of late payment penalties when financial relief sought**
- (1) Section 139BA(3)(b) is replaced by the following: 30
- “(b) the last day of the response period allowed by section 177(4) if the taxpayer does not provide the information sought or respond to a counter offer.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 35

499B Imputation penalty tax payable in some circumstances

- (1) In section 140BB, the section heading is replaced by “**Transitional imputation penalty tax payable in some circumstances**”.
- (2) After section 140BB(1), the following is inserted: 5
- “(1B) For the purposes of subsection (1)(a), for the transitional period, the following adjustments must be made to the company’s ICA balance at the end of the company’s 2007–08 income year:
- “(a) first, the company must subtract any overpayment of income tax for the 2007–08 or earlier income year in which the company was an ICA company: 10
- “(b) secondly, the company must subtract—
- “(i) any payment for an income year after the 2007–08 income year: 15
- “(ii) any amount that is or would be refundable for an income year after the 2007–08 income year:
- “(c) thirdly, the company must add any income tax paid for the 2007–08 or earlier income year in which the company was an ICA company. 20
- “(1C) For the purposes of subsection (1)(b), the company must include in its ICA balance the following debits arising in the transitional period:
- “(a) any debit arising from a dividend paid under section OZ 8 of the Income Tax Act 2007 when the ratio is greater than 30/70: 25
- “(b) any debit that relates to the company’s ICA balance at the end of the company’s 2007–08 income year—
- “(i) including any adjustment under **subsection (1B)**: 30
- “(ii) excluding any debit for an imputation credit attached to a dividend at an imputation ratio of 30/70 or less.”
- (3) After section 140BB(3), the following is added:
- “(4) Despite subsection (2), the company is not liable for imputation penalty tax for the transitional period in relation to the payment of a dividend with imputation credits attached when the imputation ratio is greater than 30/70 if the dividend is paid before the earlier of— 35

- “(a) the date on which the company’s 2008 return of income was filed; or
- “(b) 25 March 2009.”

500 Section 140C repealed

- (1) Section 140C is repealed. 5
- (2) **Subsection (1)** applies for the 2009–10 and later income years:
- (2) **Subsection (1)** applies for—
 - (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 10
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

500B FDP penalty tax payable in some circumstances

- (1) In section 140CA, the section heading is replaced by “**Transitional FDP penalty tax payable in some circumstances**”. 15
- (2) After section 140CA(1), the following is inserted:
- “(1B) For the purposes of subsection (1)(a), for the transitional period, the following adjustments must be made to the company’s FDP account balance at the end of the company’s 2007–08 income year: 20
 - “(a) first, the company must subtract any overpayment of income tax for the 2007–08 or earlier income year in which the company was an FDPA company:
 - “(b) secondly, the company must subtract—
 - “(i) any payment for an income year after the 2007–08 income year: 25
 - “(ii) any amount that is or would be refundable for an income year after the 2007–08 income year:
 - “(c) thirdly, the company must add any income tax paid for the 2007–08 or earlier income year in which the company was an FDPA company. 30
- “(1C) For the purposes of subsection (1)(b), the company must include in its FDP account balance the following debits arising in the transitional period:

- “(a) any debit arising from a dividend paid under section OZ 8 of the Income Tax Act 2008 when the ratio is greater than 30/70:
- “(b) any debit that relates to the company’s FDP account balance at the end of the company’s 2007–08 income year— 5
- “(i) including any adjustment under **subsection (1B)**:
- “(ii) excluding any debit for an FDP credit attached to a dividend at an FDP ratio of 30/70 or less.” 10
- (3) After section 140CA(3), the following is added:
- “(4) Despite subsection (2), the company is not liable for FDP penalty tax for the transitional period in relation to the payment of a dividend with FDP credits attached when the FDP ratio is greater than 30/70 if the dividend is paid before the earlier of— 15
- “(a) the date on which the company’s 2008 return of income was filed; or
- “(b) 25 March 2009.”
- 501 Section 140CA repealed** 20
- (1) Section 140CA is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income years:
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 502 Tax shortfalls**
- (1) Section 141(7)(c) is replaced by the following: 30
- “(e) ~~the 2 taxpayers are associated persons.~~
- “(c) the 2 taxpayers are associated persons,—”.
- (2) In section 141(7D), “of this Act” is omitted.

502B Unacceptable tax position

- (1) In section 141B(8), “subsection (2)(b)” is replaced by “subsection (2)”.
- (2) **Subsection (1)** applies for a tax position taken on or after 1 April 2008.

5

503 Abusive tax position

Section 141D(3B)(b) is replaced by the following:

- “(b) the sum of the tax shortfall from the arrangement for the taxpayer and the tax shortfalls from the arrangement for persons with whom the taxpayer is associated is less than \$50,000; and”.

10

504 Evasion or similar act

Section 141E(1)(c) is replaced by the following:

- “(c) knowingly does not make a deduction, withholding of tax, or transfer of payroll donation required to be made by a tax law; or”.

15

504B Not paying employer monthly schedule amount

- (1) After section 141ED(3)(a), the following is inserted:
- “(ab) during the period, the taxpayer is negotiating an instalment arrangement with the Commissioner to pay the unpaid amount:”.
- (2) After section 141ED(5), the following is inserted:
- “(5B) For the purposes of subsection (5), if the returned amount is varied or corrected by the taxpayer or the Commissioner in the period that starts on the date when the employer monthly schedule is provided to the Commissioner and ends on the day before the penalty date, the amount of the penalty that relates to the unpaid amount is based on the varied or corrected amount.
- “(5C) An amount paid by the taxpayer or applied by the Commissioner on account of the taxpayer in relation to the taxpayer’s liability to pay unpaid tax and a penalty under this section must first be applied towards payment of the penalty.”
- (3) **Subsections (1) and (2)** apply for a tax position taken on or after 1 April 2008.

20

25

30

504C Limitation on reduction of shortfall penalty

- (1) Section 141J(3) is repealed.
- (2) **Subsection (1)** applies for voluntary disclosures made on or after 17 May 2007.

504D New date for payment of tax that is not a penalty

5

After section 142A(3)(a), the following is inserted:

“(ab) if the assessment referred to in subsection (1)(a) is a default assessment; or”.

505 Due dates for payment of imputation penalty tax, FDP penalty tax, and underestimation penalty tax

10

- (1) The heading to section 142E is replaced by “**Due dates for payment of imputation penalty tax**”.

- (2) Section 142E(2) is repealed.

- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

15

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

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

20

506 Knowledge offences

- (1) Section 143A(3) and (6) are repealed.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

- (2) **Subsection (1)** applies for—

25

(a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or

(b) the 2010–11 and later income years, for persons having a balance date before 30 June.

507 Evasion or similar offence

30

- (1) Section 143B(3) is repealed.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or
 - (b) the 2010–11 and later income years, for persons having a balance date before 30 June.
- 5

507B Recovery of civil penalties

Section 156A(1)(a) and (b) are replaced by the following:

- “(a) for which the penalty is imposed; or
 - “(b) if the penalty is a late filing penalty, for which the tax return is to be provided; or
 - “(c) if the penalty is a non-electronic filing penalty, for which the return is provided.”
- 10

508 Taxes that may be recovered

- (1) In section 173D, the following is added as subsection (2):
 - “(2) For the purposes of this Part, assistance in the recovery of taxes includes assistance in the recovery of charges associated with the taxes, whether interest, administrative penalties, costs of collection or conservancy, or another related amount.”
 - (2) **Subsection (1)** applies in relation to events and periods occurring before or after 1 April 2008.
- 15
20

509 Transfer of excess tax within taxpayer’s accounts

- (1) After section 173L(2)(b), the following is inserted:
 “(bb) in the case of a tax credit for expenditure on research and development, a day after the end of the accounting year to which the credit relates:”.
 - (2) Section 173L(3) is replaced by the following:
 - “(3) Despite subsection (2)(b) and **(bb)**, a taxpayer who has an early balance date must, for tax withheld or deducted on their behalf or a tax credit for expenditure on research and development, choose a day after the end of the tax year in which the amount was withheld or deducted or the tax year corresponding to the accounting year to which the credit relates.”
 - (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 25
30

510 Transfer of excess tax to another taxpayer

- (+) After section 173M(2)(f), the following is inserted:
 “(fb) a tax pooling intermediary’s tax pooling account; or”.
- (1) Section 173M(2)(g) is replaced by the following:
 “(fb) a tax pooling intermediary’s tax pooling account; or 5
 “(g) another taxpayer not listed in paragraphs (a) to (fb).”
- (2) After section 173M(4)(a), the following is inserted:
 “(ab) if **subsection (2)(fb)** applies, a date that occurs on or
 after the date of the original deposit by the taxpayer:
 “(ab) if **subsection (2)(fb)** applies, a date that occurs on or 10
 after the date of the request.”.

511 Instalment arrangements

- (1) After section 177B(6), the following is added:
 “(7) Despite sections LA 6(2) and LH 2(6) of the Income Tax Act 2007, a taxpayer with an instalment arrangement who is meet- 15
 ing their obligations under it may choose to have an amount
 of refundable tax credit remaining for a tax year paid to them
 rather than used under the ordering rules set out in those sec-
 tions.”
- (2) **Subsection (1)** applies for the 2008–09 and later income 20
 years.

512 Section 181 repealed

- (1) Section 181 is repealed.
- (2) **Subsection (4)** applies for the 2009–10 and later income 25
 years:
- (2) **Subsection (1)** applies for—
 (a) the 2009–10 and later income years, for persons having
 a balance date on or after 30 June; or
 (b) the 2010–11 and later income years, for persons having
 a balance date before 30 June. 30

513 Section 183 repealed

Section 183 is repealed.

514 Remission for reasonable cause

- (1) Section 183A(1)(e) is repealed.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

514B Small amounts of penalties and interest not to be charged

Section 183F(1) is replaced by the following:

- “(1) Despite any other provision in this Act,— 5
- “(a) a taxpayer is not liable to pay a late payment penalty if an amount of income tax or ancillary tax that remains outstanding after the due date is \$100 or less:
- “(b) a taxpayer is not liable to pay interest under Part 7 if an amount of income tax or ancillary tax that remains outstanding after the due date is \$100 or less: 10
- “(c) a taxpayer is not liable to pay a penalty for not paying an employer monthly schedule amount if the unpaid amount on the day before the date of the Commissioner’s notice under section 141ED(1)(b) is \$100 or less: 15
- “(d) the Commissioner is not liable to pay interest under Part 7 on overpaid tax of \$100 or less.”

515 Remission on application

- (1) Section 183H(a)(ii) is repealed. 20
- (2) **Subsection (1)** applies for the 2009–10 and later income years:
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, for persons having a balance date on or after 30 June; or 25
- (b) the 2010–11 and later income years, for persons having a balance date before 30 June.

516 Payments into, and out of, Listed PAYE Intermediary Bank Account

Section 185D(1) is replaced by the following:

- “(1) All payments received by the Commissioner from a listed PAYE intermediary and made under sections RP 2 to RP 5 of the Income Tax Act 2007 must be paid into the Listed PAYE Intermediary Bank Account.” 30

517 Power to make interim payments of WFF tax credit

In section 225A(2)(b)(iii) and (iv), “of that Act” is omitted.

- (1) In section 225A(2)(b)(iii), “under that Act” is omitted.
- (2) In section 225A(2)(b)(iv), “under that Act” is omitted.

Part 3

5

**Amendments to Goods and Services Tax
Act 1985**

518 Goods and Services Tax Act 1985

This Part amends the Goods and Services Tax Act 1985.

519 Interpretation

10

- (1) This section amends section 2(1).
- (2) ~~After the definition of **dwelling**, the following is inserted:~~

~~“**emissions unit** means—~~

~~“(a) a New Zealand unit as defined in section YA 1 of the
Income Tax Act 2007:~~

15

~~“(b) a Kyoto unit as defined in section YA 1 of that Act:~~

~~“(c) a unit issued by an overseas registry that is prescribed
under the Climate Change Response Act 2002 as a unit
that may be transferred to accounts in the Registry under
that Act”.~~

20

- (2) The definition of **emissions unit** is replaced by the following:
“**emissions unit** means a unit as defined in section 4(1) of the
Climate Change Response Act 2002”.

- (3) After the definition of **local authority**, the following is inserted:

25

“loyalty programme means a consumer incentive scheme
under which a customer can obtain loyalty points that are
redeemable for goods or services”.

- (3B) The definition of **New Zealand unit** is repealed.

- (4) In the definition of **public authority** “and includes offices of
Parliament;” is replaced by “and includes offices of Parlia-
ment, the Parliamentary Service, and the Office of the Clerk
of the House of Representatives;”.

30

520 Meaning of term supply

Section 5(14) is replaced by the following:

- “(14) If a supply is charged with a tax under section 8, but section 11, 11A, 11AB, 11B, or **11C** requires part of the supply to be charged at the rate of 0%, that part of the supply is treated as being a separate supply.” 5

520B Supply of certain imported services

In section 5B, “sections 8(1), 15, 15A” is replaced by “sections 8(1), 15A to 15E”.

521 Time of supply

10

After section 9(8), the following is added:

- “(9) Despite subsection (1), an operator of a loyalty programme who meets the requirements of **section 11C** may treat a supply of services in a loyalty transaction as taking place at the time at which the loyalty points are redeemed for reward. But this subsection does not apply to a token, stamp, or voucher to which section 5(11D) to (11H) applies. 15
- “(10) For the purposes of **subsection (9)**, in a case where the operator is not resident in New Zealand but the supply of services is treated under section 8(4B) as made in New Zealand, the purchaser referred to in **section 11C** may treat the supply as taking place at the time at which the loyalty points are redeemed for reward if— 20
- “(a) the operator meets the first and second requirements set out in **section 11C**; and 25
- “(b) the purchaser meets the third requirement imposed on the operator under **section 11C**.”

522 Value of supply of goods and services

In section 10(4), “section 11(3)” is replaced by “section 11(3) or (3C)”. 30

523 Zero-rating of goods

After section 11(3), the following is inserted:

- “(3B) ~~Subsection (3)(a) does not apply to a supply of goods if the recipient gives the supplier at or before the time of the sup-~~

ply an undertaking in writing that neither the recipient nor an associated person will cause the goods to be reimported into New Zealand in a condition that is substantially the same as the condition the goods were in when the supply was charged with tax under subsection (1)(a) to (1)(l).

5

“(3B) Subsection (3)(a) does not apply to a supply of goods if the recipient gives the registered person at or before the time of the supply an undertaking in writing that neither the recipient nor an associated person will cause the goods to be reimported into New Zealand in a condition that is substantially the same as the condition the goods were in when the supply was charged with tax under subsection (1)(a) to (1)(l).

10

“(3C) Despite **subsection (3B)**, a registered person is treated as having supplied goods in the course or furtherance of a taxable activity and must be charged with tax at the rate specified in section 8 if—

15

“(a) the supply of the goods by the registered person was charged with tax under subsection (1)(a) to (l); and

“(b) the goods are imported into New Zealand; and

“(c) the goods are reacquired by the registered person in substantially the same condition as the condition the goods were in when the supply was charged with tax under subsection (1)(a) to (l); and

20

“(d) the registered person deducted under section 20(3) input tax as defined in section 3A(1)(c) in relation to the original supply of the goods under subsection (1)(a) to (l).

25

“(3D) **Subsection (3C)**—

“(a) applies at the time the goods are reacquired by the registered person:

30

“(b) does not apply if tax is paid under section 12 on the importation of the goods into New Zealand.”

524 **Zero-rating of services**

In section 11A(1)(r)(ii), “paragraph (q).” is replaced by “paragraph (q); or” and the following is added:

35

“(s) the services are an emissions unit and the supply is the issue of the emissions unit; if the issue is under an arrangement entered on or after 1 January 2009; or

“(t) the services are supplied as consideration for a supply that is chargeable at the rate of 0% under **paragraph (s)**.”

524 Zero-rating of services

- (1) Section 11A(1)(s) is replaced by the following: 5
- “(s) the services are an emissions unit and the supply is the transfer of the emissions unit under—
- “(i) section 64 of the Climate Change Response Act 2002;
- “(ii) Part 4, subpart 2 of that Act; 10
- “(iii) a covenant entered under the Forests (Permanent Forest Sink) Regulations 2007; or”.
- (2) Section 11A(1)(v) is replaced by the following:
- “(v) the services are an emissions unit and the supply is a sale or other disposal of the emissions unit, other than a transfer of the emissions unit from the Crown without payment of a price. 15
- (3) In **section 11A(1)(v)**, “price.” is replaced by “price; or” and the following is added:
- “(w) the supply is a sale or other disposal of services that are a unit— 20
- “(i) issued by reference to the sequestration, or avoidance of emission, of human-induced greenhouse gases; and
- “(ii) other than an emissions unit; and 25
- “(iii) verified to an internationally recognised standard.”

525 New section 11C inserted

After section 11B, the following is inserted:

- “11C Treatment of supplies by operators of loyalty programmes** 30
- “(1) This section applies when an operator of a loyalty programme makes a supply of services by entering into an arrangement (a **loyalty transaction**) with another person (the **purchaser**) through which the operator receives consideration for providing loyalty points to a third person as directed by the purchaser. 35

- “(2) The operator may defer the time of the supply of the services under **section 9(9)** to the time at which loyalty points are redeemed for reward if they meet the requirements of **subsections (3) to (5)**.
- “(3) The first requirement is that 25% or more of the operator’s taxable supplies must be zero-rated supplies of goods or services. The 25% threshold—
- “(a) may be met by including the taxable activity of an associated person:
 - “(b) must be met for the 12-month period that ends with the month in which the supply of services under the loyalty transaction is made, and the operator must have reasonable grounds for believing the threshold will be met for the 12-month period that begins with the month in which that supply of services is made.
- “(4) The second requirement is that —
- “(a) the operator or an associated person must make supplies of goods or services in a business activity (the **main business activity**) that is an activity other than a business of operating a loyalty programme; and
 - “(b) the loyalty points supplied by the operator must only be able to be redeemed for reward as part of the main business activity.
- “(5) The third requirement is that when the loyalty points are redeemed, the operator must be able to identify whether—
- “(a) tax under section 8 has been imposed on the supply of the loyalty points:
 - “(b) the time of supply has been deferred under **section 9(9)**.
- “(6) If the operator has a partner in an associated loyalty programme, the second requirement is still treated as met if, in addition to those requirements, loyalty points supplied by the operator are able to be redeemed for reward by the partner.”

526 Taxable periods

In section 15(2)(a), “\$250,000” is replaced by “\$500,000”.

526B Fringe benefits and entertainment expenses

In section 21I(5), “section CW 17 or CW 18” is replaced by “section CW 17, CW 17B, CW 17C, or CW 18”.

527 Persons making supplies in course of taxable activity to be registered

5

In section 51(1)(a), “\$40,000” is replaced by “\$50,000”.

528 Group of companies

In section 55(1)(a)(iii), “portfolio tax rate entity” is replaced by “multi-rate PIE”.

Part 4

10

Amendments to KiwiSaver Act 2006

529 KiwiSaver Act 2006

This Part amends the KiwiSaver Act 2006.

530 Interpretation

In section 4(1), in the definition of **PAYE period**, “in paragraph (a) of the definition of **payment period** in section MK 10” is replaced by “**payment period** as defined in section MK 10(3)”.

15

530 Interpretation

(1) This section amends section 4(1).

20

(2) In the definition of **Crown contribution**, in paragraph (b),—

(a) “section KJ 1 of the Income Tax Act 2004” is replaced by “section MK 1 of the Income Tax Act 2007”;

(b) “section KJ 5(2)” is replaced by “section MK 5”.

(3) In the definition of **PAYE period**, “in paragraph (a) of the definition of **payment period** in section MK 10” is replaced by “**payment period** as defined in section MK 10(3)”.

25

(4) The definition of **PAYE period** is replaced by the following: “**PAYE period** means, as applicable, a first payment period as defined in the Income Tax Act 2007, a second payment period as defined in that Act, or a month in which PAYE is withheld in relation to an employee”.

30

531 Section 13 repealed
Section 13 is repealed.

531B Other situations when automatic enrolment rules do not apply

In section 14(1)(d), “section OE 1(5) of the Income Tax Act 2004” is replaced by “section YD 1(7) of the Income Tax Act 2007”. 5

532 Eligibility to be exempt employer

Section 25(1)(b) is replaced by the following:

- “(b) the scheme must be a registered superannuation scheme 10
that is registered on or before the day after the Taxation
(International Taxation, Life Insurance, and Remedial
Matters) Act **2008** receives the Royal assent; and
- “(bb) the relevant participation agreement must be entered 15
into by the employer before the day after the Taxation
(International Taxation, Life Insurance, and Remedial
Matters) Act **2008** receives the Royal assent; and”.

532B Involuntary transfers

In section 57(1)(d), “paragraph (h) of the definition of **complying fund rules** in section OB 1 of the Income Tax Act 2004” 20
is replaced by “clauses 4(a) and 5(a) in schedule 28 of the In-
come Tax Act 2007”.

**533 What happens when initial back-dated validation ends,
with no confirmed back-dated validation?**

In section 59D(4), “paragraph” is replaced by “subsection 25
(3)”.

533B Contribution rate

Section 64(2) is replaced by the following:

- “(2) Despite subsection (1), the employee may choose a contribu- 30
tion rate of 2%, 4%, or 8% of their gross salary or wages by
giving notice to their employer of the rate they choose.”

534 How and when interest is paid on refunds

Sections 89(3) and (4) are repealed.

535 Refunds of employer contribution by Commissioner if employee opts out

In section 100, “may” is replaced by “must”.

5

536 General

After section 101A(2), the following is inserted:

“(2B) Despite subsection (1), an employer does not have to pay a compulsory employer contribution as provided in **sections 101FB and 101FC.**”

10

537 Compulsory employer contribution amount: general rule

(1) In section 101D(5)(b)(iii)(B), “; and” is replaced by “; or”, and the following is inserted:

“(C) one that has had contributions paid or credited to the contributions scheme or a prior scheme for the contributions scheme by a previous employer, and those contributions met the requirements described in paragraph (b)(i) to (iii); and”.

15

(2) In section 101D(8)(b), “percentage of the employee’s total contributions” is replaced by “percentage (inclusive of amounts payable under the ESCT rules) of the employee’s total contributions”.

20

538 New sections 101FB and 101FC inserted

After section 101F, the following is inserted:

25

“101FB Grace periods: employers

“(1) An employer does not have to pay a compulsory employer contribution for a payment of gross salary or wages to an employee in a grace period described in **subsection (2)**; if, for the whole of the relevant grace period,—

30

“(a) the automatic enrolment rules apply to the employee; and

“(b) the employer does not receive a notice under section 34(2) or 39 that the employee has opted in; and

- “(c) the employer does not deduct any amount of contributions required to be deducted from an employee’s salary or wages; and
- “(d) the employer does not receive a notice under section 61 that requires the deduction of contributions for the employee. 5
- “(1) An employer does not have to pay a compulsory employer contribution for a payment of gross salary or wages to an employee in a grace period described in **subsection (2)**, if, for the whole of the relevant grace period,— 10

 - “(a) 1 or more of the following apply:

 - “(i) the automatic enrolment rules apply to the employee:
 - “(ii) the employer does not receive a notice under section 34(1) or 39 that the employee has opted in; and 15
 - “(b) the employer does not deduct any amount of contributions required to be deducted from an employee’s salary or wages; and
 - “(c) the employer does not receive a notice under section 61 that requires the deduction of contributions for the employee. 20
- “(2) The grace periods for the purposes of **subsection (1)** are—

 - “(a) the period starting on the day that the employee starts new employment and finishing on the earlier of the day— 25

 - “(i) that is 1 year after the day that the employee starts new employment:
 - “(ii) that the employee ceases employment:
 - “(b) the period starting on the day that is 1 year after the day that the employee starts new employment and finishing on the earliest of— 30

 - “(i) the day that is before the day on which the employer receives a notice under section 34(2) or 39 that the employee has opted in: 35
 - “(i) the day that is before the day on which the employer receives a notice under section 34(1) or 39 that the employee has opted in:

“(ii) the day that is before the day on which the employer receives a notice under section 61 that requires the deduction of contributions for the employee:

“(iii) the day that the employee ceases employment. 5

~~“101FC De minimis: other contributions~~

For a payment of gross salary or wages to an employee, an employer does not have to pay a compulsory employer contribution for the employee if, for the payment of gross salary or wages, the amount of **other contributions** that meet the requirements of section 101D(5)(b) is calculated using the same percentage as the relevant **CEC rate** in section 101D(4). 10

“101FC De minimis: other contributions and hybrid schemes amount

For a payment of gross salary or wages to an employee, an employer does not have to pay a compulsory employer contribution for the employee, if, in respect of the payment of gross salary or wages, one of the following amounts is equal to or more than the relevant **CEC rate** in section 101D(4): 15

“(a) the amount of **other contributions** that meets the requirements of section 101D(5)(b) divided by the employee’s salary or wages (as defined for the relevant registered superannuation scheme): 20

“(b) the **hybrid schemes amount** that meets the requirements of sections 101D(6) to (8) divided by the employee’s salary or wages (as defined for the relevant registered superannuation scheme).” 25

539 Rules: providers

(1) In section 101G(3),—

- (a) “or complying superannuation fund” is omitted: 30
(b) “or a rule the same as that clause” is omitted.

(2) After section 101G(3), the following is added:

“(4) If a member of a complying superannuation fund will be entitled within 2 months to withdraw an amount from the fund under a rule the same as clause 4(3) of the KiwiSaver scheme 35
rules, the provider must send a notice to the member’s em-

ployer stating the date on which the member will be entitled to withdraw.”

539B Terms relating to members’ tax credits implied into trust deed

In section 128A(1), “section KJ 1 of the Income Tax Act 2004” is replaced by “section MK 1 of the Income Tax Act 2007”. 5

539C Terms relating to lump sum payments by complying superannuation funds

In section 128C(1), “paragraph (cc) of the definition of **complying fund rules** in section YA 1 of the Income Tax Act 2007” is replaced by “clause 2(c) in schedule 28 of the Income Tax Act 2007”. 10

540 Crown contribution

(1) In section 226(1), “a contribution” is replaced by “1 contribution”. 15

(2) Section 226(4) is replaced by the following:

“(4) If A ceases being a member of the first KiwiSaver scheme of which they are a member because the Commissioner accepts an opt-out notice outside the time limit in section 16 or because A’s enrolment is invalid, and the amount of the contribution under this section was never paid, then the next KiwiSaver scheme of which A is a member is treated as their first one, for the purposes of this section and entitlement to the contribution.” 20

541 Regulations relating to mortgage diversion facility 25

In section 229(2)(i), in the words before the subparagraphs, “a fixed dollar amount, and” is omitted.

541 Regulations relating to mortgage diversion facility

(1) In section 229(2)(i), in the words before the subparagraphs, “is a fixed dollar amount, and” is omitted. 30

(2) After section 229(2)(i), the following is inserted:

“(ia) an amount may not be diverted if it was received by the relevant provider before the provider has received

from the person a request to divert amounts under the mortgage diversion facility:”.

541B Schedule 1—KiwiSaver scheme rules

- (1) Schedule 1, clause 8(1) is replaced by the following:
- “(1) This clause applies to a member if the member has not made a withdrawal under this clause before (whether or not from the member’s current KiwiSaver scheme or from a KiwiSaver scheme to which the person previously belonged) and,—
- “(a) at least 3 years have expired after the Commissioner received the first contribution in respect of the person (whether or not a contribution in relation to the scheme of which the member is currently a member); or
- “(b) the person has been a member of 1 or more KiwiSaver schemes for a period of 3 years or more.”
- (2) Schedule 1, clause 9 is replaced by the following:
- “9 **Withdrawal on death**
- If a member dies, the trustees must,—
- “(a) on application by the member’s personal representative, pay to that person an amount that is equal to the value of the member’s accumulation at the date on which the application is accepted as part of the member’s estate; or
- “(b) if the requirements of section 65 of the Administration Act 1969 are met, pay to the relevant person any sum authorised by that section, subject to that Act.”
- (3) In schedule 1, clause 14(1), “section KJ 1 of the Income Tax Act 2004” is replaced by “section MK 1 of the Income Tax Act 2007”.
- (4) In schedule 1, clause 17—
- (a) in the words before the paragraphs, “section KJ 1 of the Income Tax Act 2004” is replaced by “section MK 1 of the Income Tax Act 2007”;
- (b) in paragraph (a), “Income Tax Act 2004” is replaced by “Income Tax Act 2007”;
- (c) in paragraph (b), “the number of **included days** under section KJ 3 of the Income Tax Act 2004 is wrong” is replaced by “they have got the time for which the

member meets the requirements of section MK 2 of the
Income Tax Act 2007 wrong”.

Part 5 Amendments to Income Tax Act 2004

- 542 Income Tax Act 2004** 5
This Part amends the Income Tax Act 2004.
- 542B New section CC 8B inserted**
- (1) After section CC 8, the following is inserted:**
- “CC 8B Certain commercial bills: non-resident holders**
- “When this section applies** 10
- “(1) This section applies in relation to a commercial bill held by a
non-resident when—**
- “(a) neither the financial arrangements rules nor the old fi-
nancial arrangements rules apply to the calculation and
allocation of income and expenditure in relation to the** 15
**commercial bill because of the application of section
EW 9(2) to (4) or EZ 45(e) (which relate to the applica-
tion of the rules); and**
- “(b) the non-resident holder—**
- “(i) disposes of the commercial bill other than by re-
demption; or** 20
- “(ii) redeems a commercial bill whose issuer is an as-
sociated person of the non-resident.**
- “Income: disposal**
- “(2) The value of the commercial bill on the day the non-resident
holder disposes of it is income of the person.** 25
- “Income: redemption**
- “(3) The amount that the non-resident holder receives on redemp-
tion is income of the person.**
- “Defined in this Act: amount, associated person, commercial bill, financial ar-
rangements rules, income, non-resident, old financial arrangements rules”.** 30
- (2) Subsection (1) applies for the 2005–06 and later income
years.**

542C What is a transfer of value?

(1) After section CD 4(2), the following is inserted:

“When shares are cancelled

“(2B) The market value of any transfer from the shareholder to the company on the cancellation of a share of the shareholder’s rights as a shareholder is zero.” 5

(2) In section CD 4, in the list of defined terms, “market value”, “share”, and “shareholder” are inserted.

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

542D Returns of capital: off-market share cancellations

In section CD 14(9), in the definition of **non-participating redeemable share**, paragraph (b)(iii), “; or” is replaced by “or **section FC 2B(2)** (Stapled debt securities); or”.

542E Treasury stock acquisitions 15

(1) Section CD 17(4), other than the heading, is replaced by the following:

“(4) If subsection (2) applies, then, with effect from the cancellation or the first anniversary, depending on which first causes subsection (2) to apply, the available subscribed capital of the class of the share is reduced by the lesser of— 20

“(a) the amount paid to the shareholder on the acquisition; and

“(b) the available subscribed capital per share calculated under the ordering rule, and calculated in the case of the first anniversary as if the share and any other shares to which this subsection applies on that date were cancelled on that date.” 25

(2) **Subsection (1)** applies for the 2005–06 and later income years. 30

543 Foreign investment fund income

(1) In section CD 26, before paragraph (a), “*Amount not dividend*” is inserted as a subsection heading.

(2) In section CD 26(b)(iv), “method; and” is replaced by “method.”, and paragraph (c) is repealed. 35

- (3) After section CD 26(b), the following are inserted as subsections (2) and (3):

“Exclusion for interests in grey list companies

- “(2) Subsection (1)(b)(iv) does not apply if—
- “(a) the FIF is a grey list company; and 5
 - “(b) the person holds a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls.

“Application of rule for certain managed funds

- “(3) **Subsection (2)** does not apply if— 10
- “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and
 - “(b) the FIF is a foreign investment vehicle.”
- (4) In section CD 26, in the list of defined terms, “direct income interest”, “foreign investment vehicle”, “life insurance”, and “portfolio investment entity” are inserted. 15

543B Available subscribed capital amount

In section CD 32, in the list of defined terms, “consideration” is inserted. 20

544 Amounts derived in connection with employment

- (1) In section CE 1, before paragraph (a), “Income” is inserted as a subsection heading.
- (2) Section CE 1(c) is replaced by the following:
- ~~“(e) the market value of accommodation that the person receives in connection with their employment or service:~~ 25
 - “(c) the market value of accommodation that the person receives in connection with their employment or service other than an amount paid under **section CW 13B** (Relocation payments):”. 30
- (3) After section CE 1(g), the following is inserted as subsection (2):
- “Meaning of accommodation*
- “(2) For the purposes of this section, **accommodation** means board or lodging, or the use of a house or part of a house: 35

“(2) For the purposes of this section and section CX 24 (Accommodation), **accommodation** means board or lodging, or the use of a house or living premises, or the use of part of a house or living premises.”

(4) In section CE 1, in the list of defined terms, “accommodation” is inserted. 5

545 Meaning of expenditure on account of an employee

After section CE 5(3)(b), the following is inserted:

“(bb) an amount paid under **section CW 13B** (Relocation payments) or **section CW 13C** (Payments for overtime meals):”. 10

545B Benefits, pensions, compensation, and government grants

Section CF 1(2)(f) and subsequent paragraphs are replaced by the following:

“(f) a payment under the Injury Prevention, Rehabilitation, and Compensation Act 2001 paid by the Corporation as defined in that Act, of weekly compensation that is not recovered or recoverable under section 248 of that Act: 15

“(g) a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 paid by the Corporation as defined in that Act, for attendant care as defined in schedule 1, clause 12 of that Act.” 20

546 New section CR 3 added

(1) After section CR 2, the following is added:

“CR3 Income for general insurance outstanding claims reserve 25

“When this section applies

“(1) This section applies for—

“(a) an insurer who uses IFRS 4, Appendix D for general insurance contracts; and

“(b) general insurance contracts, excluding contracts having premiums to which section FC 14 applies. 30

“Formula for insurer’s income

“(2) For an income year (the **current year**); an insurer has income of the amount by which the result of the following calculation is more than zero: 35

opening outstanding claims reserve
– closing outstanding claims reserve:

“Definition of items in formula”:

“(3) In the formula,—

“(a) **opening outstanding claims reserve** is—

“(i) the amount of the insurer’s closing outstanding
claims reserve for the income year before the cur- 5
rent year; or

“(ii) the amount of the insurer’s outstanding claims re-
serve for general insurance contracts, calculated
at the beginning of the current year, if the insurer
has no closing outstanding claims reserve for the 10
income year before the current year:

“(b) **closing outstanding claims reserve** is the amount of
the insurer’s outstanding claims reserve for general in-
surance contracts, calculated at the end of the current
year. 15

*“Defined in this Act: amount; general insurance contract; IFRS 4; income; in-
come year; insurer*

(2) **Subsection (1)** applies for the first income year for which
a person adopts IFRSs for the purposes of financial reporting
and later income years. 20

(1) After section CR 2, the following is added:

“CR 3 Income for general insurance outstanding claims reserve

“When this section applies

“(1) This section applies for—

“(a) an insurer who uses IFRS 4, Appendix D for general 25
insurance contracts:

“(b) general insurance contracts, excluding contracts having
premiums to which section FC 14 applies.

“Formula for insurer’s OCR income

“(2) For an income year (the **current year**), an insurer has income 30
of the amount by which zero is less than the amount calculated
using the formula—

opening outstanding claims reserve
– closing outstanding claims reserve.

“Definition of items in formula

“(3) In the formula,—

“(a) **opening outstanding claims reserve** is—

“(i) the amount of the insurer’s closing outstanding claims reserve for the income year before the current year (the **prior year**); or 5

“(ii) the amount of the insurer’s reserve for outstanding claims liability, calculated at the end of the prior year, using the basis the insurer used for tax purposes in that prior year, if the current year is the first year that this section applies to the insurer: 10

“(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve, calculated at the end of the current year. 15

“Defined in this Act: amount, general insurance contract, IFRS 4, income, income year, insurer, life insurer, outstanding claims reserve”.

(2) **Subsection (1)** applies for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if the person chooses to use IFRS 4 in a return of income for that first year. 20

546B Section CW 3B repealed
Section CW 3B is repealed.

547 Expenditure on account, and reimbursement, of employees 25

(1) After section CW 13(3), the following is added:

“Relationship with sections CW 13B and CW 13C

“(4) This section does not apply to an amount referred to in **section CW 13B** (Relocation payments) or **section CW 13C** (Payments for overtime meals).” 30

(2) After **section CW 13(4)**, the following is added:

- “Depreciation loss included*
- “(5) In this section, expenditure includes an amount of depreciation loss.”
- (3) In section CW 13, in the list of defined terms, “depreciation loss” is inserted. 5
- (4) **Subsection (2)** does not apply in relation to a tax position taken by a person—
- (a) in the period from 1 April 2005 to 31 March 2008; and
- (b) in relation to a deduction for an amount of depreciation loss; and 10
- (c) relying on section CW 13 in the absence of the amendment made by **subsection (2)**.
- 548 New sections CW 13B and CW 13C inserted**
- After section CW 13, the following is inserted:
- “CW 13B Relocation payments** 15
- “Exempt income*
- “(1) An amount that an employer pays to or on behalf of an employee in connection with the expenses of the employee in a work-related relocation is exempt income of the employee.
- “Actual expenditure* 20
- “(2) The amount paid must be no more than the actual cost incurred by or on behalf of the employee on an expense that the Commissioner lists as an eligible relocation expense in a determination made under **subsection (6)**.
- “Time limit* 25
- “(3) **Subsection (1)** applies only to expenditure incurred for the period from the start of the income year in which the employee relocates or undertakes work at the new location to the end of the next income year. However, this subsection does not apply in the case of a temporary move when— 30
- “(a) an employee moves temporarily to a new location and then relocates permanently to that place; and
- “(b) the temporary move was not treated as a work-related relocation under this section.
- “(3) **Subsection (1)** applies only to expenditure incurred to the end of the tax year following that in which the relocation oc-

curs. For the purposes of this subsection, a temporary move that has not been treated as a work-related relocation under this section is ignored.

“Meaning of work-related relocation

“(4) For the purposes of this section, **work-related relocation** 5 means a relocation of the place where an employee lives that is required—

“(a) because the employee’s workplace is not within reasonable daily travelling distance of their residence; and

“(b) as a result of the employee— 10

“(i) taking up new employment with a new employer; or

“(ii) taking up new duties at a new location with their existing employer; or

“(iii) continuing in their current position but at a new 15 location.

“Exemption from distance test

“(5) The requirement in **subsection (4)(a)** for a workplace to be beyond reasonable travelling distance of the person’s residence does not apply to a person whose accommodation 20 forms an integral part of their work.

“Determinations

“(6) The Commissioner may issue a determination for the purposes of this section under **section 91AAR** of the Tax Administration Act 1994 to provide a list of eligible relocation expenses, 25 and may extend or modify the list from time to time as required. The Commissioner must give at least 30 days notice of the implementation date of any alteration.

“Defined in this Act: amount, Commissioner, employee, employer, exempt income, income year, work-related relocation amount, Commissioner, employee, employer, exempt income, tax year, work-related relocation 30

“CW 13C Payments for overtime meals

“Exempt income

“(1) An amount that an employer pays to or on behalf of an employee for a meal for the employee when the employee is 35 working overtime is exempt income of the employee.

“Eligibility: agreement or established practice

“(2) **Subsection (1)** applies only if—

“(a) the employee’s employment agreement provides for
pay for overtime hours worked; or

“(b) the employer has an established policy or practice of
paying for overtime meals. 5

“Actual cost or reasonable estimate

“(3) The amount paid must be—

“(a) the actual cost to the employee; with documentation re-
quired for amounts over \$20 per meal; or 10

“(b) a reasonable estimate of the expenditure likely to be
incurred by the employee or a group of employees for
whom an amount is payable.

“Meaning of overtime

“(4) For the purposes of this section, **overtime**, for a person and a 15
day, means time worked for an employer on the day beyond the
person’s ordinary hours of work as set out in their employment
agreement when the employee has worked more than 2 hours
beyond their ordinary hours on that day.

“Defined in this Act: amount; employee; employer; exempt income; overtime; 20
pay

“CW 13C Payments for overtime meals and certain other allowances

“Exempt income: overtime meals

“(1) An amount that an employer pays to or on behalf of an em- 25
ployee for a meal for the employee when the employee is
working overtime is exempt income of the employee.

“Exempt income: certain sustenance allowances

“(2) An amount that an employer pays to an employee as a suste- 30
nance allowance for the employee for a day is exempt income
of the employee if—

“(a) the employee works a minimum of 7 hours on the day;
and

“(b) their employment requires them—

“(i) to work outdoors and away from their employ- 35
ment base for most of the day; and

- “(ii) to undertake a long period of physical activity in travelling through a neighbourhood or district on foot or by bicycle; and
- “(c) it is not practicable for the employer to provide sufficient sustenance on the day for the period when the employee is working outdoors; and 5
- “(d) the allowance recognises—
- “(i) the arduous physical nature of the employee’s work as described in **paragraph (b)**; and
- “(ii) that the employer would normally provide tea, coffee, water, or similar refreshments at the employment base in the course of their business. 10
- “Eligibility requirements: overtime meals*
- “(3) **Subsection (1)** applies only if—
- “(a) the employee has worked at least 2 hours’ overtime on the day of the meal; and 15
- “(b) either—
- “(i) the employee’s employment agreement provides for pay for overtime hours worked; or
- “(ii) the employer has an established policy or practice of paying for overtime meals. 20
- “Eligibility requirements: sustenance allowances*
- “(4) **Subsection (2)** applies only if the employer has an established policy or practice of paying a sustenance allowance.
- “Actual cost or reasonable estimate* 25
- “(5) The amount paid must be—
- “(a) the actual cost to the employee, and for an overtime meal referred to in **subsection (1)**, with documentation required for amounts over \$20 per meal; or
- “(b) a reasonable estimate of the expenditure likely to be incurred by the employee or a group of employees for whom an amount is payable. 30
- “Meaning of overtime*
- “(6) For the purposes of this section, **overtime**, for a person and a day, means time worked for an employer on the day beyond the 35

person's ordinary hours of work as set out in their employment agreement.

"Defined in this Act: amount, employee, employer, exempt income, overtime, pay".

548B Local and regional promotion bodies 5

In section CW 33, in the list of defined terms, "associated person" is omitted.

549 Benefits provided instead of allowances

In section CX 17(1)(b), "transport costs)." is replaced by "transport costs); or" and the following is added:

"(c) an amount that, if it had been paid, would have been exempt income under **section CW 13B** (Relocation payments)."

549B Section CX 24 replaced

(1) Section CX 24 is replaced by the following: 15

"CX 24 Accommodation"

The value of accommodation that an employer provides to an employee in connection with the employment or services is not a fringe benefit.

"Defined in this Act: accommodation, employee, employer, employment, fringe benefit". 20

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

549C Government grants to businesses

(1) In section CX 41(1)(d)(i), "for which they are allowed a deduction" is replaced by "for which they would be allowed a deduction in the absence of section DF 1 (Government grants to businesses)". 25

(2) In section CX 41(3)(b)(ii), "(Government grants to businesses)" is omitted. 30

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

549D New heading inserted

After section CX 44E, the following is inserted:

“Emissions units under Climate Change Response Act 2002”.

549E New section CX 44G inserted

5

After section CX 44F, the following is inserted:

“CX 44G Disposal of pre-1990 forest land units

“Who this section applies to

“(1) This section applies to a person who disposes of a pre-1990 forest land unit other than by surrender.

10

“Excluded income: disposal

“(2) An amount of income that the person derives from the disposal is excluded income if, at the time of the disposal, the person would not derive income, other than exempt income or excluded income, from a disposal without timber of the pre-1990 forest land to which the unit relates.

15

“Defined in this Act: amount, excluded income, income, pre-1990 forest land, pre-1990 forest land unit, surrender”.

549F Determining tax liabilities

(1) Section DB 3(4), other than the heading, is replaced by the following:

20

“(4) This section supplements the general permission and overrides the capital limitation, the private limitation, and the employment limitation. The other general limitations still apply.”

(2) In section DB 3, in the list of defined terms, “capital limitation” is inserted.

25

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

549G New section DB 8B inserted

After section DB 8, the following is inserted:

30

“DB 8B Interest or expenditure connected to stapled debt security

“No deduction

“(1) A company that issues a stapled debt security is denied, while section FC 2B(2) (Stapled debt securities) applies to the security, a deduction for— 5

“(a) interest payable under the security:

“(b) expenditure or loss incurred in connection with the security:

“(c) expenditure or loss incurred in borrowing the money secured by or owing under the security. 10

“Relationship with sections DB 5 to DB 8

“(2) This section overrides sections DB 5 to DB 8.

“Link with subpart DA

“(3) This section overrides the general permission. 15

“Defined in this Act: deduction, general permission, interest, pay, stapled debt security”.

549H Cost of revenue account property

Section DB 17(3)(a) is repealed.

550 Gifts of money by company 20

(1) Section DB 32(3) is replaced by the following:

“Amount of deduction

“(3) The deduction for the total of all gifts made in an income year is limited to the amount that would be the company’s net income in the corresponding tax year in the absence of this section.” 25

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

550B New section DB 46B inserted

After section DB 46, the following is inserted: 30

“DB 46B Liabilities for emissions

“When this section applies

- “(1) This section applies when a person incurs a liability under the Climate Change Response Act 2002 for emissions relating to post-1989 forest land or pre-1990 forest land. 5

“No deduction

- “(2) The person is denied a deduction for the liability.

“Link with subpart DA

- “(3) **Subsection (2)** overrides the general permission.

“Defined in this Act: amount, deduction, general permission, post-1989 forest land, pre-1990 forest land”. 10

550C Criteria for approval of share purchase schemes: before period of restriction ends

- (1) Section DC 12(5)(d) is replaced by the following:
“(d) the trustee to be prohibited from applying a dividend to the repayment of any sum owing to the company or to the trustee; and”. 15
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

550D Employment-related activities 20

- (1) The heading to section DD 4(3) is replaced by “Relocation expenses, employees’ meals, and sustenance allowances”.
- (2) Section DD 4(3)(a) is replaced by the following:
“(a) an amount that is exempt income of an employee under **sections CW 13B and CW 13C** (which relate to relocation expenses, expenditure on overtime meals, and sustenance allowances):”. 25
- (3) In section DD 4, in the defined terms list, “amount” is inserted.

550E Interpretation: reimbursement and apportionment

In section DD 10(a), “section CW 13 (Expenditure on account, and reimbursement, of employees)” is replaced by “sections CW 13, **CW 13B, and CW 13C** (which relate to expenditure and reimbursement of employees)”. 30

**550F Forestry business on land bought from the Crown, Maori
owners, or holding company: no deduction**

- (1) In the heading to section DP 7(3), “*and FZ 2*” is replaced by
“*, FC 2B, and FZ 2*”.
- (2) In section DP 7(3), “do” is replaced by “and **section FC 2B** 5
(Stapled debt securities) do”.

551 New section DT 1A inserted

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

“DT 1A Ring-fenced allocations

“*When this section applies* 10

- “(1) This section applies to an amount of a person’s deductions,
expenditure and loss for an income year to the extent to which
it is—

- “(a) petroleum exploration expenditure:
- “(b) petroleum development expenditure: 15
- “(c) residual expenditure.

“*Basis for allocation of deductions*

- “(2) If, but for this subsection, an amount that relates to petrol-
eum mining operations undertaken outside New Zealand is al-
located to an income year (the **current year**), including an 20
amount carried forward and allocated to the current year, the
amount that is allocated to the current year is no more than the
amount of the person’s income derived from those operations
for the current year.

- “(2) If, but for this subsection, an amount that relates to petroleum 25
mining operations undertaken outside New Zealand would be
allocated to an income year (the **current year**), including an
amount carried forward and allocated to the current year, the
amount that is allocated to the current year is no more than
the amount of the person’s income derived for the current year 30
from all petroleum mining operations undertaken outside New
Zealand.

“Excess allocations: carrying forward and re-instating next year

- “(3) Any excess not able to be allocated to the current year because of the basis for allocation described in **subsection (2)** is carried forward and treated as— 5
- “(a) ~~relating to petroleum mining operations outside New Zealand for the next income year; and~~
- “(a) relating to petroleum mining operations undertaken outside New Zealand for the next income year; and
- “(b) allocated to that next income year. 10

“Restriction on reinstating excess allocations

- “(4) Despite **subsection (3)**, the excess is not allocated to the next income year, and no deduction is allowed or allocated to any income year in respect of the excess, if section IF 1 (Net losses may be offset against future net income) would not have allowed the excess to be carried forward to that next income year, treating the excess as a net loss for the current year. 15

“Defined in this Act: deduction, income year, net loss, New Zealand, petroleum development expenditure, petroleum exploration expenditure, petroleum mining operation, residual expenditure”. 20

- (2) **Subsection (1)** applies for expenditure incurred on or after 4 March 2008.

552 Arrangement for petroleum exploration expenditure and sale of property

- (1) Section DT 2(1)(c)(ii) and (iii) are replaced by the following: 25
- “(ii) a petroleum permit; or
- “(iii) material or a permit that relates to petroleum mining operations undertaken outside New Zealand, and that material or permit are substantially the same as those described in subparagraphs (i) or 30
- (ii)**, with necessary modifications made to this subpart and the Crown Minerals Act 1991.”

- (1B) After section DT 2(5), the following is inserted:

“Meaning of associated person

- “(5B) In this section, associated person has the meaning given in section OD 7 or OD 8(3) (which relate to the meaning of associated person).” 35

- (2) **Subsection (1)** applies for expenditure incurred on or after 1 December 2007.

553 Petroleum development expenditure

- (1) Section DT 5(1) and (2) is replaced by the following:

“Deduction

5

- “(1) A petroleum miner is allowed a deduction for petroleum development expenditure incurred by them.

“Timing of deduction

- “(2) For an income year, an amount of the deduction is allocated to that year, as provided by—

10

“(a) **section EJ 11** (Petroleum development expenditure: default allocation rule); or

“(b) **section EJ 11B** (Petroleum development expenditure: reserve depletion method).”

- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008. 15

554 Disposal of petroleum mining asset to associate

- (1) Section DT 9(1)(b) is replaced by the following:

“(b) section EJ 14(2) (Disposal of petroleum mining asset to associate) prevents the miner from taking the full amount of a deduction allocated under **section EJ 11 or EJ 11B** (which relate to petroleum development expenditure) to the income year in which the miner disposes of the asset.”

20

- (2) Section DT 9(2)(b) is replaced by the following:

25

“(b) the amount of the deduction allocated under **section EJ 11 or EJ 11B** to the income years after the income year in which the miner disposes of the asset.”

- (3) **Subsections (1) and (2)** apply for expenditure incurred on or after 1 April 2008. 30

554B Amount written off by holding company

- (1) In section DU 12(3)(a), “tax year” is replaced by “income year”.

- (2) Section DU 12(3)(b) is replaced by the following:

- “(b) the prescribed proportion of the total amount of mining exploration expenditure and mining development expenditure incurred by the mining company before the end of the income year in which the amount referred to in subsection (1) is written off, reduced by the total amount of deductions the holding company is allowed under this section in all income years before the income year in which that amount is written off.” 5
- (3) **Subsection (1)** applies for the 2005–06 and later income years. 10
- 555 New section DW 3 added**
- (1) After section DW 2, the following is added:
- “DW 3 Deduction for general insurance outstanding claims reserve**
- “When this section applies* 15
- “(1) This section applies for—
- “(a) an insurer who uses IFRS 4, Appendix D for general insurance contracts; and
- “(b) general insurance contracts, excluding contracts having premiums to which section FC 14 applies. 20
- “Formula for insurer’s deduction*
- “(2) For an income year, an insurer is allowed a deduction for the amount by which the result of the following calculation is less than zero:
- opening outstanding claims reserve
– closing outstanding claims reserve.
- “Definition of items in formula* 25
- “(3) In the formula,—
- “(a) **opening outstanding claims reserve** is—
- “(i) the amount of the insurer’s closing outstanding claims reserve for the income year before the current year; or 30
- “(ii) the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the beginning of the current year, if the insurer

has no closing outstanding claims reserve for the income year before the current year:

“(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the end of the current year. 5

“*Link with subpart DA*

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

“Defined in this Act: amount; deduction; general insurance contract; general limitation; general permission; IFRS 4; income year 10

“DW 3 Deduction for general insurance outstanding claims reserve

“*When this section applies*

“(1) This section applies for— 15

“(a) an insurer who uses IFRS 4, Appendix D for general insurance contracts:

“(b) general insurance contracts, excluding contracts having premiums to which section FC 14 (Non-resident general insurers’ income) applies. 20

“*No deduction on account of claims*

“(2) For an insurer’s general insurance contracts, the insurer is not allowed a deduction relating to the insurer’s outstanding claims liability or for a claim’s expenditure or loss, except as provided by this section. 25

“*Formula for insurer’s OCR deduction*

“(3) For an income year (the **current year**), an insurer is allowed a deduction for the amount by which zero is less than the amount calculated using the formula—

opening outstanding claims reserve
– closing outstanding claims reserve.

“*Definition of items in formula* 30

“(4) In the formula,—

“(a) **opening outstanding claims reserve** is—

- “(i) the amount of the insurer’s closing outstanding claims reserve for the income year before the current year (the **prior year**); or
- “(ii) the amount of the insurer’s reserve for outstanding claims liability, calculated at the end of the prior year, using the basis the insurer used for tax purposes in that prior year, if the current year is the first year that this section applies to the insurer: 5
- “(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve, calculated at the end of the current year. 10
- “Deduction for payments of current claims*
- “(5) The insurer is allowed a deduction for the amount of expenditure or loss of a claim paid to an insured under a general insurance contract. 15
- “Link with subpart DA*
- “(6) This section supplements the general permission. The general limitations still apply.
- “Defined in this Act: amount, deduction, general insurance contract, general limitation, general permission, IFRS 4, income year, insurer, life insurer, outstanding claims reserve”.* 20
- (2) **Subsection (1)** applies for the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years. 25
- (2) **Subsection (1)** applies for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if the person chooses to use IFRS 4 in a return of income for that first year.
- 555B Prepayments** 30
- In section EA 3(7), “sections CW 13 (Expenditure on account, and reimbursement, of employees) and CW 14 (Allowance for additional transport costs)” is replaced by “sections CW 13, **CW 13B, CW 13C,** and CW 14 (which relate to expenditure, reimbursement, and allowances of employees)”. 35

555C Pool method: calculating amount of depreciation

(1) Section EE 21(5) to (8) are replaced by the following:

“Starting adjusted tax value

“(5) **Starting adjusted tax value** is—

“(a) the pool’s adjusted tax value at the start of the income year, increased as applicable by the amount referred to in section EE 22(2)(b); or

“(b) zero, if the pool did not exist at the start of the income year.

“Ending adjusted tax value

“(6) **Ending adjusted tax value** is the pool’s adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the pool for the income year. The value is, as applicable,—

“(a) increased by the amounts referred to in section EE 22(1) and (2)(a);

“(b) decreased by the amount referred to in section EE 22(3).

“Months

“(7) **Months**, for a person,—

“(a) is the number of whole or part months in their income year;

“(b) may be more or less than 12.”

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

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

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

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

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

557 Annual rate for item acquired in person’s 1995–96 or later income year

(1) In section EE 26(2), paragraph (a) and the words in paragraph (b) before subparagraph (i) are replaced by the following:

- “(a) the item’s economic rate, special rate, or provisional rate, for an item not described in either **paragraph (b)** or (c):
- “(b) the item’s economic rate, special rate, or provisional rate multiplied by 1.2, for an item that—”. 5
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

557B Meaning of adjusted tax value

- (1) Section EE 46(1)(b) is replaced by the following:
 - “(b) for a pool, the total adjusted tax value determined under section EE 21.” 10
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

558 Section EJ 11 replaced

- (1) Section EJ 11 is replaced by the following: 15
 - ~~EJ 11 Petroleum development expenditure: default allocation rule~~**
 - “What this section applies to*
 - “(1) This section applies to petroleum development expenditure that relates to a petroleum mining development and that is incurred after 1 April 2008 when, for that development, the petroleum miner has not chosen to apply **section EJ 11B** to any petroleum development expenditure for the development. 20
 - “Default allocation rule*
 - “(2) For the purposes of **section DT 5(2)(a)** (Petroleum development expenditure), a deduction for the petroleum development expenditure is allocated in equal amounts over a period of 7 income years. The period of 7 years starts with the income year in which the expenditure is incurred. 25
 - “Relationship with other petroleum mining provisions* 30
 - “(3) Sections EJ 12 to EJ 14 override **subsection (2)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and HI 3 (which relate to petroleum miners) override this section.
 - “Defined in this Act: amount; deduction; income year; petroleum development expenditure; petroleum mining development* 35

EJ 11B Petroleum development expenditure: reserve depletion method

“What this section applies to

- “(1) This section applies to petroleum development expenditure that relates to a petroleum mining development and that is incurred after 1 April 2008, if the petroleum miner has chosen to apply this section for the first income year in which the petroleum mining development first produces petroleum in commercial quantities. 5

“Choice

- “(2) The choice described in **subsection (1)** is made in a return of income, and applies this section to petroleum development expenditure that relates to a petroleum mining development for the income year of the return and for all subsequent income years. 10 15

“Reserve depletion method expense allocation rule

- “(3) For the purposes of **section DT 5(2)(b)** (Petroleum development expenditure), the deduction allocated to an income year for the petroleum development expenditure is calculated using the formula— 20

$$\frac{(\text{reserve expenditure} - \text{previous deductions}) \times \frac{\text{reserve depletion for the year}}{\text{probable reserves}}}{}$$

“Definition of items in formula

- “(4) The items in the formula are defined in **subsections (5) to (8)**.

“Reserve expenditure

- “(5) **Reserve expenditure** is the total of petroleum development expenditure to which this section applies for the income year or an earlier income year. 25

“Previous deductions

- “(6) **Previous deductions** is the total amount of petroleum development expenditure that relates to the relevant petroleum mining development and that has been allocated to an earlier income year. 30

- “Reserve depletion for the year*
- “(7) **Reserve depletion for the year** is the amount of petroleum produced from the relevant petroleum mining development for the income year, expressed in barrels of oil equivalent.
- “Probable reserves* 5
- “(8) **Probable reserves** is the amount of the reserves of petroleum for the petroleum mining development that are not yet proven but are estimated, at the beginning of the income year, to have a better than 50% chance of being technically and commercially producible, expressed in barrels of oil equivalent. 10
- “Relationship with other petroleum mining provisions*
- “(9) Sections EJ 12 to EJ 14 override **subsection (3)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IH 3 (which relate to petroleum miners) override this section.
- “Defined in this Act: amount; deduction; income year; petroleum development expenditure; petroleum mining development”²* 15
- EJ 11 Petroleum development expenditure: default allocation rule**
- “When this section applies*
- “(1) This section applies when a petroleum miner’s petroleum development expenditure that relates to petroleum mining developments in a permit area is incurred on or after 1 April 2008, if **section EJ 11B** does not apply to the expenditure. 20
- “Default allocation rule*
- “(2) For the purposes of **section DT 5(2)(a)** (Petroleum development expenditure), a deduction for the petroleum development expenditure is allocated in equal amounts over a period of 7 income years. The period of 7 years starts with the income year in which the expenditure is incurred. 25
- “Relationship with other petroleum mining provisions* 30
- “(3) Sections EJ 12 to EJ 14 override **subsection (2)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IH 3 (which relate to petroleum miners) override this section.
- “Defined in this Act: amount; deduction; income year; permit; petroleum development expenditure; petroleum miner; petroleum mining development* 35

**“EJ 11B Petroleum development expenditure: reserve depletion
method**

“When this section applies

- “(1) This section applies when a petroleum miner’s petroleum de-
velopment expenditure that relates to petroleum mining devel-
opments in a permit area, if the expenditure is incurred— 5
“(a) on or after 1 April 2008; and
“(b) an election to apply this section, described in **subsec-**
tion (2), is made for the permit area.

“Choice: first year of commercial production and later years 10

- “(2) An election to apply this section may be made by a petroleum
miner for a permit area, in a return of income for an income
year, only if that income year is the first one in which petrol-
um is produced in commercial quantities in the permit area.
The election is irrevocable, and applies this section to petrol-
um development expenditure that relates to petroleum mining
developments in the relevant permit area for the income year
and later income years. 15

“Reserve depletion method expense allocation rule

- “(3) For the purposes of **section DT 5(2)(b)** (Petroleum devel-
opment expenditure), the deduction allocated to an income
year for the petroleum development expenditure that relates to
a petroleum mining development in the relevant permit area
is the amount calculated using the following formula, if the
amount is positive: 20 25

$$\frac{(\text{reserve expenditure} - \text{previous expenditure})}{\text{probable reserves}} \times \frac{\text{reserve depletion for the year}}{\text{probable reserves}}$$

“Definition of items in formula

- “(4) The items in the formula are defined in **subsections (5) to**
(8).

“Reserve expenditure

- “(5) **Reserve expenditure** is the total petroleum development ex-
penditure that relates to the petroleum mining development for 30

the income year or an earlier income year to which this section applied.

“Previous expenditure

- “(6) **Previous expenditure** is the total petroleum development expenditure that relates to the petroleum mining development and that has been allocated to an earlier income year to which this section applied. 5

“Reserve depletion for the year

- “(7) **Reserve depletion for the year** is the amount of petroleum produced from the petroleum mining development for the income year, expressed in barrels of oil equivalent. 10

“Probable reserves

- “(8) **Probable reserves** is the amount of the reserves of petroleum for the petroleum mining development that are not yet proven but are estimated, at the beginning of the income year, to have a better than 50% chance of being technically and commercially producible, expressed in barrels of oil equivalent. 15

“Relationship with other petroleum mining provisions

- “(9) Sections EJ 12 to EJ 14 override **subsection (3)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IH 3 (which relate to petroleum miners) override this section. 20

“Defined in this Act: amount, deduction, income year, permit area, petroleum development expenditure, petroleum miner, petroleum mining development”.

- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008. 25

559 Relinquishing petroleum permit

- (1) Section EJ 12(2)(b) is replaced by the following:
 “(b) any part of the deduction allocated to earlier income years under **section EJ 11(2) or EJ 11B(3)**.”
 (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008. 30

560 New sections EJ 12B and EJ 12C inserted

- (1) After section EJ 12, the following is inserted:

“EJ 12B Dry well drilled

“When this section applies

“(1) This section applies when—

“(a) ~~the petroleum miner has petroleum development expenditure for a well, the drilling of which is completed in an income year, and, from the time of completion, the well—~~ 5

~~“(i) will never produce petroleum in commercial quantities; and~~

~~“(ii) is abandoned; and~~ 10

“(a) the petroleum miner has petroleum development expenditure for a well, the drilling of which stops in an income year, and, from the time of stopping, the well—

“(i) will never produce petroleum in commercial quantities; and 15

“(ii) is abandoned; and

“(b) part of a deduction under **section DT 5** (Petroleum development expenditure) for the petroleum development expenditure described in **paragraph (a)** has not been allocated under **section EJ 11 or EJ 11B**. 20

“Allocation

“(2) The part of the deduction described in **subsection (1)** is allocated to the income year.

“Defined in this Act: amount, deduction, income year, petroleum development expenditure 25

“EJ 12C Well not producing

“When this section applies

“(1) This section applies when—

“(a) the petroleum miner has petroleum development expenditure for a well that, in an income year— 30

“(i) stops producing petroleum in commercial quantities; and

“(ii) is abandoned; and

“(b) the petroleum miner has elected to apply **section EJ 11B** for the petroleum development expenditure described in **paragraph (a)** before the start of the income year; and 35

“(c) part of a deduction under **section DT 5** (Petroleum development expenditure) for the petroleum development expenditure described in **paragraphs (a) and (b)** has not been allocated under **section EJ 11B**.

“*Allocation*” 5

“(2) The part of the deduction described in **subsection (1)** is allocated to the income year.

“Defined in this Act: amount, deduction, income year, petroleum development expenditure”.

(2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008. 10

561 Disposal of petroleum mining asset

(1) Section EJ 13(2)(b) is replaced by the following:

“(b) it has not been allocated under **section EJ 11 or EJ 11B** to the income year in which the miner disposes of the asset or to an earlier income year.” 15

(2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

562 Sections EJ 17 and EJ 18 replaced

(1) Section EJ 17 and EJ 18 are replaced by the following: 20

“EJ 18 Meaning of petroleum mining development

“*Meaning*

“(1) In **sections EJ 11 and EJ 11B**, petroleum mining development means a place where 1 or more of the activities described in **subsection (2)** is carried out. 25

“*Activities: inclusions*

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

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

“(b) producing petroleum:

“(c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user: 30

“(d) 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 stabilized into crude oil, condensate, or natural gas; and 5
- “(b) it is done—
- “(i) by liquefaction or compression; or
- “(ii) for the extraction of constituent products; or
- “(iii) for the production of derivative products; and
- “(c) it is not treatment at the production facilities. 10
- “Defined in this Act: permit area, petroleum, removal or restoration operations”.
- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

562B What spreading methods do 15

- (1) After section EW 14(2)(d), the following is inserted:
- “(e) a financial reporting method, to which sections EW 21 and EW 23 are relevant; or”.
- (2) **Subsection (1)** applies for the 2007–08 and later income years. 20

563 IFRS taxpayer method

- (1) After section EW 15B(4)(b)(ii), the following is inserted:
- “(iib) is a lease that is a finance lease; and under NZIAS 17 and in the person’s financial statements, the lease is classified as an operating lease.”. 25
- (2) In section EW 15B, in the list of defined terms, “finance lease” and “NZIAS 17” are inserted.
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2007–08 and later income years; unless **paragraph (b) or (c)** applies; or 30
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years; if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; 35
- or

- (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.
- (1) After section EW 15B(2), the following is inserted: 5
 - “Functional currency
 - “(2B) The IFRS taxpayer method must be applied using New Zealand dollars, even if another currency may be used as the functional currency under IFRSs.
 - “Financial statements 10
 - “(2C) Unless the context otherwise requires, references to IFRSs in the IFRS taxpayer method are references to the IFRS rules used to prepare the person’s financial statements.”
 - (2) After section EW 15B(4)(b)(ii), the following is inserted: 15
 - “(iib) is, under NZIAS 17 and in the person’s financial statements, classified as an operating lease:”
 - (3) In section EW 15B, in the list of defined terms, “NZIAS 17” is inserted.
 - (4) **Subsections (1) and (2)** apply for—
 - (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or
 - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; 25
 - or
 - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 30

564 IFRS method

- (1) After section EW 15C(3)(a), the following is inserted:
 - “(ab) the IFRS method must be applied using New Zealand dollars, even if another currency may be used as the functional currency under IFRSs:” 35
- (2) **Subsection (1)** applies for—

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

564 IFRS method

- (1) Section EW 15C(3)(a) is replaced by the following:
 - “(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. However, adjustments for financial arrangements held by the person are excluded from this paragraph, if the financial arrangements are not derivative instruments and the person’s business includes dealing in those financial arrangements:”.
- (2) After **section EW 15C(3)(a)**, the following is inserted:
 - “(ab) borrowing costs are not capitalised under NZIAS 23:”.
- (3) In section EW 15C, in the list of defined terms, “derivative instrument” and “NZIAS 23” are inserted.
- (4) **Subsections (1) and (2)** apply for—
 - (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or
 - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
 - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and

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

- (5) Despite **subsection (4)**, **subsection (2)** does not apply for a taxpayer and an income year if the taxpayer has,—
- (a) before 30 June 2009, filed a return of income for the income year; and
- (b) taken a tax position in the return which ignores **subsection (2)**.

565 Determination alternatives to IFRS

- (1) In section EW 15D(1)(d), the words before subparagraph (i) are replaced by the following:
- “(d) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”.
- (2) In section EW 15D(1)(d)(ii), “fair value method” is replaced by “modified fair value method”.
- (3) In section EW 15D(2), the words before paragraph (a) are replaced by the following:
- “(2) The person must use 1 of the following methods for the financial arrangement, as modified by subsection (3) or **(4)**.”.
- (4) After section EW 15D(3), the following is added:
- “Determination alternatives to IFRS: G27 modified*
- “(4) When a person applies a determination alternative to IFRS that is *Determination G27*, the following modifications are made:
- “(a) *method C* must be used, and not *methods A, B, or D*;
- “(b) for *method C*, if relevant, *Determination G9C* and not *Determination 9A* must be used.”
- (5) **Subsections (1), (3), and (4)** apply for—
- (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or

- (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.
- (1) Section EW 15D(1)(d) is replaced by the following: 5
- “(d) for a financial arrangement that is not a hedge of another financial arrangement under IFRSs, the financial arrangement—
- “(i) is not being hedged by another financial arrangement under IFRSs; 10
- “(ii) meets the requirements of **paragraph (e)**; and
- “(e) for a financial arrangement that is a hedge of another financial arrangement under IFRSs, or is being hedged by another financial arrangement under IFRSs,—
- “(i) section EW 15C applies or has applied for the 15
- relevant other financial arrangement; and
- “(ii) the method used for the relevant other financial arrangement is not the fair value method; and
- “(iii) the method used does not account for gains and losses related to either financial arrangement.” 20
- (2) In section EW 15D(2), the words before paragraph (a) are replaced by “The person must use 1 of the following methods for the financial arrangement, as modified by subsection (3) or (4):”.
- (3) **Subsections (1) and (2)** apply for— 25
- (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 30
- income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
- (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and 35
- the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

566 Expected value method and equity-free fair value method

(1) In section EW 15E(1)(c), the words before subparagraph (i) are replaced by the following:

“(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”.

(1) Section EW 15E(1)(c) is replaced by the following:

“(c) for a financial arrangement that is not a hedge of another financial arrangement under IFRSs, the financial arrangement—

“(i) is not being hedged by another financial arrangement under IFRSs;

“(ii) meets the requirements of **paragraph (cb)**; and

“(cb) for a financial arrangement that is a hedge of another financial arrangement under IFRSs, or is being hedged by another financial arrangement under IFRSs,—

“(i) section EW 15C applies or has applied for the relevant other financial arrangement; and

“(ii) the method used for the relevant other financial arrangement is not the fair value method; and

“(iii) the method used does not account for gains and losses related to either financial arrangement; and”.

(2) In section EW 15E(3), the first sentence is replaced by “If the person chooses under subsection (1)(f) to use the equity-free IFRS method for the financial arrangement, the person must use a method that is the fair value method under section EW 15C.”

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

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

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

- (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.
- (3) Section EW 15E(4) is repealed. 5
- (4) In section EW 15E, in the list of defined terms, “associated person” is inserted.
- (5) **Subsections (1) to (3) apply for—**
 - (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or 10
 - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; 15
or
 - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 20

566B New section EW 21 inserted

- (1) After section EW 20, the following is inserted:

“EW 21 Financial reporting method

- A person who is a party to a financial arrangement may use a financial reporting method if— 25
- “(a) the person cannot use the yield to maturity method or an alternative; and
- “(b) the person—
 - “(i) may not use the straight-line method or a market valuation method; or 30
 - “(ii) may use the straight-line method or a market valuation method but chooses not to do so; and
- “(c) the person is not required to use the IFRS taxpayer method by section EW 15B; and
- “(d) the Commissioner has not made a determination for the financial arrangement under section 90AC(1)(d) of the Tax Administration Act 1994; and 35

- “(e) the method conforms with commercially acceptable practice; and
- “(f) the method is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangement (although section EW 23 may apply if the method is not used in this way); and 5
- “(g) the method allocates a reasonable amount to each income year over the financial arrangement’s term.
- “Defined in this Act: amount, Commissioner, financial arrangement, IFRS taxpayer method, income year” 10
- (2) **Subsection (1)** applies for the 2007–08 and later income years.
- 566C Default method**
- (1) In section EW 22(c), “alternative” is replaced by “alternative, or a financial reporting method”. 15
- (2) **Subsection (1)** applies for the 2007–08 and later income years.
- 566D Failure to use method for financial reporting purposes**
- (1) In section EW 23(1), “EW 18(f), and EW 20(2)(f)” is replaced by “EW 18(1)(f), EW 20(2)(f), and EW 21(f)”. 20
- (2) In section EW 23(2), “EW 18(f), and EW 20(2)(f)” is replaced by “EW 18(1)(f), EW 20(2)(f), and EW 21(f)”.
- (3) **Subsections (1) and (2)** apply for the 2007–08 and later income years. 25
- 567 Change of spreading method**
- (1) Section EW 26(1) is replaced by the following:
“Requirements for change from straight-line and market value method
- “(1) A person may change from the straight-line method or the market value method if they change to a method that is not the IFRS taxpayer method, and the Commissioner has given written authorisation for the change.” 30
- (2) In section EW 26(2), the first sentence is replaced by “A person may change from any spreading method to any other method if 35

the Commissioner's written authorisation under **subsection (1)** is not required for the change, and they have a sound commercial reason for the change."

- (3) In section EW 26(6), the first sentence is replaced by "Despite subsection (3), that subsection, subsection (4), and section EW 27 do not apply to the extent to which the person's spreading method change involves, for a financial arrangement, a change from the fair value method under the IFRS method described in section EW 15C or a change from the market value method to the IFRS taxpayer method." 5 10
- (4) Section EW 26(7)(a) is replaced by the following:
"(a) starting to use or ceasing to use IFRSs to prepare financial statements at the same time as starting to use or ceasing to use the IFRS taxpayer method:".
- (5) **Subsections (1) to (4)** apply for— 15
 - (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or
 - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; 20
or
 - (c) the 2008–09 and later income years, if a person's 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 25

568 When calculation of base price adjustment required

- (1) Section EW 29(13), other than the heading, is replaced by the following: 30
“(13) A party to a financial arrangement who, for the financial arrangement, changes from the fair value method under the IFRS method described in section EW 15C to any other method or from the market value method to the IFRS taxpayer method must calculate a base price adjustment as at the date of the change.” 35
- (2) **Subsection (1)** applies for—

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

568B Base price adjustment formula

- (1) In section EW 31(7), in the words before the paragraphs,—
 - (a) “ignoring non-contingent fees,” is omitted:
 - (b) “, ignoring—” is replaced by “, For the purposes of this subsection, the following are ignored:”.
- (2) In section EW 31(9)(a), “, under section CC 3 (Financial arrangements),” is omitted.
- (3) **Subsection (1)** applies for—
 - (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or
 - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
 - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.
- (4) **Subsection (2)** applies for the 2005–06 and later income years.

568C Direct control interests

In section EX 5(5)(c), “shares)” is replaced by “shares) or **FC 2B** (Stapled debt securities)”.

568D Direct income interests

In section EX 9(6)(c), “shares)” is replaced by “shares) or **FC 2B** (Stapled debt securities)”.

568E Direct income interests in FIFs

In section EX 31(6)(c), “shares)” is replaced by “shares) or **FC 5 2B** (Stapled debt securities)”.

569 Exemptions: direct income interests in FIF in grey list country

- (1) In section EX 33(4)(d), the words before subparagraph (i) are replaced by the following: 10

“(d) at all times in the year, the grey list company holds more than 50% of the voting interests in a company (the **resident company**) resident in New Zealand that, for 12 months or more, has—”.
- (2) Section EX 33(4)(e) is replaced by the following: 15

“(e) the year begins less than 10 years after the grey list company first held more than 50% of the voting interests in the resident company; and”.
- (3) In section EX 33, in the list of defined terms, “voting interest” is inserted. 20

570 Use of particular calculation methods required

Section EX 40B(b) is replaced by the following:

- “(b) the deemed rate of return method, if use of the comparative value method is not practical because the person cannot determine the market value of the attributing interest at the end of the income year.” 25

571 Comparative value method

Section EX 44(5), other than the heading, is replaced by the following:

- “(5) **Opening value** is the market value of the person’s interest 30
in the FIF at the end of the previous income year, calculated using the exchange rate applying under subsection (7) for that previous year. The value is zero if the person did not hold the

interest then or was then applying another calculation method to it.”

572 Fair dividend rate method: usual method

(1) After section EX 44C(4), the following is inserted:

“*Exclusion for certain managed funds*” 5

“(4B) Subsection (4)(c) does not apply if—

“(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and

“(b) the FIF is a foreign investment vehicle.” 10

(2) In section EX 44C, in the list of defined terms, “company”, “foreign investment vehicle”, “life insurance”, and “portfolio investment entity” are inserted.

573 Fair dividend rate method: method for unit valuers and persons valuing interests daily 15

(1) After section EX 44D(4), the following is inserted:

“*Exclusion for certain managed funds*”

“(4B) Subsection (4)(c) does not apply if—

“(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and 20

“(b) the FIF is a foreign investment vehicle.”

(2) In section EX 44D, in the list of defined terms, “company”, “foreign investment vehicle”, “life insurance”, and “portfolio investment entity” are inserted. 25

574 Cost method

(1) In section EX 45B(4)(ac)(ii), “income year; or” is replaced by “income year; and” and the following is inserted:

“(iii) the interest was not an attributing interest for the income year before the relevant income year; or”. 30

(2) In section EX 45B, in the list of defined terms, “attributing interest” is inserted.

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

- (1) Section EX 47(1)(c) is replaced by the following:
“(c) the fair dividend rate method.”.
- (2) After section EX 47(1), the following are inserted: 5
 “Exclusion for interests in grey list companies
“(1B) **Subsection (1)(c)** does not apply if—
 “(a) the FIF is a grey list company; and
 “(b) the person holds a direct income interest of 10% or more
 in the FIF at the beginning of the income year in which 10
 the period falls.
 “Application of rule for certain managed funds
“(1C) **Subsection (1B)** does not apply if—
 “(a) the person is a portfolio investment entity, an entity eli- 15
 gible to be a portfolio investment entity, or a life insur-
 ance company; and
 “(b) the FIF is a foreign investment vehicle.”
(3) In section EX 47, in the list of defined terms, “direct income
interest”, “foreign investment vehicle”, “life insurance”, and
“portfolio investment entity” are inserted. 20

576 Measurement of cost

Section EX 56(2B) is repealed.

577 Transitional rule for IFRS financial reporting method

- (1) In section EZ 50(1)(b), “EW 18(f)” is replaced by “EW 25
18(1)(f)”.
- (2) In section EZ 50(2), “EW 18(f)” is replaced by “EW 18(1)(f)”.

578 New sections EZ 51 and EZ 52 added

After section EZ 50, the following is added:

“EZ 51 Transitional rule for financial reporting method

- “(1) This section applies for a financial arrangement when— 30
 “(a) the first income year for which a person adopts IFRSs
 for the purposes of financial reporting is before the
 2007–08 income year and the person has not chosen to

- apply the IFRS taxpayer method in a return of income for any year before the 2008–09 income year; and
- “(b) the income year is that first income year or any subsequent income year that is before the 2008–09 income year. 5
- “(2) Despite sections EW 21(e) and EW 23, for an income year described in **subsection (1)(b)**, the person may apply a method that is not used by the person for financial reporting purposes if it is a method that they would be allowed to use if they had not adopted IFRSs. The requirements for using a financial reporting method, other than the requirement in section EW 21(e), must still be met by the person. 10
- “Defined in this Act: financial arrangement, IFRS, IFRS taxpayer method, income year, return of income
- “EZ 52 Transitional rule for changes from the fair value method 15**
- “(1) This section applies for a financial arrangement when—
- “(a) the person chooses to apply the IFRS taxpayer method in a return of income for the 2005–06 income year; and
- “(b) ~~the person uses the fair value method under the IFRS method described in section EW 15C in the 2005–06 income year; and~~ 20
- “(c) ~~the income year is the 2006–07 or 2007–08 income year.~~
- “(b) the person uses the fair value method under the IFRS method described in section EW 15C in the 2005–06 income year. 25
- “(2) The definition of **sound commercial reason** in **section EW 26(7)** ~~(Change of spreading method)~~ includes the choice of the person to ~~change from the fair value method to another method under the IFRS taxpayer method.~~
- “(2) Despite section EW 26(2) and (7) (Change of spreading method), the person is treated as having a sound commercial reason for changing from the fair value method to another method under the IFRS taxpayer method in the 2006–07 or 2007–08 income year. 30
- “Defined in this Act: financial arrangement, IFRS taxpayer method, income year, return of income, sound commercial reason”. 35

578B Floating rate of interest on debentures

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

- “(4) This section does not apply to a debenture treated as a share under **section FC 2B**.”

578C Interest on debentures issued in substitution for shares

5

After section FC 2(4), the following is inserted:

- “(4B) This section does not apply to a debenture treated as a share under **section FC 2B**.”

578D New section FC 2B inserted

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

10

“FC 2B Stapled debt securities

- “(1) **Stapled debt security** means a debt security issued by a company when—

“(a) the debt security is stapled to a share in the company or to a share in another company; and

15

“(b) the share is not a fixed-rate share.

- “(2) The stapled debt security is treated as a share issued by the company and—

“(a) interest payable under the stapled debt security is treated as a dividend; and

20

“(b) **section DB 8B** may deny deductions for expenditure or loss related to the security.

- “(3) A stapled debt security and a share to which it is stapled are treated as a single share for the purposes of applying—

“(a) the definition in section CD 14(9) of **non-participating redeemable share**; and

25

“(b) the definition in section LF 2(3) of **fixed rate share**; and

“(c) the definition in section OB 1 of **fixed rate share**, except for the purposes of **subsection (1)(c)**.

- “(4) In this section, **debt security** means a financial arrangement if—

30

“(a) the financial arrangement provides funds to the company; and

“(b) the financial arrangement gives rise to an amount for which the company would have a deduction but for this section; and

35

- “(c) the amount does not arise only from either a movement in a currency exchange rate or a non-contingent fee.
- “(5) In this section, a debt security is **stapled** to a share if—
- “(a) the debt security can, or ordinarily can, be disposed of only together with the share; and 5
- “(b) the arrangement that requires the debt security and the share to be disposed of together is an arrangement to which the company that issued the debt security or the company that issued the share is a party.
- “Exclusion: small company shareholder agreements 10
- “(6) This section does not apply if the debt security is stapled to the share using a shareholder agreement for a company that is not a widely-held company, and is not an associated person of a widely-held company.
- “Exclusion: stapling before 25 February 2008 15
- “(7) This section does not apply if the debt security was stapled to the share before 25 February 2008.”
- (2) **Subsection (1)** applies if a debt security is stapled to a share on or after 25 February 2008.
- 578E Rules for calculating New Zealand group debt percentage** 20
- Section FG 4(2)(b) is replaced by the following:
- “(b) the financial arrangement—
- “(i) gives rise to an amount for which the taxpayer, or another group member, would be allowed a deduction, other than an amount that arises only 25
- from movement in currency exchange rates:
- “(ii) is a stapled debt security that is held by a person resident in New Zealand and is stapled to shares other than shares of a company that is a proportional-stapling company.” 30
- 578F New Zealand net equity of New Zealand banking group**
- (1) In section FG 8G(1), in the formula, “FRS” is replaced by “FRS – SDS”.
- (2) In section FG 8G(1), after the item FRS, the following is inserted: 35

“SDS is the financial value for the measurement day of stapled debt securities, each of which is—

“(a) owned by a person resident in New Zealand; and

“(b) included in the value of item EQV; and

“(c) stapled to shares other than shares of a company that is a proportional-stapling company”. 5

579 Section GC 14EB repealed

Section GC 14EB is repealed.

580 Dividends from qualifying company

(1) Section HG 13(3)(a) is replaced by the following: 10

“(a) the maximum imputation credit which may be attached to that dividend by virtue of section ME 8(1); and”.

(2) Section HG 13(4)(a) is replaced by the following:

“(a) the maximum dividend withholding payment credit which may be attached to that dividend by virtue of sections MG 8(1) and MG 10(1) (after taking into account for the purposes of section MG 10(1) any imputation credit attached to that dividend under subsection (3)); and”.

580B Modification of agency provisions in respect of income from company debentures 20

In section HK 13(1), “debentures issued” is replaced by “debentures that are a stapled debt security to which **section FC 2B** applies, or to debentures issued”.

581 Effect of failure to meet eligibility requirements for entities 25

(1) Section HL 4(1)(a) is replaced by the following:

“(a) referred to in sections HL 2(2) and HL 3; and”.

(2) Section HL 4(2)(a) is replaced by the following:

“(a) the portfolio investor class of the entity fails to meet a requirement under section HL 6 or HL 9 on the last day of a quarter— 30

“(i) beginning 6 months or more after the date on which the portfolio investor class is formed; and

- “(ii) ending more than 3 months before an announcement by the entity to its investors that the portfolio investor class is winding up within 12 months of the announcement; and
- “(ab) the entity fails to meet a requirement under section HL 10 on the last day of a quarter—
- “(i) beginning 6 months or more after the date on which the entity becomes a portfolio investment entity; and
- “(ii) ending more than 3 months before an announcement by the entity to its investors that the entity is winding up within 12 months of the announcement; and”.
- (3) Section HL 4(2)(b)(ii) is replaced by the following:
- “(ii) is repeated on the last day of the quarter following the quarter referred to in **paragraph (a)** and ending more than 3 months before the announcement referred to in **paragraphs (a)(ii) and (ab)(ii)**.”
- 582 Investor membership requirement**
- (1) After section HL 6(1)(i), the following is inserted:
- “(ib) Auckland Regional Holdings.”.
- (2) In section HL 6(1)(j)(iii), “entity.” is replaced by “entity” and paragraph (k) is repealed.
- (2B) Section HL 6(3) is replaced by the following:
- “No investor membership requirement for public unit trusts
- “(3) There is no investor membership requirement for a portfolio investor class that, if treated as a unit trust, would meet the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of public unit trust.
- “No investor membership requirement for certain superannuation funds and others
- “(3B) There is no investor membership requirement for a portfolio investor class that includes an investor that is—
- “(a) a superannuation fund established under the proposal for the restructuring of the National Provident Fund re-

- quired by the National Provident Fund Restructuring Act 1990:
- “(b) the fund established by the Government Superannuation Fund Act 1956:
- “(c) a superannuation fund that— 5
- “(i) existed before 17 May 2006; and
- “(ii) on or after 17 May 2006, if treated as a unit trust, would have met the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of public unit trust; and 10
- “(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class:
- “(d) a public unit trust.”
- (3) Section HL 6(4)(a) and (b) are replaced by the following: 15
- “(a) the investor is not listed in subsection (1)(b) to **(ib)**; and
- “(b) the associated person is not listed in subsection (1)(b) to **(ib)**; and”.
- 583 Investor interest size requirement**
- (1) ~~After section HL 9(4)(h), the following is inserted:~~ 20
- ~~“(hb) Auckland Regional Holdings:”.~~
- (1) After section HL 9(4)(i), the following is inserted:
- “(ib) Auckland Regional Holdings:
- “(ic) a portfolio investor class of less than 20 persons, treating all interests held by associated persons and included 25
- by subsection (6) as being held by 1 person, if—
- “(i) the entity has 1 or more other portfolio investor classes that meet the requirements of section HL 6(1)(a); and
- “(ii) no investor in the class, other than the entity’s manager or trustee, can control the investment decisions relating to that class; and 30
- “(iii) investors for which the entity would not meet the investor membership requirement in the absence of this paragraph have portfolio investor interests with a total value of less than 10% of the total value of portfolio investor interests in the entity:”. 35

(2) In section HL 9(4)(j), “subsection (5):” is replaced by “subsection (5)” and paragraph (k) is repealed.

(2B) In section HL 9(5), replace “subsection (4)(a) to (i)” with “subsection (4)(a) to **(ic)**”.

(3) Section HL 9(6)(a) and (b) are replaced by the following: 5

“(a) ~~the investor is not listed in subsection (4)(a) to **(hb)**; and~~

“(b) ~~the associated person is not listed in subsection (4)(a) to **(hb)**; and~~

“(a) the investor is not listed in subsection (4)(a) to **(ic)**; and

“(b) the associated person is not listed in subsection (4)(a) to **(ic)**; and”. 10

584 Further eligibility requirements relating to investments

Section HL 10(2)(b)(iii) is replaced by the following:

“(iii) an amount of income from a lease of land, but this subparagraph does not apply if the lessee under the lease is associated with the entity deriving the amount.”. 15

585 Unlisted company may choose to become portfolio listed company

Section HL 11B(1)(a) is replaced by the following: 20

“(a) has at least 100 shareholders; and”.

586 Becoming portfolio investment entity

Section HL 12(1)(b) is replaced by the following:

“(b) the entity, if treated as becoming a portfolio investment entity when the election would be effective, would cease under section HL 4 to be eligible through a failure to meet 1 or more of the requirements in section HL 6, HL 9, or HL 10 in each quarter of the 12-month period.”. 25

587 Credits received by portfolio tax rate entity or portfolio investor proxy 30

In section HL 27(7), the words before paragraph (a) are replaced by the following:

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

the case of an investor having a portfolio investor exit period,
for the quarter to which the portfolio investor exit period re-
lates,—”.

588 Determination of amount of credit in certain cases

Section LB 1(1)(c) to (e) is replaced by the following: 5

- “(c) in the case of an imputation credit attached to a divi-
dend that has an imputation ratio greater than the ratio
calculated in accordance with the formula stated in sec-
tion ME 8(1), so much of the imputation credit as would
arise if the imputation ratio of the dividend were the ra- 10
tio so calculated:
- “(d) in the case of a dividend withholding payment credit at-
tached to a dividend with a dividend withholding pay-
ment ratio greater than the ratio calculated in accord- 15
ance with the formula stated in section MG 8(1), so
much of the dividend withholding payment credit as
would arise if the dividend withholding payment ratio
of the dividend were the ratio so calculated:
- “(e) in the case of a dividend with a combined imputation
and dividend withholding payment ratio greater than the 20
ratio calculated in accordance with the formula stated in
section MG 8(1), so much of the dividend withholding
payment credit and the imputation credit as remain af-
ter any reduction of the dividend withholding payment
credit or the imputation credit in accordance with sub- 25
section (5):”.

589 Credit of tax for imputation credit

- (1) Section LB 2(2) is replaced by the following:
- “(2) Any such credit of tax is credited, in so far as it extends, against
the income tax liability of the taxpayer for the income year.” 30
- (2) In section LB 2(8), “from an interest in an attributing interest in
a foreign investment fund” is replaced by “from an attributing
interest in a foreign investment fund”.

**590 Credit of tax for dividend withholding payment credit in
hands of shareholder** 35

Section LD 8(1)(a) is replaced by the following:

“(a) the taxpayer is entitled to a credit of tax equal to the dividend withholding payment credit so included in assessable income; and”.

591 Credits in respect of dividends to non-resident investors
Section LE 2(13) is repealed. 5

592 Special rules for holding companies
In section LE 3(6), item **T** is replaced by the following:
“**T** is the basic rate of income tax for companies, expressed as a percentage, stated in schedule 1, part A, clause 5, and applying in respect of the income year—”. 10

592B Credits arising to imputation credit account

(1) After section ME 4(1)(ed), the following is inserted:
“(ee) the amount of any imputation credit allocated under section HL 27(7)(b) to the company by a portfolio tax rate entity during the imputation year.” 15

(2) After section ME 4(2)(cd), the following is inserted:
“(ce) in the case of a credit referred to in **subsection (1)(ee)**, on the date the credit is allocated.”.

593 Allocation rules for imputation credits
Section ME 8(7) is repealed. 20

594 Amount of imputation credit to be attached to cash distribution
Section ME 31(3) is repealed.

595 Notional distribution deemed to be dividend
Section ME 33(4) is repealed. 25

596 Amount of imputation credit to be attached to cash distribution
Section ME 36(3) is repealed.

- 597 Notional distribution deemed to be dividend or taxable
Maori authority distribution**
Section ME 38(3) is repealed.
- 598 Branch equivalent tax account of company**
Section MF 3(3) is repealed. 5
- 599 Credits and debits arising to branch equivalent tax
account of company**
Section MF 4(7) is repealed.
- 600 Debits and credits arising to group branch equivalent
tax account** 10
Section MF 8(7) is repealed.
- 601 Use of consolidated group credit to reduce dividend
withholding payment, or use of group or individual debit
to satisfy income tax liability**
- (1) Section MF 10(4B) to (4D) are repealed. 15
- (2) ~~After section MF 10(4), the following are inserted:~~ After sec-
tion MF 10(4), the following is inserted:
- “(4B) An election made for a consolidated group under section MF
10(3) by any company described in section MF 10(3)(a) to (c)
for an income year is invalid to the extent to which the total of 20
all those elections is greater than an amount calculated for the
consolidated group for the year using the formula in section
MF 8(2)(a) (but treating item e as zero).
- “(4C) An election made for a company (the **first company**) by any
consolidated group under section MF 10(4) for an income year 25
is invalid to the extent to which the total of all those elections
and any other elections for the first company under section MF
5(4) for the year is greater than an amount calculated for the
first company for the year using the formula in section MF
4(1)(a) (but treating the item e as zero). 30
- “(4D) An amount of election that is invalid under **subsections (4B)
or (4C)**—

- “(a) is not recorded as a credit in the branch equivalent tax account of the company or the consolidated group, as the case may be, that makes the election:
 - “(b) is not an amount of debit balance for which the election is made: 5
 - “(c) does not relate to the election.”
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.

- 602 Allocation rules for dividend withholding payment credits**
 Section MG 8(9) is repealed. 10

- 603 Dividend with both imputation credit and dividend withholding payment credit attached**
 Section MG 10(3) is repealed.

- 604 Conduit tax relief account**
 Section MI 3(3) is repealed. 15

- 605 Credits arising to conduit tax relief account**
 Section MI 4(3) is repealed.

- 606 Debits arising to conduit tax relief account**
 Section MI 5(8) is repealed.

- 607 Consolidated group conduit tax relief account** 20
 Section MI 15(2) is repealed.

- 608 Credits arising to group conduit tax relief account**
 Section MI 17(3) is repealed.

- 609 Debits arising to group conduit tax relief account**
 Section MI 18(5) is repealed. 25

- 610 Retirement scheme contributors**
 (1) In section NEB 6(2), the words before paragraph (a) are replaced by the following:

- “(2) An entity may choose to become a retirement scheme contributor for a person for an income year if,—”.
- (2) **Subsection (1)** applies for the 2007–08 and later income years.

611 Application of RWT rules 5
Section NF 1(2)(b)(xii) is repealed.

612 Resident withholding tax deductions from dividends deemed to be dividend withholding payment credits
Section NF 8(1)(a) is replaced by the following:
“(a) sections LB 1 and LD 9:”. 10

613 Definitions

- (1) This section amends section OB 1.
- (2) After the definition of **accident insurance contract**, the following is inserted:
~~“accommodation is defined in **section GE 1(2)** (Amounts derived in connection with employment) for the purposes of that section~~ 15
“accommodation is defined in **section CE 1(2)** (Amounts derived in connection with employment) for the purposes of that section and **section CX 24** (Accommodation)”. 20
- (3) Before the definition of **actuary**, the following is inserted:
~~“actuarially determined—~~
~~“(a) means, for an amount, a requirement that is met when an actuary has—~~
~~“(i) calculated the amount: 25~~
~~“(ii) certified that the amount is calculated by them no later than the last day for furnishing the return of income to which the amount relates:~~
~~“(iii) provided to the Commissioner in writing, in the form prescribed by the Commissioner (if any), all 30~~
~~assumptions, methodologies, bases and working calculations necessary to support the calculation of the amount:~~
~~“(b) does not include when the calculation of an amount—~~

- “(i) does not accurately reflect the relevant taxpayer’s business experience:
 “(ii) is not made according to usual business practice:
 “(iii) is, or is part of, a tax avoidance arrangement
“actuarially determined, for an amount, means a requirement that is met when an actuary has calculated the amount using relevant actuarial standards and a proper and reasonable calculation methodology”. 5
- (3B) In the definition of **cancellation**, “including on the liquidation of the company” is replaced by “including on the liquidation of a company, and when a stapled debt security ceases to be a share”. 10
- (3C) In the definition of **consideration**, before paragraph (a), the following is inserted:
“(aa) in section CD 32 (Available subscribed capital amount), includes the amount owing under a stapled debt security when the security ceases to be a share:”. 15
- (4) In the definition of **creditable membership**, subparagraph (b)(i) is replaced by the following:
 “(i) the period ending on the day on which securities are first allotted by the KiwiSaver scheme for the person, and beginning on the earliest of—
 “(A) the first day of the month in which contributions are first received by the Commissioner for the person: 25
 “(B) the first day of the month in which Kiwi-Saver contributions are first deducted for the person:
 “(C) the day which the Commissioner nominates in answer to a request by the person for such nomination, in circumstances where, due to matters outside the control of the person, the first deduction of Kiwi-Saver contributions was delayed:” 30
- (4B) After the definition of **debentures**, the following is inserted: 35
“**debt security** is defined in **section FC 2B(4)** (Stapled debt securities)”.

- (4C) The definition of **derivative instrument** is replaced by the following:
“**derivative instrument** means a derivative as defined in NZIAS 39”.
- (4D) In the definition of **employee**, paragraph (b), “sections CW 13 (Expenditure on account, and reimbursement, of employees) and CW 14 (Allowance for additional transport costs)” is replaced by “sections CW 13, **CW 13B**, **CW 13C**, and CW 14 (which relate to expenditure, reimbursement, and allowances of employees)”.
- (4E) In the definition of **excluded security**, “shares)” is replaced by “shares) or **FC 2B** (Stapled debt securities)”.
- (4F) In the definition of **fixed-rate share**, paragraph (e), “section LF 2(3)” is replaced by “section LF 2(3):”, and the following is added:
- “(f) in **section FC 2B** (Stapled debt securities) and the definitions of **proportional-stapling company** and **stapled debt security**, means—
- “(i) a share described in paragraph (a):
- “(ii) a share that would be a share described in paragraph (a) but for any dividend or variation in the rate of dividend that may occur due to a gain arising when the share is converted into another share (the **other share**), if that gain is attributable solely to—
- “(A) a change in value of the other share in a period, and that period finishes when the share is converted, starts not more than 30 days before when the share is converted, and was a term or condition of the share when the share was first issued:
- “(B) a term or condition of the share that was a term or condition when the share was first issued, and that term or condition set, for the gain, a fixed percentage equal to 5%, or a lesser percentage, of the amount subscribed for the share:
- “(iii) a share for which the dividend payable is the equivalent of the payment of interest for money

- lent having regard to the factors in **paragraph (g)**:
- “(g) for the purposes of **paragraph (f)(iii)**, the factors are—
- “(i) whether or not the share is redeemable:
- “(ii) any security provided to the shareholder, including put or call options over the share or any amount payable determined by reference to the amount of dividend payable: 5
- “(iii) the variability or lack of variability of the dividend payable.” 10
- (5) After the definition of **general insurance**, the following is inserted:
- “**general insurance contract** has the meaning given in IFRS 4”.
- (6) After the definition of **identical share**, the following is inserted: 15
- “~~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” 20
- “**IFRS 4** means the IFRS, numbered 4, that relates to insurance contracts”.
- (6B) In the definition of **income interest**, in paragraph (b), “EX 14” is replaced by “EX 8”.
- (6C) In the definition of **market value circumstance**, paragraph (a)(ii), “applies” is replaced by “or **FC 2B** (Stapled debt securities) applies”. 25
- (6D) After paragraph (a)(ii) of the definition of **member credit contributions**, the following is inserted:
- “(iib) Crown contribution (as that term is defined in the KiwiSaver Act 2006) for the person:”. 30
- (6E) After the definition of **NZIAS 17**, the following is inserted:
- “**NZIAS 23** means New Zealand Equivalent to International Accounting Standard 23, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place”. 35
- (7) The definition of **offshore development** is repealed.
- (8) The definition of **onshore development** is repealed.

- (9) In the definition of **operating lease**, “means” is replaced by “means, except in **section EW 15B(4)(b)(iib)** (IFRS taxpayer method),”.
- (10) After the definition of **outstanding balance**, the following is inserted: 5
~~“outstanding claims reserve means the actuarially determined amount of a person’s outstanding claims liability for general insurance contracts, excluding contracts having premiums to which section FC 14 applies, as that liability is measured under Appendix D, paragraphs 5.1 to 5.2.12 of IFRS 4~~ 10
“outstanding claims reserve means the amount of an insurer’s outstanding claims liability for general insurance contracts, excluding contracts having premiums to which section FC 14 (Non-resident general insurers’ income) applies, as that liability is measured under Appendix D, paragraphs 5.1 to 5.2.12 of IFRS 4 for the insurer’s financial statements”. 15
- (11) After the definition of **overseas pension**, the following is inserted:
“**overtime** is defined in **section CW 13C(4)** (Payments for overtime meals) for the purposes of that section”.
- (12) After the definition of **petroleum mining company**, the following is inserted:
“**petroleum mining development** is defined in **section EJ 18** (Meaning of petroleum mining development) for the purposes of **sections EJ 11 and EJ 11B** (which relate to petroleum development expenditure)”.
- (12B) In the definition of **portfolio investor rate**, in paragraph (a), “33%, if” is replaced by “30%, if the investor has provided their tax file number to the Commissioner and”. 30
- (13) In the definition of **prescribed investor rate**, paragraph (a)(ii) is replaced by the following:
“(ii) the person is a resident who derives income as a trustee of a trust other than a trust referred to in paragraph (c)(i) and who chooses to be subject to this paragraph for the tax year; or”.
- (13B) After the definition of **property**, the following is inserted:

- “proportional-stapling company means a company if—
- “(a) each share in the company that is not a fixed-rate share (a **participating share**) is stapled to a stapled debt security; and
 - “(b) for each participating share in the company, the amount payable for the issue of its stapled debt security is the same proportion of the available subscribed capital calculated under the slice rule of the participating share as it is for each other participating share”. 5
- (13C) In the definition of **share**, paragraph (b), “shares)” is replaced by “shares) or **FC 2B** (Stapled debt securities)”. 10
- (13D) After the definition of **shareholder**, the following is inserted:
- “**shareholder agreement**, for a company,—
 - “(a) includes an arrangement to which the shareholders of the company are parties, in their capacity of shareholders; but
 - “(b) does not include an arrangement that is—
 - “(i) the company’s constitution:
 - “(ii) the terms of a debt security:
 - “(iii) the terms of the company’s shares”. 20
- (13E) After the definition of **standing timber**, the following is inserted:
- “**stapled**, for a debt security and a share, is defined in **section FC 2B(5)** (Stapled debt securities)
 - “**stapled debt security** is defined in **section FC 2B(1)** (Stapled debt securities)”. 25
- (14) After the definition of **working day**, the following is inserted:
- “**work-related relocation** is defined in **section CW 13B(4)** (Relocation payments) for the purposes of that section”.
- (15) **Subsections (3), (5), (6), and (10)** apply for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if the person chooses to use IFRS 4 in a return of income for that first year. 30
- (16) **Subsection (9)** applies for—
- (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or 35
 - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income

- years, if that first income year is before the 2007–08
income year and the person chooses to apply the IFRS
taxpayer method in a return of income for that first year;
or
- (c) the 2008–09 and later income years, if a person’s 5
2008–09 income year starts before 1 January 2008 and
the person has not adopted IFRSs for the purposes of
financial reporting before 1 January 2007.
- (15) **Subsections (3), (6), and (10)** apply for the first income year
for which an insurer adopts IFRSs for the purposes of financial 10
reporting and later income years, if the person chooses to use
IFRS 4 in a return of income for that first year.
- (15) **Subsections (3), (5), (6), and (10)** apply for the first income
year for which an insurer adopts IFRSs for the purposes of fi- 15
nancial reporting and later income years, if the person chooses
to use IFRS 4 in a return of income for that first year.
- (16) **Subsections (6B) and (12B)** apply for the 2005–06 and later
income years.
- (17) **Subsections (7), (8), and (12)** apply for expenditure in- 20
curred on or after 1 April 2008.
- (18) **Subsections (4C), (6E), and (9)** apply for—
- (a) the 2007–08 and later income years, unless **paragraph**
(b) or (c) applies; or
- (b) the first income year for which a person adopts IFRSs 25
for the purposes of financial reporting and later income
years, if that first income year is before the 2007–08
income year and the person chooses to apply the IFRS
taxpayer method in a return of income for that first year;
or
- (c) the 2008–09 and later income years, if a person’s 30
2008–09 income year starts before 1 January 2008 and
the person has not adopted IFRSs for the purposes of
financial reporting before 1 January 2007.
- 614 Schedule 16—Depreciable land improvements**
- (1) In schedule 16, after item 16, the following is added: 35
- 17 pipes and conduits pipes.

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

Part 6 Amendments to other Acts and regulations

5

Income Tax Act 1994

615 Income Tax Act 1994 amended

Sections 616 to 620 amend the Income Tax Act 1994.

616 Exempt income—employee allowances and expenditure on account of employee

10

- (1A) In section CB 12(1)(b), “employee.” is replaced by “employee; or” and the following is added:

“(c) despite section DE 1, includes a depreciation deduction component.”

- (1) After section CB 12(1), the following are inserted:

15

“(1B) An amount, not being an amount or part of an amount that is exempt income under subsection (1), is exempt income to the extent to which—

“(a) the amount is paid to or on behalf of an employee in respect of the costs to the employee in a work-related relocation; and

20

“(b) the amount paid does not exceed the actual cost incurred by or on behalf of the employee on an expense that is listed as an eligible relocation expense in a determination made by the Commissioner under **section 91AAR** of the Tax Administration Act 1994; and

25

“(c) ~~the expenditure is incurred from the start of the income year in which the employee relocates or undertakes work at the new location to the end of the following income year unless, in the case of a temporary move,—~~

30

“(i) the employee moves temporarily to a new location and then relocates permanently to that place; and

- ~~“(ii) the temporary move was not treated as a work-related relocation under this subsection.~~
- “(c) the expenditure is incurred to the end of the tax year in which the relocation occurs, and for this purpose, a temporary move that has not been treated as a work-related relocation under this subsection is ignored. 5
- “(1C) An amount, not being an amount or part of an amount that is exempt income under subsection (1), is exempt income to the extent to which—
- “(a) the amount is paid to or on behalf of an employee for a meal for the employee when the employee is working overtime; and 10
- “(b) the amount paid—
- “(i) does not exceed the actual cost to the employee, with documentation required for amounts over \$20 per meal; or 15
- ~~“(ii) is a reasonable estimate of the expenditure likely to be incurred by the employee or a group of employees for whom an amount is payable; and~~
- “(ii) is a reasonable estimate of the expenditure likely to be incurred by the employee or a group of employees for whom an amount is payable; and 20
- ~~“(e) either—~~
- ~~“(i) the employment agreement provides for pay for overtime hours; or~~ 25
- ~~“(ii) the employer’s established practice or policy provides for pay for overtime hours worked.~~
- “(c) the employee has worked at least 2 hours overtime and either—
- “(i) the employment agreement provides for pay for overtime hours; or 30
- “(ii) the employer’s established practice or policy provides for pay for overtime hours worked.
- “(1D) An amount, not being an amount or part of an amount that is exempt income under subsection (1), is exempt income to the extent to which the amount is paid to an employee as a sustenance allowance for a day when— 35
- “(a) the employee works a minimum of 7 hours on the day; and

- “(b) the employee’s employment requires them—
 “(i) to work outdoors and away from their employ-
 ment base for most of the day; and
 “(ii) to undertake a long period of physical activity in
 travelling through a neighbourhood or district on 5
 foot or by bicycle; and
 “(c) it is not practicable for the employer to provide suffi-
 cient sustenance on the day for the period when the em-
 ployee is working outdoors; and
 “(d) the allowance recognises— 10
 “(i) the arduous physical nature of the employee’s
 work as described in **paragraph (b)**; and
 “(ii) that the employer would normally provide tea,
 coffee, water, or similar refreshments at the em-
 ployment base in the course of their business; and 15
 “(e) the employer has an established policy or practice of
 paying a sustenance allowance; and
 “(f) the amount paid—
 “(i) does not exceed the actual cost to the employee;
 “(ii) is a reasonable estimate of the expenditure likely 20
 to be incurred by the employee or a group of
 employees for whom an amount is payable.”
 (2) **Subsection (1)** ~~applies for the 2002–03 to 2004–05 income~~
 ~~years:~~
 (2) **Subsections (1A) and (1)** apply for the 2002–03 to 2004–05 25
 income years, except when **subsection (3)** applies.
 (3) **Subsection (1A)** does not apply in relation to a tax position
 taken by a person—
 (a) in the period from 1 October 2001 to 31 March 2005;
 and 30
 (b) in relation to employees’ allowances; and
 (c) relying on section CB 12(1) in the absence of the
 amendment made by **subsection (1A)**.
617 Meaning of “fringe benefit”
 (1) After section CI 1(o)(v), the following is inserted: 35
 “(vb) it removes a need which would otherwise exist for
 the employer of the employee to pay the employee
 an amount in respect of a work-related relocation as

described in **section CB 12(1B)** or a payment for an overtime meal as described in **section CB 12(1C)**.”

- (2) **Subsection (1)** applies for the 2002–03 to 2004–05 income years.

617B Accrual expenditure

5

In section EF 1(5A), “section CB 12(1)” is replaced by “section CB 12(1) or **(1B) to (1D)**”.

618 Special and provisional economic rates

- (1) Section EG 10(1)(b) is replaced by the following:

“(b) a provisional basic economic rate, where no applicable economic depreciation rate other than a default economic depreciation rate is specified in a determination under section EG 4.”

10

- (2) **Subsection (1)** applies for the 1995–96 and later income years.

15

618B Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability

- (1) Section MF 10(4B) to (4D) are replaced by the following:

“(4B) An election made for a consolidated group under section MG 10(3) by any company described in section MF 10(3)(a) to (c) for an income year is invalid to the extent to which the total of all those elections is greater than an amount calculated for the consolidated group for the year using the formula in section MF 8(2)(a) (but treating item e as zero).

25

“(4C) An election made for a company (the **first company**) by any consolidated group under section MF 10(4) for an income year is invalid to the extent to which the total of all those elections and any other elections for the first company under section MF 5(4) for the year is greater than an amount calculated for the first company for the year using the formula in section MF 4(1)(a) (but treating the item e as zero).

30

“(4D) An amount of election that is invalid under **subsection (4B) or (4C)**—

- “(a) is not recorded as a credit in the branch equivalent tax account of the company or the consolidated group, as the case may be, that makes the election:
- “(b) is not an amount of debit balance for which the election is made: 5
- “(c) does not relate to the election.”
- (2) **Subsection (1)** applies for the 1997–98 and later income years.
- 619 Definitions**
- (1) This section amends section OB 1. 10
- (2) In the definition of **expenditure on account of an employee**, the following is added after paragraph (d):
- “(e) an amount paid under **section CB 12(1B)**.”
- (2B) In the definition of **monetary remuneration**, after paragraph (a)(iii), “but does not include any employer superannuation contribution.” is replaced by “but does not include any employer superannuation contribution, or for the purposes of paragraph (a)(iii), any amount paid under **section CB 12(1B)**.” 15
- (3) After the definition of **overseas company**, the following is inserted: 20
- “~~overtime~~, for a person and a day, means time worked for an employer on the day beyond the person’s ordinary hours of work as set out in their employment agreement when the employee has worked more than 2 hours beyond their ordinary hours on that day 25
- “**overtime**, for a person and a day, means time worked for an employer on the day beyond the person’s ordinary hours of work as set out in their employment agreement”
- (4) After the definition of **working partner**, the following is inserted: 30
- “**work-related relocation**,—
- “(a) for an employee other than an employee whose accommodation forms an integral part of their work, means a relocation of the place where the employee lives that is required because the employee’s workplace is not 35

within reasonable daily travelling distance of their residence as a result of the employee—

“(i) taking up new employment with a new employer; or

“(ii) taking up new duties at a new location with their existing employer; or 5

“(iii) continuing in their current position but at a new location:

“(b) for an employee whose accommodation forms an integral part of their work, means a relocation of the place where the employee lives that is required as a result of the employee— 10

“(i) taking up new employment with a new employer; or

“(ii) taking up new duties at a new location with their existing employer; or 15

“(iii) continuing in their current position but at a new location”.

(5) **Subsections (2) to (4)** apply for the 2002–03 to 2004–05 income years. 20

619B **Schedule 6A—Specified types of entertainment**

After schedule 6A, part B, clause 3(a), the following are inserted:

“(ab) for an employee making a work-related relocation described in **section CB 12(1B)**, the employer pays an amount for the cost of food or beverages consumed during the period of the relocation that is an eligible relocation expense; and 25

“(ac) the employer pays an employee a sustenance allowance described in **section CB 12(1D)**; and”. 30

620 **Schedule 16—Depreciable land improvements**

(1) In schedule 16, after item 16, the following is added:

17. ~~Pipes and conduits.~~ Pipes.

(2) **Subsection (1)** applies for the 1995–96 and later income years.

*Income Tax Act 1976***621 Special and provisional economic rates**

- (1) Section 108I(1)(b) of the Income Tax Act 1976 is replaced by the following:

“(b) a provisional basic economic rate, where no applicable economic depreciation rate other than a default economic depreciation rate is specified in a determination under section 108C of this Act.” 5

- (2) **Subsection (1)** applies for the 1993–94 and later income years. 10

622 Schedule 21—Depreciable land improvements

- (1) In schedule 21 of the Income Tax Act 1976, after item 16, the following is added:

17. ~~Pipes and conduits.~~ Pipes.

- (2) **Subsection (1)** applies for the 1993–94 and later income years. 15

*Estate and Gift Duties Act 1968***622B Interpretation**

In section 2(2) of the Estate and Gift Duties Act 1968, after the definition of **dutiable gift**, the following is inserted:

“**general power of appointment** includes— 20

“(a) any power or authority created on or before the 31st day of March 1967 that—

“(i) is conferred by the will of any person dying on or before that date, or is conferred by any settlement *inter vivos* executed on or before that date, or is created in any other manner on or before that date; and 25

“(ii) enables, or would enable if the holder were of full capacity, the holder of the power or authority to appoint or dispose of any property, or to charge any sum of money upon any property, as the holder thinks fit for the holder’s own benefit; and 30

- “(iii) is exercisable by instrument *inter vivos* or by will; and
- “(iv) is not a power or authority exercisable by a person in a fiduciary capacity under a disposition not made by the person, or exercisable by a mort- 5
gagee:
- “(b) any power or authority created on or after the 1st day of April 1967 that—
- “(i) is conferred by the will of any person dying on or after that date, or is conferred by any settlement 10
inter vivos executed on or after that date, or is created in any other manner on or after that date;
- and
- “(ii) enables, or would enable if the holder were of full capacity, the holder of the power or authority to 15
obtain or appoint or dispose of any property, or to charge any sum of money upon any property, as the holder thinks fit for the holder’s own benefit;
- and
- “(iii) is exercisable orally or by instrument *inter vivos* or by will or otherwise; and 20
- “(iv) is not a power or authority exercisable by a person in a fiduciary capacity under a disposition not made by the person, or exercisable by a mort-
gagee”. 25

Stamp and Cheque Duties Act 1971

622C Interpretation

- (1) In section 86F of the Stamp and Cheque Duties Act 1971, in the definition of **paid** or **payment**, “paragraph (c) of the definition of **pay** in section YA 1 of the Income Tax Act 2007” is 30
replaced by “paragraph (d) of the definition of **pay** in section OB 1 of the Income Tax Act 2004”.
- (2) In section 86F of the Stamp and Cheque Duties Act 1971, in the definition of **paid** or **payment**, “paragraph (d) of the definition of **pay** in section OB 1 of the Income Tax Act 2004”, 35
as inserted by **subsection (1)**, is replaced by “paragraph (a) of the definition of **pay** in section YA 1 of the Income Tax Act 2007”.

- (3) **Subsection (1)** applies for the 2005–06 and later income years.
- (4) **Subsection (2)** applies for the 2008–09 and later income years.

Taxation Review Authorities Act 1994 5

622D Hearing of objections by an Authority

- (1) In section 16(3)(b) of Taxation Review Authorities Act 1994, “section 22” is replaced by “section 22 or 22B”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 10

Taxation (Business Taxation and Remedial Matters) Act 2007

- 623 Use of consolidated group credit to reduce dividend withholding payment or use of group or individual debit to satisfy income tax liability** 15
- In section 287(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007, “2005–06” is replaced by “1997–98”.

Acts referring to associated person

- 624 Consequential amendments to other Acts: associated person** 20
- The enactments listed in **schedule 2** are amended in the manner indicated in the schedule.

Companies Act 1993

- 624B Schedule 7—Preferential claims** 25
- In schedule 7 of the Companies Act 1993, after clause 1(2)(a), the following is inserted:
- “(aa) subject to clause 3(1), all untransferred amounts of an employee’s payroll donations by an employer or PAYE intermediary under **section 24Q** of the Tax Administration Act 1994 during the 4 months before the commencement of the liquidation:”.
- 30

Insolvency Act 2006

624C Priority of payments to preferential creditors

In the Insolvency Act 2006, after section 274(2)(a), the following is inserted:

“(aa) subject to section 276(1), all untransferred amounts of an employee’s payroll donations by an employer or PAYE intermediary under **section 24Q** of the Tax Administration Act 1994 during the 4 months before the adjudication:”.

*Amendment to Income Tax (Depreciation
Determinations) Regulations 1993* 10

625 Income Tax (Depreciation Determinations) Regulations 1993

(1) In regulations 2(a), 3(1)(c), 3(2), 6(1)(a), and 9(1) of the Income Tax (Depreciation Determinations) Regulations 1993, “91AE” is replaced by “91AAG”. 15

(2) In regulations 2(b) and 6(1)(b) of the Income Tax (Depreciation Determinations) Regulations 1993, “91AJ” is replaced by “91AAL”.

(1) In the Income Tax (Depreciation Determinations) Regulations 1993, “91AE” is replaced by “91AAG” in the following: 20

(a) regulation 2, paragraph (a) of the definition of **depreciation determination**:

(b) regulation 3(1)(c) and (2):

(c) regulation 6(1)(a):

(d) regulation 9(1).

25

(2) In the Income Tax (Depreciation Determinations) Regulations 1993, “91AJ” is replaced by “91AAL” in the following:

(a) regulation 2, paragraph (b) of the definition of **depreciation determination**:

(b) regulation 6(1)(b).

30

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

~~Amendment to Goods and Services Tax (Grants and Subsidies) Order 1992~~

626 Schedule—Non-taxable grants and subsidies

In the schedule of the Goods and Services Tax (Grants and Subsidies) Order 1992, clause 5,—

5

- (a) “under the Income Tax Act 2004” is replaced by “under the Income Tax Act 2007, Income Tax Act 2004,”;
- (b) “under subpart KJ of the Income Tax Act 2004” is replaced by “under subpart MK of the Income Tax Act 2007 or subpart KJ of the Income Tax Act 2004”.

10

KiwiSaver Regulations 2006

627 KiwiSaver Regulations 2006 amended

Sections 628 and 629 amend the KiwiSaver Regulations 2006.

628 What member of KiwiSaver scheme must do next to participate in mortgage diversion facility

15

Regulation 26(a) is replaced by the following:

- “(a) a request to divert, in respect of his or her mortgage, contributions that are received after the provider receives such request; and”.

629 What scheme provider must do to participate in mortgage diversion facility

20

In regulation 27(b), “section 229(2)(i)” is replaced by “section 229(2)(i) and (ia)”.

Schedule 1 **s 431**
**Consequential amendments to lists of
defined terms: associated person**

Section reference in Income Tax Act 2007 *Term to be omitted from list*

CD 44 Available capital distribution amount	related person
CW 12 Proceeds of share disposal by qualifying foreign equity investor	1990 version provisions
EW 43 Consideration when debt sold at discount to associate of debtor	1988 version provisions
EW 49 Income and deduction when debt sold at discount to associate of debtor	1988 version provisions
EX 1 Meaning of controlled foreign company	control
EX 7 Indirect control interests	control
FA 3 Recharacterisation of certain dividends: recovery of cost of shares held on revenue account	control
FE 1 What this subpart does	control
FE 2 When this subpart applies	control
FE 9 Elections	control
FE 12 Calculation of debt percentages	control
FE 21 Banking group's New Zealand net equity	1973 version provisions, 1988 version provisions, 1990 version provisions

Section reference in Income Tax Act 2007 ***Term to be omitted from list***

FE 25 New Zealand group for excess debt entity that is a company	control
FE 26 Identifying New Zealand parent	control
FE 27 Establishing companies under parent's control	control
FE 28 Identifying members of New Zealand group	control
FE 30 Ownership interests in companies outside New Zealand group	control
FE 35 Persons who may be excluded from banking groups	control
FE 39 Direct ownership interests	control
GB 28 Interpretation of terms used in section GB 27	1973 version provisions, 1988 version provisions, 1990 version provisions
GB 48 Defined terms for sections GB 45 and GB 46	1973 version provisions, 1988 version provisions, 1990 version provisions
HC 15 Taxable distributions from non-complying and foreign trusts	1973 version provisions, 1988 version provisions, 1990 version provisions
HD 6 When relationship effectively that of principal and agent	control
HD 19 Persons receiving absentees' income	control

<i>Section reference in Income Tax Act 2007</i>	<i><u>Term to be omitted from list</u></i>
---	--

HL 6 Investor membership requirement	1988 version provisions
---	-------------------------

RF 11 Dividends paid to companies under control of associated with non-residents	control
---	---------

Schedule 2**s 624****Consequential amendments to other Acts:
associated person****Fisheries Act 1996 (1996, No 88)**

5

Section 59(10)(c): “paragraphs (c) and (d) of the definition of that term” is replaced by “paragraph (c) of the definition of that term, as it was before the enactment of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008**”.

Section 59(10)(d): replaced by the following:

10

~~“(d) any person who would be an associated person under subpart YB of the Income Tax Act 2007:~~

“(d) any person who would be an associated person under subpart YB of the Income Tax Act 2007 as it was before the enactment of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2009**, to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions, with the exception that paragraph (e) of the definition of **market value circumstance** in section YA 1 of that Act does not apply.”

15

20

Insolvency Act 2006 (2006 No 55)

Section 182(1): replaced by the following:

“(1) If authorised by the court, the assignee or a person appointed by the assignee may exercise the power set out in subsection (2) in relation to a company that is associated with the bankrupt under **subpart YB** of the Income Tax Act 2007.”

25

Misuse of Drugs Amendment Act 2005 (2005 No 81)

Section 31, definition of **manufacturer**: “(to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)” is omitted.

30

Privacy Act 1993 (1993 No 28)

Section 6, principle 12(2): “(to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)” is omitted.

35

**Public Service Investment Society Management Act (No 2) 1979
(1979 No 9)**

Section 2(2): replaced by the following:

“(2) For the purposes of section 4 of this Act a company shall be
deemed to be associated with another company if those com- 5
panies would be associated with each other under **subpart YB**
of the Income Tax Act 2007.”

Radiocommunications Act 1989 (1989 No 148)

Section 153(2): “(to the extent to which those rules apply for the
whole of that Act excluding the 1973, 1988, and 1990 version provi- 10
sions)” is omitted.

Section 161(2): “(to the extent to which those rules apply for the
whole of that Act excluding the 1973, 1988, and 1990 version provi-
sions)” is omitted.

Smoke-free Environments Act 1990 (1990 No 108) 15

Section 2(1), definition of **manufacturer**: “(to the extent to which
those rules apply for the whole of that Act excluding the 1973, 1988,
and 1990 version provisions)” is omitted.

Trustee Companies Management Act 1975 (1975 No 25)

Section 2(2): replaced by the following: 20

“(2) For the purposes of section 3 of this Act a company is associ-
ated with another company if those companies would be asso-
ciated with each other under **subpart YB** of the Income Tax
Act 2007.”

Unit Trusts Act 1960 (1960 No 99) 25

Section 3(4): replaced by the following:

“(4) A trustee corporation or company or bank must not act as a
trustee of a unit trust, and a company must not act as manager
of a unit trust if those 2 persons are associated with each other
under **subpart YB** of the Income Tax Act 2007.” 30

**Taxation (International Taxation, Life
Insurance, and Remedial Matters) Bill**

Legislative history

2 July 2008

6 August 2008

Introduction (Bill 233–1)

First reading and referral to Finance and
Expenditure Committee
