

# **Taxation (GST and Remedial Matters) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This bill contains amendments to the Goods and Services Tax Act 1985 to provide for tax to be charged on supplies of land in transactions between registered persons at the rate of 0%, to simplify the method for making adjustments for changes in use, and to streamline transactions involving nominated persons. Other policy and remedial amendments to the Income Tax Act 2007, the Income Tax Act 2004, the Tax Administration Act 1994, the Income Tax Act 1994, the KiwiSaver Act 2006, the Stamp and Cheque Duties Act 1971, the Gaming Duties Act 1971, the Local Government (Auckland Transitional Provisions) Act 2010, and certain regulations are also made in this bill.

### ***Regulatory impact statement***

In accordance with Cabinet Office Circular CO (09) 08, this explanatory note does not contain a regulatory impact statement for this bill. A copy of the regulatory impact statement for this bill is available at the following internet sites:

- <http://taxpolicy.ird.govt.nz/publications/2010-ris-gstrm-bill/overview>:

- <http://www.treasury.govt.nz/publications/information-releases/ris>.

### *Goods and services tax*

#### *Zero-rating transactions involving land*

A basic principle of the goods and services tax is that transactions between businesses should be GST-neutral. This goal is not always achieved, however, particularly in transactions involving the supply of significant assets such as land. Because the assets are significant, they are infrequently traded and the transaction can create GST consequences for which businesses may not have planned. In addition, a substantial risk to the tax base can be created through tax-aggressive structures that involve no corresponding revenue for government.

The amendment requires, subject to certain conditions, a GST-registered supplier to charge GST at the rate of 0% on a supply of land when the purchaser is also a registered person. A transaction between a registered supplier and a non-registered purchaser remains subject to the existing rules.

For a single supply that involves land and other goods and services, the changes mean that the full supply is zero-rated, the purchaser sets a nominal GST component for the supply and apportions their input tax deduction under the new apportionment rules to account for the part of the supply intended to be used for non-taxable purposes. Most transfers of going concerns will be covered by the new rules.

#### *Adjustments for changes in use*

A new method for making adjustments for changes in use is introduced by which a registered person apportions their initial input tax deduction according to the intended use of the asset. Adjustments are made in later years if records show the actual use of the asset is different from its intended use.

On acquisition, the person must estimate as accurately as possible the extent of the intended taxable use of the asset at the time of claiming the deduction. In later years, the person may be required to adjust the amount of their deduction if the extent to which actual use of the asset for taxable purposes differs from intended use. But further adjustments are not required if the actual and intended uses differ by

10% or less, unless the amount of the difference is \$1,000 or more, the purchase value is less than \$5,000, or the person makes a certain level of exempt supplies.

When a registered person disposes of, or is treated as disposing of, goods or services in the course or furtherance of a taxable activity and in relation to which the person has not claimed a full input tax deduction, the person may be able to claim an additional amount of input tax. The amount that can be claimed on disposal must not be more than the total amount of input tax to which the person would be entitled if they had acquired the goods or services solely for making taxable supplies.

#### *Transactions involving nominated persons*

Goods and services tax is a tax on transactions. The legislation operates largely on the assumption that transactions involve only 2 parties — that is, a vendor and a purchaser — and is not designed to cater for arrangements in which a purchaser nominates another person to receive the goods or to settle the transaction, or both.

An amendment clarifies the rules to provide, in effect, that in transactions involving nominations the GST treatment is determined on the basis of the transaction's economic substance. The GST consequences of the transaction, such as an entitlement to an input tax deduction, will depend on the nature of the particular transaction and on a determination as to who provides the consideration for the supply.

#### *Accommodation*

Accommodation provided by GST-registered persons in a *commercial dwelling* is a taxable supply. Broadly speaking, supplies of accommodation in a *dwelling* are excluded from the tax base because, if GST were applied to rents, owner-occupiers of residential dwellings would have a preference over tenants who reside in rental properties. The definition of *dwelling*, therefore, is intended to apply in circumstances that have a reasonable level of substitutability between renting and owning a home. This goal is not currently achieved owing to the potentially wide interpretation of the term *dwelling*. Moreover, the boundary between what constitutes a *dwelling* and a *commercial*

*dwelling* is not always clear and may not recognise newer accommodation types.

Amendments are made to the definitions of *dwelling* and *commercial dwelling* to clarify what types of accommodation fall within the ambit of the definitions and to ensure better alignment of the GST treatment of equivalent types of accommodation. The definition of *dwelling* is narrowed, thereby ensuring that the exemption from GST applies only in situations with a reasonable level of substitutability between renting and owning a house. The list of commercial dwellings is also revised and now includes types of accommodation such as homestays, farmstays, and serviced apartments.

#### *Certain transactions of non-profit bodies*

Differences in the accounting practices for GST can result in timing advantages being deliberately created when a registered person who accounts for GST on a payments basis makes a supply to a registered person who accounts on an invoice basis. The legislation requires GST-registered suppliers accounting for GST using the payments basis to use the invoice basis when the consideration payable for a supply of goods and services is \$225,000 or more and payment by the recipient is deferred.

An amendment is made to remove non-profit bodies from this requirement if they determine on the basis of reasonable information that the recipient is not a registered person and is not intending to use the goods and services at least until the full consideration is paid for the supply.

#### *Imported services*

The reverse charge rules for imported services operate on the assumption that output tax should be accounted for any non-taxable use of services consumed in New Zealand. The new apportionment rules will not apply when a registered person imports services that are not subject to the reverse charge and later uses those services for non-taxable purposes, creating an asymmetry between imported services and those supplied locally. An amendment incorporates the concepts of intended and actual taxable use into the reverse charge rules.

### *Other issues*

#### *Portfolio investment entities: future income and expenses*

When a PIE calculates amounts to be attributed to investors, no account is currently taken of future income or future expenditure or losses because the amounts are not then derived or incurred although they may be reflected in the PIE's unit price or shown in their financial statements. An amendment allows a PIE to take account of these amounts but only if the PIE values them in an appropriate manner and can reasonably estimate the quantum and timing of the income or liability. A credit impairment provision that is counted as such under NZIAS 39 may be included in the amendment as a future expenditure or loss.

#### *Approved issuer levy: treaty-related issues*

New Zealand has recently negotiated double tax agreements with Australia and the United States that introduce a full source-State exemption for certain interest payments. The exemption applies to interest arising in one State and beneficially owned by a bank or similar lending or finance business resident in the other State, provided the lender and borrower are unrelated. For interest arising in New Zealand, the exemption applies only if the borrower has paid approved issuer levy on the amount.

The amendments clarify the relationship between the new treaty provisions and domestic law rules for the levy. In particular, they make clear that a borrower can pay the levy in order to qualify for an exemption under a double tax double tax agreement. They also ensure a better fit between terminology used in the relevant tax treaties and the arrangements whereby a borrower chooses to pay the levy under domestic law.

#### *Emissions trading simplification*

A change has been made to the method of determining the entitlement of some industrial and agricultural businesses under the Climate Change Response Act 2002 to receive emissions units without paying for them. The income tax treatment of such units is being changed to take this into account. Under the Climate Change Re-

sponse Act 2002, an entitlement of an industrial business to emissions units, based on production, is now estimated at the beginning of each calendar year and calculated at the end of the year. The number of units transferred in the calendar year is based on the estimate. If the business's calculated entitlement for a year is greater than the estimate, extra units are transferred in the next calendar year. For an agricultural business, there is no estimated entitlement. Instead, a final entitlement is calculated at the end of the calendar year.

For income tax purposes, an entitlement for a business is now determined for each income year, based on the periods of overlap between the income year and calendar years. If the calculated entitlement for an income year exceeds the number of units that the business receives in the income year, the difference is called the *unit shortfall* for the income year. For the purposes of income tax, the business is treated as holding a number of units corresponding to the unit shortfall for the period from the end of the income year until the extra units are provided.

#### *National Provident Fund and life insurance rules*

The Board of Trustees of the National Provident Fund administers a number of defined contribution and benefit superannuation schemes. These schemes are closed to new members. In general, the benefits provided by the schemes come within the scope of the definition of *life insurance* in the Income Tax Act 2007. However, the Act expressly provides that the Fund is not a life insurer for schemes that receive employer contributions, with the result that the schemes are taxed as superannuation schemes. This exemption does not apply to schemes that were not subject to employer contributions.

An amendment is made to remove the Fund's schemes from the scope of the life insurance rules, leaving them to be taxed as superannuation schemes. The change should reduce the Fund's costs connected with complying with its income tax obligations.

#### *Allowing deductions from joint bank accounts*

When a taxpayer fails to pay income tax, interest, or a civil penalty, the Commissioner has the power to require a third party, such as a bank, to deduct funds from an amount payable to the taxpayer. Sim-

ilarly worded provisions exist in the Tax Administration Act 1994, the Goods and Services Act 1985, and the Gaming Duties Act 1971. No express provision is made for a deduction from a joint bank account.

The Child Support Act 1991 however contains a deduction provision expressly referring to money held in joint bank accounts. The distinction leads to the inference that this authority is required in express terms.

Amendments are made to the deduction provisions in the Goods and Services Act 1985, the Tax Administration Act 1994, and the Gaming Duties Act 1971 to allow a deduction from a joint bank account when the person is able to draw on the account without the signature of the other person.

#### *Clarifying the application of the cap on shortfall penalties*

Under the Tax Administration Act 1994, a shortfall penalty for not taking reasonable care or for taking an unacceptable tax position can be limited to \$50,000. It was never intended that this restriction apply to disclosures made at the time the tax position is taken. If this were the case, taxpayers could take tax positions that did not meet the applicable standard knowing the maximum penalty they would face would be a penalty of \$50,000.

An amendment is made to clarify that the restriction applies to a voluntary disclosure made before an audit or investigation is started and does not apply if the taxpayer makes a disclosure at the time the tax position is taken.

#### *Auckland Local Government issues*

The Local Government (Auckland Transitional Provisions) Act 2010 is amended to provide that if, at the date the legislation takes effect, Watercare Services Limited or a council-controlled organisation is liable for a debt under the financial arrangements rules to the Auckland Council, the Council is treated for tax purposes as paying an amount equal to the debt to Watercare Services or the organisation, as applicable.

### *Donee status*

The list of recipients of charitable or other public benefit gifts is amended to insert in the list the Bouganville Library Trust, the Branch Foundation, and the Mutima Charitable Trust, and to change the name of Volunteer Service Abroad (Incorporated) to Te Tuao Tawahi Volunteer Service Abroad Incorporated.

### *KiwiSaver remedial amendments*

Amendments to the KiwiSaver Act 2006 and the Tax Administration Act 1994 allow certain personal information to be shared by Inland Revenue and a person's scheme provider. This information is limited to the person's address, date of birth, and tax file number. Currently Inland Revenue can give information to providers only under the default allocation process. This change will improve the accuracy of contact details held by both scheme providers and Inland Revenue, allowing the communication of vital KiwiSaver information to members.

Several remedial amendments to the wind-up provisions in the Kiwi-Saver Act 2006 ensure that full effect is given to the policy intent. These amendments clarify the date on which a member is allocated to a new scheme, add a requirement for scheme providers to supply the tax file number they hold for transferring members, and remove the requirement to send additional information packs to existing members.

### *Remedial amendments*

The Remedial Rewrite Advisory Panel has recommended amendments as follows:

- (a) to clarify in the FBT rules that a benefit arising from the provision of accommodation or an accommodation allowance provided in relation to an office or position is income:
- (b) to clarify the treatment of amalgamating companies who are parties to a financial arrangement:
- (c) to clarify that a shareholder has a tax credit for an FDP credit attached to a dividend if they are either non-resident or are a resident for whom the dividend is exempt income:
- (d) to clarify that a qualifying company does not have an ICA debit or FDPA debit for loss of shareholder continuity except



in the circumstances described in the qualifying company rules when the company loses qualifying status:

- (e) to clarify that an employee becomes liable for PAYE obligations only if the employer defaults in its obligation to withhold PAYE:
- (f) to confirm the recommendation of the panel that drafting changes to the dividend and fringe benefit tax provisions applying to low or nil interest loans of shareholder-employees should be retained as intended changes — those drafting changes clarified which dividends derived by a shareholder or employee may be applied against the balance of those loans.

An amendment clarifies that CPI indexation increases of the family tax credit correctly account for non-indexation increases for CPI movements (for example, the 2.02% increase to the family tax credit provided by the Taxation (Budget Measures) Act 2010 that compensates for movements caused by the rise in GST in that Act).

An amendment restores the requirement for an employer to file a return for PAYE income payments on a monthly basis.

A base maintenance remedial amendment is made to reflect the original policy intent in the wording of the on-premises exemption in the FBT rules.

Minor amendments are made to replace the term *derived from New Zealand* with the phrase *having a source in New Zealand* for consistency with the rewritten source rules.

Further minor amendments fix a drafting error related to the defined term *investor interest* in the PIE rules, omit certain compare notes in the memorandum account rules, and correct punctuation, cross references, items in formulas, and update some terminology in both the Income Tax Act 2007 and the Income Tax Act 2004.

### *Consequential amendments*

A schedule is inserted to change references in the Inland Revenue Acts from the Injury Prevention, Rehabilitation, and Compensation Act 2001 to the Accident Compensation Act 2001.

### **Clause by clause analysis**

*Clause 1* gives the title of the Act.

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

## **Part 1**

### **Amendments to Goods and Services Tax Act 1985**

*Clause 4* amends *section 2* to insert definitions for the new apportionment rules, replaces the definitions of *commercial dwelling* and *dwelling*, and inserts a definition of *land* for zero-rated transactions.

*Clause 5* amends *section 3A* to update the business test terminology.

*Clause 6* amends *section 5* to clarify particular circumstances in which a supply of land is zero-rated.

*Clause 7* amends *section 8* to incorporate the new adjustment rules into the reverse charge mechanism for imported services.

*Clause 8* amends *section 9* to clarify the time of supply for certain imported services when some particular criteria are met.

*Clause 9* amends *section 10* to provide the value of a supply of land when the recipient of the supply is treated as the supplier.

*Clause 10* amends *section 11* to provide for a rate of tax of 0% to be charged on a supply of land when both the supplier and recipient of the supply are registered persons.

*Clause 11* amends *section 17* to clarify that, for a special return, all actions must be completed by the required date.

*Clause 12* amends *section 19D* to provide that a non-profit body is not required to account on an invoice basis for GST on large supplies if it reasonably believes that the recipient is not a registered person.

*Clause 13* amends *section 20* to insert new apportionment rules for calculating amounts of tax payable based on the taxable use of the goods or services, and to clarify the tax treatment when a non-profit body acquires goods or services other than for making exempt supplies.

*Clause 14* replaces *sections 21 to 21H* to provide the detailed provisions for making adjustments under the new apportionment rules, including transitional provisions.

*Clause 15* amends *section 24* to set out the information required in relation to supplies involving a nominated person when a tax invoice is not available.

*Clause 16* amends *section 43* to provide that, in the case of a registered person who defaults in paying GST, an amount payable to them includes an amount held in a joint bank account.

*Clause 17* amends *section 51B* to treat a recipient of a supply of land as registered if they have misrepresented, mistakenly or otherwise, that they are registered.

*Clause 18* inserts a new *section 60B* to clarify the treatment of transactions involving nominated persons.

*Clause 19* amends *section 75* to set out the record-keeping requirements for a supply of land that is zero-rated.

*Clause 20* inserts a new *section 78F* to set out a supplier's liabilities in relation to a supply of land that is zero-rated.

## **Part 2**

### **Amendments to Income Tax Act 2007**

*Clause 22* amends *section CB 36* as part of the changes to the treatment of emissions units.

*Clause 23* amends *section CD 24* to correct a cross reference.

*Clause 24* amends *section CE 1* to clarify the nature of a benefit arising from the provision of accommodation or an accommodation allowance provided in relation to an office or position.

*Clause 25* amends *section CH 5* to update cross-references and the business test terminology.

*Clause 26* amends *section CR 3* to update source rules terminology.

*Clause 27* amends *section CV 17* to update source rules terminology.

*Clause 28* amends *section CX 23* as a base maintenance remedial amendment to restore the effect of certain wording used in relation to the on-premises exemption in the FBT rules in the Income Tax Act 1994.

*Clause 29* amends *section DB 2* to provide a deduction for output tax accounted for under the reverse charge mechanism for imported services, and consequentially on the introduction of the new apportionment rules for GST.

*Clause 30* amends *section DB 46* to correct a cross reference.

*Clause 31* amends *section DV 2* to update the defined terms list.

*Clause 32* amends *section DV 5* to update the defined terms list.

*Clause 33* amends *section ED 1* as part of the changes to the treatment of emissions units.

*Clause 34* replaces *section ED 1B* to provide for the income tax treatment of certain emissions units transferred under the Climate Change Response Act 2002 for a price of zero. The replacement is required because the method of calculating entitlements and transferring emissions units under that Act has been changed.

*Clause 35* amends *section EE 54* consequentially on the introduction of the new apportionment rules for GST.

*Clause 36* amends *section EG 1* to update source rules terminology.

*Clause 37* amends *section EY 11* to exclude 3 defined benefit schemes administered by the National Provident Fund from the scope of the life insurance rules, allowing the schemes to be taxed under the superannuation rules.

*Clause 38* amends *section EY 48* to update source rules terminology.

*Clause 39* amends *section FE 1* to update source rules terminology.

*Clause 40* amends *section FF 4* as a rewrite remedial to ensure that a conduit tax relief company is not required to make the thin cap interest allocation required by the provision.

*Clause 41* amends *section FO 18* to clarify the treatment of a financial arrangement on the amalgamation of companies.

*Clause 42* amends *section HD 29* to update source rules terminology.

*Clause 43* inserts a new *section HL 19B* to clarify the treatment of provisions made by PIEs for future income or future expenditure or loss.

*Clause 44* amends *section HM 3* to correct the use of a defined term.

*Clause 45* amends *section HM 5* to update the defined terms list.

*Clause 46* amends *section HM 6* to correct a grammatical error.

*Clause 47* amends *section HM 15* to correct the use of a defined term.

*Clause 48* amends *section HM 23* to correct the use of a defined term.

*Clause 49* amends *section HM 31* to correct the use of a defined term.

*Clause 50* amends *section HM 35* to correct the use of a defined term.

*Clause 51* inserts a new *section HM 35B* to clarify the treatment of provisions made by PIEs for future income or future expenditure or loss.

*Clause 52* amends *section HM 43* to correct the use of a defined term.

*Clause 53* amends *section HM 47* to correct the use of a defined term.

*Clause 54* amends *section HM 48* to correct the use of a defined term.

*Clause 55 amends section HM 61 to correct the use of a defined term.*

*Clause 56 amends section HM 62 to correct the use of a defined term.*

*Clause 57 amends section HZ 2 to update source rules terminology.*

*Clause 58 amends section LC 4 to correct a cross reference.*

*Clause 59 amends section LC 12 to update source rules terminology.*

*Clause 60 amends section LF 8 to clarify that the section applies in relation to a dividend paid to a shareholder who is a non-resident or for whom the income is exempt income.*

*Clause 61 amends section LJ 1 to clarify that the section applies to a person who derives income from an overseas source that is also income with a source in New Zealand and to update source rules terminology.*

*Clause 62 amends section LS 4 to correct the use of a defined term.*

*Clause 63 amends section ME 1 to correct the representation of a formula.*

*Clause 64 amends section MF 7 as a consequence of the Taxation (Budget Measures) Act 2010.*

*Clause 65 amends section OB 41 as a rewrite remedial to clarify that the section applies to qualifying companies only in certain circumstances.*

*Clause 66 amends section OC 24 as a rewrite remedial to clarify that the section applies to qualifying companies only in certain circumstances.*

*Clause 67 omits the compare notes from sections OZ 7 to OZ 17.*

*Clause 68 amends section RD 4 to clarify when an employee's obligation under the section arises.*

*Clause 69 amends section RD 5 to correct a cross reference.*

*Clause 70 amends section RD 22 to clarify when the employer is required to provide the employer monthly schedule.*

*Clause 71 amends section RD 36 as a consequence of the amendment to the FBT rules regarding employment-related loans.*

*Clause 72 amends section RE 2 to update source rules terminology.*

*Clause 73 amends section RF 2 to update source rules terminology.*

*Clause 74 amends section YA 1, affecting the definitions of *boutique investor class*, *derived from New Zealand*, *emissions unit short-fall year*, *foreign non-dividend income*, *income derived from New**

*Zealand, non-filing taxpayer, source in New Zealand, and transfer of value.*

*Clause 75 amends schedule 32 to list three new entities with donee status, and to change the name of Volunteer Service Abroad (Incorporated) to Te Tuao Tawahi Volunteer Service Abroad Incorporated.*

*Clause 76 amends schedule 51 to insert a new entry related to shareholder-employees.*

### **Part 3**

#### **Amendments to Tax Administration Act 1994**

*Clause 78 amends section 3 affecting the definitions of late payment penalty and tax payable.*

*Clause 79 amends section 32M to align the rules related to approved issuer levy with treaty obligations to clarify how a person chooses to pay approved issuer levy in relation to a security.*

*Clause 80 amends section 39 to correct the representation of a formula.*

*Clause 81 amends section 81 for certain information able to be provided under the KiwiSaver Act 2006.*

*Clause 82 amends section 85F to correct a defined term.*

*Clause 83 amends section 139AA to update a cross reference.*

*Clause 84 amends section 141JAA to clarify the provision under which particular voluntary disclosure is made.*

*Clause 85 amends section 142 to update a cross reference.*

*Clause 86 amends section 157 to provide that, in the case of a person who defaults in paying tax, an amount payable to them by another person includes an amount held in a joint bank account.*

### **Part 4**

#### **Amendments to Income Tax Act 2004**

*Clause 88 amends section CE 1 to clarify the nature of a benefit under a share purchase agreement and what is included in a benefit provided by way of accommodation.*

*Clause 89 amends section CX 20 as a base maintenance remedial amendment to restore the effect of certain wording used in relation*

to the use of fringe benefits, the on-premises exemption, under the Income Tax Act 1994.

*Clause 90* amends *section DB 2* to provide a deduction for output tax accounted for under the reverse charge mechanism for imported services.

*Clause 91* inserts a new *section HL 19B* to clarify the treatment of provisions made by PIEs for future income or future expenditure or loss.

*Clause 92* amends *section ND 1E* as a consequence of the amendment to the FBT rules regarding employment-related loans.

*Clause 93* amends *schedule 22A* to insert a new entry related to shareholder-employees.

## **Part 5** **Amendments to KiwiSaver Act 2006**

*Clause 95* amends *section 50* to clarify the notice requirements on default allocations.

*Clause 96* amends *section 51* to clarify on a winding up, the date of a member's allocation to a new scheme.

*Clause 97* amends *section 57* to clarify what happens after notice is given that a person must transfer to another scheme.

*Clause 98* amends *section 59* to remove the requirement for the Commissioner to send additional information packs to existing members.

*Clause 99* amends *section 173* to add a requirement for a scheme provider to supply the tax file number of transferring members.

*Clause 100* inserts a new *section 220B* to allow certain personal information to be shared by Inland Revenue and a person's scheme provider.

## **Part 6** **Amendments to Stamp and Cheque Duties Act 1971**

*Clause 102* replaces *section 86I* to align the rules related to approved issuer levy with treaty obligations on an application for approved issuer levy status.

*Clause 103* amends *section 86L* to align the rules related to approved issuer levy with treaty obligations when an amount is refunded.

## **Part 7** **Amendments to other legislation**

### *Income Tax Act 1994*

*Clause 104* amends *section ED 4* to provide a deduction for output tax accounted for under the reverse charge mechanism for imported services.

### *Gaming Duties Act 1971*

*Clause 105* amends *section 12L* to provide that, in the case of a person who defaults in paying gaming duty, an amount payable to them by another person includes an amount held in a joint bank account.

### *Local Government (Auckland Transitional Provisions) Act 2010*

*Clause 106* amends *section 83* to add provisions for tax purposes related to the treatment of a debt under the financial arrangements rules for which Watercare Services Ltd or a council-controlled organisation is liable to the Council at the date the legislation takes effect.

### *Student Loan Scheme (Charitable Organisations) Regulations 2006*

*Clause 107* amends the *schedule* to change the references to Volunteer Service Abroad (Incorporated) to Te Tuao Tawahi Volunteer Service Abroad Incorporated.

### *Health Entitlement Cards Regulations 1993*

*Clause 108* amends *regulation 2* to correct a cross reference.

### *Inland Revenue Acts*

*Clause 109* inserts a *schedule* to make consequential changes to the Inland Revenue Acts following the change to the title of the Accident Compensation Act 2001.

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*Hon Peter Dunne*

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Government Bill

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

- 1 Title**  
This Act is the Taxation (GST and Remedial Matters) Act **2010**.
- 2 Commencement**
  - (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in this section. 5

- (2) **Section 104** is treated as coming into force on 1 January 2005.
- (3) **Sections 88, 89, 90, 92, and 93** are treated as coming into force on 1 April 2005.
- (4) **Section 91** is treated as coming into force on 1 October 2007. 5
- (5) **Section 11** is treated as coming into force on 30 November 2007.
- (6) **Sections 23, 24, 28, 29(1), 30, 40, 41, 43, 58, 60, 63, 65, 66, 67, 68, 69, 70, 71, 74(9), 76, 80, 83, 85, and 108** are treated as coming into force on 1 April 2008. 10
- (7) **Section 64** is treated as coming into force on 1 October 2008.
- (8) **Section 82** is treated as coming into force on 6 October 2009.
- (9) **Sections 31, 32, 37, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 62, and 74(2) and (4)** are treated as coming into force on 1 April 2010. 15
- (10) **Sections 22, 33, and 34** are treated as coming into force on 1 July 2010.
- (11) **Sections 79, 102, and 103** come into force on 1 August 2010.
- (12) **Section 106** comes into force on 31 October 2010. 20
- (13) **Sections 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 17, 18, 19, 20, 25, 29(2) and (3), 35, and 75(1)(b), (c), and (d)** come into force on 1 April 2011.

## Part 1

### Amendments to Goods and Services Tax Act 1985 25

- 3 Goods and Services Tax Act 1985**  
**Sections 4 to 20** amend the Goods and Services Tax Act 1985.

### 4 Interpretation 30

- (1) The following amendments are made to section 2(1).
- (2) The following is inserted in its appropriate alphabetical order:  
 “**adjustment period**, for a supply of goods or services to which **sections 8(4B)(b), 9(2)(h), 20(3C) to (3I), and 21**

**to 21G** apply, means a first or subsequent adjustment period referred to in **section 21F(2)**.”

- (3) The definition of **commercial dwelling** is replaced by the following:

“**commercial dwelling**—

5

“(a) means—

“(i) a hotel, motel, homestay, farmstay, bed and breakfast establishment, inn, hostel, or boardinghouse:

“(ii) a serviced apartment or other accommodation managed or operated by a third party for which services in addition to the supply of accommodation are provided and in relation to which a resident does not have exclusive possession: 10

“(iii) a convalescent home, nursing home, rest home, or hospice: 15

“(iv) a camping ground:

“(v) premises of a similar kind to those referred to in **subparagraphs (i) to (iv)**:

“(vi) premises other than a dwelling; and 20

“(b) excludes—

“(i) a hospital except to the extent to which the hospital is a residential establishment:

“(ii) a dwelling situated in a retirement village or rest home if the consideration paid or payable for the supply of accommodation in the dwelling is for the right to occupy the dwelling.” 25

- (4) The definition of **dwelling** is replaced by the following:

“**dwelling**, for a person,—

“(a) means premises— 30

“(i) that the person occupies as their principal place of residence; and

“(ii) of which the person has exclusive possession; and

“(b) includes any appurtenances belonging to or used with the premises; and 35

“(c) excludes a commercial dwelling.”

- (5) The following is inserted in its appropriate alphabetical order:

- “**land**, in **sections 11(1)(mb), 21D, 21F(4), 75(3B), and 78F**,—
- “(a) includes—
- “(i) an estate or interest in land:
- “(ii) a right that gives rise to an interest in land: 5
- “(iii) an option to acquire land or an estate or interest in land:
- “(b) does not include—
- “(i) a mortgage:
- “(ii) a lease of a dwelling:” 10
- (6) The following are inserted in their appropriate alphabetical order:
- “**percentage actual use** is defined in **section 21F(1)(a)** for the purposes of **sections 8(4B)(b), 9(2)(h), and 21 to 21G**:
- “**percentage difference** is defined in **section 21F(1)(c)** for the purposes of **sections 21 to 21G**: 15
- “**percentage intended use** is defined in **section 21F(1)(b)** for the purposes of **sections 8(4B)(b), 20(3G), and 21 to 21G**:
- “**previous actual use** has the meaning given in **section 21B(b)(i)**.” 20
- (7) **Subsections (2) to (6)** apply to taxable supplies made on or after 1 April 2011.
- 5 Meaning of input tax**
- (1) Section 3A(1)(a) and (b) are replaced by the following:
- “(a) tax charged under section 8(1) on a supply of goods or services acquired by the person: 25
- “(b) tax levied under section 12(1) on goods entered for home consumption under the Customs and Excise Act 1996 by the person:”
- (2) Section 3A(2)(c) is replaced by the following: 30
- “(c) the goods acquired by the person for making taxable supplies are either—
- “(i) not charged with tax at the rate of 0% under section 11A(1)(q) or (r); or
- “(ii) charged with tax at the rate of 0% under section 11A(q) or (r) and, before the acquisition, have 35



never been owned or used by the person or an associated person.”

- (3) Section 3A(4A) is repealed.

## **6 Meaning of term supply**

- (1) Section 5(15) is replaced by the following: 5  
 “(15) When a principal place of residence is included in a supply, the supply of the residence is deemed to be a separate supply from the supply of any other real property included in the supply.”
- (2) After section 5(21), the following are added:  
 “(22) In relation to a supply to which subsection (2) applies, if the supply by the first person would be zero-rated under **section 11(1)(mb)**, the second person must zero-rate the supply in the same way. 10  
 “(23) In relation to a supply to which **section 11(1)(mb)** applies, if the recipient of the supply has provided incorrect information, whether mistakenly or otherwise, that they are a registered person when in fact at the time of supply they are not a registered person, the recipient is treated as if they were a supplier making a supply that is chargeable with tax under section 8(1).” 15
- (3) **Subsections (1) and (2)** apply to taxable supplies made on or after 1 April 2011. 20

## **7 Imposition of goods and services tax on supply**

- (1) In section 8(4B)(b) is replaced by the following:  
 “(b) the recipient of the supply—  
     “(i) estimates at the time of acquisition that the percentage intended use of the services is less than 95%; or 25  
     “(ii) determines at the end of an adjustment period that the percentage actual use of the services is less than 90%; and”. 30
- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011.

## **8 Time of supply**

- (1) In section 9(2)(g), “takes place.” is replaced by “takes place:” and the following is added: 35

“(h) if **section 8(4B)(b)(ii)** applies, the supply is treated as having been made on the first day in the adjustment period when the percentage actual use of the services falls below 90%.”

- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011. 5

### 9 Value of supply of goods and services

- (1) After section 10(7A), the following is inserted:

“(7B) If goods and services are treated as supplied by a person under **section 5(23)**, the value of the supply is an amount equal to the consideration for the supply first made to the recipient.” 10

- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011.

### 10 Zero-rating of goods

- (1) After section 11(1)(m), the following is inserted: 15

“(mb) the supply wholly or partly consists of land, being a supply—

“(i) made by a registered person to another registered person who acquires the goods with the intention of using them for making taxable supplies; and 20

“(ii) that is not a supply of land intended to be used as a principal place of residence of the recipient of the supply or a person associated with them under section 2A(1)(c); or”.

- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011. 25

### 11 Special returns

- (1) In section 17(1B), “A return that a person is required to furnish to the Commissioner under subsection (1) must be furnished on or before” is replaced by “The actions required of a person under subsection (1)(a) to (c) must be completed, on or before” 30

- (2) **Subsection (1)** applies to taxable periods ending on or after 30 November 2007.

**12 Invoice basis for supplies over \$225,000**

After section 19D(2), the following is inserted:

- “(2B) Subsection (1) does not apply if the supplier is a non-profit body that determines on the basis of reasonable information that, at the time of supply, the recipient— 5
- “(a) is not a registered person; and
- “(b) is either—
- “(i) not intending to use the goods and services for the purposes of carrying on a taxable activity; or
- “(ii) intending to use the goods and services for the purposes of carrying on a taxable activity but only after the full consideration for the supply is paid to the supplier.” 10

**13 Calculation of tax payable**

- (1) Section 20(3)(e) is replaced by the following: 15
- “(e) any amount calculated under **subsections (3F) to (3I)** and **sections 21C(1) and (3)(a)**, and **21E**; and”.
- (2) After section 20(3A), the following is inserted:
- “(3C) For the purposes of subsection (3), input tax may be deducted only to the extent to which the goods or services are used for making taxable supplies. **Subsection (3D)** overrides this subsection. 20
- “(3D) A registered person is not required to apportion input tax in an adjustment period if they make both taxable and exempt supplies and have reasonable grounds to believe that the total value of their exempt supplies will not be more than the lesser of— 25
- “(a) \$90,000;
- “(b) 5% of the total consideration for all their taxable and exempt supplies for the adjustment period. 30
- “(3E) The method used to calculate the amount that may be deducted on acquisition is set out in **subsections (3C) to (3I)**. The rules for calculating adjustments are set out in **sections 21 to 21G**.
- “(3F) In determining the extent to which goods or services are used for making taxable supplies, a person must estimate at the time of acquisition how they intend to use the goods or services, choosing a determination method that provides a fair and rea- 35

sonable result. The determination is expressed as a percentage of the total use.

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

full input tax deduction × percentage intended use.

“(3H) In the formula in **subsection (3G)**,—

“(a) **full input tax deduction** is the total amount of input tax to which the person would be entitled if they acquired the goods or services solely for making taxable supplies: 5

“(b) **percentage intended use** has the meaning set out in **section 21F(1)(b)**. 10

“(3I) For a supply to which **section 11(1)(mb)** applies, the recipient must,—

“(a) on acquisition,—

“(i) identify the nominal amount of tax (the **nominal GST component**) that would be chargeable under section 8(1); and 15

“(ii) determine the extent to which they intend to use the goods as described in **subsection (3F)**; and

“(iii) account for output tax under section 20(3) for the proportion of the nominal GST component for any non-taxable use of the goods; and 20

“(b) for later adjustment periods, make adjustments under the apportionment rules set out in **sections 21 to 21G** in relation to the taxable supply referred to in **paragraph (a)**. 25

“(3J) For the purposes of section 3A(1) and (2), to the extent to which a non-profit body acquires goods or services other than for making exempt supplies, the supply is treated as acquired for making taxable supplies.”

(3) In section 20(4)(b)(ii), “applies.” is replaced by “applies; or,” and the following is added: 30

“(c) in the case of a registered person who is required to account for tax payable under **section 21C(1) and (3)(b)**.”

(4) After section 20(4), the following is inserted: 35

“(4B) A person who is treated under **section 5(23)** as a supplier of goods under **section 11(1)(mb)** is denied a deduction under subsection (3) in relation to the supply.”

(5) **Subsections (1) to (4)** apply to taxable supplies made on or after 1 April 2011. 5

#### **14 Sections 21 to 21H replaced**

(1) Sections 21 to 21H are replaced by the following:

##### **“21 Adjustments for apportioned supplies**

“(1) A registered person must ascertain at the end of an adjustment period whether an adjustment is required to be made for any percentage difference in a supply of goods or services for the period in relation to the actual use of those goods or services for making taxable supplies. 10

“(2) Despite **subsection (1)**, the person is not required to make an adjustment if— 15

“(a) **section 20(3D)** applies to them:

“(b) the taxable value of the goods or services is less than \$5,000:

“(c) the difference between the percentage intended use on acquisition and the percentage actual use for the relevant adjustment period is less than 10%, but this paragraph does not apply if the adjustment amounts to more than \$1,000. 20

“(3) If the threshold in **subsection (2)(c)** is exceeded in an adjustment period in relation to a supply of goods or services, the person must make an adjustment for any percentage difference in the supply in all later adjustment periods. 25

“(4) An adjustment arises on the last day of the relevant adjustment period.

##### **“21A When adjustments required 30**

A registered person must, at the end of an adjustment period,—

“(a) identify the percentage actual use of the goods or services in making taxable supplies in the period; and

“(b) compare the percentage actual use with percentage intended use or previous actual use, as applicable; and 35

- “(c) if a percentage difference arises and **section 21(2)(c)** does not apply, make an adjustment for any percentage difference for the adjustment period.

“**21B Adjustments for first and subsequent adjustment periods**

For the purposes of **section 21A(b)**,— 5

- “(a) for the first adjustment period applying to the goods or services, the person must compare the percentage intended use of the goods or services with their percentage actual use:

- “(b) for a subsequent adjustment period, the person must compare the percentage actual use of the goods or services with— 10

- “(i) their percentage actual use in an earlier period that is the most recent period in which an adjustment has been made (the **previous actual use**): 15

- “(ii) their percentage intended use, if no adjustment has been made in an earlier period.

“**21C Calculating amount of adjustment**

- “(1) If a percentage difference arises for an adjustment period, a registered person must make a positive or negative adjustment for the period of an amount calculated using the formula— 20

full input tax deduction × percentage difference.

- “(2) In the formula,—

- “(a) **full input tax deduction** is the total amount of input tax to which the person would be entitled if they acquired the goods or services solely for making taxable supplies: 25

- “(b) **percentage difference** has the meaning set out in **section 21F(1)(c)**.

- “(3) For the purposes of **subsection (1)**,—

- “(a) if the adjustment is positive and the percentage actual use is more than the person’s percentage intended use or previous actual use, as applicable, the person is entitled to an additional amount of input tax under **section 20(3)(e)**: 30

“(b) if the adjustment is negative and the percentage actual taxable use is less than the person’s percentage intended use or previous actual use, as applicable, the person must treat the amount as a positive amount of output tax under **section 20(4)(c)**. 5

“**21D Concurrent uses of land**

“(1) This section applies when a registered person uses all or part of an area of land during an adjustment period for making concurrent taxable and non-taxable supplies. The percentages determined under this section apply for the purposes of **section 21A**. 10

“(2) This section does not apply if the Commissioner agrees that the registered person may use another calculation method.

“(3) The extent to which the land is used for making taxable supplies is calculated as a percentage using the formula— 15

$$\frac{\text{consideration for taxable supply}}{\text{total consideration for supply}} \times 100.$$

“(4) In the formula in **subsection (3)**,—

“(a) **consideration for taxable supply** is,—

“(i) on a disposal of the land in the adjustment period, the amount derived; or

“(ii) the market value of the land at the time of making the adjustment: 20

“(b) **total consideration for supply** is the sum of the amount referred to in **paragraph (a)** and the amount of—

“(i) all rental income derived from the land since the land was acquired; or 25

“(ii) the market value of rental income that would have been derived since the land was acquired if the land had been used for this purpose.

“(5) For the purposes of **subsection (4)**, if the person disposes of the land to an associated person, or if the amount of rental income is not an arm’s length amount, **subsection (4)(a)(i) and (b)(i)** do not apply, and the amount of the consideration is measured under **subsection (4)(a)(ii) and (b)(ii)**. 30

“(6) If a person is required to estimate the extent of taxable use of the land under this section and the land has at any time been used in a month solely for making non-taxable supplies, the person must calculate the percentage use for the adjustment period on a month by month basis, calculated using the formula— 5

$$\frac{\text{months}}{\text{total months}} \times \text{result under } \mathbf{\textit{subsection (3)}}.$$

“(7) In the formula in **subsection (6)**,—

“(a) **months** is the number of months since acquisition in which all or part of the land is used to some extent for making taxable supplies: 10

“(b) **total months** is the total number of months since acquisition.

**“21E Treatment on disposal**

“(1) This section applies when a registered person—

“(a) acquires goods or services in relation to which they do not have a full input tax deduction, taking into account any adjustments made to input tax in adjustment periods after acquisition; and 15

“(b) subsequently disposes, or is treated as disposing, of the goods or services in the course or furtherance of a taxable activity. 20

“(2) The person must make a final adjustment to input tax of an amount calculated using the formula—

$$\text{tax fraction} \times \text{consideration} \times \left[ 1 - \frac{\text{actual deduction}}{\text{full input tax deduction}} \right]$$

“(3) For the purposes of the formula,—

“(a) **tax fraction** has the meaning given in section 2(1): 25

“(b) **consideration** is the amount of consideration received, or treated as received, for the supply:

“(c) **actual deduction** is the amount of deduction already claimed, taking into account adjustments made up to the date of disposal: 30



“(d) the amount, when added to any deduction already claimed, must not be more than the amount of the **full input tax deduction** on acquisition referred to in **section 21C(2)**.

“**21F Definitions and requirements for apportioned supplies and adjustment periods** 5

“(1) For the purposes of this section and **sections 8(4B)(b), 9(2)(h), 20(3G), 21 to 21E, and 21G**,—

“(a) **percentage actual use**, for a registered person and an adjustment period,— 10

“(i) means the extent to which the goods or services are actually used by the person for making taxable supplies; and

“(ii) is calculated for the period that starts when the goods or services are acquired and finishes at the end of the relevant adjustment period; and 15

“(iii) is expressed as a percentage of total use:

“(b) **percentage intended use**, for a registered person, means the extent to which the goods or services are intended to be used by the person for making taxable supplies, estimated at the time of acquisition under **section 20(3F)** and expressed as a percentage of total use: 20

“(c) **percentage difference** means the difference between the percentage actual use determined under **paragraph (a)** and, as applicable,— 25

“(i) the percentage intended use determined under **paragraph (b)**; or

“(ii) for a subsequent adjustment period following a period in which a person has made an adjustment, the previous actual use of the goods or services in the earlier period. 30

“(2) For the purposes of this section and **sections 21 to 21E and 21G**,—

“(a) the first adjustment period is a period of at least 12 months that— 35

“(i) starts on the date of acquisition; and

- “(ii) ends on the date that corresponds to the person’s balance date described in section 15B(6):
- “(b) a subsequent adjustment period is a period of 12 months that—
- “(i) starts on the day after the end of an earlier adjustment period; and 5
- “(ii) ends on the last day of the equivalent taxable period in which the first adjustment period ended.
- “(3) The number of adjustment periods in which a registered person must determine whether an adjustment is required under **section 21A** may, as the person chooses, be limited to— 10
- “(a) one of the following based on the value of the goods or services, excluding GST:
- “(i) 2 adjustment periods for goods or services valued at more than \$5,000 but not more than \$10,000: 15
- “(ii) 5 adjustment periods for goods or services valued at more than \$10,000 but not more than \$500,000:
- “(iii) 10 adjustment periods for goods or services valued at more than \$500,000; or 20
- “(b) the relevant adjustment periods that is equal to the number of years for the estimated useful life of the relevant asset as determined under the Tax Depreciation Rates Determinations set by the Commissioner under section 91AAF of the Tax Administration Act 1994. 25
- “(4) **Subsection (3)** does not apply in relation to a supply of land.
- “(5) An election by a registered person under **subsection (3)** to limit the number of adjustment periods applying to goods or services acquired by them cannot subsequently be changed.
- “(6) Despite **subsection (3)** if, after making adjustments for goods or services for the number of adjustment periods, the person subsequently disposes, or is treated as disposing, of the relevant asset, they must make a final adjustment under **section 21E** in the taxable period in which the disposal occurs. 30
- “(7) If a person does not choose the number of adjustment periods for an apportioned supply, the limits set out in **subsection (3)(a)** apply. 35

**“21G Transitional accounting rules**

- “(1) This section applies in relation to goods or services acquired before 1 April 2011, when a registered person determines the extent to which goods or services are applied for the purposes of making supplies other than taxable supplies under sections 21A to 21H (the **old apportionment rules**) as they were before the enactment of the Taxation (GST and Remedial Matters) Act **2010**. 5
- “(2) The person must continue to apply the old apportionment rules in relation to the supply. 10
- “(3) Despite **subsection (2)**, the person may choose to apply **sections 20(3C) to (3I) and 21 to 21F** (the **new apportionment rules**) in relation to the supply by taking the following steps:
- “(a) first, the person must treat themselves as disposing of the goods or services and account for output tax under section 8(1) on the total market value of the supply at the time of the deemed disposal; and 15
- “(b) secondly, the person must treat themselves as acquiring the goods or services for the total market value referred to in **paragraph (a)** and— 20
- “(i) apply **section 20(3C) to (3I)** to calculate the amount that they may deduct on the deemed acquisition on the basis of an estimation of the intended use of the goods or services; and
- “(ii) for adjustment periods after the period in which the deemed acquisition occurred, apply **sections 21 to 21F** to calculate any adjustment arising in relation to the apportioned supply.” 25
- “(4) For the purposes of **subsection (3)(a)**, the person is not entitled to recover any amount of an adjustment made under section 21 of the old apportionment rules before any accounting for the supply is made under the new apportionment rules.” 30
- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011.

**15 Tax invoices** 35

- (1) After section 24(7), the following is inserted:

- “(7B) Despite subsections (1) and (3), if a tax invoice is not available in relation to a supply of goods to which **section 60B(3) to (5)** applies, the nominated person must maintain sufficient records to enable the following particulars to be ascertained:
- “(a) the name and address of the supplier: 5
  - “(b) the date on which payment for the supply was made:
  - “(c) a description of the goods supplied:
  - “(d) the consideration for the supply.”
- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011. 10

#### 16 Deduction of tax from payment due to defaulters

After section 43(1), the following is inserted:

- “(1B) For the purposes of the definition of **amount payable** in subsection (1), money that is on deposit or is deposited to the credit of a registered person includes money that— 15
- “(a) is held in a joint bank account in the name of the registered person and 1 or more other persons; and
  - “(b) can be withdrawn from the account by or on behalf of the registered person without a signature being required at the time of the withdrawal from, or on behalf of, the other person or persons.” 20

#### 17 Persons treated as registered

- (1) After section 51B(3), the following is added:
- “(4) For the purposes of this Act, in relation to a supply to which **section 11(1)(mb)** applies, a recipient who is treated as a supplier under **section 5(23)**— 25
- “(a) is treated as registered from the date of the supply; and
  - “(b) must apply under subsection (2) to the Commissioner for registration.”
- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011. 30

#### 18 New section 60B

- (1) After section 60, the following is inserted:

**“60B Nominated recipients of supplies**

- “(1) This section applies when a person (**person A**) enters into a contract to supply goods and services to another person (**person B**) who is the recipient of the supply under the contract, and person B directs person A to provide the goods to a nominated person (**person C**) who is not party to the contract. 5
- “(2) If person B pays the full consideration for the supply, the supply is treated as a supply from person A to person B and the existence of person C is ignored.
- “(3) If person C pays the full consideration for the supply, the supply is treated as a supply from person A to person C and the existence of person B is ignored. 10
- “(4) If person B and person C each pay part of the consideration for the supply, the supply is treated as a supply from person A to person B. However, person B and person C may agree in writing that the supply is to be treated as a supply made to person C, but no such agreement can be made if person B has claimed input tax in relation to the supply. 15
- “(5) Despite **subsections (2) to (4)**, if the registration status of person B differs from the registration status of person C, the supply must be treated as a supply from person A to person C. For the purposes of this subsection, registration status differs when— 20
- “(a) person B is a registered person and person C is not a registered person; or 25
- “(b) person C is a registered person and person B is not a registered person.
- “(6) Section 60 overrides this section.”
- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011. 30

**19 Keeping of records**

- (1) After section 75(3), the following is inserted:
- “(3B) For the purposes of **section 11(1)(mb)**, the supplier must maintain sufficient records to enable the following particulars in relation to the supply to be ascertained: 35
- “(a) the name and address of the recipient:
- “(b) the registration number of the recipient:

- “(c) a description of land:  
“(d) the consideration for the supply.”
- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011.
- 20 New section 78F** 5
- (1) After section 78E, the following is inserted:  
**“78F Liability in relation to supplies of land**  
“(1) This section applies in relation to a supply of goods to which **section 11(1)(mb)** applies.  
“(2) The supplier must obtain the recipient’s registration details and confirm that— 10  
“(a) the recipient is acquiring the goods with the intention of using them for making taxable supplies:  
“(b) the supply is not a supply of land intended to be used as a principal place of residence of the recipient or a person associated with them under section 2A(1)(c). 15  
“(3) If, in the circumstances relating to the supply, the supplier is unable to obtain the details described in **subsection (2)**, the supplier must make sufficient inquiries into the recipient’s registration status and otherwise obtain all the information that the Commissioner requires in relation to a supply of land. 20  
“(4) Having met the requirements of **subsections (2) and (3)**, the supplier is not liable for tax on the supply under section 20(4) in a case of mistake or misrepresentation by the recipient.  
“(5) If the actions of both the supplier and the recipient mean that the requirements of this section are not met, the Commissioner may determine which party is liable for tax on the supply.” 25  
(2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011.

## Part 2

30

### Amendments to Income Tax Act 2007

- 21 Income Tax Act 2007**  
**Sections 22 to 76** amend the Income Tax Act 2007.

- 22 Disposal of emissions units**
- Section CB 36(7), other than the heading, is replaced by the following:
- “(7) The person is treated as selling a unit that is not a forest land emissions unit for an amount equal to the unit’s market value 5 if the person—
- “(a) surrenders the unit when it has a value of zero; and
- “(b) has transferred the unit under Part 4, subpart 2 of the Climate Change Response Act 2002 at a price of zero.”
- 23 Returns of capital: on-market share cancellations** 10
- (1) In section CD 24(2)(a)(i), “section CD 29” is replaced by “section CD 40”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 24 Amounts derived in connection with employment** 15
- (1) Section CE 1(1)(c) is repealed.
- (2) After section CE 1(1), the following is inserted:
- “Benefit of accommodation*
- “(1B) The market value of the following benefits provided to a person is income of the person if the benefit is provided in relation 20 to an office or position held by them:
- “(a) the provision of accommodation:
- “(b) the provision of an accommodation allowance instead of accommodation.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income 25 years.
- 25 Adjustment for GST**
- (1) In section CH 5(1), “An amount calculated under sections 21F and 21G” is replaced by “An adjustment taken into account under section 20(3)(e)”. 30
- (2) Section CH 5(2), other than the heading, is replaced by the following:
- “(2) This section does not apply to an adjustment made in relation to a capital asset.”

- (3) In section CH 5, in the list of defined terms, “taxable supply” is omitted.
- (4) **Subsections (1) and (2)** apply to taxable supplies made on or after 1 April 2011.
- 26 Income of non-resident general insurer** 5
- (1) In section CR 3(1), “derived from New Zealand” is replaced by “having a source in New Zealand”.
- (2) In section CR 3, in the list of defined terms,—
- (a) “derived from New Zealand” is omitted:
- (b) “source in New Zealand” is inserted. 10
- 27 Non-resident film renters**
- (1) In section CV 17(2), “derived from New Zealand by the non-resident person” is replaced by “that have a source in New Zealand”.
- (2) In section CV 17, in the list of defined terms,— 15
- (a) “derived from New Zealand” is omitted:
- (b) “source in New Zealand” is inserted.
- 28 Benefits provided on premises**
- (1) In section CX 23(1), “received or used” is replaced by “used or consumed” in each place where it appears. 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 29 Goods and services tax**
- (1) In section DB 2(2), “a supply of goods or services that section 21 or 21I(1) to (3)” is replaced by “a supply of goods or services that section 5B, 21, or 21I(1) to (3)”. 25
- (2) Section DB 2(2) is replaced by the following:
- “*When subsection (2B) applies*
- “(2) **Subsection (2B)** applies when a registered person is charged output tax in relation to— 30
- “(a) a supply of goods and services that section 5B of the Goods and Services Tax Act 1985 treats them as making:



- “(b) an apportionment of input tax made in relation to the supply under **section 20(3C) to (3I)** of that Act:
- “(c) an adjustment made in relation to the supply under **sections 21 to 21G** of that Act.
- “*Deduction* 5
- “(2B) The person is allowed a deduction for the amount but only to the extent to which—
- “(a) they are allowed a deduction for expenditure that they incur in acquiring the goods or services; or
- “(b) they are allowed a deduction for an amount of depreciation loss for the goods or services.” 10
- (3) Section DB 2(3), other than the heading, is replaced by the following:
- “(3) **Subsection (2)** does not apply to an adjustment made in relation to a capital asset.” 15
- (4) In section DB 2, in the defined terms list, “taxable supply” is omitted.
- (5) **Subsection (1)** applies for the 2008–09 and later income years.
- (6) **Subsections (2) and (3)** apply to taxable supplies made on or after 1 April 2011. 20
- 30 Avoiding, remedying, or mitigating effects of discharge of contaminant**
- (1) In section DB 46(1)(b)(i), “schedule 19, part B” is replaced by “schedule 19, in either part A or B”. 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 31 Transfer of expenditure to master fund**
- In section DV 2, in the defined terms list, “investor interest” is omitted. 30
- 32 Investment funds: transfer of expenditure to master funds**
- In section DV 5, in the defined terms list, “investor interest” is omitted.

**33 Valuation of excepted financial arrangements**

(1) Section ED 1(7B)(a) is replaced by the following:

“(a) an emissions unit transferred under section 64, or Part 4, subpart 2, of the Climate Change Response Act 2002 in an income year for no payment of a price, and to which **section ED 1B** does not apply, has a value of zero for the period beginning with the transfer and ending before the end of the income year.”

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

**34 Section ED 1B replaced**

Section ED 1B is replaced by the following:

**“ED 1B Valuation of emissions units issued for zero price**

*“What this section applies to*

“(1) This section applies to emissions units held by a person in an income year that—

“(a) are transferred to the person under Part 4, subpart 2, of the Climate Change Response Act 2002 at a price of zero; and

“(b) have been held continuously by the person from the time of the transfer; and

“(c) have not been valued under either of **subsections (4)(a) and (8)(a)** before the income year; and

“(d) are not forest land emissions units; and

“(e) are not replacement forest land emissions units; and

“(f) are not fishing quota emissions units.

*“Value of units transferred to person if no earlier emissions unit shortfall year*

“(2) If an emissions unit is transferred to the person in the income year and there is no earlier income year that is an emissions unit shortfall year for the person under **subsections (9) and (10)**, the emissions unit is assigned a value of zero at the time of the transfer.

*“Value of units transferred to person in income year after emissions unit shortfall year*

“(3) If an earlier income year is an emissions unit shortfall year for the person immediately before an emissions unit (the **transferred unit**) is transferred to the person in the income year, the

value of the transferred unit at the time of the transfer is given by the application of the paragraphs in **subsection (4)** in alphabetical order to transferred units until all the transferred units are assigned a value.

*“Valuation method at transfer for transferred units”* 5

“(4) If emissions units are transferred to the person in an income year when there is a unit shortfall under **subsections (9) and (10)** for an earlier emissions unit shortfall year,—

“(a) for each emissions unit shortfall year in date order, transferred units, up to the number corresponding to the unit shortfall relating to the emissions unit shortfall year, are each assigned a value equal to the market value of an emissions unit at the end of the emissions unit shortfall year: 10

“(b) transferred units are each assigned a value equal to zero. 15

*“Value of units with zero value immediately before end of income year”*

“(5) If the value of an emissions unit (the **revalued unit**) held by the person immediately before the end of the income year is zero, the value of the revalued unit at the end of the year is given by the application of the paragraphs in **subsection (8)** in alphabetical order to revalued units until all the revalued units are assigned a value. 20

*“Limit on application of subsection (8)(a)”*

“(6) The maximum number of units valued under **subsection (8)(a)** for the income year is the greater of zero and the number calculated using the formula— 25

unit entitlement – disposals at zero value.

*“Definition of items in formula”*

“(7) In the formula,—

“(a) **unit entitlement** is the total for the income year of amounts for each calendar year ending 31 December that overlaps the income year, each amount being the final allocation entitlement under section 83 of the Climate Change Response Act 2002, or the allocation entitlement under section 85 of that Act, that the person would have for the period of overlap between the cal- 30 35

- endar year and the income year if the period of overlap were treated as a year for the purposes of that Act:
- “(b) **disposals at zero value** is the number of emissions units disposed of by the person in the income year that had a value of zero at the disposal. 5
- “*Valuation method at end of income year for revalued units*
- “(8) If the person holds revalued units immediately before the end of the income year, the units are each assigned a value—
- “(a) equal to the market value of an emissions unit at the end of the income year: 10
- “(b) equal to zero.
- “*Emissions unit shortfall year*
- “(9) If the number of units assigned a market value for an income year under **subsection (8)(a)** is less than the maximum number given by **subsection (6)** for the income year, at the end of the income year— 15
- “(a) the income year is an **emissions unit shortfall year** and has 2 numbers (the **unit shortfall** and the **unit shortfall value**) associated with it:
- “(b) the unit shortfall relating to the emissions unit shortfall year is the difference between the maximum number given by **subsection (6)** for the income year and the number of zero value units assigned a market value under **subsection (8)(a)** for the income year: 20
- “(c) the unit shortfall value relating to the emissions unit shortfall year is the unit shortfall multiplied by the market value of an emissions unit at the end of the income year. 25
- “*Reductions in unit shortfall and unit shortfall value*
- “(10) When an emissions unit held by a person is assigned a value under **subsection (4)(a)** in relation to a year that is an emissions unit shortfall year for the person,— 30
- “(a) the unit shortfall relating to that year is reduced by the number of emissions units assigned a value in relation to that year: 35
- “(b) the unit shortfall value relating to that year is reduced by an amount equal to the number of emissions units

assigned a value in relation to that year multiplied by the value assigned to each of those emissions units:

- “(c) the year ceases to be an emissions unit shortfall year, if the unit shortfall relating to the year is reduced to zero.

“*Unit shortfall values treated as values of additional emissions units for purposes of adjustments*” 5

- “(11) For the purposes of sections CH 1 and DB 49 (which relate to adjustments for values of excepted financial arrangements), the person is treated as holding at the end of the income year additional emissions units with a value equal to the total of the unit shortfall values relating to emissions unit shortfall years for the person. 10

“Defined in this Act: amount, emissions unit, emissions unit shortfall year, fishing quota emissions units, forest land emissions units, income year, replacement forest land emissions units, year”.

15

### 35 Cost: GST

- (1) Section EE 54(3) and (4) are replaced by the following:

“*Deductions from output tax*

- “(3) The item’s cost is reduced by the amount of any adjustment taken into account in the income year under **section 20(3)(e)** of the Goods and Services Tax Act 1985. 20

“*Adjustments for output tax*

- “(4) The item’s cost is increased by the amount of output tax charged in the income year as a result of—

“(a) an apportionment of input tax made in relation to the supply under **section 20(3C) to (3I)** of that Act: 25

“(b) an adjustment made in relation to the supply under **sections 21 to 21G** of that Act.”

- (2) In section EE 54, in the list of defined terms, “taxable supply” is omitted. 30

- (3) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011.

### 36 Election to use balance date used in foreign country

- (1) In section EG 1(10), in the definition of **foreign source income**, “that is not derived from New Zealand” is replaced by “that does not have a source in New Zealand”. 35

- (2) In section EG 1, in the list of defined terms,—
- (a) “derived from New Zealand” is omitted:
  - (b) “source in New Zealand” is inserted.
- 37 Superannuation schemes providing life insurance**
- (1) Section EY 11(5) is replaced by the following: 5
- “*Nature of funds*
- “(5) At all times in the income year, the fund must be 1 of the following kinds:
- “(a) a fund established by an employer, or a group of employers who are associated, to provide benefits only to persons who are employees of, or related by employment to, such an employer, or to another associated employer who agrees after the fund’s establishment to make contributions to it: 10
  - “(b) a fund constituted under the Government Superannuation Fund Act 1956 that provides benefits only to persons who are employees of, or related by employment to, an employer who agrees or is required to contribute, or on whose behalf contributions are made, to the fund: 15
  - “(c) a fund constituted under the National Provident Fund Act 1950, the National Provident Fund Restructuring Act 1990, or the National Provident Fund Restructuring Amendment Act 1997 that has as its trustee the Board of Trustees of the National Provident Fund.” 20
- (2) **Subsection (1)** applies for the 2010–11 and later income years. 25
- 38 Non-resident life insurers with life insurance policies in New Zealand**
- (1) In section EY 48(2), the subsection heading is replaced by “*Income having source in New Zealand*”. 30
- (2) In section EY 48(2), “derived from New Zealand” is replaced by “that has a source in New Zealand”.
- (3) In section EY 48, in the list of defined terms,—
- (a) “income derived from New Zealand” is omitted:
  - (b) “source in New Zealand” is inserted. 35

**39 What this subpart does**

- (1) In section FE 1(1), “derived from New Zealand” is replaced by “that has a source in New Zealand”.
- (2) In section FE 1, in the list of defined terms,—
- (a) “income derived from New Zealand” is omitted: 5
- (b) “source in New Zealand” is inserted.

**40 Threshold for application of interest apportionment rule**

- (1) In section FF 4(1)(a), “\$50,000 or more; or” is replaced by “\$50,000 or more; and”.
- (2) **Subsection (1)** applies for the 2008–09 and later income 10 years.

**41 When amalgamating companies are parties to financial arrangement**

- (1) Section FO 18(2) to (4) is replaced by the following:
- “*Financial arrangement discharged* 15
- “(2) The financial arrangement is, for the purposes of section EW 31 (Base price adjustment formula), treated as having been discharged immediately before the amalgamation. The consideration for the discharge is as follows:
- “(a) on a resident’s restricted amalgamation,— 20
- “(i) if the amalgamating company is solvent, the consideration is the accrued balance for the financial arrangement:
- “(ii) if the amalgamating company is insolvent but is likely to be able to meet its obligations under the financial arrangement, the consideration is the accrued balance for the financial arrangement: 25
- “(iii) if the amalgamating company is insolvent and is unlikely to be able to meet its obligations under the financial arrangement, the consideration is 30 the market value of the financial arrangement on the date of the amalgamation:
- “(b) on an amalgamation other than a resident’s restricted amalgamation, the consideration is the market value of the financial arrangement on the date of the amalgamation. 35

- “When subsection (4) applies*
- “(3) **Subsection (4)** applies when an amalgamating company that is the borrower under the financial arrangement—
- “(a) is solvent; or
- “(b) is insolvent but is likely to be able to meet its obligations under the financial arrangement. 5
- “No remission*
- “(4) The other party to the financial arrangement is not regarded as remitting an amount in excess of the consideration treated as paid for the discharge under **subsection (2)(a)(i) or (ii) or (b)**, as applicable, merely by virtue of the discharge. 10
- “When subsection (6) applies*
- “(5) **Subsection (6)** applies when an amalgamating company that is the borrower under the financial arrangement is insolvent and is unlikely to meet its financial obligations under the financial arrangement. 15
- “Market value treated as paid*
- “(6) For the purposes of section EW 31, the financial arrangement is treated as discharged immediately before the amalgamation and the market value of the financial arrangement is treated as being paid by the amalgamating company to the other party to the financial arrangement. 20
- “Amount remitted*
- “(7) For the purposes of **subsection (6)**, the other party to the financial arrangement is treated as having remitted an amount equal to the excess over market value of the outstanding accrued balance for the financial arrangement, *see* section FO 20.” 25
- (2) In section FO 18, in the list of defined terms, “pay” is inserted.
- (3) **Subsection (1)** applies for the 2008–09 and later income years. 30
- 42 Persons buying goods from overseas**
- (1) In section HD 29(2)(c), “derived from New Zealand” is replaced by “having a source in New Zealand”.
- (2) In section HD 29, in the list of defined terms,— 35
- (a) “derived from New Zealand” is omitted:



(b) “source in New Zealand” is inserted.

#### 43 New section HL 19B

(1) After section HL 19, the following is inserted:

“**HL 19B Treatment of certain provisions made by portfolio tax rate entity** 5

“*When this section applies*

“(1) This section applies for the purposes of section HL 19 when—

“(a) a portfolio tax rate entity—

“(i) is likely to have future income:

“(ii) makes a provision for future expenditure or loss; 10  
and

“(b) the amount—

“(i) is reflected in the entity’s valuation of portfolio investor interests; or

“(ii) if **subparagraph (i)** does not apply, is shown in 15  
its financial statements.

“*Future amounts*

“(2) For the purposes of determining an amount for a portfolio allocation period under section HL 19(3), a portfolio tax rate entity may take account of an amount of future income or future expenditure or loss that is— 20

“(a) for future income, an amount that, when derived, would be class assessable income under section HL 19(4)(a):

“(b) for future expenditure or loss,—

“(i) an expense likely to be incurred by the entity 25  
in the tax year in which the portfolio allocation period falls, or within 93 days after the end of the tax year; and

“(ii) an amount that, when incurred, would be a class deduction under section HL 19(4)(b). 30

“*Reasonable estimation*

“(3) For the purposes of **subsection (2)**, the entity must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by—

“(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and 35

“(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate.

“*Credit impairment provisions*

“(4) A portfolio tax rate entity may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in **subsection (2)(b)(i)** does not apply in relation to a credit impairment provision. 5

“Defined in this Act: amount, deduction, income, NZIAS 39, portfolio allocation period, portfolio investor interest, portfolio tax rate entity, tax year” 10

(2) **Subsection (1)** does not apply to a portfolio tax rate entity in relation to a tax position taken by the entity—

(a) in the period from 1 April 2008 to the date of Royal assent of this Act; and 15

(b) in relation to the attribution of income to investors in the entity and the determination of net amounts in section HL 19; and

(c) relying on the rules related to portfolio investment entities as they were before the amendment made by **subsection (1)**. 20

#### 44 Foreign PIE equivalents

In section HM 3(e), “investors’ interests” is replaced by “investor interests”.

#### 45 What is an investor class? 25

In section HM 5, in the defined terms list, “investor interest” is omitted.

#### 46 Intended effects for multi-rate PIEs and investors

(1) In section HM 6(2)(b), “for which the PIE has a tax liability” is replaced by “for which the PIE has no tax liability”. 30

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

**47 Maximum investors' interests**

- (1) In section HM 15, in the section heading, “investors’ interests” is replaced by “investor interests”.  
 (2) In section HM 15(1), “total interests of investors in the class” is replaced by “total investor interests in the class”. 5  
 (3) In section HM 15, in the list of defined terms, “investor interest” is inserted.

**48 Exceptions for foreign PIE equivalents**

In section HM 23(1)(b), “investors’ interests” is replaced by “investor interests”. 10

**49 Rules for multi-rate PIEs**

In section HM 31(1)(c), “investors’ interests” is replaced by “investor interests of investors”.

**50 Determining net amounts and taxable amounts**

- (1) In section HM 35(8)(a), “investors’ interests” is replaced by “investor interests”. 15  
 (2) **Subsection (1)** applies for the 2010–11 and later income years.

**51 New section HM 35B**

- (1) After section HM 35, the following is inserted: 20

**“HM 35B Treatment of certain provisions made by multi-rate PIEs**

*“When this section applies*

- “(1) This section applies for the purposes of section HM 35 when— 25  
 “(a) a multi-rate PIE—  
     “(i) is likely to have future income:  
     “(ii) makes a provision for future expenditure or loss;  
         and  
 “(b) the amount—  
     “(i) is reflected in the PIE’s valuation of portfolio investor interests; or 30  
     “(ii) if **subparagraph (i)** does not apply, is shown in its financial statements.

*“Future amounts*

- “(2) For the purposes of determining a net amount under section HM 35(2) for an attribution period, a multi-rate PIE may take account of an amount of future income or future expenditure or loss that is— 5
- “(a) for future income, an amount that, when derived, would be assessable income under section HM 35(3)(a):
- “(b) for future expenditure or loss,—
- “(i) an expense likely to be incurred by the PIE in the tax year in which the attribution period falls, or within 93 days after the end of the tax year; and 10
- “(ii) an amount that, when incurred, would be a deduction under section HM 35(3)(b).

*“Reasonable estimation*

- “(3) For the purposes of **subsection (2)**, the PIE must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by— 15
- “(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and 20
- “(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate.

*“Credit impairment provisions*

- “(4) A multi-rate PIE may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in **subsection (2)(b)(i)** does not apply in relation to a credit impairment provision. 25

“Defined in this Act: amount, attribution period, deduction, income, investor interest, multi-rate PIE, NZIAS 39, tax year” 30

- (2) **Subsection (1)** applies for the 2010–11 and later income years. However, **subsection (1)** does not apply to a multi-rate PIE in relation to a tax position taken by the PIE—
- (a) in the period from 1 April 2010 to the date of Royal 35  
assent of this Act; and

- (b) in relation to the attribution of income to investors in the PIE and the determination of net amounts in section HM 35; and
- (c) relying on the PIE rules as they were before the amendment made by **subsection (1)**. 5

## 52 Quarterly calculation option

- (1) In section HM 43(3) and (4), “an investor’s interest” is replaced by “the investor interest of an investor” in each place where it appears.
- (2) **Subsection (1)** applies for the 2010–11 and later income 10 years.

## 53 Calculation of tax liability or tax credit of multi-rate PIEs

- (1) In section HM 47(2)(a), “an interest” is replaced by “an investor interest”.
- (2) **Subsection (1)** applies for the 2010–11 and later income 15 years.

## 54 Adjustments to investors’ interests or to distributions

- (1) In section HM 48, in the section heading, “investors’ interests” is replaced by “investor interests”.
- (2) In section HM 48(1), in the introductory words before paragraph (a), “an adjustment to an investor’s interest” is replaced by “an adjustment to the investor interest of the investor”. 20
- (3) In section HM 48(1)(a), “the investor’s interest” is replaced by “the investor interest of the investor”.
- (4) **Subsections (1) to (3)** apply for the 2010–11 and later income 25 years.

## 55 Certain exiting investors zero-rated

- (1) In section HM 61(a), “the interest of the investor” is replaced by “the investor interest of the investor”.
- (2) **Subsection (1)** applies for the 2010–11 and later income 30 years.

**56 Exit levels for investors**

- (1) In section HM 62, “the investor’s interest” is replaced by “the investor interest of the investor”.
- (2) **Subsection (1)** applies for the 2010–11 and later income years. 5

**57 Trusts that may become complying trusts**

- (1) In section HZ 2(2), “that is derived from outside New Zealand, or derived from New Zealand” is replaced by “having a source outside New Zealand, or having a source in New Zealand”.
- (2) In section HZ 2, in the list of defined terms,— 10
- (a) “derived from New Zealand” is omitted:
- (b) “source in New Zealand” is inserted.

**58 Tax credits for transitional circumstances**

- (1) In section LC 4(1)(c), “subpart MB (Adjustment of net income for family scheme)” is replaced by “subpart MD, ME, or MZ (which relate to tax credits under the family scheme)”. 15
- (2) In section LC 4(1)(d), “subpart MB” is replaced by “subpart MD, ME, or MZ”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 20

**59 Assessment when person is non-resident**

- (1) In section LC 12(1)(b), “assessable income from New Zealand” is replaced by “assessable income having a source in New Zealand”.
- (2) In section LC 12, in the list of defined terms,— 25
- (a) “derived from New Zealand” is omitted:
- (b) “source in New Zealand” is inserted.

**60 Credits for persons who are non-resident or who receive exempt income**

- (1) Section LF 8(1), other than the heading, is replaced by the following: 30
- “(1) This section applies for a tax year when a company resident in New Zealand pays a dividend with an FDP credit attached to a person as shareholder if—

- “(a) the person is non-resident; or  
“(b) the person is resident in New Zealand and the dividend is exempt income other than under sections CW 9 to CW 11 (which relate to dividends that are exempt income).” 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 61 What this subpart does**
- (1) In section LJ 1(2)(a), “that is not derived from New Zealand” is replaced by “that does not have a source in New Zealand”. 10
- (2) In section LJ 1, in the list of defined terms,—  
(a) “derived from New Zealand” is omitted;  
(b) “source in New Zealand” is inserted.
- 62 Tax credits for certain exiting investors**
- In section LS 4(2), “investor’s interest” is replaced by “investor interest of the investor”. 15
- 63 Minimum family tax credit**
- (1) In section ME 1(2), the formula is replaced by the following:
- $$(\text{prescribed amount} - \text{net family scheme income}) \times \frac{\text{weekly periods}}{52}.$$
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20
- 64 Orders in Council**
- In section MF 7(1)(a)(i), “Consumer Price Index” is replaced by “Consumer Price Index that has not yet been taken into account by an increase”.
- 65 ICA debit for loss of shareholder continuity** 25
- (1) After section OB 41(3), the following is inserted:  
“*Qualifying companies*  
“(3B) This section does not apply to a qualifying company in circumstances other than those set out in section HA 18 (Treat-

- ment of dividends when qualifying company status ends), and that section overrides subsections (1) to (3).”
- (2) In section OB 41, in the defined terms list, “qualifying company” is inserted.
- (3) In section OB 41, in the compare note, “s ME 5(1)(i), (2)(h)” is replaced by “ss HG 13(6), ME 5(1)(i), (2)(h)”.
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years.
- 66 FDPA debit for loss of shareholder continuity**
- (1) After section OC 24(3), the following is inserted: 10  
*“Qualifying companies*  
 “(3B) This section does not apply to a qualifying company in circumstances other than those set out in section HA 18 (Treatment of dividends when qualifying company status ends), and that section overrides subsections (1) to (3).” 15
- (2) In section OC 24, in the defined terms list, “qualifying company” is inserted.
- (3) In section OC 24, in the compare note, “s MG 5(1)(i), (2)(g), (3), (4)” is replaced by “ss HG 13(6), MG 5(1)(i), (2)(g), (3), (4)”.
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years. 20
- 67 Subpart OZ—Terminating provisions**  
 In sections OZ 7 to OZ 17, the compare notes are omitted.
- 68 Payment of amounts of tax to Commissioner** 25
- (1) In section RD 4(2), “withheld and paid under subsection (1)” is replaced by “withheld under subsection (1)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 69 Salary or wages** 30
- (1) In section RD 5(1)(c)(v), “subsection (8)” is replaced by “subsection (9)”.



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

#### 70 Returns for amounts of tax paid to Commissioner

- (1) In section RD 22(2), “employer monthly schedule and” is omitted. 5
- (2) After section RD 22(2), the following is inserted:  
*“Employer monthly schedule*  
 “(2B) The employer or PAYE intermediary must provide the employer monthly schedule referred to in subsection (1) by the 5th day of the month following that in which they withhold an amount of tax for a PAYE income payment, or if the month is December, by the 15th day of January.” 10
- (3) In section RD 22(3) and (4), “subsection (2)” is replaced by “subsections (2) and **(2B)**” in each place where it appears.
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years. 15

#### 71 Repayment of employment-related loans

- (1) Section RD 36(2)(b) is replaced by the following:  
 “(b) is payable to the employee without any amount of tax withheld under the PAYE rules, the RWT rules, or the NRWT rules; and” 20
- (2) In section RD 36, in the list of defined terms,—  
 (a) “amount of tax”, “NRWT rules”, and “RWT rules” are inserted;  
 (b) “non-resident passive income” and “resident passive income” are omitted. 25
- (3) **Subsection (1)** applies for the 2008–09 and later income years.

#### 72 Resident passive income

- (1) In section RE 2(5)(f), “dividend derived from New Zealand” is replaced by “dividend that has a source in New Zealand”. 30
- (2) In section RE 2, in the list of defined terms,—  
 (a) “derived from New Zealand” is omitted;  
 (b) “source in New Zealand” is inserted.

**73 Non-resident passive income**

- (1) In section RF 2(1), “income derived from New Zealand by a non-resident consisting of” is replaced by “income having a source in New Zealand that a non-resident derives and that consists of”. 5
- (2) In section RF 2, in the list of defined terms,—
- (a) “derived from New Zealand” is omitted;
- (b) “source in New Zealand” is inserted.

**74 Definitions**

- (1) This section amends section YA 1. 10
- (2) In the definition of **boutique investor class**, in paragraph (d), “the interests of investors” is replaced by “the investor interests of investors”.
- (3) The definition of **derived from New Zealand** is repealed.
- (4) The following is inserted in its appropriate alphabetical order: 15
- “**emissions unit shortfall year**, for a person means an income year that—
- “(a) is an emissions unit shortfall year for the person under **section ED 1B(9)(a)** (Valuation of emissions units issued for zero price); and 20
- “(b) has not ceased to be an emissions unit shortfall year for the person under **section ED 1B(10)(c)**”.
- (5) The definition of **foreign non-dividend income** is replaced by the following: 25
- “**foreign non-dividend income** means income that—
- “(a) does not have a source in New Zealand; and
- “(b) is not a dividend”.
- (6) The definition of **income derived from New Zealand** is repealed.
- (7) In the definition of **non-filing taxpayer**, in paragraph (b), “derived from New Zealand” is replaced “having a source in New Zealand”. 30
- (8) In the definition of **source in New Zealand**, “New Zealand source)” is replaced by “New Zealand source) and section YZ 1 (Source rule for interest)”. 35
- (9) In the definition of **transfer of value**, in paragraph (b)(ii), “paragraph (a)” is replaced by “subparagraph (i)”.

- (10) **Subsections (2) and (4)** apply for the 2010–11 and later income years.
- (11) **Subsection (9)** applies for the 2008–09 and later income years.

**75 Schedule 32—Recipients of charitable or other public benefit gifts** 5

- (1) In schedule 32,—
- (a) after the entry for “Surf Aid International Incorporated”, an entry for “Te Tuao Tawahi: Volunteer Service Abroad Incorporated” is inserted: 10
- (b) after the entry for “The Band Aid Box”, an entry for “The Bouganville Library Trust” is inserted:
- (c) before the entry for “The Commonwealth Foundation”, an entry for “The Branch Foundation” is inserted:
- (d) after the entry for “The Leprosy Mission New Zealand Incorporated”, an entry for “The Mutima Charitable Trust” is inserted: 15
- (e) the entry for “The Volunteer Service Abroad (Incorporated)” is repealed.
- (2) **Subsection (1)(b)** applies for the 2011–12 to 2018–19 tax years. 20
- (3) **Subsection (1)(d)** applies for the 2011–12 to 2016–17 tax years.

**76 Schedule 51—Identified changes in legislation**

- (1) In schedule 51, before the entry for section FA 3(2), the following is inserted: 25

CD 39(9)(b), (c)	A dividend payable to a shareholder by a company when the amount is applied under section CD 39(9)(a) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (2) In schedule 51, after the entry for MC 6, the following is inserted:

RD 36(2)	A dividend payable to a shareholder by a company when the amount is applied under section RD 36(1) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

### Part 3 Amendments to Tax Administration Act 1994

5

#### 77 Tax Administration Act 1994

**Sections 78 to 86** amend the Tax Administration Act 1994.

#### 78 Interpretation

- (1) This section amends section 3(1).
- (2) In the definition of **late payment penalty**, paragraph (b)(iv) is repealed. 10
- (3) The definition of **tax payable** is removed and reinserted in its correct alphabetical order after the definition of **tax paid**.

#### 79 Persons with approved issuer status

- (1) Section 32M(1) and (2) are replaced by the following: 15
- “(1) A person who borrows, has borrowed, or will borrow money is eligible to elect to pay approved issuer levy in relation to a security for the purposes of—
- “(a) the NRWT rules;
- “(b) an exemption under a double tax agreement. 20
- “(2) For the purposes of **subsection (1)**, the person elects to pay approved issuer levy in relation to a security by—
- “(a) either being an approved issuer or becoming an approved issuer under **subsection (2B)**; and
- “(b) applying under section 86G of the Stamp and Cheque Duties Act 1971 to register the security; and 25
- “(c) paying the amount of the levy for the security under section 86I of that Act.

“(2B) To become an approved issuer, the person must notify the Commissioner that they wish to have approved issuer status.”

(2) After section 32M(4), the following is inserted:

“(4B) If the Commissioner revokes a person’s approved issuer status under subsection (3) within 20 working days of having been notified under **subsection (2B)**, the revocation applies from the date of notification.”

(3) In section 32M(5), “for the purposes of the NRWT rules and Part 6B of the Stamp and Cheque Duties Act 1971” is replaced by “for the purposes of the NRWT rules, an exemption under a double tax agreement, and Part 6B of the Stamp and Cheque Duties Act 1971, as applicable”.

#### **80 Consequential adjustments on change in balance date**

(1) In section 39(5), the formula is replaced by the following:

$$\frac{365}{\text{income year days}} \times \text{taxable income.}$$

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

#### **81 Officers to maintain secrecy**

After section 81(4)(t), the following is added:

“(u) communicating to a person’s fund provider under **section 220B** of the KiwiSaver Act 2006 any information specified in that section for the purposes set out in the section.”

#### **82 Disclosure of information for verification of government screen production payment entitlement**

In section 85F(3), “large budget screen production grant” is replaced by “government screen production payment”.

#### **83 Non-electronic filing penalty**

(1) In section 139AA(1)(a), “section RD 22(2)” is replaced by “section RD 22(2) and **(2B)**”.

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

**84 Shortfall penalty for not taking reasonable care or for taking unacceptable tax position may not be more than \$50,000** 5

In section 141JAA(1), “if the taxpayer voluntarily discloses the shortfall,” is replaced by “if the taxpayer voluntarily discloses the shortfall under section 141G,”.

**85 Due date for payment of late filing penalty**

- (1) In section 142(1A), “section RD 22(2)(b)” is replaced by “**section RD 22(2B)**”. 10

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

**86 Deduction of tax from payments due to defaulters**

After section 157(10), the following is added: 15

- “(11) For the purposes of the definition of **amount payable** in subsection (10), money that is on deposit or is deposited to the credit of a taxpayer includes money that—

“(a) is held in a joint bank account in the name of the taxpayer and 1 or more other persons; and 20

“(b) can be withdrawn from the account by or on behalf of the taxpayer without a signature being required at the time of the withdrawal from, or on behalf of, the other person or persons.”

**Part 4** 25

**Amendments to Income Tax Act 2004**

**87 Income Tax Act 2004**

**Sections 88 to 93** amend the Income Tax Act 2004.

**88 Amounts derived in connection with employment**

- (1) Section CE 1(1)(c) is repealed. 30

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

- “Benefit of accommodation*
- “(1B) The market value of the following benefits provided to a person is income of the person if the benefit is provided in relation to an office or position held by them:
- “(a) the provision of accommodation: 5
- “(b) the provision of an accommodation allowance instead of accommodation.”
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.
- 89 Benefits provided on premises** 10
- (1) In section CX 20(1), “received or used” is replaced by “used or consumed” in each place where it appears.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
- 90 GST** 15
- (1) In section DB 2(2), “a supply of goods or services that section 21 or 21I(1) to 21I(3)” is replaced by “a supply of goods or services that section 5B, 21, or 21I(1) to (3)”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years. 20
- 91 New section HL 19B**
- (1) After section HL 19, the following is inserted:
- “HL 19B Treatment of certain provisions made by portfolio tax rate entity**
- “When this section applies* 25
- “(1) This section applies for the purposes of section HL 19 when—
- “(a) a portfolio tax rate entity—
- “(i) is likely to have future income:
- “(ii) makes a provision for future expenditure or loss; and 30
- “(b) the amount—
- “(i) is reflected in the entity’s valuation of portfolio investor interests; or
- “(ii) if **subparagraph (i)** does not apply, is shown in its financial statements. 35

*“Future amounts*

- “(2) For the purposes of determining an amount for a portfolio allocation period under section HL 19(3), a portfolio tax rate entity may take account of an amount of future income or future expenditure or loss that is— 5
- “(a) for future income, an amount that, when derived, would be class assessable income under section HL 19(4)(a):
- “(b) for future expenditure or loss,—
- “(i) an expense likely to be incurred by the entity in the tax year in which the portfolio allocation period falls, or within 93 days after the end of the tax year; and 10
- “(ii) an amount that, when incurred, would be a class deduction under section HL 19(4)(b). 15

*“Reasonable estimation*

- “(3) For the purposes of **subsection (2)**, the entity must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by— 15
- “(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and 20
- “(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate. 25

*“Credit impairment provisions*

- “(4) A portfolio tax rate entity may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in **subsection (2)(b)(i)** does not apply in relation to a credit impairment provision. 30

“Defined in this Act: amount, deduction, income, NZIAS 39, portfolio allocation period, portfolio investor interest, portfolio tax rate entity, tax year”.

- (2) **Subsection (1)** does not apply to a portfolio tax rate entity in relation to a tax position taken by the entity— 35
- (a) in the period from 1 October 2007 to the date of Royal assent of this Act; and



- (b) in relation to the attribution of income to investors in the entity and the determination of net amounts in section HL 19; and
- (c) relying on the rules related to portfolio investment entities as they were before the amendment made by **subsection (1)**. 5

## 92 Employment-related loans: repayment

- (1) Section ND 1E(2)(b) is replaced by the following:
  - “(b) is payable to the employee without any tax deduction under the PAYE rules, the RWT rules, or the NRWT rules; and”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years. 10

## 93 Schedule 22A—Identified policy changes

- (1) In schedule 22A, after the entry for section CB 9(1)(b), the following is inserted: 15

CD 28(9)(b)	A dividend payable to a shareholder by a company when the amount is applied under section CD 28(9)(a) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (2) In schedule 22A, after the entry for section FC 21, the following is added:

ND 1E(2)	A dividend payable to a shareholder by a company when the amount is applied under section ND 1E(1) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 20

## Part 5 Amendments to KiwiSaver Act 2006

- 94 KiwiSaver Act 2006**  
**Sections 95 to 100** amend the KiwiSaver Act 2006.
- 95 Commissioner provisionally allocates certain people to default KiwiSaver schemes and sends investment statement** 5
- (1) In section 50(4), in the words before the paragraphs, “a person if the Commissioner receives” is replaced by “a person when”.
- (2) In section 50(4)(a) “notice” is replaced by “the Commissioner receives notice”. 10
- (3) Section 50(4)(b) is replaced by the following:  
 “(b) the Commissioner receives notice under section 173(1)(b) that the person must transfer to another scheme on a scheme’s winding up and **paragraph (bb)** does not apply; or  
 “(bb) a scheme winds up, if that winding up is after the Commissioner receives notice under section 173(1)(b) that the person must transfer to another scheme on the scheme’s winding up; or”. 15 20
- (4) In section 50(4)(c) “notice” is replaced by “the Commissioner receives notice”.
- (5) In section 50(4)(d) “notice” is replaced by “the Commissioner receives notice”.
- 96 Completion of allocation to default KiwiSaver scheme if person does not choose his or her own KiwiSaver scheme** 25
- (1) After section 51(1), the following is inserted:  
 “(1B) Despite subsection (1), subsections (4) and (5) do not apply if **section 50(4)(b) or (bb)** applies. Instead, the allocation under section 50(3) is treated as completed on the day on which it occurs.” 30
- (2) In section 51(4)(b), “section 50(4)” is replaced by “section 50(4)(a), (c), or (d)”.

- 97 Involuntary transfers**  
 Section 57(1)(b) is replaced by the following:  
 “(b) the Commissioner has received notice under section 173(1)(b) that the person must transfer to another scheme on a scheme’s winding up and **paragraph (bb)** does not apply; or  
 “(bb) a scheme winds up, if that winding up is after the Commissioner has received notice under section 173(1)(b) that the person must transfer to another scheme on the scheme’s winding up; or”.
- 98 Commissioner must send information to involuntary transferees**  
 In section 59(a), “information pack” is replaced by “information pack, but not if section 57(1)(b) applies”.
- 99 Initial steps in winding up of KiwiSaver scheme**  
 In section 173(1)(b), “name” is replaced by “name, tax file number.”.
- 100 New section 220B**  
 Before the heading before section 221, the following is inserted:  
 “**220B Information sharing**  
 The Commissioner and a provider may, for the purposes of administering this Act or a KiwiSaver scheme, communicate to each other by electronic means a person’s name, address, date of birth, and tax file number.”

**Part 6**  
**Amendments to Stamp and Cheque**  
**Duties Act 1971**

- 101 Stamp and Cheque Duties Act 1971**  
**Sections 102 and 103** amend the Stamp and Cheque Duties Act 1971.

**102 Section 86I replaced**

Section 86I is replaced by the following:

**“86I Application of approved issuer levy and zero-rating**

- “(1) This section applies for the purposes of—
- “(a) the NRWT rules of the Income Tax Act 2007: 5
  - “(b) an exemption under a double tax agreement:
  - “(c) section 86J.
- “(2) Despite the NRWT rules, a payment of interest under a registered security is treated as paid by an approved issuer only to the extent to which— 10
- “(a) approved issuer levy in relation to the security is paid by or on behalf of the approved issuer; and
  - “(b) the amount of the levy, based on the leviable value of the registered security at the time of the payment of the interest, is paid— 15
    - “(i) at the rate set out in section 86J; and
    - “(ii) by the date set out in section 86K or 86KA or, subject to the payment of interest or penalties imposed under Part 7 or 9 of the Tax Administration Act 1994, by a later date.” 20

**103 Refund of levy paid in error or in excess**

Section 86L(2) is replaced by the following:

- “(2) For the purposes of the NRWT rules of the Income Tax Act 2007 or an exemption under a double tax agreement, as applicable, if an amount is refunded under subsection (1), the payment of interest to which the approved issuer levy relates is treated as not having been paid by an approved issuer in relation to a registered security.” 25

**Part 7****Amendments to other legislation** 30*Income Tax Act 1994***104 Accounting for goods and services tax**

In section ED 4(3) of the Income Tax Act 1994, “under section 21 or section 21I(1) to 21I(3)” is replaced by “under section 5B, 21, or 21I(1) to (3)”. 35

*Gaming Duties Act 1971***105 Deduction of duty from payments due to defaulters**

After section 12L(1B) of the Gaming Duties Act 1971, the following is inserted:

- “(1C) For the purposes of subsection (1), an amount payable or becoming payable includes money that—
- “(a) is held in a joint bank account in the name of the defaulter and 1 or more other persons; and
  - “(b) can be withdrawn from the account by or on behalf of the defaulter without a signature being required at the time of the withdrawal from, or on behalf of, the other person or persons.”

*Local Government (Auckland Transitional Provisions) Act 2010***106 Tax**

After section 83(18) of the Local Government (Auckland Transitional Provisions) Act 2010, the following are added:

- “(19) If an Order in Council under section 37(1) of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 provides that Watercare Services Limited is liable for a debt to the Auckland Council as at 1 November 2010, for the purposes of the financial arrangements rules as defined in section YA 1 of the Income Tax Act 2007, the Auckland Council is treated as paying to Watercare Services Limited on 1 November 2010 consideration equal to the debt.
- “(20) If a council-controlled organisation of the Auckland Council is established by the Transition Agency under section 19C of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 and is liable for a debt to the Auckland Council as at 1 November 2010, for the purposes of the financial arrangements rules as defined in section YA 1 of the Income Tax Act 2007, the Auckland Council is treated as paying to the council-controlled organisation on 1 November 2010 consideration equal to the debt.”

*Student Loan Scheme (Charitable Organisations) Regulations 2006*

**107 Schedule—Charitable organisations for purposes of section 38AE(1)(b) of Student Loan Scheme Act 1992**

In the schedule to the Student Loan Scheme (Charitable Organisations) Regulations 2006,—

- (a) after the entry for “Te Ora Hou Aotearoa Incorporated”, an entry for “Te Tuao Tawahi: Volunteer Service Abroad Incorporated” is inserted:
- (b) the entry for “Volunteer Service Abroad Inc” is repealed.

*Health Entitlement Cards Regulations 1993*

**108 Interpretation**

- (1) In the Health Entitlement Cards Regulations 1993, regulation 2, definition of **net income**, paragraph (d), “section EX 37(2) and (3) of the Income Tax Act 2007” is replaced by “section EX 43(2) and (3) of the Income Tax Act 2007”. 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

*Inland Revenue Acts*

20

**109 Consequential amendments to Inland Revenue Acts: ACC change**

The provisions in the enactments listed in the schedule are amended by replacing “Injury Prevention, Rehabilitation, and Compensation Act 2001” by “Accident Compensation Act 2001”. 25

**Schedule**  
**Consequential amendments to Inland Revenue Acts: ACC change**

s 109

Enactment	Provision	Definitions
<i>Income Tax Act 2007</i>	CF 1(2)(f)-(h) in each place where it appears  CW 33(1)(b)  CW 35(a)  DF 4(1)  EF 3(5) in each place where it appears  EW 13(2)  EZ 35(9)(c)(i)  LB 7(1)(a)(i)  LB 8(1)(a)  LC 5(4) in each place where it appears  MD 9(3)(e), (4)(b), (c) in each place where it appears  OB 1(2)(e)  RA 22(2)(d)  YA 1, in the definition of—	<b>ACC</b>  <b>accident compensation earnings-related payment, paragraph (d)</b>  <b>combined tax and earner-related payment, paragraph (b)(iii)</b>

Enactment	Provision	Definitions
<i>Tax Administration Act 1994</i>	schedule 4, part I, clause 1	<p><b>exempt interest</b>, paragraph (f)</p> <p><b>income from employment</b>, paragraph (b)(iv)</p> <p><b>personal service rehabilitation payment</b>, paragraph (a)</p>
	3, in the definition of—	<b>tax law</b> , paragraph (d)
	4A(3)(aa)	
	33A(1)(a)(iiic), (2)(d)(i)(B) in each place where it appears	
	33C	
	81(1)(a)(iia), (3)(a)(ii) in each place where it appears	
	82(9), in the definition of—	<b>earnings related compensation</b> , paragraph (c)
	85E(1), (3) in each place where it appears	
	86(1), (2), (5)(a), (b), (f) in each place where it appears	
	142(1)(c)	
156A(2)		
157(10), in the definition of—	<b>income tax</b> , paragraph (b)	



Enactment	Provision	Definitions
	167(1), (2) 168(1) 169(1)	
<i>Goods and Services Tax Act 1985</i>	5(13), proviso, paragraph (b)  20(3)(d)(v)	
<i>KiwiSaver Act 2006</i>	4, in the definition of—	<b>salary or wages,</b> paragraph (a)(v)(B)