

Taxation (International Investment and Remedial Matters) Bill

Government Bill

Explanatory note

General policy statement

This bill continues the reform of the way in which the Income Tax Act 2007 applies to gains of New Zealand residents from income interests in overseas entities, or FIFs, and gains of foreign residents from interests in New Zealand companies. For New Zealand residents, different regimes apply to gains from a controlled foreign company (a CFC), which is a FIF controlled by New Zealand residents, and gains from a FIF that is not so controlled. The bill follows the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009, which changed the way in which a resident's "attributed CFC income" from a CFC is calculated.

The bill proposes major changes to the rules relating to residents' "FIF income" from FIFs that are not CFCs. It proposes a new method for calculating FIF income that is aligned with the current method for calculating attributed CFC income from a CFC. Two of the existing methods for calculating FIF income are abolished and the availability of the remaining methods for use by taxpayers is changed. The revaluation, at market value, of some inherited interests in FIFs is proposed.

The bill makes 2 changes to the thin capitalisation rules. The thin capitalisation rules limit the deductions allowed for interest payments

by members of a group of companies that contains a CFC or is controlled by non-residents. The bill introduces an optional test based on the ratio of deductible interest expenditure to net cash flow. It also changes the rules relating to the grouping, for the purposes of the thin capitalisation rules, of a registered bank owned by the Crown.

The bill introduces a zero rate for the approved issuer levy on payments made by approved issuers to non-residents under some debt instruments.

The Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 also made changes to aspects of the Income Tax Act 2007 that were inconsistent with the changed approach to calculating attributed CFC income. For example, the Act restricted the availability of new branch equivalent tax account debits and abolished the conduit tax relief regime. It did not, however, abolish branch equivalent tax accounts (BETAs) for companies or conduit tax relief accounts (CTRAs) for conduit tax relief companies. Such accounts were allowed to continue so that companies were not immediately deprived of benefits relating to transactions that took place before the new rules came into force.

The bill provides for the delayed abolition of BETAs for companies and for the abolition of CTRAs. It also makes some remedial amendments to changes already made to the CFC rules.

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-iirm-bill/overview>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>.

Methods of calculating income from foreign investment fund (FIF)

Background: further detail of CFC rules

The Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 introduced a distinction between income of a CFC that is an attributable CFC amount, such as interest or a royalty, and income that is not such an amount. Under the changed CFC rules, a resident receives no attributed CFC income from a CFC if less than 5% of the CFC's income consists of attributable CFC amounts. Such a CFC is called a "non-attributing active CFC". Generally, if a CFC has income that does not satisfy the test, a resident with an income interest in the CFC is treated as deriving attributed CFC income equal to a proportion of the attributable CFC amounts derived by the CFC. The rules contain exceptions for certain CFCs resident in Australia. Investors with income interests in such CFCs derive assessable income from them in the form of distributions and gains from the disposal of income interests that are held for sale. The nature of the income derived by those CFCs does not affect the tax treatment of income from income interests in them.

Methods for calculating FIF income

Changes proposed in this bill modify the rules for determining a resident's assessable income from income interests in FIFs that are not CFCs. The proposals reflect the changes already made to the rules for income interests in CFCs.

Currently, residents calculate their FIF income from an income interest in a FIF using 1 of 6 methods. The methods are the branch equivalent method, the accounting profits method, the fair dividend rate method, the cost method, the comparative value method, and the deemed rate of return method.

The branch equivalent method corresponds to the method used, before the changes to the CFC rules, in calculating attributed CFC income from a CFC. The bill proposes to replace the branch equivalent method with the attributable FIF income method, which depends on determining the attributable CFC amounts derived by the FIF. The new method is a modified version of the current method of calculating attributed CFC income. It differs from that method mainly in

the detail of determining whether the taxpayer needs to attribute income from a FIF that is part of a group of companies. Under the attributable FIF income method, an investor receives no FIF income from a FIF if less than 5% of the FIF's income consists of attributable CFC amounts. Otherwise, the investor is treated as deriving FIF income equal to a proportion of the attributable CFC amounts derived by the FIF. The method may be used by an investor who is not a portfolio investment entity and whose income interest in a FIF is more than 10%.

The bill proposes that the accounting profits method be abolished. It also proposes that the fair dividend rate method be the default method for income interests other than those for which the attributable FIF income method is used. The cost method may be used instead of the fair dividend rate method for an income interest, if the market value of the income interest is not available.

Under the proposed changes, investors are required to use the comparative value or deemed rate of return methods for income interests that produce returns similar to interest from a loan. Only natural persons and trustees are allowed to use those methods for other income interests in FIFs. If they choose to do so, they are not allowed to use the fair dividend rate method or cost method for any other income interest in a FIF.

None of the methods are required to be used for income interests in certain FIFs resident in Australia. These exceptions correspond to the exceptions in the CFC rules.

The bill also proposes that PIEs be required to use a FIF method for all their interests in foreign entities, including interests in CFCs. The requirement is prompted by the idea that a PIE's investment in a CFC should be treated consistently with small direct investments in the CFC by the individual investors in the PIE.

The above changes come into force on 1 July 2011 and apply for income years beginning on or after that date.

Revaluation of inherited FIF interests

Another proposal will result in more people having FIF income from inherited interests in FIFs. A person with attributing interests in FIFs does not have FIF income if the interests are valued at less than \$50,000. For the purposes of this exemption, the value of the inter-

ests is often their cost to the person. For people who have inherited interests in FIFs, the value may be zero or the cost of the interests to the person from whom the interests are inherited. As a consequence, people can own interests in FIFs having a significant market value but not derive FIF income, because the value of the interests is treated as being less than the \$50,000 threshold. Such a situation commonly involves attributing interests in FIFs that were grey list companies. Formerly, owners of such interests did not receive FIF income from them because the interests were not attributing interests. When the grey list exemption was abolished, people who had inherited their interests benefited from a different exemption. The bill proposes a revaluation to market value for interests in grey list companies inherited before 1 July 2007, when the grey list was abolished. The change comes into force on the day that the bill receives the Royal assent.

Thin capitalisation rules

Background

The thin capitalisation rules in the Income Tax Act 2007 limit the availability to a resident of deductions for interest payments on loans if the resident is part of a group that is controlled by non-residents or includes a controlled foreign company. The rules require the comparison of a New Zealand group, consisting of the resident and resident companies controlled by the same people, with a worldwide group, consisting of the resident and all companies controlled by the same people. The test compares a figure for the New Zealand group with the corresponding figure for the worldwide group. The calculation of the figures differs for: (a) a group controlled by non-residents; (b) a group controlled by residents; and (c) a group that includes a registered bank. For the first 2 types of group, the figures that are compared express the accounting value of debts as a proportion of the accounting value of assets. If the figures suggest that the New Zealand group has an excessive ratio of debt to assets in comparison with the worldwide group, the resident is treated as deriving an amount of income corresponding to the excessive deductions for interest payments.

*Alternative test: interest expenditure as
proportion of income*

Some resident companies have items of income-earning property, such as goodwill, that are not recognised as assets for accounting purposes but are nevertheless treated by lenders as valuable security for loans. The current thin capitalisation rules rely on accounting rules and so do not attribute any value to such property. They consequently give misleading results for groups containing such companies, producing high figures for the ratio of debts to assets. The bill proposes an alternative test that recognises such a possibility. The method may be chosen for a group that does not include a registered bank, is controlled by residents, and satisfies other requirements.

The proposed test requires the calculation of a figure expressing the deductible interest expenditure of a group as a proportion of an amount equal to the accounting net profit of the group, after adjustments that include the addition of deductible interest expenditure and of depreciation and amortisation, which do not affect cash flow. If the calculated figure for the New Zealand group exceeds a threshold determined from the calculated figure for the worldwide group, the person in the New Zealand group claiming the interest deductions is treated as deriving an amount of income determined from the amount by which the threshold is exceeded. If the figure for the New Zealand group does not exceed the threshold, the person's tax situation is not affected.

Test for group including state-owned bank

The thin capitalisation rules use a test for a group including a registered bank that is different from the tests for other groups, because a test relating the accounting value of debts to the accounting value of assets is not appropriate for a banking business. Changes to the thin capitalisation rules by the Taxation (Budget Measures) Act 2010 extended the application of the usual test, for a group controlled by residents, to all groups having a member that owns a CFC. One such group includes a state-owned registered bank that does not itself have interests in a CFC. Under the current rules, the registered bank must be included in the group to which the usual test will apply. The bill proposes that the registered bank and the group members associated with the banking business be separated from the rest of the group for the purposes of applying the thin capitalisation rules.

Both the new income-based test and the change to the grouping rules will be treated as having come into effect on 1 July 2009 and apply to income years beginning on or after that date.

Approved issuer levy

In general, residents who pay non-resident passive income to a non-resident are required to withhold non-resident withholding tax from the payment. There is an exception to this requirement for approved issuers, who may instead pay the approved issuer levy imposed by the Stamp and Cheque Duties Act 1971 on a payment of interest to a non-resident who is not associated with the approved issuer. Currently, section 86J of that Act provides for a rate of 2% for the approved issuer levy. The bill proposes that there be a rate of 0% for the approved issuer levy on payments of interest on securities meeting certain requirements. The requirements include that the securities have been offered to the public, are not asset-backed securities, and are either listed on an exchange registered under the Securities Market Act 1988 or were issued to a group of at least 100 persons, with no person or group of associated persons receiving 10% or more of the total securities.

The proposed changes come into effect on the day that the bill receives the Royal assent.

Abolition of BETAs for companies and CTRAs

Branch equivalent tax accounts are memorandum accounts used to keep track of the relationship between foreign dividend payments (FDPs), which are payments that a resident is required to make when receiving dividends from a foreign company, and the income tax liability arising from attributed CFC income of the resident from the foreign company. They are no longer required for companies under the new CFC and FIF regimes. For a resident company, dividends received from a foreign company are now exempt income and no attributed CFC income or FIF income now arises from income of a FIF that is not an attributable CFC amount or attributable FIF amount. The abolition of BETAs will be delayed to allow for delays in the calculation of income relating to income years before the changes to the international rules came into effect. The bill proposes to close BETAs for companies at the beginning of the first income year begin-

ning on or after 1 July 2012. Until then, debit balances in the BETA will be available to offset against attributed CFC income arising in or before the previous income year.

Conduit tax relief accounts are memorandum accounts used to keep track of the relief given to a resident company on tax liabilities for income that the resident receives from an associated foreign company and passes on to non-resident owners. The accounts are no longer required for companies under the new CFC and FIF regimes, as conduit tax relief was repealed for income years beginning on or after 1 July 2009. The abolition of CTRAs was postponed to allow for the payment of dividends from tax-relieved income. The bill proposes to abolish CTRAs from the first income year beginning on or after 1 July 2011.

Remedial amendments

The bill proposes various amendments to details of existing legislation governing gains by residents from FIFs and CFCs. The more significant are described below.

The Commissioner is currently able to issue a determination that an insurer is a non-attributing active CFC. The bill proposes that the authorising provision be amended to expressly give the Commissioner an ability to impose conditions for the application of the determination.

When the conduit tax relief regime was repealed, an anti-avoidance rule was inserted in the Income Tax Act 2007. The provision applied to arrangements that involved conduit tax relief credits, reduced the tax liability of resident shareholders, and were entered between the announcement of the repeal and the date of the repeal. The provision was not intended to apply, but may do so, to arrangements between resident holding companies in a chain of such companies for the benefit of their non-resident owners. An amendment is proposed to cater for such a situation.

Currently, qualifying companies cannot hold attributing interests of 10% or more in FIFs. However, the restriction does not apply to some interests in foreign companies because they are not attributing interests. Qualifying companies should not be able to hold such interests because, unlike distributions from other resident companies, distributions to shareholders in a qualifying company are not as-

sessable income. The bill proposes to prevent qualifying companies from holding interests of 10% or more in FIFs. For similar reasons, portfolio investment entities should not receive foreign dividends as exempt income. Currently, however, only multi-rate PIEs are excluded from the exemption. The bill proposes to widen the current exclusion to include all PIEs.

Several provisions refer to the residence of a FIF as being determined by a liability to tax in a foreign jurisdiction. This causes problems for resident investors in some types of entity that New Zealand treats as CFCs but that are not treated as taxable entities by the relevant foreign jurisdiction. It also causes problems in determining the members of the group of companies to which a CFC belongs. The bill widens the criteria used in determining the residence of a CFC for those purposes.

There are also some types of entity in foreign jurisdictions that are not treated by New Zealand as companies but are recognised as taxable entities by the relevant jurisdiction, which may treat them as being members of a group of companies. This causes problems for applying provisions in the Income Tax Act 2007 that depend on recognising that a deduction for expenditure has been allowed by the jurisdiction to a member of a group of foreign companies. The bill amends the definition of “deductible foreign equity distribution” to solve such a problem in the context of exempting, from income tax, dividends received by resident companies from foreign companies.

The above changes, except for the last, are treated as coming into force on 1 July 2009, when the current treatment of attributed CFC income came into force. The last change comes into force on 27 October 2010.

Clause by clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the dates on which clauses will come into effect.

Clause 3 gives the numbers of the clauses that affect the *Income Tax Act 2007*.

Clause 4 amends *section CD 8*, removing a cross-reference affected by the abolition of conduit tax relief.

Clause 5 amends *section CD 36* so that an exclusion from the section applies to dividends from some Australian FIFs, instead of to divi-

dends from grey list companies, if the recipient uses the fair dividend rate method for the attributing interest in the FIF.

Clause 6 amends *section CD 53*, changing a cross-reference affected by the abolition of conduit tax relief.

Clause 7 amends *section CQ 2* so that PIEs do not derive attributed CFC income from an interest in a CFC, and replaces references to the branch equivalent method with references to the attributable FIF income method.

Clause 8 amends *section CQ 5* so that interests in some Australian FIFs are excluded from being attributing interests. A reference to the accounting profits method and the branch equivalent method is replaced.

Clause 9 amends *section CW 9* so that dividends from some Australian FIFs are exempt income for a resident company.

Clause 10 repeals *section CW 11* because of the abolition of conduit tax relief.

Clause 11 amends *section CW 14*, changing a cross-reference affected by the abolition of conduit tax relief.

Clause 12 amends *section DN 2* so that PIEs do not have attributed CFC loss from an interest in a CFC.

Clause 13 amends *section DN 4* to replace a reference to the branch equivalent method.

Clause 14 amends *section DN 5* to replace a reference to the branch equivalent method.

Clause 15 amends *section DN 6* consequentially on the amendment to *section EX 35* and to replace a reference to the accounting profits method and the branch equivalent method.

Clause 16 amends *section DN 8* to replace references to the branch equivalent method.

Clause 17 repeals *section DX 3* with effect from 1 October 2012, because of the abolition of supplementary dividend holding companies.

Clause 18 replaces *section EX 14* so that PIEs do not derive attributed CFC income or loss from an interest in a CFC.

Clause 19 amends *section EX 20B* so that the calculation of attributable CFC amounts does not include dividends from some Australian FIFs, and does include income from a telecommunications service that uses equipment owned by some FIFs. The clause

also inserts a subsection providing for CFCs that are not subject to income tax in a foreign jurisdiction but have a parent that is subject to income tax in the jurisdiction, with effect from 1 July 2009.

Clause 20 amends *section EX 21B*, to provide that a CFC may not be included in more than 1 test for non-attributing active CFCs.

Clause 21 amends *section EX 21D* by inserting a subsection providing for CFCs that are not subject to income tax in a foreign jurisdiction but have a parent that is subject to income tax in the jurisdiction, with effect from 1 July 2009.

Clause 22 amends *section EX 21E* by inserting a subsection providing for CFCs that are not subject to income tax in a foreign jurisdiction but have a parent that is subject to income tax in the jurisdiction, with effect from 1 July 2009.

Clause 23 amends *section EX 34* so that a PIE derives FIF income or loss from an interest in a CFC.

Clause 24 replaces *section EX 35* so that it does not apply to interests in a grey list company. Under the new provision, interests in some Australian FIFs will not be attributing interests and consequently not produce FIF income or loss.

Clause 25 amends *section EX 44* by removing references to the accounting profits method and the branch equivalent method and inserting a reference to the attributable FIF income method.

Clause 26 amends *section EX 46* by: repealing *subsection (2)*, which provides for the use of the accounting profits method; replacing *subsection (3)*, which provides for the use of the branch equivalent method, with a subsection providing for the use of the attributable FIF income method; repealing *subsection (4)* and replacing *subsection (5)* with a subsection limiting the availability of the deemed rate of return method; removing the limit in *subsection (6)* on the size of an interest for which the comparative value method may be used; and removing the same limit in *subsections (7) and (9)* for the use of the fair dividend rate method and the cost method.

Clause 27 replaces *section EX 48(2)* so that the fair dividend rate method and the cost method are the default methods for calculating FIF income or loss.

Clause 28 repeals *section EX 49*, which provides for the accounting profits method.

Clause 29 amends *section EX 50*, which provides for the branch equivalent method, so that it provides, instead, for the attributable FIF income method.

Clause 30 amends *section EX 51*, which provides for the comparative method, so the size of an interest for which the method gives a FIF loss does not affect the reduction to zero of the total FIF loss for the holder.

Clause 31 amends *section EX 52*, which provides for the usual fair dividend rate method, so that the exclusion from the method does not apply to interests in grey list companies but to interests in some Australian FIFs.

Clause 32 amends *section EX 53*, which provides for an alternative form of the fair dividend rate method, so that the exclusion from the method does not apply to interests in grey list companies but to interests in some Australian FIFs.

Clause 33 amends *section EX 58* to replace: a reference to branch equivalent income or loss with a reference to net attributable CFC income; and a reference to the branch equivalent method with a reference to the attributable FIF income method. The first replacement corrects an error and is treated as coming into force on 1 July 2009.

Clause 34 amends *section EX 59* so that the exemption from the section does not apply to interests in grey list companies but to interests in some Australian FIFs.

Clause 35 amends *section EX 62*, which limits changes of method for calculating FIF income. The amendments are consequential on the repeal of the accounting profits method and the branch equivalent method, on the introduction of the attributable FIF income method, and on the limitation of the use of the comparative value method.

Clause 36 amends *section EX 63*, which provides for the consequences of a change of method, consequential on the repeal of the accounting profits method and the branch equivalent method and on the introduction of the attributable FIF income method.

Clause 37 amends *section EX 64* to replace a reference to the accounting profits method and the branch equivalent method.

Clause 38 amends *section EX 65* to replace references to the accounting profits method and the branch equivalent method.

Clause 39 amends *section EX 66* to replace a reference to the accounting profits method and the branch equivalent method.

Clause 40 amends *section EX 66B* to replace a reference to the accounting profits method and the branch equivalent method.

Clause 41 inserts *new section EX 67B* which provides that an interest in a FIF that is inherited before 1 April 2007 when the FIF is a grey list company, and that has a cost equal to zero or the cost of the interest for the person from whom it is inherited, is treated as being disposed of and reacquired at market value.

Clause 42 amends *section EX 69* to replace a reference to the accounting profits method and the branch equivalent method.

Clause 43 amends *section EX 72* to remove a reference to attributed repatriation and replace a reference to the branch equivalent income.

Clause 44 amends *section FE 1* so that interests in certain FIFs are included in the description of the application of the thin capitalisation rules.

Clause 45 amends *section FE 2* so that interests in certain FIFs are included in the criteria for the application of the thin capitalisation rules. Also, *new subsection (5)* is added, as part of the rules relating to the New Zealand banking group of a Crown-owned registered bank, with effect from 1 July 2009.

Clause 46 amends *section FE 3* to modify the definition of the New Zealand group and worldwide group of individuals for the purposes of the thin capitalisation rules. *Subclauses (1) and (2)* exclude from the New Zealand group people who receive no income from New Zealand other than non-resident passive income. *Subclause (3)* includes, in some worldwide groups, FIFs in which the individual has certain sorts of interest.

Clause 47 amends *section FE 5* by: inserting the criteria for a new optional test based on the ratio of deductible interest expenditure to adjusted net income for a person's group; removing part of the threshold for the requirement to apportion interest expenditure under the thin capitalisation rules; and including the effects of interests in certain FIFs in the criteria for the rules. The criteria for the new optional test are treated as having come into force on 1 July 2009.

Clause 48 inserts *new section FE 6B*, which provides for the optional thin capitalisation test and is treated as coming into force on 1 July 2009.

Clause 49 inserts *new section FE 12B*, which provides rules for calculating amounts for groups in applying the optional thin capitalisation test. It is treated as coming into force on 1 July 2009.

Clause 50 amends *section FE 14* so that debts and assets producing non-resident passive income for a non-resident member of a New Zealand group are not included in the calculation of the debt percentage of the New Zealand group under the thin capitalisation rules.

Clause 51 amends *section FE 16* so that assets to the extent that they produce non-resident passive income are not included in the total group assets of a New Zealand group under the thin capitalisation rules.

Clause 52 amends *section FE 21* to remove a reference to conduit tax relief.

Clause 53 amends *section FE 26* so that non-resident passive income is disregarded in identifying the New Zealand parent of an entity under the thin capitalisation rules.

Clause 54 amends *section FE 28* so that non-resident passive income is disregarded in identifying the members of an entity's New Zealand group under the thin capitalisation rules.

Clause 55 amends *section FE 30* so that non-resident passive income is disregarded in identifying companies otherwise outside an entity's New Zealand group that may be included with the group under the thin capitalisation rules.

Clause 56 amends *section FE 31C* by including interests in certain FIFs in the test for members of an entity's worldwide group under the thin capitalisation rules.

Clause 57 amends *section FE 36* by inserting a reference to the new definition of the New Zealand banking group of a registered bank owned by the Crown, with effect from 1 July 2009.

Clause 58 inserts *new section FE 36B*, giving a new definition of the New Zealand banking group of a registered bank owned by the Crown, with effect from 1 July 2009.

Clause 59 amends *section FM 6* by removing a reference to conduit tax relief.

Clause 60 amends *section FM 31* by changing a cross-reference affected by the abolition of conduit tax relief.

Clause 61 amends *section FO 3* by changing a cross-reference affected by the abolition of conduit tax relief.

Clause 62 amends *section GB 16* by removing a reference to an election under the accounting profits method of calculating FIF income.

Clause 63 repeals *section GB 40* because of the abolition of BETA accounts for companies.

Clause 64 amends *section GZ 2* to restrict the extent to which the anti-avoidance provision applies to members of a conduit tax relief group of companies. The changes are treated as coming into force on 1 July 2009.

Clause 65 repeals *section GZ 2* because of the abolition of conduit tax relief. The repeal comes into force on 1 July 2011.

Clause 66 amends *section HA 8B* to extend the prohibition on a qualifying company of holding attributing interests of more than 10% in a FIF to the holding by the qualifying company of any income interest of more than 10% in a FIF. The change is treated as coming into force on 1 July 2009.

Clause 67 amends *section HA 17* by changing a cross-reference affected by the abolition of conduit tax relief.

Clause 68 amends *section HG 2* by removing a reference to conduit tax relief.

Clause 69 amends *section IQ 2* to replace a reference to the branch equivalent method.

Clause 70 amends *section IQ 2B*, which provides for the treatment of losses incurred from a FIF or CFC in a foreign jurisdiction before the method of calculating attributed CFC net loss was changed, with effect from 1 July 2009. *Subsections (1) and (2)* are amended to clarify that available BE losses are associated with the jurisdiction. The section is also amended, with effect from 1 July 2011, to replace references to the branch equivalent method that should now be references to the attributable FIF income method and, with effect from 1 July 2009, to insert a method for converting, into New Zealand currency, amounts expressed in foreign currency in company accounts.

Clause 71 amends *section IQ 3* to correct the references to the jurisdiction in which the FIF loss arose and to correct the reference to the source of the FIF income, with effect from 1 April 2008.

Clause 72 amends *section IQ 4* to replace a reference to the branch equivalent method.

Clause 73 amends *section IQ 9* to replace references to the branch equivalent method.

Clause 74 amends *section LK 5B*, which provides for the treatment of tax credits received by a FIF or CFC from a foreign jurisdiction before the method of calculating attributed CFC income was changed, with effect from 1 July 2009. *Subsections (1) and (2)* are amended to clarify that available BE credits are associated with the jurisdiction.

Clause 75 repeals *section LQ 5* because of the abolition of conduit tax relief.

Clause 76 amends *section OA 2* because of the abolition of conduit tax relief and branch equivalent tax accounts for companies.

Clause 77 amends *section OA 5* because of the abolition of conduit tax relief and branch equivalent tax accounts for companies.

Clause 78 amends *section OA 6* because of the abolition of conduit tax relief and branch equivalent tax accounts for companies.

Clause 79 amends *section OA 7* because of the abolition of conduit tax relief and branch equivalent tax accounts for companies.

Clause 80 amends *section OA 8* because of the abolition of conduit tax relief and branch equivalent tax accounts for companies.

Clause 81 amends *section OA 9* because of the abolition of branch equivalent tax accounts for companies.

Clause 82 amends *section OA 10* because of the abolition of conduit tax relief and branch equivalent tax accounts for companies.

Clause 83 amends *section OA 14* because of the abolition of branch equivalent tax accounts for companies.

Clause 84 amends *section OA 15* because of the abolition of conduit tax relief and branch equivalent tax accounts for companies.

Clause 85 amends *section OA 18* because of the abolition of conduit tax relief.

Clause 86 amends *section OB 1* because of the abolition of conduit tax relief.

Clause 87 amends *section OB 4* because of the abolition of branch equivalent tax accounts for companies.

Clause 88 amends *section OB 24* because of the abolition of conduit tax relief.

Clause 89 amends *section OB 53* because of the abolition of conduit tax relief.

Clause 90 amends *section OC 14* because of the abolition of conduit tax relief.

Clause 91 amends *section OC 18* because of the abolition of conduit tax relief.

Clause 92 amends *section OC 19* because of the abolition of conduit tax relief.

Clause 93 amends *section OC 27* because of the abolition of conduit tax relief.

Clause 94 repeals *subpart OD* because of the abolition of conduit tax relief.

Clause 95 amends *section OE 1* because of the abolition of branch equivalent tax accounts for companies.

Clause 96 amends *section OE 2 to OE 4* because of the abolition of branch equivalent tax accounts for companies.

Clause 97 amends *section OE 5* to replace a reference to the accounting profits method and the branch equivalent method. The change comes into force on 1 July 2011.

Clause 98 replaces *section OE 5* because of the abolition of branch equivalent tax accounts for companies. The replacement is from 1 July 2012.

Clause 99 amends *section OE 6* to restrict the amount of a branch equivalent tax credit as a result of the abolition of branch equivalent tax debits from 1 July 2009.

Clause 100 repeals *section OE 6* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 101 amends *section OE 7* to restrict the making of an election to use a debit balance in a BETA account after the abolition of branch equivalent tax debits from 1 July 2009.

Clause 102 repeals *sections OE 7 and OE 8* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 103 amends *section OE 9* to restrict the amount of a branch equivalent tax credit as a result of the abolition of branch equivalent tax debits from 1 July 2009.

Clause 104 repeals *section OE 9 to OE 16B* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 105 repeals *table O7* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 106 repeals *section OP 70* because of the abolition of conduit tax relief.

Clause 107 repeals *sections OP 78 to OP 80* because of the abolition of conduit tax relief.

Clause 108 repeals *sections OP 83 to OP 87* because of the abolition of conduit tax relief.

Clause 109 repeals *sections OP 89 to OP 94* because of the abolition of conduit tax relief.

Clause 110 repeals *sections OP 96 and tables O23 and O24* because of the abolition of conduit tax relief.

Clause 111 repeals *sections OP 97 and OP 98* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 112 amends *section OP 100* to restrict the amount of a branch equivalent tax credit as a result of the abolition of branch equivalent tax debits from 1 July 2009.

Clause 113 repeals *section OP 100* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 114 amends *section OP 101* to restrict the election to use a branch equivalent tax debit as a result of the abolition of branch equivalent tax debits from 1 July 2009.

Clause 115 repeals *sections OP 101 and OP 102* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 116 amends *section OP 103* to restrict the amount of a branch equivalent tax credit as a result of the abolition of branch equivalent tax debits from 1 July 2009.

Clause 117 repeals *sections OP 103 to OP 104B* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 118 repeals *section OP 108B* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 119 repeals *table O25* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 120 repeals *section OZ 16* because of the abolition of branch equivalent tax accounts for companies, with effect from 1 July 2012.

Clause 121 repeals *section OZ 17* because of the abolition of conduit tax relief.

Clause 122 amends *section RE 2* to change a cross reference because of the abolition of conduit tax relief.

Clause 123 amends *section RF 8* because of the abolition of conduit tax relief.

Clause 124 amends *section RF 9* because of the abolition of conduit tax relief.

Clause 125 amends *section RF 10* because of the abolition of conduit tax relief.

Clause 126 amends *section YA 1*. *Subclause (2)* repeals the definition of *accounting profits method*. *Subclause (3)* replaces the definition of *associated non-attributing active CFC*, providing for CFCs that are not liable for tax in a foreign jurisdiction but have a parent that is liable for tax there, with effect from 1 July 2009. *Subclause (4)* inserts a definition of *attributable FIF income method*. *Subclause (5)* repeals the definition of *BETA company*. *Subclause (6)* repeals the definition of *branch equivalent company*, because of the abolition of underlying foreign tax credits. *Subclause (7)* amends the definition of *branch equivalent method*, relating it to the provision that applied before being amended. *Subclause (8)* replaces the definition of *branch equivalent tax account* to remove the references to companies having such accounts. *Subclause (9)* amends the definition of *calculation method*, replacing a reference to the accounting profits method and the branch equivalent method. *Subclause (10)* repeals the definition of *combined imputation and CTR ratio*, because of the abolition of conduit tax relief. *Subclause (11)* amends the definition of *consideration*, changing the heading in a cross-reference. *Subclause (12)* repeals the definition of *consolidated BETA group*, because of the abolition of BETA accounts for companies. *Subclause (13)* amends the definition of *continuity provisions*, because of the abolition of BETA accounts for companies. *Subclause (14)* amends the definition of *credit account continuity provisions*, because of the abolition of BETA accounts for companies. *Subclause (15)* repeals 10 definitions of terms beginning with *CTR*, because of the abolition of conduit tax relief. *Subclauses (16) and (17)* amend the definition of *deductible foreign equity distribution* so that deductions allowed to certain entities overseas are recognised. *Subclause (18)* replaces the definition of *excess credit amount*, because of the abolition of con-

duit tax relief. *Subclause (19)* amends the definition of *FIF net loss*, changing the heading in a cross-reference. *Subclause (20)* amends the definition of *fixed-rate share* to include a cross-reference, with effect from 30 June 2009. *Subclause (21)* amends the definition of *foreign attributed income*, replacing a reference to the accounting profits method and the branch equivalent method. *Subclause (22)* repeals the definition of *foreign attributed loss offsets*, because of the abolition of conduit tax relief. *Subclause (23)* repeals the definition of *fully credited for conduit tax relief* because of the abolition of conduit tax relief. *Subclause (24)* amends the definition of *international tax rules*, because of the abolition of BETA accounts for companies. *Subclause (25)* amends the definition of *lease*, changing the heading in a cross-reference. *Subclause (26)* amends the definition of *loss* to replace a reference to branch equivalent income or loss with a reference to attributable FIF income or loss. *Subclause (27)* amends the definition of *maximum permitted ratio*, because of the abolition of conduit tax relief. *Subclause (28)* inserts definitions of *net attributable FIF income* and *net attributable FIF loss* because of the introduction of the attributable FIF income method. *Subclause (29)* amends the definition of *non-refundable tax credit* because of the abolition of conduit tax relief. *Subclause (30)* amends the definition of *New Zealand banking group* to insert a cross-reference with effect from 1 July 2009. *Subclause (31)* inserts definitions of *NZIAS 28* and *NZIAS 31* with effect from 1 July 2009. *Subclause (32)* amends the definition of *residual income tax*, because of the abolition of BETA accounts for companies. *Subclause (33)* amends the definition of *supplementary dividend holding company*, because of the abolition of conduit tax relief. *Subclause (34)* amends the definition of *taxation law*, because of the abolition of conduit tax relief. *Subclause (35)* provides for the application of some remedial amendments to income years beginning on or after 1 July 2009. *Subclause (36)* provides for the application of amendments arising from the abolition of conduit tax relief to income years beginning on or after 1 July 2011. *Subclause (37)* provides for the application of amendments arising from the abolition of BETA accounts for companies to income years beginning on or after 1 July 2012.

Clause 127 amends *section YC 17* because of the abolition of branch equivalent tax accounts for companies.

Clause 128 amends *section YC 18B* because of the abolition of branch equivalent tax accounts for companies.

Clause 129 amends *section YD 9* by inserting another cross-reference in the list of provisions to which the section applies, with effect from 1 July 2009.

Clause 130 repeals *sections YD 9 to YD 11* because of the abolition of conduit tax relief.

Clause 131 repeals *schedule 25, part C* because of the abolition of the accounting profits method.

Clause 132 specifies the clauses that amend the *Tax Administration Act 1994*.

Clause 133 amends *section 22* because of the abolition of conduit tax relief and of branch equivalent tax accounts for companies.

Clause 134 amends *section 29* because of the abolition of conduit tax relief.

Clause 135 repeals *section 30A* because of the abolition of conduit tax relief.

Clause 136 inserts *new section 65B* to set requirements for the provision of information to the Commissioner by a person using the new thin capitalisation test, with effect from 1 July 2009.

Clause 137 repeals *section 68A* because of the abolition of conduit tax relief.

Clause 138 amends *section 69* because of the abolition of conduit tax relief and of branch equivalent tax accounts for companies.

Clause 139 repeals *section 77* because of the abolition of branch equivalent tax accounts for companies.

Clause 140 amends *section 91AAQ* to give to the Commissioner a power to specify, in a determination, conditions that an insurer must satisfy before being a non-attributing active CFC.

Clause 141 inserts *new section 183AA(4)(c)* to extend the definition of *GST transitional taxable period* for the purposes of remissions of penalties and interest under the section.

Clause 142 replaces *section 86I of the Stamp and Cheque Duties Act 1971* with *new sections 86I and 86IB*, which provide for a zero rate of approved issuer levy for payments made under some registered securities.

Hon Peter Dunne

Taxation (International Investment and Remedial Matters) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (International Investment and Remedial Matters) Act 2010**.

2 Commencement

- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.
- (2) **Section 71** is treated as coming into force on 1 April 2008.
- (3) **Section 126(20)** is treated as coming into force on 30 June 2009.
- (4) **Sections 19(3) to (5), (7), and (9), 20, 21, 22, 33(1), (3), and (4), 43(1) and (4), 45(3), (5), and (7), 47(1), (3), (5), and (7), 48, 49, 57, 58, 64, 66, 70(1) to (3), (6), (7), and (9), 74, 99, 101, 103, 112, 114, 116, 126(3), (30), (31), and (35), 129, 136, 140** are treated as coming into force on 1 July 2009.
- (5) **Section 141** is treated as coming into force on 1 October 2010.
- (6) **Section 126(16) and (17)** are treated as coming into force on 27 October 2010.
- (7) **Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19(1), (2), (6), and (8), 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33(2) and (5), 34, 35, 36, 37, 38, 39, 40, 42, 43(2), (3), and (5), 44, 45(1), (2), (4), and (6), 46, 47(2), (4), (6), and (8), 50, 51, 52, 53, 54, 55, 56, 60, 61, 62, 65, 67, 68, 69, 70(4), (5), (8), and (10), 72, 73, 75, 76(1) and (3), 77(1), (3), and (5), 78(1), (3), and (5), 79(1), (3), and (5), 80(1), (3), and (4), 82(1), (3), (5), (6), and (8), 84(2), (4), and (7), 85, 86, 88, 89, 90, 91, 92, 93, 94, 97, 106, 107, 108, 109, 110, 121, 122, 123, 124, 125, 126(2), (4), (6), (7), (9), (10), (11), (15), (18), (19), (21) to (23), (25) to (29), (33), (34), and (36), 130, 131, 133(2) and (5), 134, 135, 137, and 138(2) and (4)** come into force on 1 July 2011.
- (8) **Sections 59, 63, 76(2) and (4), 77(2), (4), and (6), 78(2), (4), and (6), 79(2), (4), and (6), 80(2) and (5), 81, 82(2), (4), (7), and (9), 83, 84(1), (3), (5), and (6), 87, 95, 96,**

98, 100, 102, 104, 105, 111, 113, 115, 117, 118, 119, 120, 126(5), (8), (12) to (14), (24), (32), and (37), 127, 128, 133(1), (3), and (4), 138(1) and (3), and 139 come into force on 1 July 2012.

- (9) **Section 17** comes into force on 1 October 2012. 5

Part 1 Amendments to Income Tax Act 2007

3 **Income Tax Act 2007**

This Part amends the Income Tax Act 2007.

4 **Elections to make bonus issue into dividend** 10

- (1) In section CD 8(1)(a)(ii), “or CW 11 (Dividend of conduit tax relief holding company)” is omitted.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

5 **Foreign investment fund income** 15

- (1) Section CD 36(2) is replaced by the following:
“Exclusion for interests in FIFs resident in Australia
 “(2) Subsection (1)(b)(iv) does not apply if the person’s interest in the company is included, at the beginning of the income year in which the payment is made, in a direct income interest of 10% or more in a FIF that, at the beginning of the income year,—
 “(a) meets the requirements of **section EX 35(b)(i) to (iii)** (Exemption for interest in FIF resident in Australia); and
 “(b) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in **section EX 35(c)(i) or (ii).**”
 (2) In section CD 36, in the list of defined terms, “grey list company” is omitted.
 (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 30

6 Prevention of double taxation of share cancellation dividends

- (1) In section CD 53(3), “to CW 11” is replaced by “and CW 10”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

5

7 When attributed CFC income arises

- (1) After section CQ 2(1)(b), the following is inserted:
“(bb) the person is not a portfolio investment entity; and”.
- (2) In section CQ 2(2), in the words before the paragraphs, “Branch equivalent method” is replaced by “Attributable FIF income method”.
- (3) In section CQ 2(2)(b), “branch equivalent method” is replaced by “attributable FIF income method”.
- (4) In section CQ 2, in the list of defined terms,—
 - (a) “branch equivalent method” is omitted:
 - (b) “attributable FIF income method” and “portfolio investment entity” are inserted.
- (5) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2011.

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8 When FIF income arises

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- (1) Section CQ 5(1)(c)(v) is replaced by the following:
“(v) the exemption in **section EX 35** (Exemption for interest in FIF resident in Australia):”.
- (2) In section CQ 5(2), in the words before the paragraphs, “accounting profits method or branch equivalent method” is replaced by “attributable FIF income method”.
- (3) In section CQ 5, in the list of defined terms,—
 - (a) “accounting profits method” and “branch equivalent method” are omitted:
 - (b) “attributable FIF income method” is inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

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9 Dividend derived from foreign company

- (1) In section CW 9(2)(a), the words before the subparagraphs are replaced by “a direct income interest that does not meet the requirements of **section EX 35(a) to (c)** (Exemption for interest in FIF resident in Australia) and is excluded from being an attributing interest by—”. 5
- (2) In section CW 9(3), “multi-rate PIE” is replaced by “portfolio investment entity”.
- (3) In section CW 9, in the list of defined terms,—
 - (a) “multi-rate PIE” and “portfolio tax rate entity” are omitted: 10
 - (b) “portfolio investment entity” is inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

10 Section CW 11 repealed

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- (1) Section CW 11 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

11 Dividends derived by qualifying companies

- (1) In section CW 14, “Sections CW 10 and CW 11 do” is replaced by “Section CW 10 does”. 20
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

12 When attributed CFC loss arises

- (1) After section DN 2(1)(b), the following is inserted: 25
“(bb) the person is not a portfolio investment entity; and”.
- (2) In section DN 2, in the list of defined terms, “portfolio investment entity” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 30

13 Ring-fencing cap on deduction

- (1) In section DN 4(1)(b), “branch equivalent method” is replaced by “attributable FIF income method”.

- (2) In section DN 4, in the list of defined terms,—
 - (a) “branch equivalent method” is omitted:
 - (b) “attributable FIF income method” is inserted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5
- 14 Foreign investment fund loss**
 - (1) In section DN 5(2), “branch equivalent method” is replaced by “attributable FIF income method” in each place where it appears.
 - (2) In section DN 5, in the list of defined terms,— 10
 - (a) “branch equivalent method” is omitted:
 - (b) “attributable FIF income method” is inserted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 15 When FIF loss arises** 15
 - (1) Section DN 6(1)(c)(v) is replaced by the following:
 - “(v) the exemption in **section EX 35** (Exemption for interest in FIF resident in Australia):”.
 - (2) In section DN 6(2), “accounting profits method or branch equivalent method” is replaced by “attributable FIF income method”. 20
 - (3) In section DN 6, in the list of defined terms,—
 - (a) “accounting profits method” and “branch equivalent method” are omitted:
 - (b) “attributable FIF income method” is inserted. 25
 - (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.
- 16 Ring-fencing cap on deduction: branch equivalent method**
 - (1) In the heading to section DN 8, “**branch equivalent method**” 30 is replaced by “**attributable FIF income method**”.
 - (2) In section DN 8(1), “branch equivalent method” is replaced by “attributable FIF income method” in each place where it appears.

- (3) In section DN 8, in the list of defined terms,—
 - (a) “branch equivalent method” is omitted:
 - (b) “attributable FIF income method” is inserted.
 - (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011. 5
- 17 Section DX 3 repealed**
- (1) Section DX 3 is repealed.
 - (2) **Subsection (1)** applies for the 2013–14 and later income years.
- 18 Section EX 14 replaced** 10
- (1) Section EX 14 is replaced by the following:

“EX 14 Attribution: 10% threshold, not PIE

“Persons with attributed CFC income or loss

“(1) A person has attributed CFC income or loss from a CFC only if the person— 15

 - “(a) has an income interest in the CFC of 10% or more for the relevant accounting period; and
 - “(b) is not a portfolio investment entity.

“Portfolio investment entity

“(2) A portfolio investment entity that would have attributed CFC 20
income or loss from a CFC in the absence of **subsection (1)(b)** has FIF income or loss from the CFC under the FIF rules.

“Defined in this Act: accounting period, attributed CFC income, CFC, FIF income, FIF rules, income interest, loss, PIE, portfolio investment entity”. 25
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 19 Attributable CFC amount**
- (1) In section EX 20B(3)(a), the words before the subparagraphs are replaced by “a dividend that is paid in relation to rights 30
that are a direct income interest in a foreign company, do not meet the requirements of **section EX 35(a) to (c)**, and are excluded from being an attributing interest by—”.
 - (2) Section EX 20B(3)(m)(ii) is replaced by the following:

- “(ii) owned by the CFC or by a CFC or FIF that is associated with the CFC; and”.
- (3) Section EX 20B(7)(a) is replaced by the following:
- “(a) from land in a country or territory with which the CFC has links that meet the requirements of **subsection (16)**.” 5
- (4) Section EX 20B(11)(a) is replaced by the following:
- “(a) the service is the transmission, emission, or reception of information between New Zealand and a country or territory with which the CFC has links that meet the requirements of **subsection (16)**; and” 10
- (5) After section EX 20B(15), the following is added:
- “*Required relationship between CFC and country or territory*
- “(16) The relationship between a CFC and a country or territory (the **host country**) meets the requirements of this subsection if— 15
- “(a) the CFC is resident in the host country under section YD 3 (Country of residence of foreign countries); and
- “(b) there is no other country or territory for which the CFC is—
- “(i) a resident under the domestic law of the country or territory: 20
- “(ii) liable to income tax because of the CFC’s domicile, residence, place of incorporation, or centre of management:
- “(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and 25
- “(c) the CFC has no presence outside the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and 30
- “(d) the CFC is liable in the host country to tax on its income because of the CFC’s domicile, residence, place of incorporation, or centre of management, or there is another CFC (the **parent CFC**) that— 35

- “(i) wholly owns the CFC under the laws of New Zealand and the host country; and
- “(ii) has a relationship with the host country meeting the requirements of **paragraphs (a) to (c)**; and
- “(iii) because of the parent CFC’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the CFC would be liable on its income if it were a company liable for tax.” 5
- (6) In section EX 20B, in the list of defined terms, “attributable FIF income method” is inserted. 10
- (7) In section EX 20B, in the list of defined terms, “double tax agreement” and “fixed establishment” are inserted.
- (8) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011. 15
- (9) **Subsections (3) to (5)** apply for income years beginning on or after 1 July 2009.

- 20 Non-attributing active CFCs**
- (1) After section EX 21B(3), the following is added: 20
 - “*Single test for each CFC*”
- “(4) In determining whether CFCs are non-attributing active CFCs for an accounting period under a test in section EX 21D or EX 21E, an interest holder must not use the result of a test applied to a test group that includes a CFC if the person uses for the period a result of the same or a different test applied to the CFC, alone or as part of a different test group.” 25
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

- 21 Non-attributing active CFC: default test**
- (1) Section EX 21D(1)(a) is replaced by the following: 30
 - “(a) each subject to the laws of the same country or territory and having a relationship with the country or territory meeting the requirements of **subsection (10)**; and”.
- (2) After section EX 21D(9), the following is added:

- “Required relationship between CFC and country or territory*
- “(10) The relationship between a CFC and a country or territory (the **host country**) meets the requirements of this subsection if—
- “(a) the CFC is resident in the host country under section YD 3 (Country of residence of foreign countries); and 5
 - “(b) there is no other country or territory for which the CFC is—
 - “(i) a resident under the domestic law of the country or territory:
 - “(ii) liable to income tax because of the CFC’s domicile, residence, place of incorporation, or centre of management: 10
 - “(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and 15
 - “(c) the CFC has no presence outside the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and 20
 - “(d) the CFC is liable in the host country to tax on its income because of the CFC’s domicile, residence, place of incorporation, or centre of management, or there is another CFC (the **parent CFC**) that— 25
 - “(i) wholly owns the CFC under the laws of New Zealand and the host country; and
 - “(ii) has a relationship with the host country meeting the requirements of **paragraphs (a) to (c)**; and 30
 - “(iii) because of the parent CFC’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the CFC would be liable on its income if it were a company liable for tax.” 35
- (3) In section EX 21D, in the list of defined terms, “double tax agreement” and “fixed establishment” are inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2009.

22 Non-attributing active CFC: test based on accounting standard

- (1) Section EX 21E(2)(b) is replaced by the following:
 - “(b) each company is subject to the laws of the same country or territory and has a relationship with the country or territory meeting the requirements of **subsection (14)**; and”.
- (2) After section EX 21E(9)(c), the following is inserted:
 - “(cb) gain or loss from a financial asset that is a financial arrangement or agreement referred to in section EX 20B(12):”.
- (3) After section EX 21E(10)(a), the following is inserted:
 - “(ab) income from rent:”.
- (4) After section EX 21E(13), the following is added:
 - “(14) *Required relationship between CFC and country or territory* The relationship between a CFC and a country or territory (the **host country**) meets the requirements of this subsection if—
 - “(a) the CFC is resident in the host country under section YD 3 (Country of residence of foreign countries); and
 - “(b) there is no other country or territory for which the CFC is—
 - “(i) a resident under the domestic law of the country or territory:
 - “(ii) liable to income tax because of the CFC’s domicile, residence, place of incorporation, or centre of management:
 - “(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and
 - “(c) the CFC has no presence outside the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and
 - “(d) the CFC is liable in the host country to tax on its income because of the CFC’s domicile, residence, place

of incorporation, or centre of management, or there is another CFC (the **parent CFC**) that—

“(i) wholly owns the CFC under the laws of New Zealand and the host country; and

“(ii) has a relationship with the host country meeting the requirements of **paragraphs (a) to (c)**; and 5

“(iii) because of the parent CFC’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the CFC would be liable on its income if it were a company liable for tax.” 10

(5) In section EX 21E, in the list of defined terms, “double tax agreement” and “fixed establishment” are inserted.

(6) **Subsections (1) to (4)** apply for income years beginning on or after 1 July 2009. 15

23 CFC rules exemption

(1) In section EX 34(b), “falls.” is replaced by “falls; and” and the following is added:

“(c) the person is not a portfolio investment entity.”

(2) In section EX 34, in the list of defined terms, “portfolio investment entity” is inserted. 20

(3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

24 Section EX 35 replaced

(1) Section EX 35 is replaced by the following: 25

“EX35 Exemption for interest in FIF resident in Australia

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

“(a) at all times in the year, the rights are a direct income interest of 10% or more; and 30

“(b) at all times in the year, the FIF is—

“(i) resident in Australia; and

“(ii) under Australian law, subject to income tax on its income or treated as part of the head company of a consolidated group subject to income tax on its income; and 35

- “(iii) treated as being resident in Australia under all agreements between the government of Australia and the governments of other territories that would be a double tax agreement if between the government of New Zealand and the government of the other country or territory; and 5
- “(c) the FIF’s liability for income tax for the income year is not reduced by—
- “(i) an exemption from income tax for income derived from business activities carried on outside Australia: 10
- “(ii) a special allowance, relief, or exemption with respect to offshore banking units; and
- “(d) at all times in the year, the person is none of the following: 15
- “(i) a portfolio investment entity:
- “(ii) a superannuation scheme:
- “(iii) a unit trust:
- “(iv) a life insurer:
- “(v) a group investment fund. 20
- “Defined in this Act: attributing interest, direct income interest, double tax agreement, FIF, group investment fund, income tax, income year, life insurer, portfolio investment entity, resident in Australia, superannuation scheme, unit trust”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 25
- 25 Six calculation methods**
- (1) In the heading to section EX 44, “**Six**” is replaced by “**Five**”.
- (2) Section EX 44(1)(a) is repealed.
- (3) Section EX 44(1)(b) is replaced by the following: 30
- “(b) the attributable FIF income method; or”.
- (4) In section EX 44, in the list of defined terms,—
- (a) “accounting profits method” and “branch equivalent method” are omitted:
- (b) “attributable FIF income method” is inserted. 35
- (5) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2011.

26 Limits on choice of calculation methods

- (1) Section EX 46(2) is repealed.
- (2) Section EX 46(3) is replaced by the following:
“Attributable FIF income method
 - “(3) A person may use the attributable FIF income method to calculate FIF income or loss from an attributing interest in a FIF for an accounting period only if,—
 - “(a) at all times in the accounting period,—
 - “(i) the FIF is a company; and
 - “(ii) the person is not a portfolio investment entity; and
 - “(iii) the interest is a direct income interest of 10% or more; and
 - “(b) the person can provide to the Commissioner, if requested, sufficient information to enable the Commissioner to check the calculations required by section EX 50.”
- (3) Section EX 46(4) is repealed.
- (4) Section EX 46(5) is replaced by the following:
“Deemed rate of return method
 - “(5) A person may use the deemed rate of return method to calculate FIF income or loss from an attributing interest in a FIF only if the person is required by section EX 47 to use the deemed rate of return method for the interest.”
- (5) Section EX 46(6)(c) is repealed.
- (6) Section EX 46(7) is repealed.
- (7) Section EX 46(9)(a) is repealed.
- (8) In section EX 46, in the list of defined terms,—
 - (a) “branch equivalent method” is omitted;
 - (b) “attributable FIF income method” is inserted.
- (9) **Subsections (1) to (7)** apply for income years beginning on or after 1 July 2011.

27 Default calculation method

- (1) Section EX 48(2) is replaced by the following:
“Default choice
 - “(2) The person is treated as having chosen to use, for the period,—

- “(a) the fair dividend rate method if it is practical to use it;
and
 - “(b) the cost method if it is not practical to use the fair dividend rate method.”
- (2) In section EX 48, in the list of defined terms, “accounting profits method”, “comparative value method”, and “deemed rate of return method” are omitted. 5
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

- 28 Section EX 49 repealed** 10
 - (1) Section EX 49 is repealed.
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

- 29 Branch equivalent method**
 - (1) The heading to section EX 50 is replaced by “**Attributable FIF income method**”. 15
 - (2) In section EX 50(1),—
 - (a) “**branch equivalent method**” is replaced by “**attributable FIF income method**”;
 - (b) in the formula, “branch equivalent” is replaced by “net attributable FIF”. 20
 - (3) Section EX 50(3) is replaced by the following:

“Net attributable FIF income or loss

 - “(3) **Net attributable FIF income or loss** is the amount for the FIF and the accounting period calculated by applying— 25
 - “(a) sections EX 18A to EX 21E, EX 24, and EX 25, as modified by **subsection (4B)**, as if the FIF were a CFC for which the person were calculating the net attributable CFC income or loss for the accounting period; and 30
 - “(b) subsections (5) and (6).”
 - (4) After section EX 50(4), the following is inserted:

“Modifications to method of calculating net attributable CFC income or loss

 - “(4B) The net attributable FIF income or loss of a FIF is calculated as if— 35

- “(a) section EX 20B(5)(c)(i) required that the royalty be paid by a foreign company meeting the requirements of **section EX 50(4C)**:
“(b) section EX 20B(7)(c) required that the rent be paid by a foreign company meeting the requirements of **section EX 50(4C)**:
“(c) section EX 20B(12)(a) required that the financial arrangement or agreement be an agreement by the CFC to lend money to a foreign company meeting the requirements of **section EX 50(4C)**:
“(d) section EX 21D(1)(a) required that none of the other companies in the test group be a CFC:
“(e) section EX 21D(1)(b) required that the CFC hold a voting interest of more than 50% in each of the other companies in the test group:
“(f) section EX 21D(3)(b) were omitted:
“(g) section EX 21E(2)(b) required that none of the other companies in the test group be a CFC:
“(h) section EX 21E(2)(c) required that the CFC hold a voting interest of more than 50% in each of the other companies in the test group:
“(i) section EX 21E(2)(d) were omitted:
“(j) section EX 21E(4)(c) were omitted:
“(k) section EX 21E(9)(a) required that an amount in the category be a dividend that is not included in the attributable CFC amount for the accounting period under section EX 20B(3)(a) to (c) and is not excluded by **section EX 50(7B)(b)** from being additional FIF income or loss under section EX 50(6).
“Requirements for foreign company making payments to FIF
“(4C) A foreign company making payments to a FIF meets the requirements of this subsection if—
“(a) the foreign company is a non-attributing active CFC under section EX 21B(2) or would be a non-attributing active CFC under section EX 21B(2) if it were a CFC in the absence of sections EX 20B(5)(c)(i), EX 20B(7)(c), and EX 20B(12)(a); and
“(b) the FIF holds a voting interest of more than 50% in the foreign company; and

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- “(c) the FIF and the foreign company are resident in the same country (the **host country**) under section YD 3 (Country of residence of foreign countries); and
- “(d) there is no other country or territory for which the FIF or the foreign company is— 5
- “(i) a resident under the domestic law of the country or territory:
- “(ii) liable to income tax because of domicile, residence, place of incorporation, or centre of management: 10
- “(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and
- “(e) the FIF and the foreign company each have no presence 15 outside the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and 20
- “(f) the FIF and the foreign company are each liable in the host country to tax on their respective incomes because of their domicile, residence, place of incorporation, or centre of management, or there is a FIF (the **parent FIF**) that— 25
- “(i) wholly owns the FIF or foreign company under the laws of New Zealand and the host country; and
- “(ii) has a relationship with the host country meeting the requirements of **paragraphs (c) to (e)**; and 30
- “(iii) because of the parent FIF’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the FIF or foreign company would be liable on its income if it were a 35 company liable for tax.”
- (5) After section EX 50(7), the following is inserted:

“Exception to subsection (6)

“(7B) A person does not have additional FIF income or loss under subsection (6) from a FIF with an interest in a foreign company if—

- “(a) the foreign company meets the test for a non-attributing active CFC under section EX 21B(2) and the person—
 - “(i) would be able to use the attributable FIF income method for the foreign company if the person held the FIF’s interest in the foreign company:
 - “(ii) is able to include the foreign company in the same test group as the FIF under section EX 21D or EX 21E:
- “(b) the FIF would meet the test for a non-attributing active CFC under section EX 21B(2)(b) if the following amounts relating to the interest in the foreign company reported in the accounts of the FIF, or in the consolidated accounts of the FIF’s test group under section EX 21E, were included in the item ‘added passive’ under section EX 21E(5) and (8) for the FIF or the test group:
 - “(i) amounts recognised in the profit and loss accounts under the equity method under NZIAS 28 or NZIAS 31:
 - “(ii) amounts recognised in the income statement under proportionate consolidation under NZIAS 31:
 - “(iii) dividends and holding gains recognised in the profit and loss accounts under NZIAS 39.”

(6) In section EX 50(9)(d), “branch equivalent method” is replaced by “attributable FIF income method”. 30

(7) In section EX 50, in the list of defined terms,—

- (a) “branch equivalent income” and “branch equivalent method” are omitted:
- (b) “attributable FIF income method”, “net attributable CFC income”, “net attributable FIF income”, “non-attributing active CFC”, “NZIAS 28”, “NZIAS 31”, “NZIAS 39”, and “voting interest” are inserted. 35

(8) **Subsections (1) to (6)** apply for income years beginning on or after 1 July 2011.

30 Comparative value method

(1) Section EX 51(7), other than the heading, is replaced by the following:

“(7) Subsection (8) applies to a person who calculates under subsection (1) an amount of FIF loss for an attributing interest in a FIF (the **affected interest**) that is not a non-ordinary share described in section EX 46(10).”

(2) In section EX 51, in the list of defined terms, “direct income interest” is omitted.

(3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

31 Fair dividend rate method: usual method

(1) Section EX 52(5)(b) is replaced by the following:

“(b) are not, at the beginning of the income year, included in a direct income interest of 10% or more in a FIF that, at the beginning of the year,—

“(i) meets the requirements of **section EX 35(b)(i) to (iii)**; and

“(ii) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in **section EX 35(c)(i) or (ii)**.”

(2) In section EX 52, in the list of defined terms, “direct income interest” is inserted.

(3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

32 Fair dividend rate method for unit-valuing funds and others by choice

(1) Section EX 53(5)(b) is replaced by the following:

“(b) are not, at the beginning of the income year, included in a direct income interest of 10% or more in a FIF that, at the beginning of the year,—

“(i) meets the requirements of **section EX 35(b)(i) to (iii)**; and

“(ii) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in **section EX 35(c)(i) or (ii)**.”

- (2) In section EX 53, in the list of defined terms, “direct income interest” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

33 Additional FIF income or loss if CFC owns FIF 5

- (1) In section EX 58(1)(b), “branch equivalent income” is replaced by “net attributable CFC income”.
- (2) In section EX 58(4)(c), “branch equivalent method” is replaced by “attributable FIF income method”.
- (3) In section EX 58, in the list of defined terms, “branch equivalent income” is omitted. 10
- (4) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- (5) **Subsection (2)** applies for income years beginning on or after 1 July 2011. 15

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

- (1) Section EX 59(1B) is replaced by the following:
“Exclusion for interests in FIFs resident in Australia
 “(1B) Subsection (1)(c) does not apply if the person’s interest in the company is included, at the beginning of the income year in which the payment is made, in a direct income interest of 10% or more in a FIF that, at the beginning of the income year,—
 “(a) meets the requirements of **section EX 35(b)(i) to (iii)**;
 and
 “(b) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in **section EX 35(c)(i) or (ii)**.” 20
- (2) In section EX 59, in the list of defined terms, “grey list company” is omitted. 30
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

35 Limits on changes of method

- (1) Section EX 62(2)(a) is replaced by the following:

- “(a) in the case of the accounting profits method,—
 - “(i) section EX 46(2) is repealed:
 - “(ii) before the date of the repeal of section EX 46(2),
that section prevents its continued use or it is
impossible to obtain enough information to con- 5
tinue to use it.”.
- (2) Section EX 62(2)(b) is replaced by the following:
 - “(b) in the case of the attributable FIF income method, sec-
tion EX 46(3) prevents its continued use or it is impos-
sible to obtain enough information to continue to use 10
it.”.
- (3) Section EX 62(2)(c) is replaced by the following:
 - “(c) in the case of the comparative value method,—
 - “(i) section EX 46(6) prevents its continued use:
 - “(ii) it is impossible to find out the end-of-year market 15
value of the interest.”.
- (4) Section EX 62(2)(d) is repealed.
- (5) Section EX 62(2)(e) is replaced by the following:
 - “(e) in the case of the deemed rate of return method, the per-
son is required by section EX 47 to use the comparative 20
value method.”.
- (6) Section EX 62(2)(g) is replaced by the following:
 - “(g) in the case of the cost method, section EX 46(9) pre-
vents its continued use.”
- (7) In section EX 62(3)(b)(ii), “branch equivalent method” is re- 25
placed by “attributable FIF income method”.
- (8) Section EX 62(6) is replaced by the following:
 - “*Changing to or from the attributable FIF income method*
- “(6) A person may make an election under subsection (3) to change
to or from the attributable FIF income method if— 30
 - “(a) they are changing from the branch equivalent method:
 - “(b) this is the first time they have chosen to change to or
from the attributable FIF income method for an attribut-
ing interest in the FIF, other than under **paragraph (a)**:
 - “(c) subsection (7) allows them to make another election.” 35

- (9) In section EX 62(7), “branch equivalent method” is replaced by “attributable FIF income method” in each place where it appears.
- (10) After section EX 62(9), the following is added:
“Change to fair dividend rate method for first income year beginning on or after 1 July 2011” 5
- “(10) A person may change to the fair dividend rate method from the accounting profits method, the branch equivalent method, or the deemed rate of return method in the person’s return of income for the first income year beginning on or after 1 July 2011.” 10
- (11) In section EX 62, in the list of defined terms,—
 (a) “branch equivalent method” is omitted;
 (b) “attributable FIF income method” is inserted.
- (12) **Subsections (1) to (10)** apply for income years beginning on or after 1 July 2011. 15

36 Consequences of changes in method

- (1) Section EX 63(1)(a) and (b) are replaced by the following:
 “(a) from 1 of the 4 cost-based calculation methods (the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method) to the attributable FIF income method; or
 “(b) from a look-through calculation method (the attributable FIF income method, the accounting profits method, or the branch equivalent method) to 1 of the 4 cost-based calculation methods.” 20 25
- (2) In section EX 63, in the list of defined terms, “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 30

37 Migration of persons holding FIF interests

- (1) Section EX 64(5)(c) is replaced by the following:
 “(c) for the accounting period in which the change occurs, uses the attributable FIF income method to calculate FIF income or loss from the interest.” 35
- (2) In section EX 64, in the list of defined terms,—

- (a) “accounting profits method” and “branch equivalent method” are omitted:
 - (b) “attributable FIF income method” is inserted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5
- 38 Changes in application of FIF exemptions**
 - (1) In section EX 65(3), “the accounting profits method or the branch equivalent method” is replaced by “the attributable FIF income method”. 10
 - (2) In section EX 65(7), “the accounting profits methods or the branch equivalent method” is replaced by “the attributable FIF income method”. 10
 - (3) In section EX 65, in the list of defined terms,—
 - (a) “accounting profits method” and “branch equivalent method” are omitted: 15
 - (b) “attributable FIF income method” is inserted.
 - (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.
- 39 Entities emigrating from New Zealand**
 - (1) In section EX 66(3), “accounting profits method or branch equivalent method” is replaced by “attributable FIF income method”. 20
 - (2) In section EX 66, in the list of defined terms,—
 - (a) “accounting profits method” and “branch equivalent method” are omitted: 25
 - (b) “attributable FIF income method” is inserted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 40 Entities ceasing to be FIFs**
 - (1) In section EX 66B(3), “accounting profits method or branch equivalent method” is replaced by “attributable FIF income method”. 30
 - (2) In section EX 66B, in the list of defined terms,—
 - (a) “accounting profits method” and “branch equivalent method” are omitted: 35

- (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

- 41 New section EX 67B inserted**
 - After section EX 67, the following is inserted: 5
 - “EX 67B Revaluation of inherited interests in grey list companies**
 - “When this section applies*
 - “(1) This section applies when—
 - “(a) a person inherited, before 1 April 2007, an interest in a FIF that was a grey list company when the interest was inherited; and 10
 - “(b) the cost of the interest for the person is equal to—
 - “(i) the cost of the interest for the person from whom the interest was inherited: 15
 - “(ii) zero.
 - “Treatment as disposal and reacquisition*
 - “(2) The person is treated as having—
 - “(a) disposed of the interest immediately before this section applied to the person and the interest; and 20
 - “(b) reacquired the interest as soon as this section applied to the person and the interest; and
 - “(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal. 25
 - “Payment of tax liability arising from revaluation*
 - “(3) A person who is liable to pay an amount of income tax (the **amount of tax**) because of a disposal in an income year, and related acquisition, treated as occurring under this section—
 - “(a) may satisfy the liability by paying to the Commissioner— 30
 - “(i) at least one third of the amount of tax in the income year following the income year in which the disposal is treated as occurring; and
 - “(ii) at least one half of the balance of the amount of tax remaining owing after payment made under **subparagraph (i)**, in the second income year 35

following the income year in which the disposal is treated as occurring; and

“(iii) the balance of the amount of tax remaining owing after payments made under **subparagraphs (i) and (ii)**, in the third income year following the income year in which the disposal is treated as occurring: 5

“(b) is not liable to pay any penalty or interest for which the person would otherwise be liable for an inaccuracy in an estimate, or shortfall in the payment, of provisional tax to the extent to which the inaccuracy or shortfall arises because of the disposals. 10

“Defined in this Act: amount, Commissioner, dispose, FIF, grey list company, income tax, income year, market value, pay, provisional tax, tax”.

42 Change of FIF’s balance date 15

- (1) In section EX 69(1)(b), “accounting profits method or the branch equivalent method” is replaced by “attributable FIF income method”.
- (2) In section EX 69, in the list of defined terms,—
 - (a) “accounting profits method” and “branch equivalent method” are omitted: 20
 - (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

43 Commissioner’s default assessment power 25

- (1) Section EX 72(1)(c) is replaced by the following:

“(c) a person cannot obtain enough information to calculate their attributed CFC income or loss or FIF income or loss for a period.”
- (2) Section EX 72(3)(b) is replaced by the following: 30

“(b) the application of a rate of presumed increase of 10% or more, compounded annually, to the CFC’s net attributable CFC income or to the FIF’s net attributable FIF income, for a previous period:”.
- (3) In section EX 72, in the list of defined terms,— 35

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	<ul style="list-style-type: none"> (a) “attributed repatriation” and “branch equivalent income” are omitted: (b) “attributable FIF income method”, “net attributable CFC income” and “net attributable FIF income” are inserted. 	5
(4)	Subsection (1) applies for income years beginning on or after 1 July 2009.	
(5)	Subsection (2) applies for income years beginning on or after 1 July 2011.	
44	What this subpart does	10
(1)	Section FE 1(1)(a) is replaced by the following: <ul style="list-style-type: none"> “(a) to apportion certain interest expenditure between income derived from New Zealand and other income for a New Zealand taxpayer who has a disproportionately high level of debt funding in relation to their worldwide interest expenditure and who— <ul style="list-style-type: none"> “(i) is controlled by a single non-resident: “(ii) is a person (an outbound entity) with an income interest in a CFC or with an interest in a FIF that satisfies the requirements of section EX 35 (Exemption for interest in FIF resident in Australia) or for which the person uses the attributable FIF income method: “(iii) is a New Zealand resident who controls an outbound entity; and”. 	15 20 25
(2)	In section FE 1, in the list of defined terms, “attributable FIF income method” and “FIF” are inserted.	
(3)	Subsection (1) applies for income years beginning on or after 1 July 2011.	
45	When this subpart applies	30
(1)	Section FE 2(1)(e) is replaced by the following: <ul style="list-style-type: none"> “(e) a company that is resident in New Zealand and has— <ul style="list-style-type: none"> “(i) an income interest in a CFC: “(ii) an interest in a FIF that satisfies the requirements of section EX 35 (Exemption for interest in FIF resident in Australia): 	35

- “(iii) an interest in a FIF for which the person uses the attributable FIF income method:”.
- (2) After section FE 2(1)(g)(i), the following is inserted:
- “(ib) an interest in a FIF that satisfies the requirements of **section EX 35**: 5
- “(ic) an interest in a FIF for which the person uses the attributable FIF income method:”.
- (3) After section FE 2(4), the following is added:
- “New Zealand banking group of Crown-owned registered bank 10*
- “(5) If the members of the New Zealand banking group of a registered bank are given by **section FE 36B**, the interests held by a member of the group for the purposes of **subsection (1)(e) and (f)** do not include interests held by an associated person who is not a member of the group.” 15
- (4) In section FE 2, in the list of defined terms, “attributable FIF income method” and “FIF” are inserted.
- (5) In section FE 2, in the list of defined terms, “New Zealand banking group” is inserted.
- (6) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011. 20
- (7) **Subsection (3)** applies for income years beginning on or after 1 July 2009.
- 46 Interest apportionment for individuals**
- (1) Section FE 3(1)(a)(iii) is replaced by the following: 25
- “(iii) derive income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:”.
- (2) Section FE 3(2)(a)(iii) is replaced by the following: 30
- “(iii) derive income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:”.
- (3) In section FE 3(2)(b)(ii), “interest:” is replaced by “interest; and” and the following is added: 35

- “(iii) all FIFs in which the trustee or a member of the trustee’s New Zealand group has an interest that meets the requirements of **section EX 35** (Exemption for interest in FIF resident in Australia); and 5
- “(iv) all FIFs in which the trustee or a member of the trustee’s New Zealand group has an interest for which the person uses the attributable FIF income method.”.
- (4) In section FE 3, in the list of defined terms, “attributable FIF income method”, “FIF”, “income”, “New Zealand tax”, and “non-resident passive income” are inserted. 10
- (5) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2011.

- 47 Thresholds for application of interest apportionment rules** 15
- (1) After section FE 5(1B)(a), the following is inserted:
 - “(ab) the company or person is eligible to choose, and chooses, under **subsection (1BB)** to use the threshold test in **subsection (1D)**.”.
- (2) Section FE 5(1B)(b) is repealed. 20
- (3) After section FE 5(1B), the following is inserted:
 - “*Eligibility for optional threshold, apportionment method*
 - “(1BB) A company or person referred to in subsection (1B) that would otherwise be required to make an apportionment under section FE 6 may choose instead to be subject to the threshold in **subsection (1D)** and to the apportionment method in **section FE 6B** only if—
 - “(a) for each of the New Zealand group and the worldwide group, the amount (the **adjusted net profit**) given by **subsection (1BC)** is greater than zero; and 30
 - “(b) for the New Zealand group, the deductions for interest allowed to the group under sections DB 6 to DB 9 (which relate to deductions for interest) exceed the income of the group that is interest; and
 - “(c) for the worldwide group, treating the members as residents for the purposes of this paragraph, the deductions for interest allowed to the group under sections DB 6 35

to DB 9 exceed the income of the group that is interest;
and

- “(d) for the worldwide group, the amount of the total group debt, calculated for the income year as if for the purposes of determining the group’s debt percentage under section FE 12, is equal to or more than 75% of the amount of total group assets, not including goodwill; and 5
- “(e) for the worldwide group, the proportion of the total group debt, calculated as for **paragraph (d)**, for which the lender is not associated with the group under subpart YB (Associated persons) is equal to or more than 80%. 10

“Formula for adjusted net profit

- “(1BC) The adjusted net profit for a group is the amount calculated using the formula— 15

net – attributed + net interest + depreciation + amortisation.

“Definition of items in formula

- “(1BD) In the formula in **subsection (1BC)**,—

- “(a) **net** is the net profit or loss of the group before tax using generally accepted accounting practice, treating a net loss as a negative amount: 20
- “(b) **attributed**, for the worldwide group, is zero and, for the New Zealand group, is the income—
- “(i) under generally accepted accounting practice from an interest in a FIF or CFC described in section FE 2(1)(e) to (g); and 25
- “(ii) included in the calculation of the item net profit or loss and not included in the calculation of the item net interest:
- “(c) **net interest** is the deductions for interest allowed to the group under sections DB 6 to DB 9, treating the members as residents for the purpose of calculating this item for a worldwide group, reduced by the income of the group that is interest: 30
- “(d) **depreciation** is the depreciation for the group:
- “(e) **amortisation** is the amortisation for the group.” 35

- (4) In section FE 5(1C)(c), “interest.” is replaced by “interest.” and the following is added:

- “(d) all FIFs in which the natural person or a member of the natural person’s New Zealand group has an interest that meets the requirements of **section EX 35** (Exemption for interest in FIF resident in Australia); and
- “(e) all FIFs in which the natural person or a member of the natural person’s New Zealand group has an interest for which the natural person or member uses the attributable FIF income method.” 5
- (5) After section FE 5(1C), the following is inserted:
- “*Elective threshold for excess debt entity* 10
- “(1D) A company or person that chooses to be subject to the threshold test in this subsection must apportion the interest expenditure for the income year under **section FE 6B** except if the ratio (the **interest-income ratio**) given by **subsection (1E)** for the company or person’s New Zealand group is equal to or less than the lesser of— 15
- “(a) 110% of the interest-income ratio for the company or person’s worldwide group:
- “(b) 50%.
- “*Formula for group’s interest-income ratio* 20
- “(1E) The interest-income ratio for a group is calculated using the formula—
- $$\frac{\text{net interest}}{\text{adjusted net profit.}}$$
- “*Definition of items in formula*
- “(1F) In the formula in **subsection (1E)**,—
- “(a) **net interest** is the deductions for interest allowed to the group under sections DB 6 to DB 9, treating the members as residents for the purpose of calculating this item for a worldwide group, reduced by the income of the group that is interest: 25
- “(b) **adjusted net profit** is the amount given for the group by **subsection (1BC)**.” 30
- (6) In section FE 5, in the list of defined terms, “attributable FIF income method”, and “non-resident passive income” are inserted.

- (7) **Subsections (1), (3), and (5)** apply for income years beginning on or after 1 July 2009.
- (8) **Subsections (2) and (4)** apply for income years beginning on or after 1 July 2011.

48 New section FE 6B inserted 5

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

“FE 6B Alternative apportionment of interest by some excess debt entities

“Who this section applies to

- “(1) This section applies to a company or person that is required by **section FE 5(1D)** to apportion its interest expenditure for an income year under this section. 10

“Formula

- “(2) The company or person is treated under section CH 9 (Interest apportionment: excess debt entity) as deriving from New Zealand in the income year an amount of income calculated for the income year using the formula— 15

$$\text{net interest} \times \frac{\text{NZ group ratio} - \text{threshold ratio}}{\text{NZ group ratio.}}$$

“Definition of items in formula

- “(3) In the formula—

“(a) **net interest** is the deductions for interest allowed to the company or person under sections DB 6 to DB 9 (which relate to deductions for interest) reduced by the income of the company or person that is interest: 20

“(b) **NZ group ratio** is the interest-income ratio given by **section FE 5(1E)** for the New Zealand group of the company or person: 25

“(c) **threshold ratio** is the lesser of—

“(i) 50%:

“(ii) 110% of the interest-income ratio given by **section FE 5(1E)** for the worldwide group of the company or person. 30

“Defined in this Act: company, deduction, income, income year, interest, New Zealand”.

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

49 New section FE 12B inserted

- (1) After section FE 12, the following is inserted:

“FE 12B Calculations for group for test and apportionment using interest-income ratio 5

“Application of rules

- “(1) The rules in this section apply to the calculation, for an entity’s New Zealand group or worldwide group, of the following amounts: 10

“(a) deductions for interest allowed to the group under sections DB 6 to DB 9 (which relate to deductions for interest), for the purposes of **section FE 5(1BB)**:

“(b) the income of the group that is interest, for the purposes of **section FE 5(1BB)**: 15

“(c) the items in the formula for adjusted net profit in **section FE 5(1BC)**:

“(d) the items in the formula for interest-income ratio in **section FE 5(1E)**.

“Generally accepted accounting practice for consolidation 20

- “(2) An amount calculated under these rules for an entity’s group must be calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group income, expenses, transactions, and balances. 25

“Non-resident member of New Zealand group

- “(3) If a member of a New Zealand group is not resident in New Zealand, the amounts for the member are not included in a consolidation except to the extent that the amounts relate to—

“(a) the carrying on of business in New Zealand through a fixed establishment in New Zealand: 30

“(b) the derivation of income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable.

“Defined in this Act: business, deduction, fixed establishment, generally accepted accounting practice, income, interest, New Zealand, New Zealand tax, resident in New Zealand, source in New Zealand” . 35

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

50 Consolidation of debts and assets

- (1) Section FE 14(3)(b) is replaced by the following:
- “(b) derive income, other than non-resident passive income, 5
that has a source in New Zealand and for which relief
from New Zealand tax under a double tax agreement is
unavailable.”
- (2) In section FE 14, in the list of defined terms, “non-resident
passive income” and “tax” are inserted. 10
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

51 Total group assets

- (1) Section FE 16(1B)(a)(ii) is replaced by the following:
- “(ii) the CFC derives income, other than non-resident 15
passive income, that has a source in New Zealand
and for which relief from New Zealand tax under
a double tax agreement is unavailable.”
- (2) Section FE 16(1C)(b) is replaced by the following:
- “(b) derive income, other than non-resident passive income, 20
that has a source in New Zealand and for which relief
from New Zealand tax under a double tax agreement is
unavailable.”
- (3) In section FE 16, in the list of defined terms, “non-resident
passive income” and “tax” are inserted. 25
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

52 Banking group’s New Zealand net equity

- (1) Section FE 21(12)(a) is replaced by the following:
- “(a) are held by a member or potential member of the group; 30
and”
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

53 Identifying New Zealand parent

- (1) Section FE 26(2)(b)(ii) is replaced by the following:
- “(ii) no single non-resident who is carrying on business in New Zealand through a fixed establishment in New Zealand or who derives income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable has an ownership interest in the entity of 50% or more; or”.
- (2) Section FE 26(3)(a)(iii) is replaced by the following:
- “(iii) not resident in New Zealand but deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (3) Section FE 26(4)(a)(iii) is replaced by the following:
- “(iii) not resident in New Zealand but deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (4) In section FE 26, in the list of defined terms, “non-resident passive income” and “tax” are inserted.
- (5) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2011.

54 Identifying members of New Zealand group

- (1) Section FE 28(1)(a)(iii) is replaced by the following:
- “(iii) deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (2) Section FE 28(2)(a)(iii) is replaced by the following:
- “(iii) deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.

- (3) In section FE 28, in the list of defined terms, “non-resident passive income” and “tax” are inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

55 Ownership interests in companies outside New Zealand group 5

- (1) Section FE 30(1)(c)(iii) is replaced by the following:
 - “(iii) deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.10
- (2) Section FE 30(3)(b)(iii) is replaced by the following:
 - “(iii) deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.15
- (3) In section FE 30, in the list of defined terms, “non-resident passive income” and “tax” are inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011. 20

56 CFCs in worldwide group for natural persons or trustees described in section FE 2(1)(g)

- (1) Section FE 31C(1)(b) is replaced by the following:
 - “(b) an interest, in an entity not part of the worldwide group A, that is— 25
 - “(i) an income interest in a CFC:
 - “(ii) an interest in a FIF that meets the requirements of **section EX 35** (Exemption for interest in FIF resident in Australia):
 - “(iii) an interest in a FIF for which the natural person or trustee uses the attributable FIF income method.” 30
- (2) In section FE 31C, in the list of defined terms, “attributable FIF income method” and “FIF” are inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 35

57 Identifying members of New Zealand banking group

- (1) In the heading to section FE 36 “**in usual case**” is added.
- (2) In section FE 36(1), “to which **section FE 36B** does not apply” is inserted after “registered bank”.
- (3) **Subsections (1) and (2)** apply for income years beginning 5
on or after 1 July 2009.

58 New section FE 36B inserted

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

**“FE 36B Identifying members of New Zealand banking group:
Crown-owned, no interest apportionment**

10

“Entities included in group

- “(1) The New Zealand banking group of a registered bank consists of the entities given by this section if—

“(a) Her Majesty the Queen in right of New Zealand has a voting interest of 100% in the registered bank; and

15

“(b) in the absence of this paragraph and sections EX 15, **FE 2(5)**, FE 38(b) and (d), and FE 41(1), none of the entities that would be part of the banking group under this section would be a person to whom the interest apportionment rules might apply under section FE 2.

20

“Registered bank and person with direct voting interest of 100%”

- “(2) The banking group includes—

“(a) the registered bank:

“(b) a person with a direct voting interest of 100% in the registered bank.

25

“Resident member of financial reporting group under Financial Reporting Act 1993

- “(3) A resident person is included in the banking group if the person,—

30

“(a) under the Financial Reporting Act 1993, is a member of the financial reporting group for which the registered bank is the reporting member:

“(b) would be a member of the financial reporting group referred to in **paragraph (a)** but for the relevant materiality thresholds.

“Defined in this Act: direct voting interest, New Zealand, New Zealand banking group, registered bank, resident”.

5

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

59 Some general rules for treatment of consolidated groups

- (1) Section FM 6(3)(d) is repealed.

- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012. 10

60 Eligibility rules

- (1) In section FM 31(1)(c), “to CW 11” is replaced by “and CW 10”.

- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 15

61 Resident’s restricted amalgamations

- (1) In section FO 3(1)(c), “to CW 11” is replaced by “and CW 10”.

- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 20

62 FIF income or loss: arrangements for measurement day concessions

- (1) Section GB 16(1)(b)(ii) is repealed.

- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 25

63 Section GB 40 repealed

- (1) Section GB 40 is repealed.

- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

64 Arrangements involving cancellation of conduit tax relief credits 30

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

- “(b) the purpose of the arrangement is to produce a benefit—
 - “(i) for a New Zealand resident that is not a CTR group member under section YD 9 (Residence of CTR company shareholders) or for a New Zealand resident that is a CTR group member under section YD 9 to the extent that it is treated under that section as resident in New Zealand; and
 - “(ii) under a taxation law; and
 - “(iii) relating to the CTR credits.”
 - (2) In section GZ 2, in the list of defined terms, “CTR group member” and “resident in New Zealand” are inserted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 65 Section GZ 2 is repealed**
- (1) Section GZ 2 is repealed.
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 66 No CFC income interests or FIF direct income interests of 10% or more**
- (1) In section HA 8B(b), “attributing” is omitted.
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 67 Dividends derived by qualifying companies**
- (1) In section HA 17(1)(b), “or CW 11 (Dividend of conduit tax relief holding company)” is omitted.
 - (2) In section HA 17(2), “sections CW 10 and CW 11” is replaced by “section CW 10”.
 - (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.
- 68 Partnerships are transparent**
- (1) Section HG 2(4)(c) is repealed.
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

69 Ring-fencing cap on attributed CFC net losses

- (1) In section IQ 2(1)(b), “branch equivalent method” is replaced by “attributable FIF income method”.
- (2) In section IQ 2, in the list of defined terms,—
 - (a) “branch equivalent method” is omitted: 5
 - (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

70 Attributed CFC net loss from tax year before first affected year 10

- (1) Section IQ 2B(1), other than the heading, is replaced by the following:
“(1) This section applies for a person and a country (the **jurisdiction**) when the person has an amount (the **available BE loss**) of attributed CFC net loss, or FIF net loss calculated using the branch equivalent method, that— 15
 - “(a) relates to a tax year (the **loss year**) before the first tax year for which this section applies to the person; and
 - “(b) relates to a CFC or FIF that is resident in the jurisdiction in the loss year; and 20
 - “(c) is carried forward to a tax year (the **conversion year**) in which this section applies to the person.”
- (2) Section IQ 2B(2), other than the heading, is replaced by the following:
“(2) In this section, subsection (3) gives the person an option that 25
available BE loss for a jurisdiction not be carried forward and subsections (4) to (7) give, for whichever of the 4 possible alternative situations is relevant for the person,—
 - “(a) the amount of the available BE loss (the **converted BE loss**) for the jurisdiction that is— 30
 - “(i) treated as being converted into an amount referred to in **paragraph (b)** in the conversion year; and
 - “(ii) not available to the person to be carried forward as available BE loss for the jurisdiction and a 35
later tax year:

- “(b) the amount (the **equivalent CFC loss**) of attributed CFC net loss for the jurisdiction that, for the purposes of the rest of this subpart, is treated as arising on the last day of the conversion year.”
- (3) Section IQ 2B(8)(a)(i) is replaced by the following: 5
 “(i) corresponding to an income year beginning on or after 1 July 2011; and”.
- (4) In section IQ 2B(9), in the definition of **jurisdictional attributed income**, paragraph (a)(ii), “branch equivalent method” is replaced by “attributable FIF income method”. 10
- (5) In section IQ 2B(9), in the definition of **jurisdictional BE income**, paragraph (a)(ii), “branch equivalent method, the FIF income or loss” is replaced by “attributable FIF income method, the FIF income or loss calculated under the branch equivalent method”. 15
- (6) After section IQ 2B(10), the following is added:
“Conversion of income from accounts into New Zealand currency
- “(11) If a person or wholly-owned group chooses under subsection (10) to use the profit or loss before taxation of a CFC given 20
 by accounts expressed in a currency other than New Zealand currency, the person or group must convert the profit or loss into New Zealand currency—
- “(a) by applying the close of trading spot exchange rate on the last day of the accounting period for the accounts; 25
 or
- “(b) applying the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the accounting period.”
- (7) In section IQ 2B, in the list of defined terms, “accounting 30
 period” and “close of trading spot exchange rate” are inserted.
- (8) In section IQ 2B, in the list of defined terms, “attributable FIF income method” is inserted.
- (9) **Subsections (1) to (3), and (6)** apply for income years beginning on or after 1 July 2009. 35
- (10) **Subsections (4) and (5)** apply for income years beginning on or after 1 July 2011.

71 Ring-fencing cap on FIF net losses

- (1) Section IQ 3(1)(a) and (b) are replaced by the following:
 - “(a) all attributed CFC income that they derive in the tax year in relation to a CFC resident in the same country in which the FIF that had the loss was resident at the time the loss arose; and 5
 - “(b) all FIF income calculated under the branch equivalent method that they derive in the tax year in relation to a FIF resident in the same country in which the FIF that had the loss was resident at the time the loss arose.” 10
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

72 Group companies using attributed CFC net losses

- (1) In section IQ 4(3)(a)(ii), “branch equivalent method” is replaced by “attributable FIF income method”. 15
- (2) In section IQ 4, in the list of defined terms,—
 - (a) “branch equivalent method” is omitted:
 - (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 20

73 When attributed CFC net loss becomes FIF net loss

- (1) In section IQ 9(3), “branch equivalent method” is replaced by “attributable FIF income method” in each place where it appears.
- (2) In section IQ 9, in the list of defined terms,— 25
 - (a) “branch equivalent method” is omitted:
 - (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

74 Credits from tax year before first affected year

- (1) Section LK 5B(1), other than the heading, is replaced by the following: 30
 - “(1) This section applies for a person and a country (the **jurisdiction**) when the person has a credit (the **available BE credit**) that— 35

- “(a) relates to a tax year (the **credit year**) before the first tax year for which this section applies to the person; and
 - “(b) relates to a CFC or FIF that is resident in the jurisdiction in the credit year; and
 - “(c) is carried forward to a tax year (the **conversion year**) 5
in which this section applies to the person.”
 - (2) Section LK 5B(2), other than the heading, is replaced by the following:
 - “(2) In this section, subsection (3) gives the person an option that an available BE credit for a jurisdiction not be carried forward 10
and subsections (4) to (7) give, for whichever of the 4 possible alternative situations is relevant for the person,—
 - “(a) the amount of the available BE credit (the **converted BE credit**) for the jurisdiction that is—
 - “(i) treated as being converted into an amount re- 15
ferred to in **paragraph (b)** in the conversion year; and
 - “(ii) not available to the person to be carried forward as available BE credit for the jurisdiction and a later tax year: 20
 - “(b) the amount (the **equivalent tax credit**) of a tax credit for the jurisdiction that, for the purposes of the rest of this subpart, is treated as arising on the last day of the conversion year.”
 - (3) **Subsections (1) and (2)** apply for income years beginning 25
on or after 1 July 2009.
- 75 Section LQ 5 repealed**
- (1) Section LQ 5 is repealed.
 - (2) **Subsection (1)** applies for income years beginning on or after 30
1 July 2011.
- 76 Memorandum accounts**
- (1) Section OA 2(1)(c) is repealed.
 - (2) In section OA 2(1)(d), “subparts OE and OP” is replaced by “subpart OE”.
 - (3) **Subsection (1)** applies for income years beginning on or after 35
1 July 2011.

- (4) **Subsection (2)** applies for income years beginning on or after 1 July 2012.

77 Credits

- (1) Section OA 5(4) is repealed.
- (2) Section OA 5(5), other than the heading, is replaced by the following: 5
- “(5) A credit is a **branch equivalent tax credit** if it is an amount, for a BETA person,—
- “(a) set out in section OA 7 or OE 19:
- “(b) described in a row of table O9: person’s branch equivalent tax credits.” 10
- (3) In section OA 5, in the list of defined terms, “CTR credit” is omitted.
- (4) In section OA 5, in the list of defined terms, “BETA company” and “consolidated BETA group” are omitted. 15
- (5) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- (6) **Subsection (2)** applies for income years beginning on or after 1 July 2012.

78 Debits

- (1) Section OA 6(4) is repealed. 20
- (2) Section OA 6(5), other than the heading, is replaced by the following:
- “(5) A debit is a **branch equivalent tax debit** if it is an amount, for a BETA person,— 25
- “(a) set out in any of sections OA 7 and OE 20 to OE 22:
- “(b) described in a row of table O10: person’s branch equivalent tax debits.”
- (3) In section OA 6, in the list of defined terms, “CTR debit” is omitted. 30
- (4) In section OA 6, in the list of defined terms, “BETA company” and “consolidated BETA group” are omitted.
- (5) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

- (6) **Subsection (2)** applies for income years beginning on or after 1 July 2012.

79 Opening balances of memorandum accounts

- (1) Section OA 7(2)(c) is repealed.
- (2) Section OA 7(2)(d) is replaced by the following: 5
“(d) for a branch equivalent tax account of a BETA person, the first day of the income year.”.
- (3) In section OA 7, in the list of defined terms, “CTR account” is omitted.
- (4) In section OA 7, in the list of defined terms, “BETA company” 10
and “consolidated BETA account” are omitted.
- (5) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- (6) **Subsection (2)** applies for income years beginning on or after 15
1 July 2012.

80 Shareholder continuity requirements for memorandum accounts

- (1) Section OA 8(5) is repealed.
- (2) Section OA 8(6)(c) and (g) are repealed.
- (3) In section OA 8, in the list of defined terms, “CTR account” is 20
omitted.
- (4) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- (5) **Subsection (2)** applies for income years beginning on or after 25
1 July 2012.

81 General treatment of credits and debits on resident’s restricted amalgamation

- (1) In section OA 9(4), “GB 34, GB 40,” is replaced by “GB 34”.
- (2) **Subsection (1)** applies for income years beginning on or after 30
1 July 2012.

82 When credits or debits due to amalgamating company but not recorded

- (1) Section OA 10(1)(c) is repealed.

- (2) Section OA 10(1)(d) is repealed.
 - (3) Section OA 10(3)(b) is repealed.
 - (4) Section OA 10(3), other than the heading, is replaced by the following:
 - “(3) Subsection (2) does not apply to a debit for loss of shareholder continuity in an imputation credit account arising under section OB 41 (ICA debit for loss of shareholder continuity) and described in table O2: imputation debits, row 14 (debit for loss of shareholder continuity).”
 - (5) In section OA 10(4), “subsection (1)(b), (c), and (e)” is replaced by “subsection (1)(b) and (e)”.
 - (6) In section OA 10, in the list of defined terms, “CTR account” is omitted.
 - (7) In section OA 10, in the list of defined terms, “branch equivalent tax account” is omitted.
 - (8) **Subsections (1), (3), and (5)** apply for income years beginning on or after 1 July 2011.
 - (9) **Subsections (2) and (4)** apply for income years beginning on or after 1 July 2012.
- 83 Continuity of shareholding when group companies amalgamate**
- (1) In section OA 14(6), “GB 34, GB 40,” is replaced by “GB 34”.
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.
- 84 When credits or debits due to consolidated group but not recorded**
- (1) Section OA 15(1)(c) is repealed.
 - (2) Section OA 15(3)(b) is repealed.
 - (3) Section OA 15(3), other than the heading, is replaced by the following:
 - “(3) Subsection (2) does not apply to a debit for loss of shareholder continuity in an imputation credit account arising under section OP 42 (Consolidated ICA debit for loss of shareholder continuity) and described in table O20: imputation debits

of consolidated imputation groups, row 16 (debit for loss of shareholder continuity).”

- (4) In section OA 15, in the list of defined terms, “CTR account” is omitted.
- (5) In section OA 15, in the list of defined terms, “branch equivalent tax account” is omitted. 5
- (6) **Subsections (1) and (3)** apply for income years beginning on or after 1 July 2012.
- (7) **Subsection (2)** applies for income years beginning on or after 1 July 2011. 10

85 Calculation of maximum permitted ratios

- (1) In section OA 18(1), in the words before the paragraphs, “a CTR credit,” is omitted.
- (2) Section OA 18(1)(d) and (e) are repealed.
- (3) In section OA 18, in the list of defined terms, “CTR credit” is omitted. 15
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

86 General rules for companies with imputation credit accounts

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- (1) In section OB 1(2)(iv), “to CW 11” is replaced by “and CW 10”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

87 ICA payment of tax

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- (1) Section OB 4(3)(h) is repealed.
- (2) In section OB 4, in the list of defined terms, “branch equivalent tax account” is omitted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2012. 30

88 ICA credit on resident’s restricted amalgamation

- (1) Section OB 24(3)(c) is repealed.

- (2) In section OB 24, in the list of defined terms, “CTR account” and “CTR credit” are omitted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 89 ICA debit on resident’s restricted amalgamation** 5
- (1) Section OB 53(3)(c) is repealed.
 - (2) In section OB 53, in the list of defined terms, “CTR account” and “CTR debit” are omitted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 10
- 90 FDPA refund of FDP**
- (1) Section OC 14(3), other than the heading, is replaced by the following:
“(3) The company does not have a debit for the amount of a refund to the extent to which it refunds FDP paid before a debit arises under section OC 24 (table O4: FDP debits, row 13 (debit for loss of shareholder continuity)).” 15
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 91 FDPA transfer to imputation credit account** 20
- (1) Section OC 18(5) is repealed.
 - (2) In section OC 18, in the list of defined terms, “CTR company” is omitted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 25
- 92 Section OC 19 repealed**
- (1) Section OC 19 is repealed.
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 93 FDP credits attached to dividends** 30
- (1) Section OC 27(2) is repealed.

- (2) In section OC 27, in the list of defined terms, “CTR company” is omitted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 94 Subpart OD repealed** 5
- (1) Subpart OD is repealed.
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 95 General rules for companies and other persons with branch equivalent tax accounts** 10
- (1) In the heading to section OE 1, “**companies and other**” is omitted.
 - (2) Section OE 1(1) and (3) are repealed.
 - (3) In section OE 1(4), “(which relate to the treatment of memorandum accounts)” is inserted after “OA 3”. 15
 - (4) In section OE 1, in the list of defined terms, “BETA company” is omitted.
 - (5) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2012.
- 96 Headings and sections OE 2 to OE 4 repealed** 20
- (1) The headings before section OE 2 are repealed.
 - (2) Sections OE 2 to OE 4 are repealed.
 - (3) **Subsection (2)** applies for income years beginning on or after 1 July 2012.
- 97 Treatment of attributed CFC income and FIF income in this subpart** 25
- (1) Section OE 5(a)(i) is replaced by the following:
“(i) under the attributable FIF income method; or”.
 - (2) In section OE 5, in the list of defined terms,—
 - (a) “accounting profits method” and “branch equivalent method” are omitted: 30
 - (b) “attributable FIF income method” is inserted.

- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

98 Section OE 5 replaced

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

“OE 5 Treatment of attributed CFC income and FIF income in this subpart

For the purposes of applying this subpart to a person, other than a company, with an attributing interest in a foreign investment fund (FIF),—

- “(a) FIF income derived from the person’s interest is treated as attributed CFC income if the FIF income is calculated—

“(i) under the attributable FIF income method:

“(ii) under a method to which section EX 50(6) or EX 58 (which relate to the calculation of FIF income) applies; and

“(b) the FIF is treated as a CFC; and

“(c) the interest in the FIF is treated as an income interest.

“Defined in this Act: attributable FIF income method, attributing interest, CFC, company, FIF, FIF income, foreign investment fund, income interest”.

- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

99 BETA payment of income tax on foreign income

- (1) In section OE 6(1), the words before the formula are replaced by “A BETA company has a branch equivalent tax credit for the lesser of the amount by which the branch equivalent tax account is in debit and the amount calculated using the formula—”.

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

100 Heading and section OE 6 repealed

- (1) The heading before section OE 6 is repealed.

- (2) Section OE 6 is repealed.

- (3) **Subsection (2)** applies for income years beginning on or after 1 July 2012.

101 BETA payment of income tax

- (1) Section OE 7(3), other than the heading, is replaced by the following:
- “(3) The company or company B may choose to apply under section BC 8 (Satisfaction of income tax liability) some or all of the debit balance to satisfy an income tax liability in relation to attributed CFC income that is allocated to an income year beginning before 1 July 2011. The election must be made before the end of the first income year beginning on or after 1 July 2011, for the company having the branch equivalent tax account with the debit balance, by recording a credit in that branch equivalent tax account.”
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

102 Sections OE 7 and OE 8 repealed

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- (1) Sections OE 7 and OE 8 are repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

103 BETA refund of FDP

- (1) In section OE 9(1), “Subsections (2) and (3)” is replaced by “Subsections (2) to **(3B)**”.
- (2) After section OE 9(3), the following is inserted:
“Limit on amount
 “(3B) The amount of the credit under subsection (1), after any reduction under subsection (3), is limited to the amount of the debit in the company’s branch equivalent tax account at the time of the refund.”
- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2009.

104 Sections OE 9 to OE 16B repealed

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- (1) Sections OE 9 to OE 16B are repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

105	Table O7 repealed	
(1)	Table O7 is repealed.	
(2)	Subsection (1) applies for income years beginning on or after 1 July 2012.	
106	Section OP 70 repealed	5
(1)	Section OP 70 is repealed.	
(2)	Subsection (1) applies for income years beginning on or after 1 July 2011.	
107	Headings and sections OP 78 to OP 80 repealed	
(1)	The headings before section OP 78 are repealed.	10
(2)	Sections OP 78 to OP 80 are repealed.	
(3)	Subsection (2) applies for income years beginning on or after 1 July 2011.	
108	Heading and sections OP 83 to OP 87 repealed	
(1)	The heading before section OP 83 is repealed.	15
(2)	Sections OP 83 to OP 87 are repealed.	
(3)	Subsection (2) applies for income years beginning on or after 1 July 2011.	
109	Sections OP 89 to OP 94 repealed	
(1)	Sections OP 89 to OP 94 are repealed.	20
(2)	Subsection (1) applies for income years beginning on or after 1 July 2011.	
110	Heading, section OP 96, and tables O23 and O24 repealed	
(1)	The heading before section OP 96 is repealed.	
(2)	Section OP 96 and tables O23 and O24 are repealed.	25
(3)	Subsection (2) applies for income years beginning on or after 1 July 2011.	
111	Headings and sections OP 97 and OP 98 repealed	
(1)	The headings before section OP 97 are repealed.	
(2)	Sections OP 97 and OP 98 are repealed.	30

- (3) **Subsection (2)** applies for income years beginning on or after 1 July 2012.

112 Consolidated BETA payment of income tax on foreign income

- (1) In section OP 100(1), the words before the paragraphs are replaced by “A consolidated BETA group has a branch equivalent tax credit for an income year for the lesser of the amount by which the group’s branch equivalent tax account is in debit and the amount calculated using the formula—”. 5
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009. 10

113 Heading and section OP 100 repealed

- (1) The heading before section OP 100 is repealed.
- (2) Section OP 100 is repealed.
- (3) **Subsection (2)** applies for income years beginning on or after 1 July 2012. 15

114 Consolidated BETA payment of income tax

- (1) Section OP 101(2), other than the heading, is replaced by the following:
- “(2) The nominated company of the consolidated BETA group may choose to apply some or all of the debit balance to satisfy an income tax liability of the group or of group company B in relation to attributed CFC income that is allocated to an income year beginning before 1 July 2011. The election must be made before the end of the first income year beginning on or after 1 July 2011.” 20 25
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

115 Sections OP 101 and OP 102 repealed

- (1) Sections OP 101 and OP 102 are repealed. 30
- (2) **Subsection (1)** applies for income year beginning on or after 1 July 2012.

116 Consolidated BETA refund of FDP

- (1) In section OP 103(1), “Subsections (2) and (3)” is replaced by “Subsections (2) to **(3B)**”.
- (2) After section OP 103(3), the following is inserted:
“Limit on amount” 5
- “(3B) The amount of the credit under subsection (1), after any reduction under subsection (3), is limited to the amount of the debit in the group’s branch equivalent tax account at the time of the refund.”
- (3) **Subsections (1) and (2)** apply for income years beginning 10
on or after 1 July 2009.

117 Sections OP 103 to OP 104B repealed

- (1) Sections OP 103 to OP 104B are repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 15
1 July 2012.

118 Heading and section OP 108B repealed

- (1) The heading before section OP 108B is repealed.
- (2) Section OP 108B is repealed.
- (3) **Subsection (2)** applies for income years beginning on or after 20
1 July 2012.

119 Table O25 repealed

- (1) Table O25 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after

120 Section OZ 16 repealed 25

- (1) Section OZ 16 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after
1 July 2012.

121 Section OZ 17 repealed

- (1) Section OZ 17 is repealed. 30
- (2) **Subsection (1)** applies for income years beginning on or after
1 July 2011.

122 Resident passive income

- (1) In section RE 2(5)(a)(i), “any of sections CW 9 to CW 11” is replaced by “either of sections CW 9 and CW 10”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5

123 Certain dividends

- (1) Section RF 8(1)(c) and (f) are repealed.
- (2) In section RF 8, in the list of defined terms, “CTR additional dividend” and “fully credited for conduit tax relief” are omitted. 10
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

124 When dividends fully imputed or fully credited

- (1) In section RF 9(1), “or conduit tax relief” is omitted.
- (2) Section RF 9(6) and (7) are repealed. 15
- (3) In section RF 9, in the list of defined terms, “fully credited for conduit tax relief” is omitted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

125 Non-cash dividends 20

- (1) Section RF 10(3)(a) is replaced by the following:
“(a) **rate A** is the rate of tax set out in section RF 8:”.
- (2) In the formula in section RF 10(4), “(amount paid + credit amount)” is replaced by “amount paid”.
- (3) In section RF 10(5)(d), “withheld:” is replaced by “withheld.” 25
and paragraph (e) is repealed.
- (4) Section RF 10(7) is repealed.
- (5) In section RF 10, in the list of defined terms, “CTR additional dividend” and “fully credited for conduit tax relief” are omitted. 30
- (6) **Subsections (1) to (4)** apply for income years beginning on or after 1 July 2011.

126 Definitions

- (1) This section amends section YA 1.
- (2) The definition of **accounting profits method** is repealed.
- (3) The definition of **associated non-attributing active CFC** is replaced by the following: 5

“**associated non-attributing active CFC**, for a CFC, means a person who is associated with the CFC under section YB 2 (Two companies) if the person and the CFC meet the following requirements:

 - “(a) the person is a non-attributing active CFC; and 10
 - “(b) the person and the CFC are each resident under section YD 3 (Country of residence of foreign countries) in the same country or territory (the **host country**); and
 - “(c) neither of the person and the CFC is, in a country or territory other than the host country,— 15
 - “(i) a resident under the domestic law of the country or territory:
 - “(ii) liable to income tax because of domicile, residence, place of incorporation, or centre of management: 20
 - “(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and
 - “(d) neither of the person and the CFC has a presence outside 25 the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and 30
 - “(e) each of the person and the CFC is liable in the host country to tax on its income because of domicile, residence, place of incorporation, or centre of management, or is wholly-owned under the laws of New Zealand and the host country by another CFC (the **parent CFC**) that— 35
 - “(i) has a relationship with the host country meeting the requirements of **paragraphs (c) and (d)**; and

- “(ii) because of the parent CFC’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the person or the CFC would be liable on its income if it were a company liable for tax”. 5
- (4) The following definition is inserted in the appropriate alphabetical order:
 “**attributable FIF income method** means the method of calculating FIF income or FIF loss in section EX 50 (Attributable FIF income method)”. 10
- (5) The definition of **BETA company** is repealed.
- (6) The definition of **branch equivalent company** is repealed.
- (7) In the definition of **branch equivalent method**, “as that provision read immediately before being amended by **section 29** of the Taxation (International Investment and Remedial Matters) Act **2010**” is added. 15
- (8) The definition of **branch equivalent tax account** is replaced by the following:
 “**branch equivalent tax account** means the account maintained by a BETA person under section OE 17(3) (Person choosing to become BETA person)”. 20
- (9) In the definition of **calculation method**, “accounting profits method, the branch equivalent method” is replaced by “attributable FIF income method”. 25
- (10) The definition of **combined imputation and CTR ratio** is repealed.
- (11) In the definition of **consideration**, paragraph (b)(ii) is replaced by the following:
 “(ii) section EX 21(11) (Attributable CFC amount and net attributable CFC income or loss: calculation rules):”. 30
- (12) The definition of **consolidated BETA group** is repealed.
- (13) In the definition of **continuity provisions**, paragraph (i) is repealed. 35

- (14) In the definition of **credit account continuity provisions**, paragraph (b), “continuity); and” is replaced by “continuity)” and paragraph (c) is repealed.
- (15) The definitions of **CTR**, **CTR account**, **CTR additional dividend**, **CTR company**, **CTR credit**, **CTR debit**, **CTR group member**, **CTR holding company**, **CTR ratio**, and **CTRA** are repealed. 5
- (16) In the definition of **deductible foreign equity distribution**, paragraph (a) is replaced by the following:
 “(a) for which a deduction is allowed in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of a person:” 10
- (17) In the definition of **deductible foreign equity distribution**, paragraph (b)(ii) is replaced by the following:
 “(ii) the other company or another person is allowed a deduction, in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the other company or person, for the amount paid to the foreign company” 15
20
- (18) The definition of **excess credit amount** is replaced by the following:
 “**excess credit amount** means an amount calculated under section OC 29(5) (FDP credits and imputation credits attached to dividends) for a dividend with a combined imputation and GDP ratio” 25
- (19) In the definition of **FIF net loss**, “branch equivalent method” is replaced by “attributable FIF income method”.
- (20) In the definition of **fixed-rate share**, in paragraph (a), “FE 6 (Apportionment of interest by excess debt entity),” is inserted before “GC 8”. 30
- (21) In the definition of **foreign attributed income**, paragraph (b) is replaced by the following:
 “(b) FIF income calculated under the attributed FIF income method” 35
- (22) The definition of **foreign attributed loss offsets** is repealed.

- (23) The definition of **fully credited for conduit tax relief** is repealed.
- (24) In the definition of **international tax rules**, paragraph (a)(xii) is repealed.
- (25) In the definition of **lease**, paragraph (d), “(Branch equivalent income or loss: calculation rules)” is replaced by “(Attributable CFC amount and net attributable CFC income or loss: calculation rules)”. 5
- (26) In the definition of **loss**, paragraph (c) is replaced by the following: 10
 - “(c) means a net attributable FIF loss when used in the expression ‘net attributable FIF income or loss’:”.
- (27) In the definition of **maximum permitted ratio**, “a CTR credit,” is omitted.
- (28) The following definitions are inserted in the appropriate alphabetical order: 15
 - “**net attributable FIF income**, for a FIF and for an accounting period, means an amount of zero or more calculated for the accounting period under **section EX 50(3)** (Attributable FIF income method) 20
 - “**net attributable FIF loss**, for a FIF and for an accounting period, means an amount of less than zero calculated for the accounting period under **section EX 50(3)** (Attributable FIF income method)”.
- (29) In the definition of **non-refundable tax credit**, paragraph (d) is repealed. 25
- (30) In the definition of **New Zealand banking group**, “section FE 36 (Identifying members of New Zealand banking group)” is replaced by “sections FE 36 and **FE 36B** (which identify the members of a New Zealand banking group)”. 30
- (31) The following definitions are inserted in the appropriate alphabetical order:
 - “**NZIAS 28** means New Zealand Equivalent to International Accounting Standard 28 approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place 35

“**NZIAS 31** means New Zealand Equivalent to International Accounting Standard 31 approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place”.

- (32) In the definition of **residual income tax**, paragraph (d) is repealed. 5
- (33) In the definition of **supplementary dividend holding company**, paragraph (e), “to CW 11” is replaced by “and CW 10”.
- (34) In the definition of **taxation law**, “ GZ 2 (Arrangements involving cancellation of conduit tax relief credits),” is omitted. 10
- (35) **Subsections (3), (20), (30), and (31)** apply for income years beginning on or after 1 July 2009.
- (36) **Subsections (2), (4), (6), (7), (9) to (11), (15), (18), (19), (21) to (23), (25) to (29), (33), and (34)** apply for income years beginning on or after 1 July 2011. 15
- (37) **Subsections (5), (8), (12) to (14), (24), and (32)** apply for income years beginning on or after 1 July 2012.

127 Demutualisation of insurers

- (1) In section YC 17(12)(b)(ii), “account:” is replaced by “account.” and subparagraph (iii) is repealed. 20
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

128 Corporate reorganisations not affecting economic ownership

- (1) In section YC 18B(3), “OE,” is omitted. 25
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

129 Residence of CTR company shareholders

- (1) In section YD 9(1), “and section GZ 2 (Arrangements involving cancellation of conduit tax credits)” is added after “tax relief”. 30
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

130 Heading and sections YD 9 to YD 11 repealed

- (1) The heading before section YD 9 is repealed.
- (2) Sections YD 9 to YD 11 are repealed.
- (3) **Subsection (2)** applies for income years beginning on or after 1 July 2011. 5

131 Schedule 25—Foreign investment funds

- (1) Schedule 25, part C is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

Part 2

10

Amendments to Tax Administration Act 1994

132 Tax Administration Act 1994

Sections 133 to 141 amend the Tax Administration Act 1994. 15

133 Keeping of business and other records

- (1) In section 22(2)(f), “a BETA company,” is omitted.
- (2) In section 22(2)(k), “a CTR account and” is omitted.
- (3) In section 22(7), “and sections OP 97 to OP 108” is omitted.
- (4) **Subsections (1) and (3)** apply for records relating to income 20 years beginning on or after 1 July 2012.
- (5) **Subsection (2)** applies for records relating to income years beginning on or after 1 July 2011.

134 Shareholder dividend statement to be provided by company

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- (1) In section 29(1), in the words before the paragraphs, “an FDP credit, or a CTR credit” is replaced by “or an FDP credit”.
- (2) Section 29(1)(ia) is repealed.
- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011. 30

135 Section 30A repealed

- (1) Section 30A is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

136 New section 65B inserted

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- (1) After section 65, the following is inserted:

“65B Information to be furnished with return by entity apportioning interest expenditure under section FE 6B

A company or person apportioning its interest expenditure under **section FE 6B** of the Income Tax Act 2007 for an income year must furnish to the Commissioner, no later than when the company or person is required to furnish a return of its income for the corresponding tax year, the following information in the form and by the means prescribed by the Commissioner:

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- “(a) notice to the Commissioner that the section has been applied; and
- “(b) a reconciliation of adjusted net profit under **section FE 5(1BC)** of that Act to GAAP net profit; and
- “(c) a reconciliation of goodwill to items presented in the GAAP balance sheet; and
- “(d) further information that is required by the Commissioner.”

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

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137 Section 68A repealed

- (1) Section 68A is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

138 Annual ICA return

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- (1) Section 69(1)(e) is repealed.
- (2) Section 69(1)(f) is repealed.
- (3) **Subsection (1)** applies for returns relating to income years beginning on or after 1 July 2012.

- (4) **Subsection (2)** applies for returns relating to income years beginning on or after 1 July 2011.

139 Section 77 repealed

- (1) Section 77 is repealed.
(2) **Subsection (1)** applies for returns relating to income years beginning on or after 1 July 2012. 5

140 Determination on insurer as non-attributing active CFC

- (1) After section 91AAQ(5), the following is inserted:
“(5B) In a determination, the Commissioner may stipulate conditions that must be satisfied,— 10
“(a) in addition to the requirements of subsection (2), for a CFC to be a non-attributing active CFC:
“(b) in addition to the requirements of subsection (3), for the members of a group of CFCs to be non-attributing active CFCs.” 15
(2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

141 Remission for GST transitional taxable periods

- In section 183AA(4)(b), “31 December 2010.” is replaced by “31 December 2010:” and the following is added: 20
“(c) a GST taxable period for which the taxpayer is required to make a return that includes an adjustment under section 78B of the Goods and Services Tax Act 1985 because of the change in the rate of goods and services tax on 1 October 2010.” 25

**Part 3
Amendment to Stamp and Cheque Duties
Act 1971**

142 Section 86I replaced by new sections 86I and 86IB

- Section 86I of the Stamp and Cheque Duties Act 1971 is replaced by the following: 30

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

For the purposes of the NRWT rules of the Income Tax Act 2007 and section 86J of this Act, and notwithstanding any provision of the NRWT rules of the Income Tax Act 2007, a payment of interest shall be treated as being paid by an approved issuer in respect of a registered security only where,—

- “(a) and to the extent that, payment is made by or on behalf of the approved issuer of approved issuer levy on the leviable value of the registered security at the time of the payment of interest—
 - “(i) at the rate specified in section 86J of this Act; and
 - “(ii) by the date specified in either section 86K or section 86KA, or by a later date upon the payment of any interest or penalties imposed under Parts 7 or 9 of the Tax Administration Act 1994 respectively; or
- “(b) the registered security meets the requirements of **section 86IB** and the approved issuer provides a statement to the Commissioner—
 - “(i) showing the details prescribed by the Commissioner under section 86K(2) for a statement relating to payments of interest under such a registered security and provided to the Commissioner within the time given by **subparagraph (ii)**; and
 - “(ii) by the time that would be required by section 86K(1)(b) for a payment of the levy in relation to the payment of interest, or by a later date for the statement if that date is set by the Commissioner in a notice given to the approved issuer.

“86IB Zero rate of approved issuer levy—requirements for securities

“(1) A registered security meets the requirements of this section if—

- “(a) the security is denominated in New Zealand dollars; and
- “(b) the issue of the security—
 - “(i) was an offer to the public for the purposes of the Securities Act 1978; and
 - “(ii) was not a private placement; and

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- “(c) the security is not an asset-backed security; and
- “(d) the activities of the registrar and the paying agent for the security are carried on through a fixed establishment in New Zealand; and
- “(e) the security— 5
- “(i) is listed on an exchange registered under the Securities Market Act 1988;
- “(ii) is 1 of a number of securities meeting the requirements of **subsection (2)**.
- “(2) A security meets the requirements of this subsection if, at or 10
before the time of the payment of interest referred to in **section 86I** in respect of the registered security,—
- “(a) the security is 1 of a number of identical debt securities (the **class of securities**) that are registered securities; 15
and
- “(b) the group of persons who each hold a security included in the class of securities consists of 100 or more persons; and
- “(c) the issuer of the class of securities has reasonable grounds for expecting that each of 100 or more persons 20
in the group—
- “(i) is not associated with the issuer and not associated with another member of the group; and
- “(ii) is not part of an arrangement intended to temporarily increase the number of persons in the 25
group; and
- “(d) no person or group of associated persons holds more than 10% by value of the class of securities.”
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