

# **Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill**

Government Bill

As reported from the Finance and  
Expenditure Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill seeks to make amendments to various Acts, including the Income Tax Act 2007, the KiwiSaver Act 2006, the Tax Administration Act 1994, the Income Tax Act 2004, and the Tax Administration (Binding Rulings) Regulations 1999. The proposed amendments would introduce the following:

- trans-Tasman portability of retirement savings

- new rules for under-18-year-olds seeking to enrol in Kiwi-Saver
- flexibility in a provision applying to resident co-operative companies that require members to hold shares in proportion to their trading stock transactions with the company
- the effective cancellation of Branch Equivalent Tax Account debits that arose from conduit-relieved dividends
- a further five-year tax exemption on profits for non-residents operating offshore rigs or seismic vessels in New Zealand
- a number of new rules relating to binding rulings
- an exemption from gift duty for gifts made to local or central government, donee organisations, and distributions of property made in accordance with certain Court orders
- the addition of Cure Kids to the list of charitable donee organisations.

The bill also proposes various minor technical amendments.

This commentary discusses the more significant amendments we recommend to the bill. It also notes our views on some significant matters we considered on which we are not recommending amendments. It does not include discussion of technical or inconsequential amendments.

We are recommending amendments which would make some provisions relating to gift duty, Portfolio Investment Entities, and the Emissions Trading Scheme apply retrospectively. We are advised that taxpayers would not be adversely affected by these amendments, and that the amendments would not be unexpected by those whom they would affect as they effect clarifications of a minor nature which align with the policy intent of the original legislation to which they relate.

## **Trans-Tasman portability of retirement savings**

### **Reallocation or transfer back to Australia of savings if membership is declined or invalid**

We recommend amending clauses 75 and 76 of the bill to refer to the “amount transferred” rather than “net” amounts to be paid if an individual’s superannuation membership is found to be invalid. We consider that referring to “net” amounts might require unduly complex

information collecting and record-keeping for providers, increasing their costs and making accounting unnecessarily complex. Using the phrase “amount transferred” instead of “net” would be consistent with current rules on invalid membership.

We also recommend an amendment to clause 76 to ensure that, in situations where KiwiSaver account amounts must be transferred back to the original Australian complying scheme because the KiwiSaver enrolment is deemed invalid, an individual could nominate another superannuation scheme in Australia if their original scheme would not accept a transfer, or the scheme no longer existed. This would close a gap in the bill, as the way it is currently drafted means that there are no options for completing the transfer if the original scheme is no longer in existence or will not accept such a transfer.

#### **Fees first deducted from New Zealand-sourced savings**

We also recommend the deletion of clause 2B from the KiwiSaver scheme rules (contained in clause 80 of the bill), which requires fees to be first deducted from the net value of amounts not transferred from Australia. We recommend the deletion of this clause because of the difficulty for providers of setting and administering separate fees. For example, compliance costs would rise, and it would necessitate the duplication of unit prices within KiwiSaver schemes.

#### **Other matters**

We considered amending the bill to take account of concerns about the transfer of superannuation funds that exceed Australia’s contribution threshold. Some submitters recommended that people who migrate to Australia should be able to withdraw their KiwiSaver funds in part to avoid being taxed on contributions exceeding the Australian contribution threshold, or that the amounts transferred to Australia be exempt entirely from the Australian contribution cap. We consider that this issue is not of great concern at present because of the relatively small amounts in Kiwisaver accounts that may be transferred; and Inland Revenue has advised us that it may raise this matter with Australian officials once KiwiSaver amounts become high enough to be affected by the contributions cap.

We also considered a number of other possible amendments. For instance, some submitters advocated aligning tax rates on investment

income with Australia, to encourage consolidation of retirement savings. However, the intention of the bill is to improve labour market mobility and help move toward a single integrated superannuation market with Australia, rather than to achieve equal tax treatment on investments. Also, we note that it is difficult to align the two rates since, for example, Australia taxes capital gains on equities and New Zealand does not. Some submitters also advocated allowing New Zealanders who move permanently to Australia to withdraw their savings entirely upon emigration. As this would be contrary to the objectives of trans-Tasman portability, and to the concept of a single integrated superannuation market, we do not consider this appropriate.

We also considered extending trans-Tasman portability facilities to complying superannuation funds. We consider that, in principle, such funds should be able to offer portability; however, the arrangements currently refer only to KiwiSaver, and any extension would be a decision for the Governments of the two countries. We are advised that Inland Revenue will raise this matter with Australian officials.

## **KiwiSaver**

### **Requirements for guardians**

We recommend an amendment to clause 74(2) to make it clear that, for children aged under 16 years, agreement and joint signatures would have to be obtained from all the child's guardians before the child could be enrolled in a KiwiSaver scheme. We consider this clarification necessary for consistency with the Care of Children Act 2004, which states that a guardian of a child must act jointly with any other guardians of the child in exercising his or her duties and responsibilities. For children aged 16 or 17, we consider that one guardian's signature should be sufficient, because the 16- or 17-year-old would have to co-sign with his or her guardian to be enrolled. We consider it important that children close to 18 have some role in their enrolment and the consent process; furthermore, many young people begin working at this age. We believe that those aged 18 and over should not require guardians' consent to enrol, as at this age young people are generally seen as adults in respect of certain rights, for example, to vote, and to marry without parental consent.

We understand that further information regarding evidence to verify guardianship, and evidence declaring that a child has no legal guardian, will be published by Inland Revenue in its *Tax Information Bulletin*. We were also advised that the same document will explain in more detail why it is appropriate for those under the age of 16 to require the signatures of all of their guardians, and for those aged 16 or 17 to co-sign with one of their guardians.

### **Temporary employment**

We recommend the insertion of new clause 72B to ensure temporary employees who were already KiwiSaver members would be entitled to continue to have contributions made to their accounts. We have been made aware of a small anomaly in the KiwiSaver Act 2006, which has meant that the current definition of “KiwiSaver deduction notice” might prevent a current KiwiSaver member from choosing to receive employer contributions and having KiwiSaver deductions made from their pay if he or she began temporary employment. We consider that temporary employees should be able to participate in KiwiSaver and receive employer contributions if they are already KiwiSaver members, as the purpose of KiwiSaver is to encourage long-term saving by all workers. Temporary employees who are not already KiwiSaver members are currently able to issue a deduction notice to the employer.

### **Exemptions from automatic enrolment**

We recommend the insertion of new clauses 72C–E, which would modify the exemption from the KiwiSaver automatic enrolment rules for certain employers. The Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009, which we considered last year, introduced a provision to ensure that employers could not establish new schemes that are not KiwiSaver schemes for the purpose of avoiding automatic enrolment rules. A grandfathering clause was included in the bill to allow exemption from enrolment only if a scheme was in existence at the date of enactment of the legislation (6 October 2009). However, the grandfathering clause does not take into account various situations, such as mergers and acquisitions, which could result in a replacement agreement. This means that in such circumstances, an existing employer would lose their exempt status.

As this is not intended, we recommend including in the bill a provision to ensure that exemptions for currently exempt employers can remain valid past 6 October 2009 in such circumstances.

### **Other matters**

Inland Revenue advised us that it intends to consider a number of issues raised during submissions in more detail. They include the withdrawal provisions in relation to misled or misinformed members and incorrect enrolments, short-paid employer contributions, KiwiSaver hardship claims, and the withdrawal of Crown contributions in situations of serious illness.

We understand that another matter that was raised—allowing the sharing of KiwiSaver members' address updates between Inland Revenue and providers—may be included for consideration in the next taxation bill.

We look forward to observing any progress on these matters.

### **Binding rulings**

#### **Application date**

We recommend that clauses 53(4), 54(3), 59(4), and 60(3) be removed. This would ensure that the provisions relating to partially accepted applications would apply to all existing rulings. As the bill is currently drafted, the proposed amendments to the binding rulings provisions are limited to applications received after the date of Royal assent; for consistency and certainty, we consider that all existing rulings should benefit from the amendments after the Royal assent date.

We also recommend that clause 52(5) be amended so that the bill's amendments to binding rulings would also apply to all applications that had not been declined on the grounds set out in section 91E(4)(ga) of the Tax Administration Act 1994, and to those that had not been finalised or issued before the bill was enacted.

#### **Application of binding rulings proposals**

We also recommend the deletion of clause 67. This clause would prevent Part 7 (Interest) of the Tax Administration Act 1994 from applying to a taxpayer who took a tax position relying on advice given to them as a taxpayer by the Commissioner. It provides that the advice

in question must be provided in writing by the Commissioner (unless the advice is standard and relates to a common tax issue), given as official departmental advice, and apply specifically to that taxpayer. We consider that this clause essentially duplicates clause 68, and that its inclusion could create confusion.

### **Publication of rulings in the *Gazette***

The bill as introduced contains provisions to require the Commissioner to publish the making and withdrawal of public and product rulings in a publication of his or her choosing, rather than in the *Gazette*. However, the bill appears to have omitted references to other sections of the Tax Administration Act 1994 that require the Commissioner to publish these notices. For consistency, we therefore recommend that the bill also apply to sections 91AAK (notice of setting economic rate), 91AAQ(8) (determination of insurer as a non-attributing controlled foreign company (CFC)), and 91AAR(6) (determination relating to eligible relocation expenses) of the Act. These amendments are contained in new clauses 46B, 49B, and 49C. Some other clauses also still refer to the *Gazette*, as they allow the revocation of provisions effective after the day of publication of the *Gazette*. We are advised that Inland Revenue will consider this issue further some time in the future.

We considered whether the Commissioner should be required to specify the name of the publication in which he intends to publish rulings or determinations. We believe it is important that taxpayers have some certainty about where such notices are published, but are concerned that specifying a publication in legislation could lead to difficulties should the name of the publication change. Therefore, we do not recommend that the name of the publication where the Commissioner publishes rulings or determinations be specified in legislation. Nevertheless, we urge Inland Revenue to publish rulings in the *Tax Information Bulletin*, and to take steps to ensure that it is well known that rulings and determinations can be found in this publication.

### **Unacceptable tax position penalties and use-of-money interest**

We recommend an amendment to clause 36 clarifying what is meant by the “Commissioner’s official opinion”. We were concerned that, as the bill is currently drafted, this could be interpreted to include

only opinions concerning a specific taxpayer's affairs, and might not include more general advice published by the Commissioner and applicable to taxpayers in general. In situations where the Commissioner might give a clear and unambiguous instruction to taxpayers that is later found to be incorrect, this could therefore result in the taxpayer being penalised for following an incorrect instruction, and having to dispute the imposition of penalties or request the remission of use-of-money interest.

We recommend an amendment to clause 69 to remove the word "solely". As drafted, the bill provides for non-application of interest only where it arises solely because the taxpayer relied on a Commissioner's official opinion. As the taxpayer might have relied on other advice in addition to the Commissioner's official opinion, we consider the word "solely" inappropriate.

We carefully considered the view that penalties and use-of-money interest should not apply in cases where a taxpayer has relied upon general advice from Inland Revenue, and agree in principle with it. However, we believe that the relief from penalties and interest should apply only where the general advice applies to the taxpayer's specific situation. We do not consider that the relief should apply to all published general advice, as taxpayers may interpret general statements in a way that Inland Revenue would not agree fitted their case. Penalties and interest might thus become easy to avoid, undermining the voluntary compliance objective of the policy. We have therefore not recommended any amendment to this end.

### **Other matters**

We considered whether the Commissioner should be empowered to rule on a wider range of matters, as the Commissioner may form a view on various other matters when conducting an audit or investigation. However, we do not recommend a change to the bill in this area, as we recognise such a change might create administrative problems. For example, if the Commissioner could rule on a much broader range of issues, timeliness of rulings might become an issue; or, conversely, should the Commissioner be forced to provide an early determination about the facts of a complex case, it might not be possible to confirm all the pertinent facts. Further, we believe it is unreasonable to expect the Commissioner to rule on some of the



matters suggested, such as the intention of a person entering into an arrangement.

We also considered amending the binding rulings provisions in the bill to impose time limits on the Commissioner regarding such rulings. However, as some applications can be complex and wide-ranging, we believe that some flexibility is needed. We were advised that if deadlines were set out in the legislation and the Commissioner were to miss a deadline, a negative ruling would be issued; if the taxpayer then chose to withdraw the application for a ruling or not to follow the ruling, there would still be no certainty for that taxpayer on the issue. This would defeat the purpose of binding rulings.

### **Branch Equivalent Tax Account debits**

We recommend an amendment to clause 30 and the insertion of new clause 30G to reflect better the policy intent of the Branch Equivalent Tax Account (BETA) debit provisions; that is, that BETA debits should be unavailable for use only to the extent that they arose from dividends that were subject to conduit tax relief. We consider that a specific reference to those BETA debits generated in respect of tax liabilities that were offset by conduit relief under section RG 7 of the Income Tax Act 2007 needs to be added to these provisions to clarify the intent.

Our changes would ensure that the application date of the BETA debit provisions generally allowed debits arising from conduit relief to be used against pre-reform CFC income. As the clause is currently drafted, BETA debits would be cancelled as soon as the international tax rules applied, which might cause difficulties for companies that did not file an income tax return for CFC income earned before the reforms until the new international rules took effect. We note that these amendments would necessitate some restrictions to prevent manipulation of the rules.

Our proposed amendments also include ordering rules to make it clear how taxpayers should measure the amount of debit balance that is unavailable for use, which the Income Tax Act 2007 does not specify. We consider this clarification necessary, as some BETA debits have arisen for reasons other than conduit-relieved dividends, or used to offset tax liabilities, making it unclear in many situations which

debts have been offset and which have not. An ordering rule would clarify this matter for taxpayers.

### **Other matters**

We considered the view that all BETA debts, and not just those that arose from payment of tax, should be retained for a two-year transitional period. However, new international taxation rules have no potential for double taxation if no tax has been paid on a dividend because of conduit tax relief. Therefore, if the BETA debts were not cancelled, a company could still use them over the transitional period to offset any tax on attribution of foreign income, which would result in the company paying no tax at all during that time. We note also that allowing taxpayers to keep the debts would prolong conduit tax relief and allow non-taxation of passive income for two years. While it is difficult to estimate the exact fiscal cost of retaining all BETA debts, as this would depend on the amount of taxable foreign income earned by companies over the transitional period, Inland Revenue has estimated that it could be substantial, potentially more than \$200 million.

## **Remedial and miscellaneous matters**

### **Emissions Trading Scheme**

We propose a number of amendments to the provisions relating to the tax treatment of emissions units. We recommend the insertion of new clause 9D to allow, from 1 July 2010, capital account treatment of emissions trading units allocated to owners of fishing quota. We consider that, because the rationale for allocation of units to owners of fishing quota is the loss of value to the quota, it would be inconsistent to apply revenue account treatment to these units.

We also recommend the insertion of new clause 20C to clarify the application of the market transfer rule to emissions units, as it is not clear that the generic market value transfer rule would apply. We propose that a market value transfer rule be established specifically for emissions units, and that this amendment be made retrospective from 26 September 2008, the date on which the former specific anti-avoidance provision was repealed. However, we recommend an exception to this proposed rule for forestry rights arrangements. We propose that, in order to avoid triggering a tax liability for a transferee, the

rule which deems a transfer of emissions units for less than market value to be a transfer at market value should not apply to transfers of emissions units between a forestry rights holder and the landowner party to the forestry right. We propose that this amendment be effective retrospectively from 1 January 2009, before the first date of allocation of forestry emissions units.

Finally, we recommend that the ETS provisions in the Income Tax Act 2007 be amended to extend the capital treatment of emissions units allocated to interim entities in relation to pre-1990 forestry land to the ultimate owners of that land where it is to be eventually transferred under a Treaty of Waitangi settlement. This is covered in new clause 32(7C) of the bill. Under current law, revenue account treatment would apply to such situations; as this would be inconsistent with the purpose and character of Treaty forestry settlements, we consider these units should receive capital account treatment. Further, we recommend that this amendment take effect retrospectively from 1 April 2010, before the date on which any unit transfers are expected to occur.

### **Portfolio Investment Entities**

We recommend a number of small amendments to the provisions governing portfolio investment entities (PIEs), the majority of which are for clarification purposes or to correct drafting errors. We recommend amendments to clauses 22 and 23 and the insertion of new clause 85C to ensure that foreign exchange losses relating to portfolio investments in offshore portfolio land companies would not have to be carried forward by the PIE. Under the bill as drafted, these losses would have to be carried forward, which was not the intention. Therefore, we also recommend that this amendment take effect retrospectively from October 2007, when the new PIE rules came into force.

We also recommend amendments to table 1 of schedule 6 of the Income Tax Act 2007 (contained in new clause 33E of the bill) to ensure the rates and thresholds in it are correct, and to make it clear that the 30 percent portfolio investor rate would apply to all non-resident investors, regardless of whether or not they had provided a notification. We recommend that these amendments apply retrospectively from 1 April 2010. Application from this date would not create problems for taxpayers, as the date of 1 April would be a widely expected choice.

Further, we recommend a clarification amendment to section LS 2 of the Income Tax Act 2007, contained in new clauses 27B and 27C, to ensure consistency with the policy intention of PIE credit rules. We recommend that this section be amended to provide investors with a credit for a PIE's tax liability on that income rather than for PIE tax paid; and that this amendment apply retrospectively from October 2007.

### **Distributions to co-operative company members**

We propose three amendments to the bill's provisions in this area. We recommend that clause 7, which would insert new section CD 34B into the Income Tax Act 2007, be amended to make it clear that the election of deductible treatment would apply until a company notified the Commissioner otherwise. We also recommend an amendment to clause 12 to ensure that consistent terminology is used in sections DV 11(3) and CD 34B of the Income Tax Act 2007. We note the apparent inconsistencies in these sections, and are concerned they may cause confusion. Our recommended amendment would make it clear that section DV 11(3) refers to "the income year to which the distribution relates". We also recommend that section CD 2 of the Act refer to new section CD 34B.

### **Gift duty**

We recommend amendments to clause 82 and the commencement provisions in clause 2, so that the exemption from gift duty would apply to local authorities and council-controlled organisations from 1 July 2008, and to gifts made to donee organisations from 1 April 2008. We consider that these retrospective recommendations are necessary. No explicit consideration was given to the gift duty treatment of gifts to local authorities and council-controlled organisations when tax-related provisions in the Charities Act 2005 were being considered in relation to the Income Tax Act 2007, so gifts to such organisations have effectively been subject to gift duty since 1 July 2008. Applying the exemption from this date would preserve the exempt status of gifts to such organisations. Similarly, the exemption from gift duty for gifts to donee organisations should also be retrospective for consistency with the policy intention of this exemption, which is to align gift duty treatment with the policy of encouraging

giving to charitable and philanthropic causes. We recommend that the date of 1 April 2008 apply to gifts to donee organisations, because on this date the limit was raised on qualifying donations for the purposes of individuals' donation tax credit. We understand that applying these exemptions would involve some revenue, administrative, and compliance costs in situations where gift duty has been paid, but we are assured that these costs will be minimal.

We note that Inland Revenue is reviewing gift duty policy, and will consider a number of possibilities raised during submissions. We look forward to the results of the review.

#### **Other remedial matters**

We recommend a number of remedial amendments to the bill. They include amendments to effect the recommendations of the Rewrite Advisory Panel, amendments for transitional matters arising out of the life insurance provisions in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009, and minor technical corrections to drafting.

We recommend clarification amendments to clauses 18 and 85 of the bill regarding CFCs, to ensure the wording makes it clear that a New Zealand resident's control interests in a foreign company must be less than or equal to the control interests held in the same company by the other party, and that the savings provision in clause 85(2)(b) would apply from (and therefore would include) the 2005/06 income year. We also recommend amendments to exclude foreign investment fund income calculated under the fair dividend rate method from the limit on foreign income. This would be effected by amending the definition of "foreign non-dividend income" in clause 32(3D) of the bill.

We also recommend that new clause 33D be inserted to amend schedule 4 of the Income Tax Act 2007, to provide a rate of tax for scheduled payments to certain public office-holders. We consider that this amendment is necessary because the bill as drafted provides no authority for the payers of fees to certain public office-holders to withhold tax from the payments. Furthermore, the definition of "honorary" in the Income Tax Act 2007 (as inserted by the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009) compounds the problem by explicitly limiting the scope of the definition for the purposes of new provisions introduced by the 2009

Act relating to payments for volunteers, and the purposes of schedule 4, part B (rates of tax for schedular payments).

Finally, we recommend various amendments to clauses 28, 28C, 28D, 30C, 30D, and 30E of the bill, regarding imputation credits and tax pooling, to clarify policy intentions and remedy drafting issues in sections OB 6, OB 34, OB 35, OP 9, OP 32, and OP 33 of the Income Tax Act 2007. The amendments to section OB 6 would ensure that the provision applied only to a company that held an amount representing an entitlement to funds in a tax pooling account that the company had acquired from another person under the tax pooling rules. The amendments would also make it clear that the credit date where the purchasing company on-sells to another taxpayer the entitlement to the funds in the tax pooling account is the date the entitlement is transferred to the other taxpayer; and that the credit date in situations where the purchasing company requests the intermediary to refund the funds representing the purchased entitlement from the tax pooling account to the company is the date of the refund.

### **Charitable donee organisations**

We considered a request by a submitter to be added to Inland Revenue's list of charitable donee organisations. We have been advised that there is an established process for the consideration of additions to the register (schedule 32 of the Income Tax Act 2007), and are assured that requests by organisations to be added to the schedule are being considered promptly by officials. We therefore do not recommend that organisations seek to be added to the schedule via the select committee process. We consider that avoiding the standard registration process this way is unfair for those applying for addition to the schedule in the usual way, and note also that allowing such a short-cut would result in a lack of appropriate vetting of the organisation.

### **Other issues**

#### **Supplementary Order Paper No 105**

We were also asked by the Minister of Revenue to consider supplementary order paper 105 in conjunction with the provisions in the bill. The measures in the SOP would reverse an amendment to the

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 that removed the immediate finished film deduction for films that received a grant from the screen production incentive fund and replaced it with a two-year deduction. The SOP introduces two other minor clarification amendments. The amendment to reverse the finished film deduction provision is intended to reduce the funding problems that New Zealand films receiving the incentive have encountered because the New Zealand Film Commission now pays the incentive after a film has been made, rather than by progress payments during the production process.

The proposed amendments to give effect to the SOP are contained in clauses 2(9B), 11C, 14C, 14D, 14E, 14F, 32(4C) and (4F), and 36(2B).

## **Appendix**

### **Committee process**

The Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill was referred to the committee on 8 December 2009. The closing date for submissions was 10 February 2010. We received and considered 18 submissions from interested groups and individuals. We heard nine submissions.

We received advice from the Inland Revenue Department, our independent specialist tax adviser, Therese Turner, and our independent specialist drafting adviser, David McLay.

### **Committee membership**

Craig Foss (Chairperson)

Amy Adams (Deputy Chairperson)

David Bennett

John Boscawen

Brendon Burns

Hon David Cunliffe

Aaron Gilmore

Raymond Huo

Rahui Katene

Peseta Sam Lotu-Iiga

Stuart Nash

Dr Russel Norman

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**Taxation (Annual Rates, Trans-Tasman  
Savings Portability, KiwiSaver, and  
Remedial Matters) Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Peter Dunne*

**Taxation (Annual Rates,  
Trans-Tasman Savings Portability,  
KiwiSaver, and Remedial Matters)  
Bill**

Government Bill

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

**1 Title**

This Act is the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act **2009**.

**2 Commencement**

- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section. 5
- (1B) **Section 82(2)** is treated as coming into force on 24 May 1999.
- (1C) **Section 83AC** is treated as coming into force on 21 December 2004.
- (2) **Section 81** is treated as coming into force on 1 January 2005. 10
- (3) **Sections 85, 86(1) and (3), and 87(1) and (3)** are treated as coming into force on 1 April 2005.
- (3) **Sections 83AD, 85, 86(1) and (3), 86B, and 87(1) and (3)** are treated as coming into force on 1 April 2005.
- (4) **Sections 83, 84, and 86(2)** are treated as coming into force on 1 April 2007. 15
- (5) **Section 22** is treated as coming into force on 1 October 2007.
- (5) **Sections 22, 38C, 38D, 38E, 68B, 85C, 85D, and 85E** are treated as coming into force on 1 October 2007.
- (5B) **Sections 83AB and 85B** are treated as coming into force on 19 December 2007. 20
- (6) **Sections 14, 15, 16, 17, 18, 21, 25, 26, 27, 28, 31, 32(10) and (13), 33, 37, 38, 39, 46, and 87(2) and (4)** are treated as coming into force on 1 April 2008.
- (6) **Sections 4B, 7B, 7C, 9C, 12B, 12C, 12D, 14, 14B, 15, 16, 17, 18, 19H, 19I, 20, 20B, 20D, 20E, 20F, 20G, 20H,** 25

- 20I, 21, 21B, 21C, 24B, 24C, 24D, 24E, 25, 26, 27, 27B, 27D, 28, 28B, 28C, 28D, 30C, 30D, 30E, 30F, 31, 31C, 32(1B), (3), (3B), (3D), (4B), (10), (11C), and (13), 33, 33B, 33D(1), (2), and (4), 37, 38, 39, 39B, 46, 82(5), and 87(2) and (4)** are treated as coming into force on 1 April 2008. 5
- (6B) **Section 82(4)** is treated as coming into force on 1 July 2008.
- (6C) **Section 20C** is treated as coming into force on 26 September 2008.
- (7) **Sections 5, 10, 11, 13, 20, and 32(4), (7), (9), and (11)** are treated as coming into force on 1 January 2009. 10
- (7) **Sections 5(1), (2), (2B), and (3)(b), 10, 11, 13(1) and (5)(b), and 32(4), (7), (9), and (11)** are treated as coming into force on 1 January 2009.
- (7B) **Section 32(4D)** is treated as coming into force on 1 April 2009. 15
- (8) **Sections 19, 29, and 30** are treated as coming into force on 30 June 2009.
- (8) **Sections 18B, 19, 30, 30B, 30G, 30H, and 49(1)** are treated as coming into force on 30 June 2009.
- (8B) **Sections 72C, 72D, and 72E** are treated as coming into force on 7 October 2009. 20
- (9) **Section 9** comes into force on 31 December 2009.
- (9) **Section 9** is treated as coming into force on 31 December 2009.
- (9B) **Sections 11C, 14C to 14F, 32(4C) and (4F), and 36(2B)** are treated as coming into force on 1 January 2010. 25
- (10) **Sections 6, 7, 12, 23, 24, 32(5), (8), and (12), and 34** come into force on 1 April 2010.
- (10) **Sections 5B, 6, 7, 9E, 12, 22B, 22C, 22D, 23, 23B, 24, 27C, 27E, 31B, 32(4E), (5), (7B), (7C), (8), (12) and (14), 33C(1) to (3), 33D(3), 33E, 34, and 38B** are treated as coming into force on 1 April 2010. 30
- (11) **Sections 72(2), 73, 74, 77, 78, and 80(4)** come into force on 1 July 2010.
- (11) **Sections 5(2C) and (3)(a), 9D, 11B, 13(2), (3), (4), and (5)(a), 13B, 19B, 19C, 19D, 19E, 19F, 19G, 32(3C), (11B),** 35

**and (15), 72(2), 73, 74, 77, 78, and 80(4)** come into force on 1 July 2010.

(11B) **Section 33C(4)** comes into force on 1 April 2011.

(12) **Sections 8, 32(2) and (6), 72(1) and (3), 75, 76, 79, and 80(1) to (3), (5), and (6)** come into force on the first day of the second month after the month in which the Governments of Australia and New Zealand exchange notes, as provided by clause 21 of the Arrangement between them on trans-Tasman retirement savings portability. 5

(12) **Sections 8, 27F, 32(2) and (6), 72(1) and (3), 75, 76, 79, and 80(2), (3), (5), and (6)** come into force on the first day of the second month after the month in which the Governments of Australia and New Zealand exchange notes, as provided by clause 21 of the Arrangement between them on trans-Tasman retirement savings portability. 10 15

## Part 1

### Annual rates of income tax

3 **Annual rates of income tax for 2010–11 tax year**  
Income tax imposed by section BB 1 of the Income Tax Act 2007 must, for the 2010–11 tax year, be paid at the basic rates specified in schedule 1 of that Act. 20

## Part 2

### Amendments to Income Tax Act 2007

4 **Income Tax Act 2007**  
**Sections 5 to 344B to 34** amend the Income Tax Act 2007. 25

#### **4B Amounts derived by mutual associations**

(1) **Section CB 33(2)** is replaced by the following:

*“Income: other income provisions*

*“(2) If the association derives from the transaction an amount that would, in the absence of this subsection, be income under a provision in this Part but for the mutual character of the transaction, the amount is income of the association.”* 30

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

**5 Disposal of emissions units**

- (1) After section CB 36(4), the following is inserted:
- “Surrender of unit: under forest sink covenant”* 5
- “(4B) The person is treated as selling the unit for an amount of zero if the person transfers the emissions unit to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949.”
- (2) Section CB 36(6) is replaced by the following: 10
- “Surrender of post-1989 forest land emissions unit or forest sink emissions unit: for other purposes”*
- “(6) The person is treated as selling a post-1989 forest land emissions unit or forest sink emissions unit for an amount equal to the unit’s market value if the person surrenders the emissions unit other than— 15
- “(a) for emissions in relation to post-1989 forest land:
- “(b) by a transfer to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949.”
- (2B) The heading to section CB 36(9) is replaced by “*Excluded income: pre-1990 forest land emissions unit*”. 20
- (2C) After section CB 36(9), the following is added:
- “Excluded income: fishing quota emissions unit”*
- “(10) **Section CX 51C** (Disposal of fishing quota emissions units) applies to the disposal to another person of a fishing quota emissions unit. 25
- (3) ~~In section CB 36, in the list of defined terms, “forest sink emissions unit” is inserted.~~
- (3) In section CB 36, in the list of defined terms,—
- (a) “fishing quota emissions unit” is inserted: 30
- (b) “forest sink emissions unit” is inserted.

**5B Distribution excluded from being dividend**

In section CD 2, “section CD 34” is replaced by “**section CD 34B**”.

**6 Section CD 34 repealed**

Section CD 34 is repealed.

**7 New section CD 34B inserted**

Before section CD 35, the following is inserted:

**“CD 34B Distributions to members of co-operative companies 5**

*“What this section applies to*

~~“(1) This section applies to distributions by a co-operative company, or by a company (a subsidiary) in which the co-operative company has a voting interest of 100%, if the distributions are made after the Commissioner has received, from the co-operative company, an irrevocable election in writing to apply this section: 10~~

“(1) This section applies to a distribution by a co-operative company, or by a company (a subsidiary) in which the co-operative company has a voting interest of 100%, if— 15

“(a) the distribution is made after the Commissioner has received, from the co-operative company, an election in writing to apply this section; and

“(b) the election has not been revoked.

*“General rule: co-operative company distributions not dividends 20*

~~“(2) If the requirements in **subsection (4)** are met, a distribution by a co-operative company, or by a subsidiary, to a member of the co-operative company is not a dividend, to the extent to which the distribution is for their— 25~~

~~“(a) transaction shares:~~

~~“(b) projected transactions shareholding:~~

~~“(c) limited non-transaction shares.~~

*“Exception: distributions for excess shareholdings*

~~“(3) **Subsection (2)(c)** is ignored,— 30~~

~~“(a) for a distribution to a member, if the member holds shares in the co-operative company that—~~

~~“(i) are not transaction shares, are not their projected transactions shareholding, and are not limited non-transaction shares; and 35~~

~~“(ii) may entitle members to enter trading transactions:~~

- “(b) for all distributions to all members, if the constitution of the co-operative company permits any member to hold shares that—
- “(i) are not transaction shares, are not their projected transaction shareholding, and are not limited non-transaction shares; and 5
- “(ii) may entitle members to enter trading transactions.
- “*Requirements*
- “(4) For the purposes of **subsection (2)**, the requirements are— 10
- “(a) the co-operative company is resident in New Zealand for the period to which the distribution relates; and
- “(b) the company making the distribution is resident in New Zealand for the period to which the distribution relates; and 15
- “(c) the co-operative company believes on reasonable grounds that the member at the time of the distribution—
- “(i) is resident in New Zealand:
- “(ii) has a fixed establishment in New Zealand. 20
- “*Meaning of transaction shares*
- “(5) In this section, **transaction shares** means the number of shares in the co-operative company that the member holds for trading transactions that occurred in the period to which the distribution relates. The number of shares must determine the value of the trading transactions. 25
- “*Meaning of limited non-transaction shares*
- “(6) In this section, **limited non-transaction shares** means the member’s shares that are not the member’s transaction shares or their projected transactions shareholding, and that may entitle the member to enter trading transactions, if the number of those shares is less than or equal to the greater of the following: 30
- “(a) 20% of the member’s transaction shares on the date of entitlement for the distribution under section 125 of the Companies Act 1993: 35

“(b) 20% of the member’s projected transactions shareholding on the date of entitlement for the distribution under section 125 of that Act.

*“Meaning of projected transactions shareholding*

“(7) In this section, **projected transactions shareholding** means 5  
the number of shares in the co-operative company that the member would have had to hold if the trading transactions actually had occurred that the member had projected, using reasonable assumptions, would occur in the period to which the distribution relates. The number of shares must determine the 10  
value of the trading transactions.

*“Meaning of trading transactions*

“(8) In this section, **trading transactions** means transactions between the member and the co-operative company or subsidiary that are— 15

- “(a) the sale and purchase of trading stock of the vendor that is not intangible property; and
- “(b) not subject to section CB 2 (Amounts received on disposal of business assets that include trading stock).

*“Companies Act 1993* 20

“(9) The 20 working day rule for fixing a date in section 125(2) of the Companies Act 1993 does not apply to members’ entitlements to receive distributions that are for transaction shares, projected transaction shareholdings, limited non-transaction shares, or shares described in **subsection (3)**, if— 25

- “(a) the co-operative company or the subsidiary, as the case may be, has given a copy of the irrevocable election described in **subsection (1)** to the Registrar of Companies before the relevant distributions are paid; and
- “(b) for the purposes of section 125(1) of the Companies Act 30  
1993, the co-operative company or the subsidiary, as the case may be, fixes a date in relation to members’ entitlements to receive distributions before the entitlements arises, and that date is within the year or period to which the distributions relate. 35

“Defined in this Act: ~~company, co-operative company, dividend, limited non-transaction shares, projected transaction shareholding, resident in New Zealand, trading transactions, transaction shares~~ Commissioner, company, co-operative company, dividend, limited non-transaction shares, projected transaction share-



holding, resident in New Zealand, share, trading stock, trading transactions, transaction shares”.

**7B Available subscribed capital (ASC) amount**

(1) In section CD 43(9)(b), “IC 3(3) and (4)” is replaced by “**IC 3(3) to (5)**”.

5

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

**7C Income for general insurance outstanding claims reserve**

In section CR 4, in the list of defined terms,—

(a) “premium” is inserted:

10

(b) “general insurance contract” is omitted.

**8 New section CW 29B inserted**

After section CW 29, the following is inserted:

**“CW 29B Amounts from Australian complying superannuation schemes reinvested in KiwiSaver schemes**

15

An amount of income derived in an income year by a natural person from an Australian complying superannuation scheme is exempt income if, in the income year, it is contributed to a KiwiSaver scheme.

“Defined in this Act: amount, Australian complying superannuation scheme, exempt income, income, income year, KiwiSaver scheme”.

20

**9 Non-resident company involved in exploration and development activities**

Section CW 57(1)(b) is replaced by the following:

“(b) ends on 31 December 2014.”

25

**9B Voluntary activities**

(1) In section CW 62B(5), “and schedule 4, part B (Rates of tax for schedular payments),” is omitted.

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

30

**9C    Benefits provided to employees who are shareholders or investors**

(1)    In section CX 17(4)(a), “shareholder:” is replaced by “shareholder; and”.

(2)    **Subsection (1)—**

(a)    applies for the 2008–09 and later income years, except if **paragraph (b)** applies:

(b)    does not apply for a person and an income year in relation to a tax position taken for the income year by the person —

(i)    in the period from 1 April 2008 to the date of the Royal assent of this Act; and

(ii)    in a return of income, an FBT return, or a GST return filed before the date of the Royal assent of this Act; and

(iii)    relying upon section CX 17(4) as it was before the amendment made by **subsection (1)**.

**9D    New section CX 51C inserted**

After section CX 51B, the following is inserted:

**“CX 51C    Disposal of fishing quota emissions units**

*“Who this section applies to*

**“(1)    This section applies to a person who disposes of a fishing quota 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 excluded income, from a disposal of the individual transferable quota to which the emissions unit relates.**

*“Defined in this Act: amount, emissions unit, excluded income, exempt income, fishing quota emissions unit”.*

**9E    Available capital distribution amount**

In section CZ 9B(2)(c), “not on the liquidation of the company” is replaced by “on the liquidation of the company”.

**10 Acquisition of emissions units**

Section DB 60(1), other than the heading, is replaced by the following:

- “(1) This section applies when an emissions unit is transferred to a person for a price of zero— 5
- “(a) under section 64, or Part 4, subpart 2, of the Climate Change Response Act 2002:
- “(b) in relation to a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person.”

**11 Liabilities for emissions**

10

- (1) Section DB 60B(1), other than the heading, is replaced by the following:

- “(1) This section applies when a person incurs a liability—
- “(a) under the Climate Change Response Act 2002 for emissions relating to post-1989 forest land or pre-1990 forest land: 15
- ~~“(b) to transfer emission units to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person:~~
- “(b) to transfer emissions units to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person.” 20

- (2) In section DB 60B, in the list of defined terms, “emissions unit” is inserted.

**11B Section DB 61 replaced**

25

Section DB 61 is replaced by the following:

**“DB 61 Surrender of certain emissions units for post-1989 forest land emissions**

*“When this section applies*

- “(1) This section applies when a person surrenders a pre-1990 forest land emissions unit or fishing quota emissions unit to meet a liability under the Climate Change Response Act 2002 to surrender units in relation to post-1989 forest land. 30

*“Treated as disposal and reacquisition*

- “(2) The person is treated as having disposed of the emissions unit to an unrelated person and as having then reacquired it, in each 35

case immediately before the surrender and for an amount equal to the unit's market value at the time.

"Defined in this Act: amount, emissions unit, fishing quota emissions unit, pre-1990 forest land emissions unit, surrender".

- 11C Film production expenditure** 5
- (1) In section DS 2(4),—
- (a) in paragraph (a), "government screen production payment" is replaced by "large budget film grant";
- (b) in paragraph (b), "government screen production payment" is replaced by "large budget film grant". 10
- (2) In section DS 2, in the list of defined terms,—
- (a) "government screen production payment" is omitted;
- (b) "large budget film grant" is inserted.
- 12 Distribution to member of co-operative company, excluded from being dividend** 15
- (1) In section DV 11(1), "section CD 34 (Distribution to member of co-operative company based on member's transactions)" is replaced by "**CD 34B** (Distributions to members of co-operative companies)".
- (2) In section DV 11(2), "section CD 34" is replaced by "section **CD 34B**". 20
- (3) In section DV 11(3), "for which the distribution is made" is replaced by "to which the distribution relates".
- 12B Association rebates**
- (1) Section DV 19(1), other than the heading, is replaced by the following: 25
- “(1) This section applies when an association—
- “(a) enters into a mutual transaction; and
- “(b) in relation to the transaction, pays an association rebate to a member.” 30
- (2) Section DV 19(3), other than the heading, is replaced by the following:
- “(3) The deduction is allowed in the income year corresponding to the accounting year for which the association rebate is paid.”

- (3) In section DV 19, in the list of defined terms, “accounting year” is inserted.
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years.

**12C Deduction for general insurance outstanding claims reserve** 5

In section DW 4, in the list of defined terms,—

- (a) “pay” is inserted:
- (b) “general insurance contract” is omitted.

**12D Apportionment on disposal of business assets that include trading stock** 10

- (1) In section EB 24(1), the second sentence is replaced by “This section also applies if a person disposes of an interest in trading stock together with other assets of a business or an interest in those other assets, whether or not the disposal of the partial interest is to another person.” 15

**(2) Subsection (1)—**

- (a) applies for the 2008–09 and later income years, except if **paragraph (b)** applies:
- (b) does not apply for a person and an income year in relation to a tax position taken by the person— 20
  - (i) in a return of income filed before 28 October 2009; and
  - (ii) relating to an apportionment of an amount on a disposal of trading stock and other assets; and 25
  - (iii) relying on section EB 24(1) as it was before the amendment made by **subsection (1)**.

**13 Valuation of excepted financial arrangements**

- (1) After section ED 1(5B)(b), the following is inserted: 30

“(bb) forest sink emissions units:”.
- (2) After section ED 1(5B)(c), the following is inserted:

“(cb) fishing quota emissions units, if the holder of the units would derive income, other than exempt income and excluded income, from a disposal of the individual transferable quota to which the units relate:”. 35

- (3) After section ED 1(5B)(d), the following is inserted:  
“(db) fishing quota emissions units, if the holder of the units would derive no income, other than exempt income and excluded income, from a disposal of the individual transferable quota to which the units relate:”. 5
- (4) Section ED 1(5C), other than the heading, is replaced by the following:  
“(5C) Despite subsection (5B), for the purposes of subsection (5),—  
“(a) emissions units described in paragraphs (a) to (cb) may be pooled together: 10  
“(b) emissions units described in paragraphs (d) and (db) may be pooled together.”
- (5) In section ED 1, in the list of defined terms,—  
(a) “fishing quota emissions unit” is inserted:  
(b) “forest sink emissions unit” is inserted. 15
- 13B Valuation of emissions units issued for zero price**
- (1) After section ED 1B(1)(e), the following is inserted:  
“(eb) are not fishing quota emissions units; and”.
- (2) In section ED 1B, in the list of defined terms, “fishing quota emissions unit” is inserted. 20
- 14 Economic rate for plant, equipment, or building, with high residual value**
- (1) Section EE 30(3)(b) is replaced by the following:  
“(b) rounds the figure up or down to the nearest rate specified in schedule 11, column 1 (New banded rates of depreciation); and”. 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 14B Total deductions in section EE 56**
- (1) After section EE 60(3), the following is inserted: 30  
“Treatment of mothballed assets
- “(3B) Subsection (3)(b) does not apply in relation to an amount of depreciation loss for an item that has been withdrawn from use in deriving assessable income or carrying on a business

for the purpose of deriving assessable income. However, this exclusion does not apply to an amount of depreciation loss for which the person has a deduction under section EE 39.”

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

5

**14C Expenditure incurred in acquiring film rights in feature films**

- (1) In section EJ 4(1)(b), “government screen production payment” is replaced by “large budget film grant”.
- (2) In section EJ 4, in the list of defined terms,—
- (a) “government screen production payment” is omitted:
- (b) “large budget film grant” is inserted.

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**14D Expenditure incurred in acquiring film rights in films other than feature films**

- (1) In section EJ 5(1)(b), “government screen production payment” is replaced by “large budget film grant”.
- (2) In section EJ 5, in the list of defined terms,—
- (a) “government screen production payment” is omitted:
- (b) “large budget film grant” is inserted.

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**14E Film production expenditure for New Zealand films having no government screen production payment**

- (1) In the heading to section EJ 7, “government screen production payment” is replaced by “large budget film grant”.
- (2) In section EJ 7(1)(a), “government screen production payment” is replaced by “large budget film grant”.
- (3) In section EJ 7, in the list of defined terms,—
- (a) “government screen production payment” is omitted:
- (b) “large budget film grant” is inserted.

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**14F Film production expenditure for other films having no government screen production payment**

- (1) In the heading to section EJ 8, “government screen production payment” is replaced by “large budget film grant”.
- (2) In section EJ 8(1)(a), “government screen production payment” is replaced by “large budget film grant”.

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(3) In section EJ 8, in the list of defined terms,—

(a) “government screen production payment” is omitted:

(b) “large budget film grant” is inserted.

**15 Determination alternatives**

In section EW 15E(1)(c)(ii), “fair value method.” is replaced 5  
by “fair value method; or” and the following is added:

“(iii) is treated under IFRSs by the person as a hedge  
of something that is not a financial arrangement.”

**16 Expected value method**

In section EW 15F(1)(c)(ii), “fair value method; and” is re- 10  
placed by “fair value method; or” and the following is added:

“(iii) is treated under IFRSs by the person as a hedge  
of something that is not a financial arrangement;  
and”.

**17 Modified fair value method**

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In section EW 15G(1)(c)(ii), “fair value method; and” is re-  
placed by “fair value method; or” and the following is added:

“(iii) is treated under IFRSs by the person as a hedge  
of something that is not a financial arrangement;  
and”.

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**18 Meaning of controlled foreign company**

(1) Section EX 1(1)(b)(i) is replaced by the following:

~~“(i) the person’s control interest is less than a control  
interest in the same category held by another per-  
son; and~~

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“(i) the person’s control interest is less than or equal  
to a control interest in the same category held by  
another person; and”.

(2) **Subsection (1)—**

(a) applies for the 2008–09 and later income years, except 30  
if **paragraph (b)** applies:

(b) ~~does not apply for a person and an income year after the  
2007–08 income year in relation to a tax position for the  
income year taken by the person—~~



- (i) ~~before 19 November 2009; and~~
    - (ii) ~~relying on the provision amended by this section as it was immediately before the amendment made by this section.~~
  - (b) does not apply for a person in relation to a tax position taken by the person— 5
    - (i) before 19 November 2009; and
    - (ii) relying on the provision amended by this section as it was immediately before the amendment made by this section. 10
- 18B Attributable CFC amount**
- (1) In section EX 20B(11)(b)(i), “market circumstance” is replaced by “market value circumstance”.
  - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009. 15
- 19 Non-attributing active CFC: default test**
- In section EX 21D(7), “item attributable” is replaced by “item attributable”.
- 19B Part-year tax calculations**
- (1) In the heading to section EY 5(3), “*First year part-year*” is replaced by “*Part-year*”. 20
  - (2) In section EY 5(4), “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” is replaced by “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, and if the life reinsurance associated with a class of policies is not assigned by the transferor to the transferee, those reserve amounts are calculated without subtracting relevant life reinsurance amounts”. 25 30
  - (3) Section EY 5(6) and (7) are replaced by the following:  
“*Part-year calculations: end of transitional adjustments*
  - “(6) If, for a life insurance policy, the transitional adjustment under section EY 30(7) is calculated for part of an income year, be- 35

cause section EY 30 ceases to apply to the policy before the end of the income year, the life insurer does part-year tax calculations for the policy for the income year, as described in subsection (2), but the income year is divided by the day that section EY 30 ceases to apply. The effect of the part-year calculations is described in subsection (3)." 5

**(4) Subsections (1) to (3) apply—**

- (a)** on and after 1 July 2010, except if **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 the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year. 10 15

**19C Outstanding claims reserving amount: non-participation policies not annuities**

- (1)** In section EY 24(2)(a)(ii), “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” is replaced by “the amount that would be the outstanding claims reserve for the class of policies, using subsections (3) and (4) with necessary modifications, calculated at the end of the prior year, but including”. 20

**(2) Subsection (1) applies—** 25

- (a)** on and after 1 July 2010, except if **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 the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year. 30

**19D Premium smoothing reserving amount: non-participation policies not annuities** 35

- (1)** In section EY 25(2)(a)(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” is replaced by “the amount that would be the premium smoothing reserve for the class of policies, using the principles in subsection (3) with necessary modifications, calculated at the end of the prior year”.

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(2) **Subsection (1) applies—**

(a) on and after 1 July 2010, except if **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 the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

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**19E Unearned premium reserving amount: non-participation policies not annuities**

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(1) In section EY 26(2)(a)(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” is replaced by “the amount that would be the unearned premium reserve for the class of policies, using subsection (3) with necessary modifications, calculated at the end of the prior year”.

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(2) **Subsection (1) applies—**

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

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(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 the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

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**19F Capital guarantee reserving amount: non-participation policies not annuities**

(1) In section EY 27(2)(a)(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” is replaced by “the amount that would be the capital guarantee re-

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serve for the class of policies, using subsection (3) with necessary modifications, calculated at the end of the income year before the current year”.

**(2) Subsections (1) applies—**

- (a)** on and after 1 July 2010, except if **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 the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year. 10

**19G Transitional adjustments: life risk**

**(1)** After section EY 30(1), the following is inserted:

“Separation of products into separate policies for purposes of transitional adjustment 15

**“(1B)** If a life insurance policy is comprised of 2 or more life insurance product types that are capable of being sold separately, and the life insurance cover amounts for each product type are separately identified in the policy, then each of the product types may be treated as a separate life insurance policy for the purposes of this section.” 20

**(2)** In section EY 30(2), “and an” is replaced by “and a”.

**(3)** Section EY 30(2)(c) is replaced by the following:

**“(c)** the amount of life insurance cover at the finish of a cover review period, or at the finish of any shorter period, if the life insurer chooses to measure within the cover review period, has not increased by more than the greater of 10% and the percentage change in the consumer price index for the relevant period, as compared to the amount of life insurance cover at the beginning of the relevant cover review period.” 25 30

**(4)** Section EY 30(3)(e) is replaced by the following:

**“(e)** to the extent to which, looking through to the individual lives covered, the amount of life insurance cover at the finish of a cover review period, or at the finish of any shorter period, if the life insurer chooses to measure 35

- 5
- within the cover review period, has not increased by more than the greater of 10% and the percentage change in consumer price index for the relevant period, as compared to the amount of life insurance cover at the beginning of the relevant cover review period.”
- (5) In section EY 30(5)(b), “and the premium does not go up in the period (the **continuous rate period**)” is replaced by “and for which the premium does not go up in that period (the **continuous rate period**) ignoring any increase directly linked to the percentage change in the consumer price index if that increase was the subject of agreement before the grandparenting start day”. 10
- (6) After section EY 30(5), the following is inserted:  
“When this section does not apply: life insurance cover increase for whole cover review period 15
- “(5B) This section does not apply for a policy for the whole of an income year if a cover review period finishes in the year and, for that cover review period, there has been an increase in the amount of life insurance cover as described in **subsection (2)(c) or (3)(e)** and the life insurer has not made an election for measuring within the cover review period under those subsections. 20
- “When this section does not apply: continuity
- “(5C) This section does not apply for a policy for any period after this section has ceased to apply for the policy.” 25
- (7) In section EY 30(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” is replaced by “A life insurer has an amount of shareholder base allowable deduction for a policy calculated using the following formula, to the extent to which this section applies for the relevant income year for the policy”. 30
- (8) In section EY 30(8)(a), “income year for the policies” is replaced by “income year or part of the income year, as applicable, for the policy,”. 35
- (9) In section EY 30(8)(b), “income year” is replaced by “income year or part of the income year, as applicable, for the policy,”.

- (10) In section EY 30(8)(c), “income year” is replaced by “income year or part of the income year, as applicable, for the policy”.
- (11) In section EY 30(11), “credit card.” is replaced by “credit card, or life reinsurance to the extent to which it reinsures such a life insurance policy.” 5
- (12) Section EY 30(14), other than its heading, is replaced by the following:
- “(14) **Group life master policy**—
- “(a) means a life insurance policy with multiple individuals’ life insurance cover grouped under it, if the group of individuals is identified in the policy: 10
- “(b) does not include—
- “(i) a workplace group policy:
- “(ii) credit card repayment insurance:
- “(iii) life reinsurance to the extent to which it reinsures a workplace group policy or credit card repayment insurance.” 15
- (13) Section EY 30(15), other than its heading, is replaced by the following:
- “(15) **Workplace group policy** means a life insurance policy with multiple individuals’ life insurance cover grouped under it, or life reinsurance to the extent to which it reinsures such a life insurance policy, if— 20
- “(a) the individuals under the policy are:
- “(i) a class of employees of an employer or group of employers, and the policy is sponsored by the employers or by the trustees of a superannuation scheme: 25
- “(ii) members of a union registered under the Employment Relations Act 2000 or members of an industry association, and the union or association is the sponsor of the policy: 30
- “(iii) the spouses, civil union partners and de facto partners of employees or members described in subparagraphs (i) and (ii); and 35
- “(b) in the case of the sponsor being the employer, joining the life insurance policy is compulsory for the relevant class of employees, and the employee does not pay the premiums.”

(14) In section EY 30, in the list of defined terms, “pay” is inserted.

(15) **Subsections (1) to (13) apply—**

(a) on and after 1 July 2010, except if **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 the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year. 5  
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**19H Expenditure when deduction would be denied to consolidated group**

(1) In section FM 12(2), “borrowed from a person that is part of the consolidated group” is replaced by “borrowed from a person that is not part of the consolidated group”. 15

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

**19I Close company remuneration to shareholders, directors, or relatives**

(1) In section GB 25(3)(b), “management” is replaced by “management or administration”. 20

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

**20 Disposals of trading stock at below market value**

Section GC 1(4)(d) is replaced by the following: 25

“(d) by the surrender of an emissions unit under the Climate Change Response Act 2002:

“(e) by the transfer of an emissions unit to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949.” 30

**20 Disposals of trading stock at below market value**

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

**“GC 1 Disposals of trading stock at below market value**

*“When this section applies*

**“(1) This section applies when a person disposes of trading stock for—**

**“(a) no consideration:**

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**“(b) an amount that is less than the market value of the trading stock at the time of disposal.**

*“Market value consideration*

**“(2) The person is treated as deriving an amount equal to the market value of the trading stock at the time of disposal.**

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*“Market value expenditure*

**“(3) If the person disposes of the trading stock to another person, an amount equal to the market value of the trading stock at the time of disposal is treated as expenditure incurred by the other person in acquiring the trading stock.**

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*“Shares in trading stock*

**“(4) In this section, **trading stock** includes an interest in trading stock.**

*“Exclusions*

**“(5) This section does not apply to a disposal of trading stock—**

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**“(a) under a relationship agreement:**

**“(b) by the person to another person who is not associated with them, for use by the other person in a farming, agricultural, or fishing business that is affected by a self-assessed adverse event:**

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**“(c) under a share-lending arrangement, by a share user to a share supplier or by a share supplier to a share user.**

*“Defined in this Act: amount, associated person, business, relationship agreement, self-assessed adverse event, share, share-lending arrangement, share supplier, share user, trading stock”.*

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**(2) Subsection (1)—**

**(a) applies for the 2008–09 and later income years, except if **paragraph (b)** applies:**

**(b) does not apply for a person and an income year in relation to a tax position taken by the person—**

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**(i) in a return of income filed before 28 October 2009; and**

**(ii) relating to a disposal of trading stock; and**



- (iii) relying on section GC 1 as it was before the replacement made by **subsection (1)**.

**20B Disposals of timber rights or standing timber**

- (1) In section GC 2(3), “Section GC 1(3)” is replaced by “Section GC 1(4)”. 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**20C New section GC 3B inserted**

After section GC 3, the following is inserted:

**“GC 3B Disposals of emissions units**

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“When section GC 1 applies

- “(1) Section GC 1 applies to a disposal of an emissions unit as if the emissions unit were trading stock.

“Exclusions

- “(2) Section GC 1 does not apply to a disposal of an emissions unit if the disposal is—

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“(a) the surrender of the unit under the Climate Change Response Act 2002;

“(b) the transfer of the unit to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949;

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“(c) the transfer of a forest land emissions unit—

“(i) from the person (the **transferor**) who receives the unit from the Crown; and

“(ii) to a person (the **transferee**) as a party to a forestry rights agreement as defined in the Forestry Rights Registration Act 1983; and

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“(iii) as required by a provision of the forestry rights agreement relating to the allocation of income or emissions units between the transferor and the transferee.

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“Defined in this Act: disposal, emissions unit, trading stock”.

**20D What this subpart does**

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

	<b>Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill</b>	
Part 2 cl 20E		
	<u>“(a) to have a distribution of profits to shareholders imputed or, to the extent not imputed, distributed as exempt income; and”.</u>	
(2)	<u>In section HA 1, in the list of defined terms, “exempt income” is inserted.</u>	5
(3)	<u><b>Subsection (1)</b> applies for the 2008–09 and later income years.</u>	
<b>20E</b>	<b><u>Corporate requirements</u></b>	
(1)	<u>In section HA 6(2)(c), “HA 11(4)” is replaced by “<b>HA 11B(1)</b>”.</u>	10
(2)	<u><b>Subsection (1)</b> applies for the 2008–09 and later income years.</u>	
<b>20F</b>	<b><u>When requirements no longer met</u></b>	
(1)	<u>In section HA 11, the section heading is replaced by “<b>When requirements no longer met: qualifying companies</b>”.</u>	15
(2)	<u>Section HA 11(4) is repealed.</u>	
(3)	<u><b>Subsection (2)</b> applies for the 2008–09 and later income years.</u>	
<b>20G</b>	<b><u>New section HA 11B inserted</u></b>	
(1)	<u>After section HA 11, the following is inserted:</u>	20
	<u><b>“HA 11B When requirements no longer met: LAQCs</b></u>	
	<u>“<i>When status lost</i></u>	
“(1)	<u>If a company is an LAQC in an income year, but does not meet the requirements of sections HA 1(3) and HA 5 to HA 10 for the next income year, its status as a qualifying company is treated as ended from the start of that next income year.</u>	25
	<u>“<i>Regaining status</i></u>	
“(2)	<u>The company may become a qualifying company again if it subsequently meets the requirements set out in sections HA 5 to HA 9.</u>	30
	<u>“Defined in this Act: company, income year, LAQC, qualifying company”.</u>	
(2)	<u><b>Subsection (1)</b> applies for the 2008–09 and later income years.</u>	

**20H Treatment of tax losses other than certain foreign losses**

(1) Section HA 24(5) is replaced by the following:

*“Treatment of losses incurred before company has LAQC status*

“(5) Despite subsection (2), a company that has a tax loss component arising in an income year in which it is a qualifying company but before it acquires LAQC status, may include the amount in a loss balance (the **pre-LAQC loss balance**) for the tax year corresponding to the income year, but only to the extent to which the tax loss component remains unused at the end of the tax year.

*“Using pre-LAQC loss balance*

“(5B) For the tax year referred to in subsection (1), a pre-LAQC loss balance carried forward from the previous tax year is used in the following order:

“(a) first, the LAQC must use the amount under section IA 4 (Using loss balances carried forward to tax year); and

“(b) secondly, for a remaining unused amount of the loss balance, the LAQC may choose to use the amount under section IA 3 (Using tax losses in tax year); and

“(c) thirdly, for a remaining unused amount of the loss balance, the LAQC must include the amount in the company’s loss balance under section IA 3(4) at the end of the tax year.

*“Continuity requirements and ordering rules*

“(5C) The uses referred to in **subsection (5B)** are subject to the continuity requirements set out in section IA 5 (Restrictions on companies’ loss balances carried forward) and the ordering rules set out in section IA 9 (Ordering rules).”

(2) In section HA 24, in the list of defined terms, “company”, “qualifying company”, and “tax loss component” are inserted.

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

**20I Attribution when balance dates differ**

(1) Section HA 26(2), other than the heading, is replaced by the following:

Part 2 cl 21	Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill	
(2)	<u>Despite section 38 of the Tax Administration Act 1994, the LAQC may choose to treat the amount of the shareholder's tax loss as having been incurred on the first day of the next income year.</u>	
(2)	<u><b>Subsection (1)</b> applies for the 2008–09 and later income years.</u>	5
<b>21</b>	<b>Trustees' obligations</b>	
(1)	Section HC 24(2)(a) is replaced by the following: “(a) have a tax credit under subparts LC and LD (which relate to tax credits for natural persons and for certain gifts):”.	10
(2)	<b>Subsection (1)</b> applies for the 2008–09 and later income years.	
<b>21B</b>	<b><u>Effect of failure to meet eligibility requirements for entities</u></b>	15
(1)	<u>Section HL 4(2) is replaced by the following:</u> <i>“Failure to meet other requirements</i>	
(2)	<u>An entity ceases under this section to be eligible to be a portfolio investment entity if it fails in either of the circumstances set out in <b>subsection (3)</b> and the entity's failure—</u>	20
	<u>“(a) is significant and would not have occurred but for an event or circumstance within the control of the entity:</u>	
	<u>“(b) is repeated on the last day of the quarter following the quarter referred to in <b>subsection (3)(a)</b> and ending more than 3 months before the announcement referred to in <b>subsection (3)(a)(ii) and (b)(ii).</b></u>	25
	<i>“Particular circumstances</i>	
(3)	<u>The circumstances are that either—</u> <u>“(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—</u>	30
	<u>“(i) beginning 6 months or more after the date on which the portfolio investor class is formed; and</u>	
	<u>“(ii) ending more than 3 months before an announcement by the entity to its investors that the</u>	35

- portfolio investor class is winding up within 12 months of the announcement; or
- “(b) 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.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 21C Investor interest size requirement**
- (1) In section HL 9(2), “investor membership requirement” is replaced by “investor interest size requirement”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 22 Treatment of portfolio class taxable loss and portfolio class land loss for tax year**
- (1) Section HL 32(3)(a)(i) is replaced by the following:
- “(i) are an investment of the type listed in **subsection (4)**; and”.
- (2) After section HL 32(3), the following is added:
- “Investment types*
- “(4) For the purposes of **subsection (3)(a)(i)**, the investment must be—
- “(a) an investment in land:
- “(b) an investment in a portfolio land company that is resident in New Zealand:
- “(c) an investment in a non-resident portfolio land company in which the portfolio investor class has a voting interest of more than 20%.”
- (2B) In section HL 32, in the list of defined terms, “non-resident”, “resident in New Zealand”, and “voting interest” are inserted.

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

**22B** When entity no longer meets investment or investor requirements

- (1) In section HM 25(3)(b), “the first quarter ends more than 3 months” is replaced by “the first quarter ends within 3 months”.
- (2) **Subsection (1)** applies for the 2010–11 and later income years.

**22C** Use of tax credits other than foreign tax credits by PIEs 10

- (1) In section HM 53(2), “section HM 52” is replaced by “section HM 51”.
- (2) **Subsection (1)** applies for the 2010–11 and later income years.

**22D** Notified investor rates 15

- (1) In section HM 60(4), “sections CX 56 and CX 56B (which relate to attributed income of and distributions to certain investors in multi-rate PIEs)” is replaced by “section CX 56 (Attributed income of certain investors in multi-rate PIEs)”.
- (2) **Subsection (1)** applies for the 2010–11 and later income years. 20

**23** Use of land losses of investor classes

- (1) Section HM 65(3)(a) is replaced by the following:
- “(a) are an investment of the type listed in **subsection (4)**; and” 25
- (2) After section HM 65(3), the following is added:
- “Investment types*
- “(4) For the purposes of **subsection (3)(a)**, the investment must be—
- “(a) an investment in land: 30
- “(b) an investment in a land investment company that is resident in New Zealand:

“(c) an investment in a non-resident land investment company in which the investor class has a voting interest of more than 20%.”

(2B) In section HM 65, in the list of defined terms, “non-resident”, “resident in New Zealand”, and “voting interest” are inserted. 5

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

**23B When formation losses carried forward are 5% or more of formation investment value: 3-year spread**

(1) Section HM 69(5), other than the heading, is replaced by the following: 10

“(5) After the end of the period of 3 years referred to in subsection (1), any residual formation loss may be allocated to an attribution period when a calculation is made under section HM 35(5) of the taxable amount for an investor class.” 15

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

**24 Transitional provisions for PIE rules**

(1) In section HZ 5(3)(b), “section 292(2) of this Act” is replaced by “section 292(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009”. 20

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

**24B Restrictions relating to ring-fenced tax losses**

(1) Section IA 7(2), other than the heading, is replaced by the following: 25

“(2) The general rules do not apply in relation to a loss-attributing qualifying company (LAQC) to an amount that would have been a loss balance carried forward under section IA 3(4) if section HA 21 (Loss balances not carried forward) did not exist. The provisions that deal generally with these losses are sections HA 24 to HA 27. But this subsection does not apply to a pre-LAQC loss balance dealt with under **section HA 24(5) to (5C)** (Treatment of tax losses other than certain foreign losses).” 30  
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(2) **Subsection (1)** applies for the 2008–09 and later income years.

**24C Common ownership: group of companies**

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

*“Measuring common voting interests*

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“(3) In subsection (1)(a), a person’s common voting interest in the relevant companies at a particular time is the percentage of their voting interests under section YC 2 (Voting interests) in each of the companies at the time.

*“Measuring common market value interests*

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“(4) In subsection (1)(b), a person’s common market value interest in the relevant companies at a particular time is the percentage of their market value interests under section YC 3 (Market value interests) in each of the companies at the time.

*“Common interest percentages*

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“(5) For the purposes of this section, in measuring a person’s common voting interest or common market value interest in 2 or more companies at a particular time,—

“(a) for percentages that are the same in relation to each company, the person’s percentage interest at the time:

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“(b) for percentages that differ as between the companies, the lowest percentage interest in each company at the time.”

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

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**24D Bad debts or decline of value of shares**

(1) Section IC 12(1), other than the heading, is replaced by the following:

“(1) This section applies to companies that are part of a group of companies in a tax year when—

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“(a) a company (**company C**) in the group has in the tax year a deduction—

“(i) under section DB 31 (Bad debts) for a loan to another company in the group:

“(ii) for a decline in the value of shares in another company in the group; and

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- “(b) a company (**company A**) in the group, other than company C, has a tax loss for the tax year that includes a tax loss component arising from a deduction—
- “(i) for expenditure funded by the loan referred to in **paragraph (a)(i)** or by the issue to company A of the shares referred to in **paragraph (a)(ii)**; and 5
- “(ii) taken into account in calculating company A’s tax loss for the 1993–94 tax year or a later tax year.”
- (2) Section IC 12(2) is replaced by the following:
- “*Limitation on loss grouping* 10
- “(2) The amount of company A’s tax loss cannot be made available to another company in the group to use except to the extent to which the amount of the tax loss is more than the total amount of the deductions referred to in **subsection (1)(a)**. To that extent, company A may choose to make the excess amount available to a group company to use under section IA 3(2) and IA 5 (which relate to using and carrying forward tax losses) if the requirements for grouping tax losses are met.” 15
- (3) In section IC 12, in the list of defined terms, “loan” is inserted.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 20
- 24E Breach in tax year in which loss balance is grouped**
- (1) Section IP 5(2)(a) is replaced by the following:
- “(a) the amount of company A’s loss balance carried forward to the tax year in which the breach occurred is not more than the amount of— 25
- “(i) company B’s net income for the common span, if no company in the group other than company B has net income for the common span of more than zero; or 30
- “(ii) the total of the amounts of net income for the common span of companies in the group; and”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**25 Child's income**

(1) In section LC 3(1), in the words before paragraph (a), “a person” is replaced by “a person other than an absentee”.

(1B) In section LC 3, in the list of defined terms, “absentee” is inserted.

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

**26 Tax credits for housekeeping**

(1) In section LC 6(1), in the words before paragraph (a), “A person” is replaced by “A person, other than an absentee,”.

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(1B) In section LC 6, in the list of defined terms, “absentee” is inserted.

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

**27 Limitation on deductions**

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(1A) In section LP 10(1), in the words before the formula, “that is allocated to a tax year” is replaced by “for a tax year”.

(1) The formula in section LP 10(1) is replaced by the following:

$$\text{company's income} - \frac{\text{total credits + supplementary dividends}}{\text{tax rate.}}$$

(2) In section LP 10(2),—

(a) in paragraph (b), “**company's total credits**” is replaced by “**total credits**”:

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(b) in paragraph (c), “**supplementary amount**” is replaced by “**supplementary dividends**”.

(3) **Subsections (1) and (2)**—

(a) apply for the 2008–09 and later income years, except if **paragraph (b)** applies:

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(b) do not apply for a person and an income year after the 2007–08 income year in relation to a tax position for the income year taken by the person—

(i) before 19 November 2009; and

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- (ii) relying on the provision amended by this section as it was immediately before the amendment made by this section.

<b><u>27B</u></b>	<b><u>Tax credits for certain investors in portfolio tax rate entities</u></b>	5
(1)	<u>In section LS 2(2), “income tax paid” is replaced by “income tax liability satisfied”.</u>	
(2)	<u>In section LS 2, in the list of defined terms, “pay” is omitted.</u>	
(3)	<u><b>Subsection (1)</b> applies for the 2008–09 and later income years.</u>	10
 <b><u>27C</u></b>	 <b><u>Tax credits for investors in multi-rate PIEs</u></b>	
(1)	<u>In section LS 2(2), “income tax paid” is replaced by “income tax liability satisfied”.</u>	
(2)	<u>In section LS 2, in the list of defined terms, “pay” is omitted.</u>	
(3)	<u><b>Subsection (1)</b> applies for the 2010–11 and later income years.</u>	15
 <b><u>27D</u></b>	 <b><u>Tax credits for certain zero-rated portfolio investors</u></b>	
(1)	<u>In section LS 3(2), “income tax paid” is replaced by “income tax liability satisfied”.</u>	
(2)	<u><b>Subsection (1)</b> applies for the 2008–09 and later income years.</u>	20
 <b><u>27E</u></b>	 <b><u>Tax credits for zero-rated investors</u></b>	
(1)	<u>In section LS 3(2), “income tax paid” is replaced by “income tax liability satisfied”.</u>	
(2)	<u><b>Subsection (1)</b> applies for the 2010–11 and later income years.</u>	25
 <b><u>27F</u></b>	 <b><u>Treatment of tax credits on permanent emigration</u></b>	
(1)	<u>In the heading to section MK 8, “<b>permanent emigration</b>” is replaced by “<b>permanent emigration other than to Australia</b>”.</u>	30
(2)	<u>In section MK 8(1), “from New Zealand” is replaced by “from New Zealand to a place other than Australia”.</u>	

- (3) In section MK 8(1), “or an equivalent provision” is replaced by “for a KiwiSaver scheme or under a provision equivalent to that one for a complying superannuation fund”.

**28 ICA transfer from tax pooling account**

- (1) Section OB 6(1), other than the heading, is replaced by the following: 5

~~“(1) An ICA company has an imputation credit for an amount representing an entitlement to funds held in a tax pooling account if—~~

~~“(a) the company receives the entitlement from another person: 10~~

~~“(b) the intermediary transfers the funds from the tax pooling account to the company’s tax account with the Commissioner: 15~~

~~“(c) the intermediary transfers the funds from the tax pooling account to the company: 15~~

“(1) An ICA company has an imputation credit for an amount representing an entitlement to funds held in a tax pooling account if the intermediary transfers the entitlement from another person to the company.” 20

- (2) Section OB 6(3), other than the heading, is replaced by the following:

~~“(3) The credit date is,—~~

~~“(a) if the company receives the entitlement from another person, the date on which the company receives the entitlement; or 25~~

~~“(b) if the intermediary transfers the funds from the tax pooling account to the company’s tax account with the Commissioner, the effective date under sections RP 19 and RP 20 (which relate to transfers from the tax pooling account); or 30~~

~~“(c) if the intermediary transfers the funds from the tax pooling account to the company, the date of the transfer: 35~~

“(a) for an entitlement to funds that are transferred by the intermediary from the tax pooling account to the company’s tax account with the Commissioner, the credit date under section RP 19 (Transfers from tax pooling accounts) for the amount transferred; or

- “(b) for an entitlement to funds that are refunded by the intermediary from the tax pooling account to the company, the date of the refund; or
- “(c) for an entitlement that is transferred by the intermediary from the company to another person, the date of the transfer.” 5
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 28B ICA refund of income tax**
- (1) In section OB 32(2)(b), “less than” is replaced by “less than or equal to”. 10
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 28C ICA refund from tax pooling account**
- (1) Section OB 34(1), other than the heading, is replaced by the following: 15
- “(1) This section applies for an ICA company when—
- “(a) the company has an entitlement to an amount in a tax pooling account and has an imputation credit for the entitlement under— 20
- “(i) section OB 5 (table O1: imputation credits, row 3 (deposit in tax pooling account)); or
- “(ii) section OB 6 (table O1: imputation credits, row 4 (transfer from tax pooling account)); and
- “(b) the intermediary refunds the amount from the tax pooling account to the company.” 25
- (2) In section OB 34(4)(b), “refund or transfer” is replaced by “refund” in both places that it occurs.
- (3) In section OB 34(5), “refund or transfer” is replaced by “refund”. 30
- (4) In section OB 34, in the list of defined terms, “tax pooling account” is inserted.
- (5) **Subsections (1) to (3)** apply for the 2008–09 and later income years.

**28D ICA transfer within tax pooling account**

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

“(1) This section applies for an ICA company when—

“(a) the company has an entitlement to an amount in a tax pooling account and has an imputation credit for the entitlement under—

“(i) section OB 5 (table O1: imputation credits, row 3 (deposit in tax pooling account)); or

“(ii) section OB 6 (table O1: imputation credits, row 4 (transfer from tax pooling account)); and

“(b) the intermediary transfers the entitlement from the company to another person.”

(2) In section OB 35(5), “refund” is replaced by “transfer”.

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

**29 BETA payment of income tax**

(1) Section OE 7(1)(c)(ii) and (iii) are replaced by the following:  
“(ii) by reducing a tax loss.”

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

**30 New heading and section OE 11B inserted**

(1) After section OE 11, the following is inserted:

*“Credit if debit balance including debits from  
conduit relief*

**“OE 11B Company with debit balance, including debits from conduit relief, at beginning of first affected income year**

*“When this section applies*

**“(1) This section applies when a BETA company has, at the beginning of the first income year for which this section applies to the company,—**

**“(a) a debit balance in its branch equivalent tax account; and**

**“(b) debits in the branch equivalent tax account that arose under section OE 12.**

*“Credit*

“(2) A branch equivalent tax credit arises in the branch equivalent tax account at the beginning of the income year of an amount equal to the total of the debits that—

“(a) arose under section OE 12; and

“(b) are in the branch equivalent tax account at the beginning of the income year.

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*“Treatment of debits from conduit relief*

**“OE 11B Company with debit balance, including debits from conduit relief, in some income years**

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*“When this section applies*

“(1) This section applies when a BETA company, in an income year beginning on or after 1 July 2009 (an **affected year**), has a debit balance—

“(a) in its branch equivalent tax account; and

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“(b) that includes an amount (the **CTR-relief amount**) equal to the total of amounts that—

“(i) relate to branch equivalent tax debits in the branch equivalent tax account that each arose under section OE 12 in relation to a foreign dividend; and

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“(ii) equal, for each branch equivalent tax debit, the reduction under section RG 7 (Reduction of payments for conduit tax relief) of the company’s liability to pay FDP to the Commissioner for the foreign dividend.

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*“Use of CTR-relief amount*

“(2) The BETA company may not choose under section OE 7 to apply the CTR-relief amount to satisfy an income tax liability except by an election—

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“(a) relating to attributed CFC income that the company allocates to an income year beginning before 1 July 2009; and

“(b) made before the earlier of—

“(i) the first election under section OE 7 relating to attributed CFC income that the company allocates to an affected year:

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“(ii) the end of the first affected year.

“Determination of CTR-relief amount

“(3) The CTR-relief amount in a branch equivalent tax account is found by—

- “(a) treating a branch equivalent tax debit that arises partly 5  
from a reduction of FDP under section RG 7 and partly  
from a payment of FDP as being 2 debits, one equal to  
the reduction of FDP and the other equal to the amount  
of the payment of FDP; and
- “(b) if a branch equivalent tax credit arises before the first 10  
affected year other than from an election relating to at-  
tributed CFC income allocated to an affected year or  
arises in an affected year from an election meeting the  
requirements of the exception to **subsection (2)**, treat-  
ing the credit as— 15
  - “(i) reducing branch equivalent tax debits in the order  
in which the debits arise; and
  - “(ii) for branch equivalent tax debits arising at the  
same time and not reduced to zero by the credit,  
reducing each debit in proportion to the contribu- 20  
tion of the debit to the total of the debits; and
- “(c) if the treatment of a branch equivalent tax credit is not  
given by **paragraph (b)**, treating the credit as—
  - “(i) reducing branch equivalent tax debits arising 25  
from the payment of FDP in the order in which  
the debits arise; and
  - “(ii) after all branch equivalent tax debits arising from  
the payment of FDP are reduced to zero, reducing  
debts arising from a reduction of FDP under sec-  
tion RG 7 in the order in which the debits arise; 30  
and
  - “(iii) for branch equivalent tax debits subject to the  
same subparagraph and arising at the same time  
and not reduced to zero by the credit, reducing  
each debit in proportion to the contribution of the 35  
debit to the total of the debits; and



“(d) counting an amount of a branch equivalent tax credit only once in the reduction of some or all of a branch equivalent tax debit.”

“Defined in this Act: attributed CFC income, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, Commissioner, company, FDP, foreign dividend, income tax liability, income year”.

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(2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

**30B Heading and section OE 16B repealed**

The heading before section OE 16B and section OE 16B are repealed.

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**30C When credits and debits arise only in consolidated imputation group accounts**

In section OP 5(4)(d), “transfer to tax pooling account” is replaced by “transfer within tax pooling account”.

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**30D Consolidated ICA transfer from tax pooling account**

(1) Section OP 9(1), other than the heading, is replaced by the following:

“(1) A consolidated imputation group has an imputation credit for an amount representing an entitlement to funds held in a tax pooling account if the intermediary transfers the entitlement from another person to the group.”

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

“(3) The credit date is,—

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“(a) for an entitlement to funds that are transferred by the intermediary from the tax pooling account to the group’s tax account with the Commissioner, the credit date under section RP 19 (Transfers from tax pooling accounts) for the amount transferred; or

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“(b) for an entitlement to funds that are refunded by the intermediary from the tax pooling account to the group, the date of the refund; or

“(c) for an entitlement that is transferred by the intermediary from the group to another person, the date of the transfer.”

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

**30E Consolidated ICA refund from tax pooling account**

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

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“(1) This section applies for a consolidated imputation group when—

“(a) the group has an entitlement to an amount in a tax pooling account and has an imputation credit for the entitlement under sections OP 8 and OP 9; and

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“(b) the intermediary refunds the amount from the tax pooling account to the group.”

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

**30F Consolidated ICA transfer to tax pooling account**

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(1) The heading to section OP 33 is replaced by “**Consolidated ICA transfer within tax pooling account**”.

(2) Section OP 33(1), other than the heading, is replaced by the following:

“(1) This section applies for a consolidated imputation group when—

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“(a) the group has an entitlement to an amount in a tax pooling account and has an imputation credit for the entitlement under sections OP 8 and OP 9; and

“(b) the intermediary transfers the entitlement from the group to another person.”

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(3) In section OP 33(4)(b), “refund” is replaced by “transfer” in both places that it occurs.

(4) **Subsections (2) and (3)** apply for the 2008–09 and later income years.

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**30G New heading and section OP 104B inserted**

(1) After section OP 104, the following is inserted:

*“Treatment by consolidated BETA groups of  
BETA debits from conduit relief*

**“OP 104B Consolidated BETA group with debit balance,  
including debits from conduit relief, in certain income  
years**

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*“When this section applies*

**“(1) This section applies when a consolidated BETA group, in an  
income year beginning on or after 1 July 2009 (an **affected  
year**), has a debit balance—**

**“(a) in its branch equivalent tax account; and**

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**“(b) that includes an amount (the **CTR-relief amount**) equal  
to the total of amounts that—**

**“(i) relate to branch equivalent tax debits in the  
branch equivalent tax account that each arose  
under section OP 105 in relation to a foreign  
dividend; and**

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**“(ii) equal, for each branch equivalent tax debit, the  
reduction under section RG 7 (Reduction of pay-  
ments for conduit tax relief) of a company’s li-  
ability to pay FDP to the Commissioner for the  
foreign dividend.**

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*“Use of CTR-relief amount*

**“(2) The consolidated BETA group may not choose under section  
OP 101 to apply the CTR-relief amount to satisfy an income  
tax liability except by an election—**

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**“(a) relating to attributed CFC income that the consolidated  
BETA group allocates to an income year beginning be-  
fore 1 July 2009; and**

**“(b) made before the earlier of—**

**“(i) the first election under section OP 101 relating to  
attributed CFC income that the group allocates to  
an affected year:**

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**“(ii) the end of the first affected year.**

*“Determination of CTR-relief amount*

**“(3) The CTR-relief amount in a branch equivalent tax account is  
found by—**

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**“(a) treating a branch equivalent tax debit that arises partly  
from a reduction of FDP under section RG 7 and partly**

- from a payment of FDP as being 2 debits, one equal to the reduction of FDP and the other equal to the amount of the payment of FDP; and
- “(b) if a branch equivalent tax credit arises before the first affected year other than from an election relating to attributed CFC income allocated to an affected year or arises in an affected year from an election meeting the requirements of the exception to **subsection (2)**, treating the credit as—
- “(i) reducing branch equivalent tax debits in the order in which the debits arise; and
- “(ii) for branch equivalent tax debits arising at the same time and not reduced to zero by the credit, reducing each debit in proportion to the contribution of the debit to the total of the debits; and
- “(c) if the treatment of a branch equivalent tax credit is not given by **paragraph (b)**, treating the credit as—
- “(i) reducing branch equivalent tax debits arising from the payment of FDP in the order in which the debits arise; and
- “(ii) after all branch equivalent tax debits arising from the payment of FDP are reduced to zero, reducing debits arising from a reduction of FDP under section RG 7 in the order in which the debits arise; and
- “(iii) for branch equivalent tax debits subject to the same subparagraph and arising at the same time and not reduced to zero by the credit, reducing each debit in proportion to the contribution of the debit to the total of the debits; and
- “(d) counting an amount of a branch equivalent tax credit only once in the reduction of some or all of a branch equivalent tax debit.
- “Defined in this Act: attributed CFC income, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, Commissioner, company, consolidated BETA group, FDP, foreign dividend, income tax liability, income year”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

**30H    Heading and section OP 108B repealed**

The heading before section OP 108B and section OP 108B are repealed.

**31    Payment dates for terminal tax**

- (1) In section RA 13(2)(a)(i), “subsection (3)” is replaced by “sub- 5  
section (4)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income  
years.

**31B    Interest**

- (1) In section RE 12(5), in the subsection heading, “*income year*” 10  
is replaced by “*tax year*”.
- (2) Section RE 12(5)(a) is replaced by the following:  
    “(a) the payment of resident passive income that consists of  
        interest is made in the 2010–11 tax year to—  
        “(i) a portfolio investment entity; or 15  
        “(ii) a company that is not a trustee or a Maori author-  
            ity; and”.
- (3) In section RE 12, in the list of defined terms, “Maori authority”  
and “trustee” are inserted.

**31C    Payments made by RWT proxies**

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- (1) In section RE 18(2)(a), “schedule 1, part D, clause 2” is re-  
placed by “schedule 1, part D, clause 3”.
- (2) **Subsection (1)** applies for the 2008–09 and later income  
years.

**32    Definitions**

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- (1) This section amends section YA 1.
- (1B) In the definition of **amount of tax**, “means” is replaced by  
“includes”.
- (2) After the definition of **Australian approved deposit fund**, the  
following is inserted: 30  
    “**Australian complying superannuation scheme** means an  
entity that is a complying superannuation fund for the purposes  
of Part 5, Division 2 of the Superannuation Industry (Supervi-

- sion) Act 1993 (Aust) and that is regulated by the Australian Prudential Regulation Authority”.
- (3) In the definition of **charitable or other public benefit gift**, “for the purposes of sections LD 1 to LD 3 (which relate to tax credits for charitable or other public benefit gifts)” is omitted. 5
- (3B) In the definition of **child**, in the words before paragraph (a), “between a man and a woman” is omitted.
- (3C) After the definition of **fishing business**, the following is inserted:
- “**fishing quota emissions unit** means an emissions unit— 10
- “(a) transferred, under an allocation plan made under section 74 of the Climate Change Response Act 2002, to a person as an owner of individual transferable quota as defined in section 2 of the Fisheries Act 1996; and
- “(b) held continuously by the person since the issue”. 15
- (3D) In the definition of **foreign non-dividend income**, in paragraph (b), “dividends” is replaced by “dividends; and”, and the following is added:
- “(c) not FIF income calculated under the fair dividend rate method”. 20
- (4) The definition of **forest land emissions unit** is replaced by the following:
- “forest land emissions unit** means a pre-1990 forest land emissions unit, a post-1989 forest land emissions unit, or a forest sink emissions unit 25
- “forest sink emissions unit** means an emissions unit issued to a person in relation to a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person”.
- (4B) The definition of **general insurance contract** is repealed.
- (4C) The definition of **government screen production payment** is repealed. 30
- (4D) In the definition of **honorarium**, “and schedule 4, part B (Rates of tax for schedular payments)” is omitted.
- (4E) In the definition of **land investment company**, in paragraph (a), “portfolio investment entity:” is replaced by “portfolio investment entity; and”. 35
- (4F) After the definition of **LAQC**, the following is inserted:

- “large budget film grant** means a payment that—
- “(a)** is in the nature of a large budget screen production grant or post-production digital and visual effects grant; and
- “(b)** is made in relation to a film or television production; and 5
- “(c)** 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”.
- (5) After the definition of **limited attribution company**, the following is inserted: 10
- “limited non-transaction shares** is defined in **section CD 34B** (Distributions to members of co-operative companies)”.
- (6) In the definition of **member credit contribution**, after paragraph (a)(iii), the following is added: 15
- “(iv)** a superannuation contribution that was transferred from an Australian complying superannuation scheme and contributed to a KiwiSaver scheme:”.
- 20
- (7) In the definition of **non-Kyoto greenhouse gas unit**, in paragraph (a), “human induced” is replaced by “human-induced”.
- (7B) The definition of **post-1989 forest land emissions unit** is replaced by the following:
- “post-1989 forest land emissions unit**, for a person, means 25
- an emissions unit transferred under section 64 of the Climate Change Response Act 2002 for growing trees on post-1989 forest land—
- “(a)** to the person and held continuously by the person from the transfer: 30
- “(b)** to another person (the **recipient**), who at the time of the transfer is a party to a forestry rights agreement as defined in the Forestry Rights Registration Act 1983 with the person, and—
- “(i)** transferred by the recipient to the person, under a provision of the forestry rights agreement relating to the allocation of income or emissions units between the recipient and the person; and 35

- “(ii) held continuously by the person from the transfer by the recipient”.
- (7C) The definition of **pre-1990 forest land emissions unit** is replaced by the following:
- “**pre-1990 forest land emissions unit**, for a person, means an emissions unit transferred under Part 4, subpart 2 of the Climate Change Response Act 2002 in relation to pre-1990 forest land—
- “(a) to the person and held continuously by the person from the transfer:
- “(b) to another person (the **appointee**), as a person appointed under section 73 of that Act, and—
- “(i) transferred by the appointee to the person, as a future owner of the pre-1990 forest land at the time of the transfer to the appointee; and
- “(ii) held continuously by the person from the transfer by the appointee:
- “(c) to another person (the **recipient**), who at the time of the transfer is a party to a forestry rights agreement as defined in the Forestry Rights Registration Act 1983 with the person, and—
- “(i) transferred by the recipient to the person, under a provision of the forestry rights agreement relating to the allocation of income or emissions units between the recipient and the person; and
- “(ii) held continuously by the person from the transfer by the recipient”.
- (8) After the definition of **profit-sharing arrangement**, the following is inserted:
- “**projected transactions shareholding** is defined in **section CD 34B** (Distributions to members of co-operative companies)”.
- (9) In the definition of **replacement forest land emissions unit**,—
- (a) paragraph (a) is replaced by the following:
- “(a) the person has previously disposed of a post-1989 forest land emissions unit or forest sink emissions unit other than by—



- “(i) surrender under the Climate Change Response Act 2002:
- “(ii) transfer to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949; and
- (b) in paragraph (b), “post-1989 forest land emissions unit” is replaced by “post-1989 forest land emissions unit or forest sink emissions unit”. 5
- (10) In the definition of **revenue account property**, in paragraph (b), “property that would produce income for the person if they disposed of it” is replaced by “property for which an amount derived by the person from its disposal would be income”. 10
- (11) In the definition of **revenue account property**, in paragraph (b), “if disposed of” is replaced by “if disposed of for valuable consideration”. 15
- (11B) In the definition of **savings product policy**, in paragraph (b), “portion of a policyholder’s premiums” is replaced by “some or all of a policyholder’s premiums relating to life risk”.
- (11C) In the definition of **trading stock**,—
  - (a) in paragraph (b), “GC 6” is replaced by “CG 6”: 20
  - (b) in paragraph (c), “GC 1(3)” is replaced by “**GC 1(4)**”.
- (12) After the definition of **trading stock**, the following is inserted:
  - “**trading transactions** is defined in **section CD 34B** (Distributions to members of co-operative companies)
  - “**transaction shares** is defined in **section CD 34B** (Distributions to members of co-operative companies)”. 25
- (13) ~~**Subsection (10)** applies for the 2008–09 and later income years.~~
- (13) **Subsections (1B), (3B), (3D), 10, and (11C)** apply for the 2008–09 and later income years. 30
- (14) **Subsection (4E)** applies for the 2010–11 and later income years.
- (15) **Subsection (11B)** applies—
  - (a) on and after 1 July 2010, except if **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 the Taxation (International Tax-

ation, Life Insurance, and Remedial Matters) Act 2009  
in a return of income for the tax year corresponding to  
the first relevant income year.

**33 General rules for currency conversion**

- (1) After section YF 1(3), the following is added: 5
- ~~“Conversion rates and calculation methods approved by  
Commissioner~~*
- ~~“(5) Despite subsection (2), the amount may be converted into New  
Zealand currency by applying a rate—~~
- ~~“(a) approved by the Commissioner for use in the circum- 10  
stances of the person:~~
- ~~“(b) calculated using a method approved by the Commis-  
sioner for use in the circumstances of the person.~~
- ~~“General conversion rates and calculation methods approved  
by Commissioner~~* 15
- ~~“(5) Despite subsection (2), the amount may be converted into New  
Zealand currency by applying a rate—~~
- ~~“(a) set by the Commissioner for general use for the pur-  
poses of this section:~~
- ~~“(b) calculated using a method approved by the Commis- 20  
sioner for general use for the purposes of this section.~~
- ~~“Specific conversion rates and calculation methods approved  
by Commissioner~~*
- ~~“(6) Despite subsection (2), a person may convert the amount into  
New Zealand currency by applying a rate—~~ 25
- ~~“(a) approved by the Commissioner for use in the circum-  
stances of the person:~~
- ~~“(b) calculated using a method approved by the Commis-  
sioner for use in the circumstances of the person.”~~
- (2) **Subsection (1)** applies for the 2008–09 and later income 30  
years.

**33B New section YF 2 added**

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

**“YF2 Other rules for currency conversion: approved alternatives**

*“When this section applies*

**“(1) This section applies when—**

- “(a) a provision other than **section YF 1** provides a rate or method for currency conversion; and** 5
- “(b) for the purposes of the provision, a person is required to convert an amount expressed in a currency other than New Zealand currency.**

*“Representative rates*

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**“(2) The Commissioner may set a representative conversion rate that the person may use, instead of the rate or method referred to in **subsection (1)(a)**, in converting the amount into New Zealand currency.**

*“Defined in this Act: amount, Commissioner, New Zealand”.*

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

**33C Schedule 1—Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits**

**(1) In schedule 1, part D, table 2, the row set out in schedule 1, part 1 of this Act is inserted after row 3.** 20

**(2) Schedule 1, part D, clause 4 is replaced by the following:**

**“4 Interest: most companies**

*The payment rate for a payment of resident passive income that consists of interest is set out in **table 3** if the recipient of the payment is a company that is not a trustee or a Maori authority. However, this restriction does not apply if the trustee is a portfolio investment entity.”* 25

**(3) Schedule 1, part D, table 3 is replaced by the table set out in schedule 1, part 2 of this Act.** 30

**(4) Schedule 1, part D, table 3 is replaced by the table set out in schedule 1, part 3 of this Act.**

**33D Schedule 4—Rates of tax for schedular payments**

**(1) In the heading to schedule 4, part B, “or honoraria” is replaced by “honoraria, and other payments”.** 35

**Taxation (Annual Rates, Trans-Tasman  
Savings Portability, KiwiSaver, and  
Remedial Matters) Bill**

Part 2 cl 33E

- (2) After schedule 4, part B, clause 1, the following is inserted:
- “1B A payment has a 0.33 rate of tax for each dollar of the payment, if it is for work or services performed by—
- “(a) a local government elected representative:
- “(b) an official of a community organisation, society, or club: 5
- “(c) a chair or member of a committee, board or council:
- “(d) an official, chair, or member of a body or organisation similar to one described in **paragraph (b) or (c).**”
- (3) In schedule 4, part C, clause 2, the definition of **cultivation contract work** is replaced by the following: 10
- “cultivation contract work—
- “(a) means work or services provided under a contract or arrangement—
- “(i) for the supply of labour, or substantially for the supply of labour; and: 15
- “(ii) on or in connection with land that is used or intended to be used for the cultivation of fruit crops, vegetables, orchards, or vineyards:
- “(b) excludes work or services provided by—
- “(i) a post-harvest facility: 20
- “(ii) a management entity under a formal management agreement under which the entity is responsible for payment for the work or services provided”.
- (4) **Subsection (2)** applies to a payment for work and services made in the 2008–09 and later income years, other than a pay- 25
- ment—
- (a) for work or services performed before the day that this Act receives the Royal assent, and
- (b) from which the payer is not obliged to withhold an amount of tax, ignoring **subsection (2).** 30
- 33E Schedule 6—Prescribed rates: PIE investments and retirement scheme contributions**
- Schedule 6, table 1 is replaced by the table set out in schedule 2 of this Act.

**34 Schedule 32—Recipients of charitable or other public benefit gifts**

- (1) In schedule 32, “Cure Kids” is inserted before the entry for “Cyclone Ofa Relief Fund”.
- (2) **Subsection (1)** applies for the 2010–11 and later tax years.

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**Part 3**  
**Amendments to Tax Administration Act**  
**1994**

**35 Tax Administration Act 1994**

**Sections 36 to 70** amend the Tax Administration Act 1994.

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**36 Interpretation**

- (1) This section amends section 3(1) of the Tax Administration Act 1994.
- (2) After the definition of **Commissioner-set instalment date**, the following is inserted:

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**“Commissioner’s official opinion—**

~~“(a) means, for a taxpayer, an opinion of the Commissioner concerning the tax affairs of the taxpayer, given by the Commissioner, either orally or in writing, after all information relevant to forming the opinion has been provided to the Commissioner, and that information is correct:~~

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“(a) means, for a taxpayer,—

“(i) an opinion of the Commissioner concerning the tax affairs of the taxpayer, given by the Commissioner, either orally or in writing, after all information relevant to forming the opinion has been provided to the Commissioner, if that information is correct:

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“(ii) a finalised official statement of the Commissioner, in writing, if it specifically applies to the taxpayer’s situation:

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**“(b) does not include a private binding ruling”.**

- (2B) After the definition of **government agency**, the following is inserted:

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- “government screen production payment means a payment that—
- “(a) is in the nature of a large budget screen production grant, post-production digital and visual effects grant, or New Zealand screen production incentive; and 5
- “(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”.
- (3) After the definition of **proceedings**, the following is inserted: 10  
“promoter is defined in **section 141EC**”.
- (4) After the definition of **proposed adjustment**, the following is inserted:
- “proscribed question means—
- “(a) whether a fact is correct or exists: 15
- “(b) what is a person’s purpose or intention, for the purpose of any provision of the Income Tax Act 2007 that expressly refers to a person’s purpose or intention:
- “(c) what is the value of a thing:
- “(d) what is commercially acceptable practice, for the purposes of any provision of that Act that expressly refers to commercially acceptable practice”. 20
- 37 Exemption certificates for schedular payments**
- (1) Section 24M(5) is replaced by the following:
- “(5) A person must not alter an exemption certificate. 25
- “(6) A person must not use an exemption certificate that is not in force, or has been altered, to cause a person to refrain from withholding an amount of tax from a schedular payment.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 30
- 38 Special tax rate certificates for schedular payments**
- (1) Section 24N(5) is replaced by the following:
- “(5) A person must not alter a special tax rate certificate.
- “(6) A person must not use a special tax rate certificate that is not in force, or has been altered, to cause a person to refrain from withholding an amount of tax from a schedular payment.” 35

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

**38B Use of inconsistent RWT rates**

- (1) Section 25A(1) is replaced by the following:

“(1) This section applies when the Commissioner considers that a person who receives a payment of resident passive income consisting of interest has had tax withheld at an RWT rate that is inconsistent with their marginal tax rate.” 5

- (2) **Subsection (1)** applies for the 2010–11 income year.

**38C Portfolio tax rate entity to give statement to investors and request information** 10

In section 31B(2B)(a), “portfolio exit period” is replaced by “portfolio investor exit period”.

**38D Particulars furnished in electronic format**

In section 36C(1), “sections 35, 36, 36A, 36B, 36BB, or 36BC” is replaced by “section 35, 36, 36A, 36AB, 36B, 36BB, or 36BC.” 15

**38E General requirements for returns**

In section 40(2)(a), “either sections 36, 36A, or 36B” is replaced by “section 35, 36, 36A, 36AB, 36B, 36BB, 36BC, or 36E”. 20

**39 Returns by persons with tax credits for housekeeping payments and charitable or other public benefit gifts**

- (1) In section 41A(5)(a), “section LC 7” is replaced by “section LC 6”. 25

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

**39B Disclosure of interest payments when no requirement to withhold RWT**

- (1) In section 52(a), “for which RWT is required” is replaced by “for which RWT is not required”. 30

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

- 40

**Determinations in relation to financial arrangements**

In section 90(7),—

(a) “in the *Gazette*” is omitted: 5

(b) “determination or notice,” is replaced by “determination or notice, in a publication chosen by the Commissioner and”.

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- 41

**Notification of determinations and notices**

In section 90AD(1),—

(a) “in the *Gazette*” is omitted:

(b) “determination or notice is made” is replaced by “determination or notice is made, in a publication chosen by the Commissioner”.

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- 42

**Determinations in relation to apportionment of interest costs**

In section 90A(7),—

(a) “in the *Gazette*” is omitted:

(b) “determination or notice,” is replaced by “determination or notice, in a publication chosen by the Commissioner and”.

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- 43

**Determinations in relation to standard-cost household service**

In section 91AA(6),—

(a) “in the *Gazette*” is omitted: 25

(b) “making of the determination” is replaced by “making of the determination, in a publication chosen by the Commissioner”.

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- 44

**Determinations relating to types and diminishing values of listed horticultural plants**

In section 91AAB(6), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.

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**45 Publication and revocation of determinations relating to livestock**

- (1) In section 91AAE(1),—
  - (a) “in the *Gazette*” is omitted:
  - (b) “the Commissioner” is replaced by “the Commissioner, 5  
in a publication chosen by the Commissioner”.
- (2) In section 91AAE(2), “in the *Gazette*” is omitted.

**46 Commissioner may decline to issue special rate or provisional rate**

- (1) Section 91AAH(2)(a) is replaced by the following: 10
  - “(a) the difference between the economic rate already applicable to the item and an appropriate special rate would be less than 50% of the difference between the already applicable economic rate and the next higher or lower rate, as applicable, in— 15
    - “(i) schedule 11 of the Income Tax Act 2007, if the item is acquired on or after 1 April 2005; or
    - “(ii) schedule 12 of that Act, if the item is acquired before 1 April 2005; or”.
- (2) Section 91AAH(3)(ab) is replaced by the following: 20
  - “(ab) if a default rate applies to the item, the difference between the default rate and the provisional rate would be less than 50% of the difference between the default rate and the next higher or lower rate, as applicable, in—
    - “(i) schedule 11 of the Income Tax Act 2007, if the 25  
item is acquired on or after 1 April 2005; or
    - “(ii) schedule 12 of that Act, if the item is acquired before 1 April 2005; or”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 30

**46B Notice of setting of economic rate**

In section 91AAK, “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.

- 47 Applications for determinations**  
In section 91AAM(4), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 48 Determinations on rates for diminishing value of environmental expenditure** 5  
In section 91AAN(9), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 49 Determination on type of interest in FIF and use of fair dividend rate method**
- (1) In section 91AAO(2)(b)(i), “fixed-return foreign equity” is replaced by “fixed-rate foreign equity”. 10
- (2) In section 91AAO(5)(a),—
- (a) “in the *Gazette*” is omitted:
- (b) “date of the determination” is replaced by “date of the determination, in a publication chosen by the Commissioner”. 15
- 49B Determination on insurer as non-attributing active CFC**  
In section 91AAQ(8), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 49C Determination relating to eligible relocation expenses** 20  
In section 91AAR(6), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 50 Content and notification of a public ruling**  
In section 91DA(2), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”. 25
- 51 Withdrawal of a public ruling**  
In section 91DE(2), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 52 Commissioner to make private rulings on request**
- (1) In section 91E(3)(b) “matter on which the ruling is sought is” 30  
is replaced by “arrangement on which the ruling is sought, or a

separately identifiable part of that arrangement, is substantially the same as an arrangement which is”.

(2) In section 91E(4)(a), “questions of fact” is replaced by “a prescribed question”.

(3) Section 91E(4)(ga) is replaced by the following: 5

“(ga) the application is for a ruling in respect of a tax type or a separately identifiable issue, for an arrangement, that is the subject of a notice of proposed adjustment for the arrangement; or”.

(4) In section 91E(4)(j), “or to form an opinion as to a commercially acceptable practice” is omitted. 10

(5) **Subsection (3)** applies if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent.

### 53 Effect of a private ruling 15

(1) In section 91EA(1)(a), “an arrangement” is replaced by “an arrangement and a tax type for an arrangement”.

(2) In section 91EA(1)(b), “taxation law” is replaced by “taxation law for the tax type”.

(3) In section 91EA(1), in the words after the paragraphs, “the person and the arrangement” is replaced by “the person, the tax type, and the arrangement”. 20

(4) **Subsections (1) to (3)** apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent. 25

### 54 Application of a private ruling

(1) In section 91EB(1), in the words before the paragraphs, “taxation law” is replaced by “taxation law for a tax type”.

(2) In section 91EB(2), in the words before the paragraphs “an arrangement if” is replaced by “a tax type for an arrangement, to the extent to which, in relation to the tax type”. 30

(3) **Subsections (1) and (2)** apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent.

**55 Assumptions in making a private ruling**

After section 91EF(2), the following is added:

- “(3) The Commissioner may make assumptions about the answer to a proscribed question, and making those assumptions is treated as not determining the proscribed question for the purposes of **section 91E(4)(a)**.” 5

**56 Content and notification of a private ruling**

After section 91EH(1), the following is inserted:

- “(1B) The Commissioner may stipulate conditions about the answer to a proscribed question, and stipulating those conditions is treated as not determining the proscribed question for the purposes of **section 91E(4)(a)**.” 10

**57 New section 91EJ inserted**

After section 91EI, the following is inserted:

**“91EJ Treatment of information” 15**

- “(1) Information supplied to the Commissioner by the applicant for a private ruling is the factual basis on which the Commissioner makes a private ruling.
- “(2) Despite **subsection (1)**, the Commissioner,—
- “(a) as part of the process of making a private ruling, may, but does not have to, inquire into the correctness or existence of the facts contained in the information supplied before making the private ruling: 20
- ~~“(b) is not stopped by the process of making the private ruling or by the use of the information as the basis of the private ruling from inquiring, outside the process of making the ruling or subsequent to making the ruling, into the correctness or existence of the facts contained in the information supplied.” 25~~
- “(b) is not stopped by the process of making the private ruling or by the use of the information as the basis of the private ruling from denying, outside the process of making the ruling or subsequent to making the ruling, the correctness or existence of the facts contained in the information supplied.” 30 35

**58 Commissioner may make product rulings**

- (1) Section 91F(3)(b) is replaced by the following:
  - “(b) the arrangement on which the ruling is sought, or a separately identifiable part of that arrangement, is substantially the same as an arrangement which is subject to an objection, challenge, or appeal, whether in relation to the applicant or any other person; or
  - “(bb) the applicant is a promoter who, in the Commissioner’s opinion, did not comply with section 91FD in relation to an earlier binding ruling application; or”.
- (2) In section 91F(4)(a), “questions of fact” is replaced by “a prescribed question”.
- (3) In section 91F(4)(h), “or to form an opinion as to a commercially acceptable practice” is omitted.

**59 Effect of a product ruling**

- (1) In section 91FA(1)(a), “an arrangement” is replaced by “an arrangement and a tax type for an arrangement”.
- (2) In section 91FA(1)(b), “taxation law” is replaced by “taxation law for the tax type”.
- (3) In section 91FA(1), in the words after the paragraphs, “the arrangement” is replaced by “the person, the tax type, and the arrangement”.
- ~~(4) Subsections (1) to (3) apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent.~~

**60 Application of a product ruling**

- (1) In section 91FB(1), in the words before the paragraphs, “taxation law” is replaced by “taxation law for a tax type”.
- (2) In section 91FB(2), in the words before the paragraphs “an arrangement if” is replaced by “a tax type for an arrangement, to the extent to which, in relation to the tax type”.
- ~~(3) Subsections (1) and (2) apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent.~~

**61 Applying for a product ruling**

In section 91FC(1A), “proposed arrangement” is replaced by “proposed arrangement or a promoter of the proposed arrangement”.

**62 Disclosure requirements**

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After section 91FD(1)(b), the following is inserted:

“(bb) if the person making the application is the promoter of the arrangement, make a statutory declaration that paragraph (b) has been complied with and that all relevant facts are correct.”

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**63 Assumptions in making a product ruling**

After section 91FF(2), the following is added:

“(3) The Commissioner may make assumptions about the answer to a proscribed question, and making those assumptions is treated as not determining the proscribed question for the purposes of **section 91F(4)(a)**.”

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**64 Content and notification of a product ruling**

(1) After section 91FH(1), the following is inserted:

“(1B) The Commissioner may stipulate conditions about the answer to a proscribed question, and stipulating those conditions is treated as not determining the proscribed question for the purposes of **section 91F(4)(a)**.”

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(2) In section 91FH(4)(a), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.

(3) In section 91FH(5)(a), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.

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(4) ~~Subsections (2) and (3) apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent.~~

**65 Withdrawal of a product ruling**

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In section 91FJ(2), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.

**66 New section 91FK inserted**

After section 91FJ, the following is inserted:

**“91FK Treatment of information**

- “(1) Information supplied to the Commissioner by the applicant for  
a product ruling is the basis on which the Commissioner makes 5  
a product ruling.
- “(2) Despite **subsection (1)**, the Commissioner,—
- “(a) as part of the process of making a product ruling, may,  
but does not have to, inquire into the existence or cor-  
rectness of facts contained in the information supplied 10  
before making the product ruling:
- “(b) is not stopped by the process of making the product  
ruling or by the use of the information as the basis of  
the product ruling from inquiring, outside the process of  
making the ruling or subsequent to making the ruling, 15  
into the existence or correctness of facts contained in  
the information supplied.”

**67 Application of Part**

After section 120AA(2), the following is added:

- “(3) This Part does not apply to a person who takes a tax position 20  
relying on advice given to them as a taxpayer by the Commis-  
sioner. For the purposes of this subsection, the advice must—
- “(a) be provided in writing by the Commissioner; and
- “(b) be given as official departmental advice; and
- “(c) apply specifically to the taxpayer. 25
- “(4) Despite **subsection (3)(a)**, the advice is not required to be  
in writing if the advice is standard in nature and is given in  
relation to a common tax issue.”

**68 New section 120W inserted**

After section 120V, the following is inserted:

**“120W Commissioner’s official opinions**

- “(1) A taxpayer that, but for this section, is liable to pay interest  
on unpaid tax to the Commissioner, is not liable to pay that  
interest to the extent to which it arises ~~solely~~ because they  
relied on a Commissioner’s official opinion. 35

“(2) **Subsection (1)** applies if the relevant Commissioner’s official opinion was given by the Commissioner on or after the day on which the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act **2009** receives the Royal assent.”

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**68B Transitional imputation penalty tax payable in some circumstances**

Section 140BB(1C) is replaced by the following:

“(1C) For the purposes of subsection (1), the company must include in its ICA balance the ICA credits and debits for transactions occurring after the end of the company’s 2007–08 income year to the extent to which those credits and debits relate to memorandum account debits, credits, and balances dealt with, arising, or calculated using an old company tax rate, but excluding any amount taken into account under subsection (1B).”

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**69 Unacceptable tax position**

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

~~“(1D) A taxpayer does not take an unacceptable tax position to the extent to which they have taken their position solely because they have relied on a Commissioner’s official opinion.”~~

20

“(1D) A taxpayer does not take an unacceptable tax position to the extent to which they have taken their position because they have relied on a Commissioner’s official opinion.”

(2) **Subsection (1)** applies if the relevant Commissioner’s official opinion was given by the Commissioner on or after the day on which this Act receives the Royal assent.

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**70 Definition of promoter**

In section 141EC(1), “section 141EB” is replaced by “sections 91FC, 91FD, and 141EB”.

**Part 4**

**Amendments to KiwiSaver Act 2006**

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**71 KiwiSaver Act 2006**

**Sections 72 to 80** amend the KiwiSaver Act 2006.



## **72 Interpretation**

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

“**Australian complying superannuation scheme** means an entity that is a complying superannuation fund for the purposes of Part 5, Division 2 of the Superannuation Industry (Supervision) Act 1993 (Aust) and that is regulated by the Australian Prudential Regulation Authority”.

- (2) In section 4, after the definition of **gross salary or wages**, the following is inserted:

“**guardian** has the same meaning as in the Care of Children Act 2004”.

- (3) In section 4, in the definition of **member’s accumulation**, after paragraph (a), the following is inserted:

“(ab) an amount that was transferred from an Australian complying superannuation scheme and contributed to a KiwiSaver scheme; and”.

## **72B Employees must give information to employers**

- (1) In the heading before section 22, “*people who start new employment*” is replaced by “*employees and employers*”.

- (2) In the heading to section 22, “**must give**” is replaced by “**giving**”.

- (3) After section 22(2), the following is added:

- “(3) A person who is in temporary employment and who is a member of a KiwiSaver scheme may give their temporary employer a KiwiSaver deduction notice.”

## **72C Eligibility to be exempt employer**

- (1) In section 25(1)(b), “the day after the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 receives the Royal assent” is replaced by “7 October 2009”.

- (2) Section 25(1)(bb) is repealed.

## **72D How to apply to be exempt employer**

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

- “(1) A person may make an application to the Government Actuary for approval of an employer (the **current employer**) as an exempt employer if,—
- “(a) an application (the **old application**) was received by the Government Actuary on or before 19 November 2009; 5
- and
- “(b) as a result of the Government Actuary’s consideration of that old application under section 30 an employer was approved as an exempt employer; and
- “(c) either that exempt employer is the current employer, or 10
- the current employer is a succeeding employer for that exempt employer.”
- (2) After section 29(2), the following is added:
- “(3) In this section **succeeding employer** means, for an exempt employer,— 15
- “(a) an employer who succeeds the exempt employer due to a merger or acquisition of the exempt employer; and
- “(b) another employer who succeeds a succeeding employer for the exempt employer due to a merger or acquisition of that succeeding employer.” 20
- 72E** **How applications to be exempt employer must be dealt with**
- In section 30(1), in the words before the paragraphs, “receiving an application under section 29 and the documents required” is replaced by “receiving an application that may be 25
- made under **section 29(1)** and the documents required under section 29(2)”.
- 73** **How to opt in**
- (1) In the heading to section 34, “**How to opt in**” is replaced by “**Opting in by person 18 years or more**”. 30
- (2) In section 34(1), in the words before the paragraphs, “A person who” is replaced by “A person who is 18 years or more and who”.

**74 Opting in by persons under 18**

Section 35, other than the heading, is replaced by the following:

- “(1) A person who is less than 18 years may only opt in in accordance with this section. 5
- “(2) A person who is less than 16 years may opt in if ~~their guardian contracts~~ all their guardians contract directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as— 10
  - “(a) contracting directly with the provider; and
  - “(b) 18 years for the purposes of the Minor’s Contracts Act 1969; and
  - “(c) opting in under section 34(1)(a).
- “(3) A person who is 16 or 17 years old with a guardian may opt in if the person and ~~their guardian~~ 1 of their guardians jointly contract directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as— 15
  - “(a) contracting directly with the provider; and
  - “(b) 18 years for the purposes of the Minors’ Contracts Act 1969; and 20
  - “(c) opting in under section 34(1)(a).
- “(4) A person who is 16 or 17 years old with no guardian may opt in if the person contracts directly with a provider. If the provider accepts the person, then the person is treated as— 25
  - “(a) 18 years for the purposes of the Minors’ Contracts Act 1969;
  - “(b) opting in under section 34(1)(a).”

**75 Initial back-dated validation**

In section 59B(2)(b)(iii), “the member’s accumulation” is replaced by “~~an~~ the amount of the member’s accumulation, less ~~the net value of~~ the amount that was transferred from an Australian complying superannuation scheme”. 30

**76 What happens when initial back-dated validation ends, with no confirmed back-dated validation?**

- (1) ~~Section 59D(2)(b) is replaced by the following:~~ 35

- “(b) pay the amount of the member’s accumulation, less the net value of the amount that was transferred from an Australian complying superannuation scheme, for the person to the Commissioner, if the provider has not already done so; and 5
- “(c) pay the net value of the amount that was transferred from an Australian complying superannuation scheme to that scheme.”
- (2) In section 59D(3)(a), in the words before the subparagraphs, “the Commissioner” is replaced by “the Commissioner, but ignoring those transferred from an Australian complying superannuation scheme” 10
- (1) In section 59D(2)(a)(i), “and when they were received” is replaced by “, when they were received, and (if available) who they were paid by” 15
- (2) Section 59D(2)(b) is replaced by the following:
- “(b) pay the amount of the member’s accumulation, less the amount that was transferred from an Australian complying superannuation scheme, for the person to the Commissioner, if the provider has not already done so; and 20
- “(c) pay the amount that was transferred from an Australian complying superannuation scheme (the **transferor scheme**) or the amount of the member’s accumulation (whichever amount is smaller), for the person to—
- “(i) the transferor scheme; or 25
- “(ii) an Australian complying superannuation scheme chosen by the person; or
- “(iii) an Australian complying superannuation scheme chosen by the Commissioner, if the person does not choose one and it is not appropriate to pay to the transferor scheme.” 30
- (3) After section 59D(3)(a)(iii), the following is added:
- “(iv) the amount that was transferred from an Australian complying superannuation scheme.”
- (4) In section 59D(3)(c), “paragraph (a)(i) to (iii)” is replaced by “paragraph (a)(i) to **(iv)**” 35
- (5) In section 59D(4), “subsection (3)(a)(i) and (ii)” is replaced by “subsection (3)(a)(i) to **(iv)**”.

- 77 PAYE rules apply to deductions**  
In section 67(3)(a), “to RD 11” is replaced by “, RD 10”.
- 78 Application of other provisions of Superannuation Schemes Act 1989**  
After section 122(5)(a), the following is inserted: 5  
“(ab) the requirement in section 17(1)(a) is treated as met in respect of a member, if—  
“(i) the member has consented, in writing, to receive a world wide web uniform resource locator for access to an electronic copy of the annual report (the **annual report URL**); and 10  
“(ii) the provider gives the annual report URL to the member within 6 months of the close of the relevant financial year; and”.
- 79 Regulations relating to mortgage diversion facility** 15  
After section 229(2)(j), the following is inserted:  
“(jb) an amount that was transferred from an Australian complying superannuation scheme may not be diverted.”.
- 80 Schedule 1—KiwiSaver scheme rules**  
~~(1) After schedule 1, clause 2, the following is inserted:~~ 20  
~~“2B Fees from amounts not transferred from Australian complying superannuation schemes~~  
~~Fees are deducted first from the net value of amounts that were not transferred from an Australian complying superannuation scheme.”~~ 25  
(2) After schedule 1, clause 4, the following is inserted:  
~~“4B Amounts from Australian complying superannuation schemes~~  
A member may withdraw the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount), if the member is 60 years or more and the member’s retirement (as that term is defined in regulation 6.01(7) of the Superannuation Industry (Supervision) Regula- 30

tions 1994 (Aust), with necessary modification for KiwiSaver scheme trustees) is taken to have occurred.”

(3) Schedule 1, clause 8(4) is replaced by the following:

“(4) A member may not make a withdrawal under this clause of more than an amount equal to the member’s accumulation, at the time of the withdrawal, less the total of the following 2 amounts:

“(a) the amount of the Crown contribution (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution):

“(b) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).”

(4) In schedule 1, clause 8(6), “, a leasehold estate,” is omitted.

(5) In schedule 1, clause 14(1) and (2) are replaced by the following:

“(1) Subject to **clause 14B**, a member may, on application to the trustees, and no earlier than 1 year after the member’s permanent emigration from New Zealand, withdraw an amount equal to the member’s accumulation, at the time of the withdrawal, less the total of the following 2 amounts:

“(a) the amount of the Crown contribution arising from a tax credit under section MK 1 of the Income Tax Act 2007 (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution):

“(b) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).

“(2) Subject to **clause 14B**, a member may, on application to the trustees, at any time after the member’s permanent emigration from New Zealand, have the trustees transfer to a foreign superannuation scheme authorised for that purpose under regulations made under section 228 the member’s accumulation, less the total of the following 2 amounts:

- “(a) the amount of the Crown contribution arising from a tax credit under section MK 1 of the Income Tax Act 2007 (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution):

5
- “(b) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).”
- (6) After schedule 1, clause 14, the following is inserted:

10
- “14B Exceptions to clause 14 for Australian permanent emigration**
- “(1) For a KiwiSaver scheme (but not for a complying superannuation fund) a member may not withdraw any amount, or have the trustees transfer any amount, after the member’s permanent emigration to Australia, except as provided by this clause.

15
- “(2) At any time after the member’s permanent emigration to Australia, a member may, on application to the trustees, have the trustees transfer the member’s accumulation to an Australian complying superannuation scheme.

20
- “(3) As soon as practicable after receiving a satisfactory application, the trustees must transfer the whole of the member’s accumulation to the relevant Australian complying superannuation scheme and provide that scheme with any necessary information it reasonably requires.

25
- “(4) An application under **subclause (2)** must be in the form required by the trustees and must include—
- “(a) a completed statutory declaration in respect of the member to the effect that the member has permanently emigrated to Australia; and

30
- “(b) proof to the satisfaction of the trustees—
- “(i) of the member’s departure from New Zealand (*see*, for examples of proof: clause 14(3)(b)(i)); and
- “(ii) that the member has resided at an Australian address at some time following the member’s departure from New Zealand.”

35

- “(5) The trustees may require that any other documents, things, or information produced in an application under **subclause (2)** be verified by oath, statutory declaration, or otherwise.”

## Part 5 Amendments to other Acts and regulations

5

### *Goods and Services Tax Act 1985*

#### **81 Goods and services tax incurred in making certain supplies of financial services**

- (1) In the Goods and Services Tax Act 1985, in section 20C, the definition of item c is replaced by the following: 10
- “c is the total value of exempt supplies of financial services by the registered person in respect of the taxable period.”.
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 January 2005. 15

### *Estate and Gift Duties Act 1968*

#### **82 Exemption for gifts to charities and certain bodies**

- (1) This section amends the Estate and Gift Duties Act 1968.
- (2) Before section 73(2)(a), the following is inserted: 20
- “(aa) any gift required by an order of a court under the Law Reform (Testamentary Promises) Act 1949 or the Family Protection Act 1955.”.
- (3) After section 73(2)(jc), the following is inserted:
- “(jd) any gift to an organisation that is— 25
- “(i) part of the State Services as defined in section 2 of the State Sector Act 1988; and
- “(ii) not an educational institution; and
- “(iii) not carried on for the private pecuniary profit of any individual.”. 30
- (4) After section 73(2)(ka), the following is inserted:
- ~~“(kb) any gift to an organisation that is a local authority, or a council-controlled organisation or subsidiary of a coun-~~



- ~~eil-controlled organisation, as defined in section YA 1 of the Income Tax Act 2007 and is not carried on for the private pecuniary profit of any individual:~~
- ~~“(kb) any gift to an organisation that is a local authority, or a council-controlled organisation as defined in section 6 of the Local Government Act 2002, or a subsidiary of such a council-controlled organisation and is not carried on for the private pecuniary profit of any individual:”.~~ 5
- (5) In section 73(2)(n), “that trust.” is replaced by “that trust.” and the following is added:
- “(o) any gift to an organisation that is a donee organisation as defined in section YA 1 of the Income Tax Act 2007.” 10
- (6) **Subsection (2)** applies for gifts made on or after 24 May 1999.

*Income Tax Act 2004*

- 83A Income Tax Act 2004** 15  
**Sections 83AB to 86B** amend the Income Tax Act 2004.

**83AB Foreign investment fund income**

Section CD 26(1) is replaced by the following:

*“Amount not dividend*

- “(1) An amount paid by a company to a person is not a dividend if,—* 20
- “(a) at the time the person derives the amount, the person’s interest in the company is an attributing interest or would have been an attributing interest if the company had not been liquidated; and* 25
- “(b) the person calculates their FIF income or loss in relation to the interest and the period in which the amount is paid under—*
- “(i) the comparative value method;*
- “(ii) the deemed rate of return method; 30*
- “(iii) the cost method;*
- “(iv) the fair dividend rate method.”*

**83AC Benefits provided to employees who are shareholders or investors**

- (1) In section CX 16(4)(a), “shareholder:” is replaced by “shareholder; and”.
- (2) **Subsection (1)**— 5
- (a) applies for the 2005–06 and later income years, except if **paragraph (b)** applies:
- (b) does not apply for a person or an income year in relation to a tax position taken by the person for their 2005–06 or later income year— 10
- (i) in the period from 12 December 2004 to the date of the Royal assent of this Act; and
- (ii) relating to a return of income, an FBT return, or a GST return filed before the date of the Royal assent of this Act; and 15
- (iii) relying upon section CX 16(4) as it was before the amendment made by **subsection (1)**.

**83AD Total deductions in section EE 47**

- (1) After section EE 51(3), the following is inserted: 20
- “Treatment of mothballed assets*
- “(3B) Subsection (3)(b) does not apply in relation to an amount of depreciation loss for an item that has been withdrawn from use in deriving assessable income or carrying on a business for the purpose of deriving assessable income. However, this exclusion does not apply to an amount of depreciation loss for which the person has a deduction under section EE 32.” 25
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**83 Determination alternatives to IFRS**

- (1) In the Income Tax Act 2004, in section EW 15D(1)(d)(ii), “fair value method.” is replaced by “fair value method; or” and the following is added: 30
- “(iii) is treated under IFRSs by the person as a hedge of something that is not a financial arrangement.”
- (2) **Subsection (1)** applies for— 35

- (a) the 2007–08 and later income years, ~~unless~~except if  
**paragraph (b) or (c)** applies; or
- (b) the first income year for which the person adopts IFRSs  
for the purposes of financial reporting and later income  
years, if that first income year is before the 2007–08 5  
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 10  
the person has not adopted IFRSs for the purposes of  
financial reporting before 1 January 2007.

**84 Expected value method and equity-free fair value method**

- (1) In the ~~Income Tax Act 2004~~, in section EW 15E(1)(c)(ii), “fair  
value method; and” is replaced by “fair value method; or” and 15  
the following is added:

“(iii) is treated under IFRSs by the person as a hedge  
of something that is not a financial arrangement;  
and”.

- (2) **Subsection (1)** applies for— 20

- (a) the 2007–08 and later income years, ~~unless~~except if  
**paragraph (b) or (c)** applies; or
- (b) the first income year for which the person adopts IFRSs  
for the purposes of financial reporting and later income  
years, if that first income year is before the 2007–08 25  
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 30  
the person has not adopted IFRSs for the purposes of  
financial reporting before 1 January 2007.

**85 Meaning of CFC**

- (1) In the ~~Income Tax Act 2004~~, ~~section~~Section EX 1(1)(b)(i) is  
replaced by the following: 35

Part 5 cl 85B	Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill	
	<p><del>“(i) the person’s control interest is less than a control interest in the same category held by another person; and</del></p> <p><u>“(i) the person’s control interest is less than or equal to a control interest in the same category held by another person; and”.</u></p>	5
(2)	<b>Subsection (1)—</b>	
	(a) applies for the 2005–06 and later income years, except if <b>paragraph (b)</b> applies:	
	(b) <del>does not apply for a person and an income year after the 2005–06 income year in relation to a tax position for the income year taken by the person—</del>	10
	<del>(i) before 19 November 2009; and</del> <del>(ii) relying on the provision amended by this section as it was immediately before the amendment made by this section.</del>	15
	<u>(b) does not apply for a person in relation to a tax position taken by the person—</u>	
	<u>(i) before 19 November 2009; and</u> <u>(ii) relying on the provision amended by this section as it was immediately before the amendment made by this section.</u>	20
<b>85B</b>	<b><u>Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method</u></b>	
	<u>Section EX 47(1)(c) is replaced by the following:</u>	25
	<u>“(c) the fair dividend rate method:”.</u>	
<b>85C</b>	<b><u>Treatment of portfolio class taxable loss and portfolio class land loss for tax year</u></b>	
(1)	<u>Section HL 30(3)(a)(i) is replaced by the following:</u>	
	<u>“(i) are an investment of the type listed in <b>subsection (4)</b>; and”.</u>	30
(2)	<u>After section HL 30(3), the following is added:</u>	
	<u>“Investment types</u>	
<u>“(4)</u>	<u>For the purposes of subsection (3)(a)(i), the investment must be—</u>	35
	<u>“(a) an investment in land:</u>	

- “(b) an investment in a portfolio land company that is resident in New Zealand:
- “(c) an investment in a non-resident portfolio land company in which the portfolio investor class has a voting interest of more than 20%.”

5

**85D Credit for investor for tax paid by entity if portfolio investor allocated income not excluded income**

In section LD 10(2), “income tax paid” is replaced by “income tax liability satisfied”.

**85E Credit for zero-rated portfolio investor for tax paid by entity in relation to portfolio investor allocated income**

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In section LD 10B(2), “income tax paid” is replaced by “income tax liability satisfied”.

**86 Definitions**

- (1) In section OB 1 ~~of the Income Tax Act 2004~~, in the definition of **revenue account property**, in paragraph (b), “property that would produce income for the person if they disposed of it” is replaced by “property for which an amount derived by the person from its disposal would be income”.
- (2) In section OB 1 ~~of the Income Tax Act 2004~~, in the definition of **fair value method**, “15B” is replaced by “15C”.
- (3) **Subsection (1)** applies for the 2005–06 and later income years.

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**86B Schedule 22A—Identified policy changes**

- (1) In schedule 22A, after the entry for CW 15(1), the following is inserted:

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CW 31(3)

The amounts excepted from the exemption are amounts that a public authority receives as trustee.

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

*Local Government Act 2002*

**87 Schedule 9—Council-controlled organisations and transfer of undertakings**

- (1) In the Local Government Act 2002, schedule 9, clause 6(3), “sections EG 17(1)” is replaced by “sections EE 33(1) to (3)”. 5
- (2) In the Local Government Act 2002, schedule 9, clause 6(3), “sections EE 33(1) to (3)” is replaced by “sections EE 40(1) to (3)”. 5
- (3) **Subsection (1)** applies for the 2005–06 and later income years. 10
- (4) **Subsection (2)** applies for the 2008–09 and later income years. 10

*Tax Administration (Binding Rulings)  
Regulations 1999*

**88 Waiver of fees** 15

In the Tax Administration (Binding Rulings) Regulations 1999, regulation 6 is replaced by the following:

**“6 Waiver of fees**

- “(1) The Commissioner may waive all or part of a fee payable under these regulations if the Commissioner considers it is fair and reasonable in the circumstances to do so, having regard to the nature of the issue that is the subject of the application, the level of skill and experience required in the consideration of the application, and any other relevant factors. 20
- “(2) **Subclause (1)** applies if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act **2009** receives the Royal assent.” 25

**89 Fees inclusive of goods and services tax** 30

In the Tax Administration (Binding Rulings) Regulations 1999, regulation 7 is replaced by the following:

**“7 Goods and services tax**

- “(1) The fees prescribed by these regulations include goods and services tax. However, for a supply that is zero-rated under 35

the Goods and Services Tax Act 1985, the amount of a fee prescribed by these regulations is reduced by an amount equal to the tax fraction of the fee under that Act.

- “(2) **Subclause (1)** applies if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act **2009** receives the Royal assent.” 5

**Schedule 1** **33C**  
**Amendments to Income Tax Act 2007,**  
**schedule 1**

**Part 1**  
**Part D, table 2, row 3B**

5

<b><u>Row</u></b>	<b><u>Conditions</u></b>	<b><u>Payment rate</u></b>
<u>3B</u>	<p>For a person who chooses the payment rate of 0.390 before 1 April 2010, the payer of the interest—</p> <p>(a) <u>has been supplied with the tax file number of the person; and</u></p> <p>(b) <u>has received a payment rate election from the person.</u></p>	<u>0.380</u>

**Part 2**  
**Part D, table 3**

**Table 3**

<b><u>Row</u></b>	<b><u>Conditions</u></b>	<b><u>Payment rate</u></b>
<u>1</u>	<p>The payer of the interest—</p> <p>(a) <u>has been supplied with the tax file number of a person who is paid the interest; and</u></p> <p>(b) <u>has not received a payment rate election from the recipient of the interest.</u></p>	<u>0.33</u>
<u>2</u>	<p>The payer of the interest—</p> <p>(a) <u>has been supplied with the tax file number of a person who is paid the interest; and</u></p> <p>(b) <u>has received a payment rate election from the recipient of the interest, choosing the 0.33 payment rate.</u></p>	<u>0.33</u>



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Schedule 1

<u>3</u>	<p><u>The payer of the interest—</u></p> <p>(a) <u>has been supplied with the tax file number of a person who is paid the interest; and</u></p> <p>(b) <u>either—</u></p> <p style="padding-left: 20px;">(i) <u>has received a payment rate election from the recipient of the interest, choosing the 0.38 payment rate; or</u></p> <p style="padding-left: 20px;">(ii) <u>has received a payment rate election from the recipient of the interest, choosing the 0.39 payment rate before 1 April 2010.</u></p>	<u>0.38</u>
<u>4</u>	<p><u>The payer of the interest has not been supplied with the tax file number of a person who is paid the interest.</u></p>	<u>0.38</u>

**How to use this table**

Find the applicable condition, in the second column, in order to find the relevant rate to apply, in the third column.

**Part 3**  
**Part D, table 3**

**Table 3**

<b><u>Row</u></b>	<b><u>Conditions</u></b>	<b><u>Payment rate</u></b>
<u>1</u>	<p><u>The payer of the interest—</u></p> <p>(a) <u>has been supplied with the tax file number of a person who is paid the interest; and</u></p> <p>(b) <u>has not received a payment rate election from the recipient of the interest.</u></p>	<u>0.30</u>
<u>2</u>	<p><u>The payer of the interest—</u></p> <p>(a) <u>has been supplied with the tax file number of a person who is paid the interest; and</u></p> <p>(b) <u>either—</u></p>	

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Schedule 1

	<p>(i) <u>has received a payment rate election from the recipient of the interest, choosing the 0.30 payment rate; or</u></p> <p>(ii) <u>has received a payment rate election from the recipient of the interest, choosing the 0.33 payment rate before 1 April 2011.</u></p>	0.30
<u>3</u>	<p><u>The payer of the interest—</u></p> <p>(a) <u>has been supplied with the tax file number of a person who is paid the interest; and</u></p> <p>(b) <u>either—</u></p> <p>(i) <u>has received a payment rate election from the recipient of the interest, choosing the 0.38 payment rate; or</u></p> <p>(ii) <u>has received a payment rate election from the recipient of the interest, choosing the 0.39 payment rate before 1 April 2010.</u></p>	0.38
<u>4</u>	<u>The payer of the interest has not been supplied with the tax file number of a person who is paid the interest.</u>	0.38

**How to use this table**

Find the applicable condition, in the second column, in order to find the relevant rate to apply, in the third column.

**Schedule 2** **33E**  
**Amendments to Income Tax Act 2007,**  
**schedule 6**

**Table 1**

<b><u>Row</u></b>	<b><u>Conditions</u></b>	<b><u>Prescribed rate</u></b>
<u>1</u>	<u>For a natural person who is resident in New Zealand, other than a person described in row 4 or 6.</u>	<u>0.300</u>
<u>2</u>	<u>For a non-resident person.</u>	<u>0.300</u>
<u>3</u>	<u>For a person who—</u>	
	<u>(a) is resident in New Zealand and who derives income for the relevant tax year as a trustee of a trust other than a trust with income that is exempt income under section CW 41 or CW 42; and</u>	
	<u>(b) notifies this rate for the relevant tax year.</u>	<u>0.300</u>
<u>4</u>	<u>For a natural person who is resident in New Zealand and is not a person described in row 6 and who, in either of the 2 income years before the relevant tax year, derives—</u>	
	<u>(a) \$48,000 or less in taxable income; and</u>	
	<u>(b) \$70,000 or less in the sum of their taxable income and attributed PIE income after subtracting any attributable PIE loss.</u>	<u>0.210</u>
<u>5</u>	<u>For a person who—</u>	
	<u>(a) is resident in New Zealand and derives income for the relevant tax year as a trustee of a trust other than a trust with income that is exempt income under section CW 41 or CW 42; and</u>	
	<u>(b) notifies this rate for the relevant tax year.</u>	<u>0.210</u>
<u>6</u>	<u>For a natural person who is resident in New Zealand and who, in either of the 2 income years before the relevant tax year, derives—</u>	

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	(a) <u>\$14,000 or less in taxable income; and</u>	
	(b) <u>\$48,000 or less in the sum of their taxable income and attributed PIE income after subtracting any attributable PIE loss.</u>	<u>0.125</u>
<u>7</u>	<u>For a person who—</u>	
	(a) <u>is resident in New Zealand and derives income for the relevant tax year as a trustee of a testamentary trust to which section HC 37 applies other than a trust with income that is exempt income under section CW 41 or CW 42; and</u>	
	(b) <u>notifies this rate for the relevant tax year.</u>	<u>0.125</u>
<u>8</u>	<u>For a person who is a zero-rated investor.</u>	<u>0.000</u>

**How to use this table**

Find the applicable condition, in the second column, in order to find the relevant rate to apply, in the third column.

**Legislative history**

19 November 2009  
8 December 2009

Introduction (Bill 100–1)  
First reading and referral to Finance and  
Expenditure Committee