

Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill

Government Bill

Explanatory note

General policy statement

This bill proposes measures foreshadowed in Budget 2012, to broaden the tax base. The budget-related measures tighten the rules for deducting costs of assets that are used both privately by the person who has the asset, and also used to earn income. Holiday homes, boats, and aircraft are often used in this way. Also, following on from the changes to livestock valuation rules in Budget night legislation, there are further supporting provisions proposed.

Several important GST-related changes are proposed. Among them, supplies by agents are better accounted for, and debts to the Crown from local authorities changing GST accounting basis will be spread over 72 months with no penalties or interest imposed. In addition, it is proposed that certain non-resident businesses may register for GST and claim input tax deductions for GST incurred on approximately the same basis as a resident registered person.

Other substantive measures include changes to the time periods for claiming refunds under the Income Tax Act 2007, ensuring that expenditure on trees and plantings for erosion, shelter and water protection purposes is tax deductible, and clarification of the definition of *dividend* in relation to certain rights issues, premiums paid under

bookbuild arrangements, and share splits by companies. Also, the removal of tax concessions for certain non-resident investment companies is proposed.

Several remedial and technical changes are proposed as well, including better aligning the primary sector amortisation rules with the general depreciation rules, eliminating tax treatment mismatches for certain foreign currency hedges, and fixing the tax treatment of MPs' allowances.

Donee status is proposed for 3 organisations, namely The Hunger Project New Zealand, OneSight New Zealand, and Fund for Timor.

Regulatory impact statement

Inland Revenue produced regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact statements can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/ris>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Livestock valuation

The specified livestock amendments proposed in this bill flesh out the Budget 2012 provision which provides the rule that elections to use the herd scheme are generally irrevocable, effective 18 August 2011.

The bill provides an exception to this irrevocability rule where a farmer changes to a fattening operation. In such a case, a farmer may make a one-off election to change, in the year that the last of the female breeding livestock is disposed of. This exception will also be effective from 18 August 2011.

Also, it is proposed to amend section EC 20 and repeal section EC 21 of the Income Tax 2007, with effect from 28 March 2012.

The section EC 20 rule about disposals and the cessation of farming is amended by providing that if the livestock are sold before 1 November of an income year, the herd values that were announced in May of the calendar year of the sale must be used to value the opening herd scheme livestock for taxation purposes. By default, if the sale

is completed on or after 1 November of an income year, the normal opening herd scheme adjustment will be made.

Section EC 21, which relates to disposals of livestock on a person's death, is repealed and is effectively replaced by the associated person transfer rule, discussed immediately below.

It is proposed that, for associated person transfers of livestock, if a person (the **transferor**) is disposing of the livestock other than in the ordinary course of business, and they are using the herd scheme, then their herd scheme election and base herd scheme numbers will transfer to the associated person who acquires the livestock (the **transferee**). There is an exception for certain intergenerational transfers.

A herd scheme election and base herd scheme numbers may not transfer to a transferee if it is an intergenerational transfer in situations where the only association between the parties is because of their blood relationship. Other criteria have to be met, including that the transferor has to cease deriving income from the disposal of livestock and that the transferee makes a one-off election in the year of the transfer.

The associated person transfer rule and intergenerational exception will have effect from 28 March 2012, and may also apply on death and to matrimonial property transfers.

Also, 2 sets of classes, for Friesian and Jersey dairy cattle, and Red and Wapiti deer will be combined, in schedule 17 of the Income Tax Act 2007. This will apply for the 2012–13 income year.

Apportionment of expenditure for certain assets

New rules are proposed to limit the amount of an income tax deduction that a person is allowed in relation to the use of certain assets, such as holiday homes, aircraft, and boats, which are used for both income-earning and private purposes.

Generally, a person is allowed an income tax deduction for expenditure if it is incurred in deriving their income or in the course of carrying on a business. The private limitation, however, denies a deduction if the expenditure is private or domestic. These 2 rules are difficult to apply in relation to assets such as holiday homes.

For assets that are used partly for private purposes and partly to derive income, the new rules will determine whether an expense is explicitly

allowed as a deduction and provide a method of apportioning that amount.

The proposed rules will apply to assets that are comprised of land or are valued over \$50,000, and that are not used for at least 62 days in an income year. Motor vehicles are excluded from the rules, as are assets whose expenditure is apportioned on an area basis.

A person will be allowed a full deduction for certain expenditure directly related to income-earning use of an asset, and an apportioned amount for other expenditure, other than purely private expenditure. Depreciation loss and GST input tax deductions will be calculated along similar lines. Some losses arising in relation to these assets will be ring-fenced.

Under the proposed rules, private use of an asset is any use of the asset by the person or a relative, whether or not rent is paid. *Relative* is defined for the purposes of the new rules.

Some modifications are proposed when it is impossible to attribute income separately to the use of an asset. Any losses that the person has are not ring-fenced unless the income derived from the use of the asset is substantially rental income.

If the income that a person derives from the use of the asset is less than \$1,000 for an income year, or if they have a loss, they may choose to treat the income relating to the use of the asset as exempt income in relation to which no deduction is allowed.

Primary sector businesses

The Income Tax Act 2007 allows primary sector businesses (farming, horticulture, forestry, and aquaculture) to amortise the costs of certain capital expenditure that are not expressly depreciable. This amortisation is similar to taxpayers' entitlement to claim depreciation on fixed assets. Two minor amendments are proposed, to better align the amortisation rules for primary sector businesses more closely with the general rules on depreciation in the Income Tax Act 2007.

The bill proposes the removal of the remnants of depreciation loading for primary sector assets.

The bill also ensures the tax deductibility of expenditure on trees and plantings for erosion, shelter, and water protection purposes.

Fair dividend rate foreign currency hedges

At present, there is a mismatch in the income tax treatment for a person who enters into a foreign currency hedge in relation to certain offshore assets. Generally, the mismatch arises for assets that are taxed under the fair dividend rate (**FDR**) regime and for some ASX-listed shares, because the tax treatment of those assets is different from the current tax treatment of foreign currency hedges made in relation to them. This mismatch makes it more difficult to effectively hedge investments in those assets.

The bill proposes rules designed to eliminate the tax mismatch as much as possible. The rules are optional, and allow eligible taxpayers to apply FDR to their foreign currency hedges, rather than apply the financial arrangement rules. The rules are restricted to hedging those offshore assets for which the tax mismatch would normally arise.

Clarification of dividend definition

The *dividend* definition is being clarified to ensure that certain transactions are not dividends for tax purposes. From a policy perspective, transactions like rights issues, premiums paid under bookbuild arrangements, and share splits should not be treated as a taxable dividend because the company does not give up anything of value.

Refund request time period

The bill proposes a reduction in the time period allowed to some taxpayers for requesting a refund under the Income Tax Act 2007. The current period is generally 4 years from the year of assessment. An extra 4 years is allowed, for taxpayers other than those who receive personal tax summaries, if the overpayment resulted from a clear mistake or simple oversight. The proposal is to remove the extra 4 years from the period so that the same time is allowed for all taxpayers. The change would align the period in which a taxpayer must apply for a refund with the 4-year period in which the Commissioner must amend an assessment. It would result in taxpayers being treated equally for refund purposes.

Consistent with this amendment to the Income Tax Act 2007, the time period for requesting refunds of donations tax credits is being limited to 4 years from the relevant year.

Expenditure for a building's commercial fit-out

The bill proposes an amendment to the Income Tax Act 2007 to ensure that expenditure on a building's commercial fit-out is only immediately deductible if the capital / revenue boundary would allow the deduction ignoring the expenditure's relationship to the building. If the expenditure is not immediately deductible, it may be capitalised and depreciated over the fit-out's useful life.

Tax concessions for certain non-resident investment companies

The bill proposes the repeal of residual income tax concessions for certain non-resident companies investing in projects specified in 4 Orders in Council. The concessions have outlived their original purpose.

MPs' allowances

Minor technical changes are proposed, to correct an unintended anomaly following the rewrite of the Income Tax Act 1994. The changes apply from 1 April 2005, to restore the rules to the original position, and ensure that only the private element of payments and services provided to members of Parliament is taxed. Without the change, the full amount of payments and services to MPs, to carry out their Parliamentary duties, would be taxed.

Donee status

Donee status is proposed for 3 organisations, namely The Hunger Project New Zealand, OneSight New Zealand, and Fund for Timor.

GST issues

Cross border business to business neutrality

Under existing GST rules, a non-resident business that buys goods or services can incur a GST cost that would not be incurred by a resident business buying the same goods or services. Amendments are proposed to allow certain non-resident businesses to register for GST and claim input tax deductions for GST incurred on approximately the same basis as a resident registered person.

Deductibility of cash prizes

When the Gambling Act 2003 was enacted, consequential amendments were made to the Goods and Services Tax Act 1985. However, the changes had the unintended result of narrowing the range of circumstances in which cash prizes are able to be deducted when calculating the consideration for a supply. Amendments are proposed to restore the legislation in line with the original policy, and to slightly widen the range of circumstances in which cash prizes can be deducted.

Supplies by agents

An agent may make a supply to a recipient on behalf of a principal, and, for the purposes of the Goods and Services Tax Act 1985, the supply is treated as made by the principal with 1 invoice issued for the supply. In practice, however, some accounting systems automatically issue a tax invoice when goods or services are provided to another party, causing 2 invoices to be issued in an agency situation for what is in effect a single supply. The bill proposes to enable principals and agents to agree to treat the principal's provision of the goods and services to the agent and the agent's supply to the customer as separate supplies for GST purposes so allowing 2 tax invoices to be issued. Other changes include limiting the use of the bad debt rules when principals and agents use this new invoicing procedure.

Local authorities' change of accounting basis

In 2001, a temporary exemption was provided for certain local authorities from a requirement to change to the invoice accounting basis. The exemption expires on 30 June 2013. Eight local authorities are still to make the change but they have large rates debts on which output tax will be payable once the change is made. An amendment proposes the payment of the debt by instalment spread over 72 months with no penalties or interest imposed.

Record keeping

Changes are proposed to GST taxpayer record-keeping requirements so that they align with proposed Tax Administration Act 1994 requirements that allow flexibility in keeping records overseas.

KiwiSaver

This bill proposes an amendment to the definition of *salary and wages* in the KiwiSaver Act 2006 to exclude Voluntary Bonding Scheme payments from the KiwiSaver deduction regime. Voluntary Bonding Scheme payments are made under the auspices of the Ministry for Primary Industries, the Ministry of Health, and the Ministry of Education, to encourage graduates in veterinarian science, medicine, midwifery, nursing, and teaching to work in hard-to-staff specialities and geographical locations within New Zealand.

As a separate remedial matter, a cross-reference in section 4 of the KiwiSaver Act 2006 is corrected.

Remedial matters

The bill proposes various remedial amendments to various Revenue Acts, and to other Acts, consequentially. They are mainly of a technical nature. The more significant are:

- ensuring that the current outstanding claims reserve provisions do not apply to general insurance policies with risk periods straddling 1 July 1993:
- ensuring that transitional imputation penalty tax does not apply earlier than it should:
- correcting a drafting mistake, to ensure that certain livestock valuation elections are in writing:
- correcting cross-references in the calculation of net family scheme income for the minimum family tax credit:
- correcting a drafting mistake in the CFC tax credit rules for foreign tax paid by a foreign company:
- amending section EE 60 of the Income Tax Act 2007, and section EE 51 of the Income Tax Act 2004, on the advice of the Rewrite Advisory Panel:
- amending the AIL rules to re-instate a DTA-related rule mistakenly removed:
- correcting and rationalising cross-references for the income tax exemption of parts of overseas benefits:
- amending the Schedule of the Search and Surveillance Act 2012 and the Tax Administration Act 1994, to ensure that the

Inland Revenue's search and seizure powers are appropriate and harmonised between the 2 Acts.

Clause by clause analysis

Clause 1 gives the title of the Act.

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

Part 1

Amendments to Income Tax Act 2007

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

Clause 4 amends *section CC 1* to clarify that the income that a person derives from the use of an asset referred to in subpart DG when they choose to opt out of the apportionment rules is not a payment of rent for the purposes of the section.

Clause 5 inserts *new section CD 29B* to ensure that certain transactions do not constitute a dividend.

Clause 6 amends *section CD 40* by removing a cross-reference to repealed *section RM 6*.

Clause 7 amends *section CD 41* by removing 2 cross-references to repealed *section RM 6*.

Clause 8 amends *section CR 4* to ensure that the current outstanding claims reserve provisions do not apply to general insurance policies with risk periods straddling 1 July 1993.

Clause 9 inserts *new section CV 18* as part of removing tax volatility for certain foreign exchange hedging transactions.

Clause 10 inserts *new section CW 8B* to treat the income that a person derives from the use of an asset referred to in *subpart DG* when they choose to opt out of the apportionment rules as exempt income.

Clause 11 amends *section CW 28* as part of correcting and rationalising cross-references for the income tax exemption of parts of overseas benefits.

Clause 12 replaces *section CW 31* to ensure, as a remedial matter, that only the private element of payments and services provided to members of Parliament is taxed.

Clause 13 replaces *section CX 12* to ensure, as a remedial matter, that only the private element of payments and services provided to members of Parliament is taxed.

Clause 14 inserts *new section DA 5* to ensure that expenditure on a building's commercial fit-out is only immediately deductible if the capital / revenue boundary would allow the deduction ignoring the expenditure's relationship to the building.

Clause 15 amends *section DB 5* to clarify the relationship with the new rules in *subpart DG*.

Clause 16 amends *section DB 7* to clarify the relationship with the new rules in *subpart DG*.

Clause 17 amends *section DB 8* to clarify the relationship with the new rules in *subpart DG*.

Clause 18 amends *section DB 64* to align primary sector amortisation deductions with general rules on capital contributions and depreciation.

Clause 19 inserts *new subpart DG* to provide the deductibility and apportionment rules for expenditure that a person incurs in relation to certain assets when the person uses the asset partly for deriving income and partly for private purposes. *Sections DG 1 and DG 2* provide an outline of the subpart and describe how it is to apply. *Section DG 3* defines the assets to which the subpart applies, *section DG 4* defines private use for the purposes of the subpart, and *section DG 5* defines what is meant by interest expenditure. *Section DG 6* modifies the rules related to persons associated with companies. *Sections DG 7 to DG 9* determine the deductibility of expenditure when the asset is held simply by either a natural person or a close company. *Section DG 8* provides the main expenditure limitation rule for expenditure related to the mixed-use of the asset, and *section DG 9* sets out the apportionment formula that is used in a number of sections. *Sections DG 10 to DG 14* outline the approach to the deductibility and apportionment of interest expenditure when the asset is held in complex structures involving related companies. *Sections DG 15 to DG 19* provide for the treatment of quarantined expenditure, the calculations for determining the quarantined amounts, and the allocation of the expenditure. *Sections DG 20 to DG 22* modify the earlier provisions for situations when amounts of income cannot be separately attributed to the use of an asset, when a person may choose to opt out of the rules, and when an asset is acquired or disposed of during the year.

Clause 20 amends *section DO 1* as part of ensuring that expenditure on trees and plantings for erosion, shelter, and water protection purposes is tax deductible.

Clause 21 amends *section DO 2* to ensure that expenditure on trees and plantings for erosion, shelter, and water protection purposes is tax deductible.

Clause 22 amends *section DO 5* to remove depreciation loading for listed horticultural plants.

Clause 23 amends *section DO 11* to allow deductions for expenditure on certain primary industry improvements to land, where the improvements have been rendered useless.

Clause 24 inserts *new section DV 25* as part of removing tax volatility for certain foreign exchange hedging transactions.

Clause 25 amends *section DW 4* to ensure that the current outstanding claims reserve provisions do not apply to general insurance policies with risk periods straddling 1 July 1993.

Clause 26 inserts *new section EC 4B* to ensure that a person receiving herd scheme animals from an associate must themselves use the herd scheme, except if the person is the direct descendant of the associate.

Clause 27 amends *section EC 7* to ensure, as a remedial matter, that written notice is required for certain livestock valuation method elections.

Clause 28 amends *section EC 8* as part of ensuring that a person receiving herd scheme animals from an associate must themselves use the herd scheme, and to allow the use of a valuation method other than the herd scheme, in limited circumstances.

Clause 29 amends *section EC 11* as part of allowing the use of a valuation method other than the herd scheme, in limited circumstances.

Clause 30 amends *section EC 20* as part of ensuring that a person receiving herd scheme animals from an associate must themselves use the herd scheme, and to prescribe outcomes when livestock is disposed of before values are determined.

Clause 31 repeals *section EC 21* as part of ensuring that a person receiving herd scheme animals from an associate must themselves use the herd scheme.

Clause 32 amends *section EE 60* to clarify that it applies to assets that are not available for use, including assets that are withdrawn from use.

Clause 33 inserts *new subpart EM* to remove tax volatility for certain foreign exchange hedging transactions. *Section EM 1* provides general rules for applying *subpart EM*. *Section EM 2* provides rules for who *subpart EM* applies to. *Section EM 3* provides rules for what hedges *subpart EM* applies to. *Section EM 4* provides rules for irrevocable elections to choose that eligible hedges are subject to *subpart EM*. *Section EM 5* provides rules that set maximum fair dividend rate hedge portions for a person's eligible hedges. *Section EM 6* provides the calculation to determine the income and expenditure for a person's fair dividend rate hedge portions. *Section EM 7* provides a quarterly test of the person's fair dividend rate hedge portions, and provide rules that apply if the ratio of hedge portions to eligible hedged assets exceeds 1.05, including a rule to not apply *subpart EM*. *Section EM 8* provides some definitions for *subpart EM*.

Clause 34 amends *section EX 21* consequential to ensuring that expenditure on trees and plantings for erosion, shelter, and water protection purposes is tax deductible.

Clause 35 amends *section GC 5* to ensure that the section does not apply in relation to assets referred to in *subpart DG*.

Clause 36 amends *section HA 33* to correct a cross-reference as a remedial matter.

Clause 37 amends *section LK 1* to allow a CFC credit for foreign tax paid by a foreign company as a remedial matter.

Clause 38 repeals *sections LZ 2 to LZ 5* which relate to credits for certain non-resident investment companies.

Clause 39 amends *section MB 1* as part of correcting and rationalising cross-references for the income tax exemption of parts of overseas benefits.

Clause 40 amends *section ME 3* to correct cross-references in the calculation of net family scheme income for the minimum family tax credit.

Clause 41 amends *section OB 71* by removing a cross-reference to repealed *section RM 6*.

Clause 42 amends *section OB 72* by removing a cross-reference to repealed *section RM 6*.

Clause 43 amends *section OB 72B* by removing 2 cross-references to repealed *section RM 6*.

Clause 44 amends *section OP 6* by removing a cross-reference to repealed *section RM 6*.

Clause 45 amends *section RD 60* to insert a cross-reference to clarify the relationship between *sections RD 60 and RA 20(2)*.

Clause 46 amends *section RM 2* by removing a cross-reference to repealed *section RM 6*.

Clause 47 amends *section RM 4* by removing a cross-reference to repealed *section RM 6*.

Clause 48 repeals *section RM 6* which provides taxpayers who are required to make a tax return with an extra 4 years in which to apply for refunds arising from a clear mistake by or simple oversight of the taxpayer.

Clause 49 amends *section RM 10* by removing a cross-reference to repealed *section RM 6*.

Clause 50 amends *section RM 13* by removing a cross-reference to repealed *section RM 6*.

Clause 51 amends *section RM 17* by removing a cross-reference to repealed *section RM 6*.

Clause 52 amends *section RM 22* by removing a cross-reference to repealed *section RM 6*.

Clause 53 amends *section RM 23* by removing a cross-reference to repealed *section RM 6*.

Clause 54 amends *section RM 26* by removing a cross-reference to repealed *section RM 6*.

Clause 55 amends *section RM 28* by removing a cross-reference to repealed *section RM 6*.

Clause 56 amends *section RM 33* by removing a cross-reference to repealed *section RM 6*.

Clause 57 amends *section YA 1*. *Subclause (1)* amends the definition of *asset* as part of the rules for expenditure that a person incurs in relation to certain assets when the person uses the asset partly for deriving income and partly for private purposes. *Subclause (2)* inserts a new definition of *asset value* as part of the rules for expenditure that a person incurs in relation to certain assets when the person uses the asset partly for deriving income and partly for private purposes. *Subclause (3)* inserts a new definition of *Australian non-attributing shares* as part of removing tax volatility for certain foreign exchange

hedging transactions. *Subclauses (4) and (5)* replace the definition of *bonus issue* to ensure that a share split involving the subdivision of shares does not constitute a dividend. *Subclause (6)* amends the definition of *capital contribution* as part of aligning primary sector amortisation deductions with general rules on capital contributions and depreciation. *Subclause (7)* inserts a new definition of *capital contribution property* as part of aligning primary sector amortisation deductions with general rules on capital contributions and depreciation. *Subclause (8)* inserts a new definition of *class closing animal balance* as part of Budget-related livestock valuation changes. *Subclause (9)* amends the definition of *cost* as part of the rules for expenditure that a person incurs in relation to certain assets when the person uses the asset partly for deriving income and partly for private purposes. *Subclause (10)* inserts a new definition of *debt value* as part of the rules for expenditure that a person incurs in relation to certain assets when the person uses the asset partly for deriving income and partly for private purposes. *Subclause (11)* inserts a new definition of *descendant* as part of Budget-related livestock valuation changes. *Subclause (12)* inserts a new definition of *descended associate* as part of Budget-related livestock valuation changes. *Subclause (13)* repeals the definition of *development investments* as part of removing tax concessions for certain non-resident investment companies. *Subclause (14)* inserts a new definition of *eligible hedge* as part of removing tax volatility for certain foreign exchange hedging transactions. *Subclause (15)* inserts a new definition of *fair dividend rate hedge portion* as part of removing tax volatility for certain foreign exchange hedging transactions. *Subclause (16)* amends the definition of *FDP rules* as a remedial matter. *Subclause (17)* inserts a new definition of *hedge* as part of removing tax volatility for certain foreign exchange hedging transactions. *Subclause (18)* inserts a new definition of *interest expenditure* as part of the rules for expenditure that a person incurs in relation to certain assets when the person uses the asset partly for deriving income and partly for private purposes. *Subclause (19)* replaces the definition of *investor interest* as part of removing tax volatility for certain foreign exchange hedging transactions. *Subclause (20)* amends the definition of *market value* as part of the rules for expenditure that a person incurs in relation to certain assets when the person uses the asset partly for deriving income and partly for private purposes. *Subclauses (21) and (22)* amend the

definitions of *New Zealand superannuation* and *New Zealand superannuitant* as part of correcting and rationalising cross-references for the income tax exemption of parts of overseas benefits. *Subclause (23)* repeals the definition of *non-resident investment company* as part of removing tax concessions for certain non-resident investment companies. *Subclause (24)* replaces the definition of *private use* as part of the rules for expenditure that a person incurs in relation to certain assets when the person uses the asset partly for deriving income and partly for private purposes. *Subclause (25)* inserts a new definition of *quarterly FDR hedging ratio* as part of removing tax volatility for certain foreign exchange hedging transactions. *Subclause (26)* amends the definition of *significant capital activity* as part of ensuring that expenditure on trees and plantings for erosion, shelter, and water protection purposes is tax deductible. *Subclause (27)* replaces the definition of *veteran's pension* as part of correcting and rationalising cross-references for the income tax exemption of parts of overseas benefits. *Subclauses (28) to (31)* give dates for which the subclauses of *clause 57* apply.

Clause 58 amends *schedule 3* to insert a cross-reference as a remedial matter.

Clause 59 amends *schedule 17* to consolidate the listed types and classes of livestock.

Clause 60 amends *schedule 20* to remove depreciation loading for primary sector assets.

Clause 61 amends *schedule 32* to add 3 new organisations to the list of recipients of charitable or other public benefit gifts.

Part 2 Amendments to other Acts

Amendments to Tax Administration Act 1994

Clause 62 gives the clauses that affect the *Tax Administration Act 1994*.

Clause 63 repeals *section 2(4)* which dates from the enactment of the *Tax Administration Act 1994* and is now obsolete.

Clause 64 amends *section 16*, to ensure that the Inland Revenue's search and seizure powers are appropriate and harmonise with the *Search and Surveillance Act 2012*.

Clause 65 amends *section 16C*, to ensure that the Inland Revenue's search and seizure powers are appropriate and harmonise with the Search and Surveillance Act 2012.

Clause 66 inserts *new section 30D* for the notification that a company must provide to its shareholders when expenditure is incurred in relation to an asset that is used partly for deriving income and partly for private purposes.

Clause 67 amends *section 41A* to ensure a 4-year refund timeframe for donations tax credits.

Clause 68 amends *section 120C* as a consequential measure in relation to refunds owing to non-residents.

Clause 69 amends *section 125* by removing a cross-reference to repealed *section RM 6*.

Clause 70 amends *section 138E* by removing a cross-reference to repealed *section RM 6*.

Clause 71 amends *section 140C* to ensure that transitional imputation penalty tax does not apply earlier than it should.

Clause 72 amends *section 184* by removing a cross-reference to repealed *section RM 6*.

Amendments to Goods and Services Tax Act 1985

Clause 73 gives the clauses that affect the *Goods and Services Tax Act 1985*.

Clause 74 amends *section 2* to insert a new definition of *prize competition*.

Clause 75 amends *section 5* to provide for the treatment of the goods and services supplied by a non-resident person at the time they cease to be a registered person, and to restore the effect of the original policy in relation to prize competitions.

Clause 76 amends *section 9* to restore the effect of the original policy in relation to prize competitions.

Clause 77 amends *section 10*. *Subclauses (1), (2), and (4)* clarify that the definition of *market value* in the *Income Tax Act 2007* applies in relation to the new asset expenditure provisions. *Subclause (3)* restores the effect of the original policy in relation to prize competitions.

Clause 78 amends *section 11* to zero-rate the costs of tools used exclusively to make exported goods.

Clause 79 amends *section 19* to require a non-resident registered person to account for tax payable on a payments basis.

Clause 80 amends *section 19A* as a consequential amendment on the expiry of the exemption for certain local authorities from the requirement to account for GST on an invoice basis, and also to enable the Commissioner to require a non-resident registered person to account on a payments basis.

Clause 81 repeals *section 19AB* as a consequential amendment on the expiry of the exemption for certain local authorities from the requirement to account for GST on an invoice basis.

Clause 82 amends *section 19C* to update a cross-reference.

Clause 83 amends *section 20*. *Subclauses (1), (3), (4), and (7)* determine the amount of tax payable in relation to the use of an asset that is partly used for deriving income and partly for private purposes. *Subclauses (2), (5), and (6)* provide that non-resident registered persons may deduct input tax only to the extent to which goods or services are used for making taxable supplies.

Clause 84 inserts *new section 20G* to calculate the amount of an input tax deduction for expenditure on an asset described in subpart DG of the Income Tax Act 2007.

Clause 85 amends *section 21B* to update cross-references.

Clause 86 amends *section 21D* to update cross-references.

Clause 87 amends *section 21G* to update cross-references.

Clause 88 amends *section 26* to exclude the application of the bad debt provisions in relation to certain supplies involving a principal and an agent.

Clause 89 amends *section 46* to extend the refund period when the registered person is non-resident.

Clause 90 repeals *section 52(7)* as a consequential amendment on the insertion of *new section 54C*.

Clause 91 inserts *new sections 54B and 54C* to provide the rules for the registration and deregistration of non-residents.

Clause 92 amends *section 55* to clarify the treatment of groups of companies who have both resident and non-resident registered persons as members.

Clause 93 amends *section 60* to provide an opt-out provision for principals and agents so that 2 invoices can be issued for what is in effect a single supply.

Clause 94 amends *section 75* to provide record keeping requirements that align with proposed *Tax Administration Act 1994* requirements that allow flexibility in keeping records overseas.

Clause 95 inserts *new section 87* to provide a transitional provision for certain local authorities who are required to account on an invoice basis from 1 July 2013.

Amendment to KiwiSaver Act 2006

Clause 96 amends the definition of *salary and wages* in *section 4 of the KiwiSaver Act 2006* to exclude Voluntary Bonding Scheme payments from the KiwiSaver deduction regime, and to correct a cross-reference.

Amendment to Student Loan Scheme Act 2011

Clause 97 amends *section 202 of the Student Loan Scheme Act 2011* by removing a cross-reference to repealed *section RM 6*.

Amendment to Stamp and Cheque Duties Act 1971

Clause 98 amends *section 86I of the Stamp and Cheque Duties Act 1971* to re-instate a DTA-related rule mistakenly removed.

Amendments to Income Tax Act 2004

Clause 99 gives the clauses that affect the *Income Tax Act 2004*.

Clause 100 inserts *new section CD 21BA* to ensure that certain transactions do not constitute a dividend.

Clause 101 amends *section CR 3* to ensure that the current outstanding claims reserve provisions do not apply to general insurance policies with risk periods straddling 1 July 1993.

Clause 102 replaces *section CW 25* to ensure, as a remedial matter, that only the private element of payments and services provided to members of Parliament is taxed.

Clause 103 replaces *section CX 11* to ensure, as a remedial matter, that only the private element of payments and services provided to members of Parliament is taxed.

Clause 104 amends *section DW 3* to ensure that the current outstanding claims reserve provisions do not apply to general insurance policies with risk periods straddling 1 July 1993.

Clause 105 amends *section EC 7* to ensure, as a remedial matter, that written notice is required for certain livestock valuation method elections.

Clause 106 amends *section EE 51* to clarify that it applies to assets that are not available for use, including assets that are withdrawn from use.

Clause 107 amends *section OB 1* to replace the definition of *bonus issue* as part of ensuring that a share split involving the subdivision of shares does not constitute a dividend.

Amendment to Social Security Act 1964

Clause 108 amends *section 70(4)* of the *Social Security Act 1964* consequentially, as part of correcting and rationalising cross-references for the income tax exemption of parts of overseas benefits.

Non-resident investment companies Orders in Council

Clause 109 revokes 4 Orders in Council, consequential to the repeal of *sections LZ 2 to LZ 5* of the *Income Tax Act 2007* which relate to credits for certain non-resident investment companies.

Amendment to Search and Surveillance Act 2012

Clause 110 amends the *Schedule of the Search and Surveillance Act 2012*, consequential to ensuring that the Inland Revenue's search and seizure powers are appropriate and harmonise with that Act.

Hon Peter Dunne

Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill

Government Bill

Contents

	Page
1 Title	8
2 Commencement	8
Part 1	
Amendments to Income Tax Act 2007	
3 Income Tax Act 2007	9
4 Section CC 1 amended (Land)	9
5 New section CD 29B inserted (Issues to shareholders of rights to subscribe for or sell back shares)	10
CD 29B Issues to shareholders of rights to subscribe for or sell back shares	10
6 Section CD 40 amended (Adjustment if dividend recovered by company)	11
7 Section CD 41 amended (Adjustment if amount repaid later)	11
8 Section CR 4 amended (Income for general insurance outstanding claims reserve)	11
9 New section CV 18 inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)	11
CV 18 Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests	11

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

10	New section CW 8B inserted (Certain amounts derived from use of assets)	11
	CW 8B Certain amounts derived from use of assets	12
11	Section CW 28 amended (Pensions)	12
12	Section CW 31 replaced (Services for members of Parliament)	12
	CW 31 Services for members of Parliament	12
13	Section CX 12 replaced (Services for members of Parliament)	13
	CX 12 Services for members of Parliament	13
14	New section DA 5 inserted (Treatment of expenditure for commercial fit-out)	13
	DA 5 Treatment of expenditure for commercial fit-out	13
15	Section DB 5 amended (Transaction costs: borrowing money for use as capital)	13
16	Section DB 7 amended (Interest: most companies need no nexus with income)	14
17	Section DB 8 amended (Interest: money borrowed to acquire shares in group companies)	14
18	Section DB 64 amended (Capital contributions)	14
19	New subpart DG inserted (Expenditure related to use of certain assets)	15
	Subpart DG—Expenditure related to use of certain assets	
	<i>Introductory provisions</i>	
	DG 1 What this subpart does	15
	DG 2 Application of this subpart	15
	DG 3 Meaning of asset for this subpart	16
	DG 4 Meaning of private use for this subpart	17
	DG 5 Meaning of interest expenditure for this subpart	18
	DG 6 Associated persons: company rule modified	19
	<i>When assets held simply</i>	
	DG 7 Expenditure related to income-earning use	19
	DG 8 Expenditure limitation rule	20
	DG 9 Apportionment formula	21
	<i>When assets held in complex structures</i>	
	DG 10 Interest expenditure rules	22
	DG 11 Interest expenditure: close companies	23
	DG 12 Interest expenditure: group companies	25
	DG 13 Interest expenditure: corporate shareholders	27

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

	DG 14 Interest expenditure: non-corporate shareholders	30
	<i>Quarantined expenditure</i>	
	DG 15 Quarantined expenditure rules	31
	DG 16 Quarantined expenditure when asset activity negative	31
	DG 17 Allocation of amounts quarantined under section DG 16	33
	DG 18 Quarantined expenditure: group companies and shareholders	34
	DG 19 Allocation of amounts quarantined under section DG 18	37
	<i>Certain modifications to rules</i>	
	DG 20 When income cannot be separately attributed	38
	DG 21 Opting out of treatment under this subpart	39
	DG 22 Application of rules to part years	40
20	Section DO 1 amended (Enhancements to land, except trees)	41
21	Section DO 2 amended (Erosion and shelter plantings)	41
22	Section DO 5 amended (Expenditure on land: planting of listed horticultural plants)	42
23	Section DO 11 amended (Improvement destroyed or made useless)	42
24	New section DV 25 inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)	43
	DV 25 Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests	43
25	Section DW 4 amended (Deduction for general insurance outstanding claims reserve)	43
26	New section EC 4B inserted (Compulsory use of herd scheme method for associated persons)	43
	EC 4B Compulsory use of herd scheme method for associated persons	44
27	Section EC 7 amended (Valuation methods)	45
28	Section EC 8 replaced (Restrictions on use of herd scheme)	46
	EC 8 Restrictions on use of herd scheme	46
29	Section EC 11 amended (Restrictions on making elections)	48

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

30	Section EC 20 amended (Herd livestock disposed of before values determined)	48
31	Section EC 21 repealed (Herd livestock on death before values determined)	48
32	Section EE 60 amended (Total deductions in section EE 56)	48
33	New subpart EM inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)	49
	Subpart EM—Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests	
	EM 1 Australian non-attributing shares and attributing FDR method interests	49
	EM 2 Who does this subpart apply to?	50
	EM 3 What hedges does this subpart apply to?	51
	EM 4 Irrevocable elections	52
	EM 5 Fair dividend rate hedge portions	52
	EM 6 Income and expenditure for fair dividend rate hedge portions	55
	EM 7 Quarterly test of fair dividend rate hedge portions	56
	EM 8 Some definitions	57
34	Section EX 21 amended (Attributable CFC amount and net attributable CFC income or loss: calculation rules)	58
35	Section GC 5 amended (Leases for inadequate rent)	58
36	Section HA 33 amended (Revocation of shareholders' elections: by event)	58
37	Section LK 1 amended (Tax credits relating to attributed CFC income)	58
38	Sections LZ 2 to LZ 5 repealed	59
39	Section MB 1 amended (Adjustments for calculation of family scheme income)	59
40	Section ME 3 amended (Meaning of net family scheme income)	59
41	Section OB 71 amended (Imputation additional tax on leaving wholly-owned group)	59
42	Section OB 72 amended (Imputation additional tax on joining wholly-owned group)	59
43	Section OB 72B amended (Limit on using entitlement to refund after joining wholly-owned group)	59
44	Section OP 6 amended (Provisions applying to consolidated imputation groups)	60

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

45	Section RD 60 amended (Close company option)	60
46	Section RM 2 amended (Refunds for overpaid tax)	60
47	Section RM 4 amended (Overpayment on amended assessment)	60
48	Section RM 6 repealed (Refunds after 4-year period ends)	60
49	Section RM 10 amended (Using tax refund to satisfy tax liability)	60
50	Section RM 13 amended (Limits on refunds for ICA companies)	60
51	Section RM 17 amended (Treatment of further income tax paid)	61
52	Section RM 22 amended (Limits on refunds for Maori authorities)	61
53	Section RM 23 amended (Limits on refunds when Maori authority stops being Maori authority)	61
54	Section RM 26 amended (Treatment of further income tax paid)	61
55	Section RM 28 amended (Limits on refunds for PCA persons)	61
56	Section RM 33 amended (Limits on refunds for certain unit trusts and group investment funds)	61
57	Section YA 1 amended (Definitions)	61
58	Schedule 3 amended (Payment of provisional tax and terminal tax) amended	65
59	Schedule 17 amended (Types and classes of livestock)	65
60	Schedule 20 amended (Expenditure on farming, horticultural, aquacultural, and forestry improvements)	66
61	Schedule 32 amended (Recipients of charitable or other public benefit gifts)	66

Part 2

Amendments to other Acts

Amendments to Tax Administration Act 1994

62	Tax Administration Act 1994	67
63	Section 2 amended (Purpose of Act)	67
64	Section 16 amended (Commissioner may access premises to obtain information)	67
65	Section 16C amended (Power to remove and retain documents for inspection)	67
66	New section 30D (Statements to shareholders when certain assets held by companies)	67
	30D Statements to shareholders when certain assets held by companies	67

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

67	Section 41A amended (Returns by persons with tax credits for charitable or other public benefit gifts)	68
68	Section 120C amended (Definitions)	68
69	Section 125 amended (Certain rights of objection not conferred)	68
70	Section 138E amended (Certain rights of challenge not conferred)	68
71	Section 140C amended (Transitional imputation penalty tax payable in some circumstances)	68
72	Section 184 amended (Refund of tax paid on income subsequently exempted by Order in Council)	69
	<i>Amendments to Goods and Services Tax Act 1985</i>	
73	Goods and Services Tax Act 1985	69
74	Section 2 amended (Interpretation)	69
75	Section 5 amended (Meaning of term supply)	69
76	Section 9 amended (Time of supply)	70
77	Section 10 amended (Value of supply of goods or services)	70
78	Section 11 amended (Zero-rating of goods)	71
79	Section 19 amended (Accounting basis)	71
80	Section 19A amended (Requirements for accounting on payments basis)	72
81	Section 19AB repealed (Local authorities accounting on payments basis on and after 1 July 2001)	72
82	Section 19C amended (Tax payable, or refund, where change in accounting basis)	72
83	Section 20 amended (Calculation of tax payable)	72
84	New section 20G inserted (Treatment of supplies of certain assets)	73
	20G Treatment of supplies of certain assets	73
85	Section 21B amended (Adjustments when person or partnership becomes registered after acquiring goods and services)	75
86	Section 21D amended (Calculating amount of adjustment)	75
87	Section 21G amended (Definitions and requirements for apportioned supplies and adjustment periods)	75
88	Section 26 amended (Bad debts)	75
89	Section 46 amended (Commissioner's right to withhold payments)	75
90	Section 52 amended (Cancellation of registration)	76
91	New sections 54B and 54C inserted	76
	54B Non-residents: registration	76

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

	54C Non-residents: cancellation of registration	77
92	Section 55 amended (Group of companies)	77
93	Section 60 amended (Agents and auctioneers)	78
94	Section 75 amended (Keeping of records)	78
95	New section 87 inserted (Change of accounting basis: transitional provision for certain local authorities)	80
	87 Change of accounting basis: transitional provision for certain local authorities	80
	<i>Amendment to KiwiSaver Act 2006</i>	
96	Section 4 amended (Interpretation)	81
	<i>Amendment to Student Loan Scheme Act 2011</i>	
97	Section 202 amended (Provisions of Tax Administration Act 1994 and Income Tax Act 2007 to apply to this Act)	81
	<i>Amendment to Stamp and Cheque Duties Act 1971</i>	
98	Section 86I amended (Application of approved issuer levy and zero-rating)	81
	<i>Amendments to Income Tax Act 2004</i>	
99	Income Tax Act 2004	81
100	New section CD 21BA inserted (Issues to shareholders of rights to subscribe for or sell back shares)	81
	CD 21BA Issues to shareholders of rights to subscribe for or sell back shares	82
101	Section CR 3 amended (Income for general insurance outstanding claims reserve)	82
102	Section CW 25 replaced (Services for members of Parliament)	83
	CW 25 Services for members of Parliament	83
103	Section CX 11 replaced (Services for members of Parliament)	83
	CX 11 Services for members of Parliament	83
104	Section DW 3 amended (Deduction for general insurance outstanding claims reserve)	84
105	Section EC 7 amended (Valuation methods)	84
106	Section EE 51 amended (Total deductions in section EE 47)	84
107	Section OB 1 amended (Definitions)	85
	<i>Amendment to Social Security Act 1964</i>	
108	Section 70 amended (Rate of benefits if overseas pension payable)	85

	<i>Non-resident investment companies Orders in Council</i>	
109	Non-resident investment companies Orders in Council revoked	85
	<i>Amendment to Search and Surveillance Act 2012</i>	
110	Schedule amended (Powers in other enactments to which all or part of Part 4 of Search and Surveillance Act 2012 applies)	86

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act **2012**.
- 2 Commencement** 5
- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) **Sections 100, 102, 103, 105, 106, and 107** are treated as coming into force on 1 April 2005.
- (3) **Sections 101 and 104** are treated as coming into force on 10
1 April 2006.
- (4) **Sections 5, 8, 12, 13, 25, 27, 32, 36, 37, 45, 57(4), (16), (28), and (29), and 58** are treated as coming into force on
1 April 2008.
- (5) **Section 96(1)** is treated as coming into force on 5 January 15
2010.
- (6) **Section 23** is treated as coming into force on 1 April 2010.
- (7) **Section 71** is treated as coming into force on 1 October 2010.
- (8) **Sections 14, 18, 20, 21, 34, and 57(6), (7), (26), and (30)**
are treated as coming into force on 1 April 2011. 20
- (9) **Sections 28(1) and 29** are treated as coming into force on
18 August 2011.
- (10) **Sections 26, 28(2) and (3), 30, 31, and 57(8), (11), and (12)**
are treated as coming into force on 28 March 2012.
- (11) **Section 98** is treated as coming into force on 7 May 2012. 25

- (12) **Section 57(5)** is treated as coming into force on 1 October 2012.
- (13) **Sections 22 and 60** are treated as coming into force on **the day of introduction of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill.** 5
- (14) **Section 94** is treated as coming into force on **the day of Royal assent for the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill.**
- (15) **Sections 4, 6, 7, 9, 10, 15, 16, 17, 19, 24, 33, 35, 38, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57(1), (2), (3), (9), (10), (13), (14), (15), (17), (18), (19), (20), (23), (24), (25), and (31), 59, 61, 66, 67, 69, 70, 72, 77(1), (2), and (4), 83(1), (3), (4), and (7), 84, 85, 86, 87, 97, and 109** come into force on 1 April 2013. 10
- (16) **Section 80(1)** comes into force on 1 July 2013. 15
- (17) **Sections 68, 75(1), 78, 79, 80(2), 83(2), (5), and (6), 89, 90, 91, and 92** come into force on 1 April 2014.
- (18) **Sections 64, 65, and 110** come into force immediately after the items relating to the Tax Administration Act 1994 in the Schedule of the Search and Surveillance Act 2012 come into force, or on 1 April 2014, whichever is first. 20

Part 1

Amendments to Income Tax Act 2007

- 3 Income Tax Act 2007**
Sections 4 to 61 amend the Income Tax Act 2007. 25
- 4 Section CC 1 amended (Land)**
- (1) After section CC 1(2), insert:
“*Amounts derived from certain assets*”
- “(2B) Despite subsections (1) and (2), an amount referred to in **section CW 8B** (Certain amounts derived from use of assets) is not a payment of rent or another amount for the purposes of this section.” 30
- (2) **Subsection (1)** applies for the 2013–14 and later income years.

5 New section CD 29B inserted (Issues to shareholders of rights to subscribe for or sell back shares)

(1) After section CD 29, insert:

“CD 29B Issues to shareholders of rights to subscribe for or sell back shares

5

“Issue of rights to subscribe for shares

“(1) The issue by a company to a shareholder of a right to subscribe for a share, or to sell a share in the company to the company, is not a dividend.

“Issue of shares under rights to subscribe for shares

10

“(2) The issue by a company of a share to a person for consideration less than the market value, immediately before the issue, of a share in the same class of shares, is not a dividend if—

“(a) the person subscribes for the share under a right (a **subscription right**) issued by the company to a shareholder holding shares in the share class before the issue of the right; and

15

“(b) the company does not, as part of the issue of the subscription right, give the person a right to dispose of the share to the company.

20

“Premiums from issue of rights to subscribe for shares

“(3) A distribution by a company to a shareholder is not a dividend if—

“(a) the company issues to the shareholder a right (the **subscription right**) to subscribe for a share at a given price (the **subscription price**); and

25

“(b) the shareholder fails or is ineligible to exercise the subscription right; and

“(c) another person subscribes for the share corresponding to the subscription right at a price (the **clearing price**) of more than the subscription price; and

30

“(d) the distribution to the shareholder represents all or part of the difference between the clearing price and the subscription price.

“Defined in this Act: bonus issue in lieu, company, consideration, dividend, share, shareholder”.

35

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

- 6 Section CD 40 amended (Adjustment if dividend recovered by company)**
In section CD 40(4), replace “RM 6” with “RM 5”.
- 7 Section CD 41 amended (Adjustment if amount repaid later)** 5
(1) In section CD 41(5), in the heading, replace “RM 6” with “RM 5”.
(2) In section CD 41(5), replace “RM 6” with “RM 5”.
- 8 Section CR 4 amended (Income for general insurance outstanding claims reserve)** 10
(1) After section CR 4(1), insert:
“*When this section does not apply*
“(1B) This section does not apply for contracts that section DZ 10 (General insurance with risk period straddling 1 July 1993) applies to.” 15
(2) **Subsection (1)** applies for the 2008–09 income year and later income years.
- 9 New section CV 18 inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)** 20
(1) Before the heading to subpart CW, insert:
“**CV 18 Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests**
The amount of income that a person has under **section EM 6** 25
(Income and expenditure for fair dividend rate hedge portions) is income of the person.
“Defined in this Act: amount, income”.
(2) **Subsection (1)** applies for the 2013–14 and later income years. 30
- 10 New section CW 8B inserted (Certain amounts derived from use of assets)**
(1) After section CW 8, insert:

“CW 8B Certain amounts derived from use of assets

Income that a person derives from the use of an asset described in **section DG 3** (Meaning of asset for this subpart) is exempt income if the person—

- “(a) meets the requirements of **section DG 21** (Opting out of treatment under this subpart); and
- “(b) chooses under that section to treat the income as exempt income.

“Defined in this Act: asset, exempt income, income”.

- (2) **Subsection (1)** applies for the 2013–14 and later income years.

11 Section CW 28 amended (Pensions)

- (1) In section CW 28(2)(a)(i), replace “Part 1 of the” with “that”.
- (2) In section CW 28(2)(b), delete “but not to the extent of the equivalent amount of New Zealand superannuation, veteran’s pension, or income-tested benefit paid under section 70(3)(b) of that Act”.
- (3) In section CW 28, in the list of defined terms, delete “income-tested benefit”.

12 Section CW 31 replaced (Services for members of Parliament)

- (1) Replace section CW 31 with:

“CW 31 Services for members of Parliament

An amount is exempt income of a person to the extent to which it is income of the person and is not exempt income under another provision of subpart CW, if the amount is travel, accommodation, attendance, and communication services, as defined in section 20A(7) of the Civil List Act 1979, and,—

- “(a) the amount is—
 - “(i) referred to in section 20A of that Act;
 - “(ii) paid under section 25 of that Act; and
- “(b) the amount is—
 - “(i) provided to a person to whom any of section 25(1)(b) to (e) of that Act applies;

- “(ii) provided to a member of the family of a person described in **subparagraph (i)**.
“Defined in this Act: amount, exempt income, income”.
- (2) **Subsection (1)** applies for the period beginning on the first day of the 2008–09 income year and ending on 30 September 2012. 5
- 13 Section CX 12 replaced (Services for members of Parliament)**
- (1) Replace section CX 12 with:
“**CX 12 Services for members of Parliament** 10
“*When fringe benefit arises*
“(1) A fringe benefit arises when travel, accommodation, attendance, and communications services are exempt income under **section CW 31** (Services for members of Parliament).
“*Relationship with sections CX 5 and CX 28* 15
“(2) This section overrides sections CX 5 and CX 28.
“Defined in this Act: exempt income, fringe benefit”.
- (2) **Subsection (1)** applies for the period beginning on the first day of the 2008–09 income year and ending on 30 September 2012. 20
- 14 New section DA 5 inserted (Treatment of expenditure for commercial fit-out)**
After section DA 4, insert:
“**DA 5 Treatment of expenditure for commercial fit-out** 25
When applying the capital limitation to expenditure, to the extent to which the expenditure relates to a building’s commercial fit-out (the **item**), the expenditure is treated as relating to the item, and not the building.
“Defined in this Act: commercial fit-out, expenditure, capital limitation”.
- 15 Section DB 5 amended (Transaction costs: borrowing money for use as capital)** 30
(1) After section DB 5(1), insert:

- “Relationship with sections DG 5 to DG 7, and DG 10*
- “(1B) **Sections DG 5 to DG 7, and DG 10** (which relate to the treatment of interest expenditure for certain assets) override this section.”
- (2) **Subsection (1)** applies for the 2013–14 and later income 5
years.
- 16 Section DB 7 amended (Interest: most companies need
no nexus with income)**
- (1) After section DB 7(6), insert:
“Relationship with sections DG 5 to DG 7, and DG 10 10
- “(6B) **Sections DG 5 to DG 7, and DG 10** (which relate to the treatment of interest expenditure for certain assets) override this section.”
- (2) **Subsection (1)** applies for the 2013–14 and later income 15
years.
- 17 Section DB 8 amended (Interest: money borrowed to
acquire shares in group companies)**
- (1) After section DB 8(6), insert:
“Relationship with sections DG 5 to DG 7, and DG 10
- “(6B) **Sections DG 5 to DG 7, and DG 10** (which relate to the 20
treatment of interest expenditure for certain assets) override this section.”
- (2) **Subsection (1)** applies for the 2013–14 and later income
years.
- 18 Section DB 64 amended (Capital contributions)** 25
- (1) Replace section DB 64(1)(b) with:
“(b) in the absence of this section, the person would be al-
lowed a deduction for the relevant capital contribution
property, or for the relevant expenditure for the capital
contribution property; and” 30
- (2) Replace section DB 64(2) with:
“Deductions
- “(2) For the purposes of quantifying the amount of depreciation
loss under subpart EE (Depreciation) in relation to the capital
contribution property or the amount of deduction under sub- 35

- part DO (Farming and aquacultural business expenditure) in relation to expenditure for the capital contribution property,—
- “(a) the capital contribution property’s adjusted tax value, base value, cost, or value, as applicable, is reduced by the amount of the capital contribution, under subpart EE: 5
- “(b) the relevant expenditure for the capital contribution property is reduced by the amount of the capital contribution, under subpart DO.”
- (3) In section DB 64, in the list of defined terms, insert “capital contribution property” and “expenditure”. 10
- (4) **Subsections (1) to (3)** apply for the 2011–12 and later income years.
- 19 New subpart DG inserted (Expenditure related to use of certain assets)** 15
- (1) After section DF 5, insert:
- “Subpart DG—Expenditure related to use of certain assets
- “Introductory provisions*
- “**DG 1 What this subpart does** 20
- This subpart sets out the rules for the deductibility and apportionment of expenditure incurred for an income year in relation to an asset when the asset is used partly for the purpose of deriving income and partly for private purposes, and for a time during the income year, the asset is not in use. 25
- “Defined in this Act: asset, deduction, income, income year
- “**DG 2 Application of this subpart**
- “Asset by asset*
- “(1) The rules in this subpart apply on an asset by asset basis. 30
- “Relationship with sections DB 5, DB 7, and DB 8*
- “(2) The rules in this subpart override sections DB 5, DB 7, and DB 8 (which relate to deductions for interest expenditure) in relation to interest expenditure that is required to be apportioned under **section DG 9**.

- “Relationship with subpart DD*
- “(3) Subpart DD (Entertainment expenditure) does not apply to expenditure incurred in relation to an asset to which this subpart applies.
- “Application to companies* 5
- “(4) The rules in this subpart do not apply to a company other than a close company and, for the purposes of this subpart, a reference in the definition of **close company** to a natural person is treated as a reference to a person.
- “Application to groups of, and interests in, companies* 10
- “(5) For the purposes of this subpart,—
- “(a) a group of companies is treated as a wholly-owned group of companies:
- “(b) a voting interest in a company includes a market value interest when a market value circumstance exists for the company. 15
- “Defined in this Act: asset, close company, company, deduction, group of companies, interest expenditure, market value circumstance, market value interest, voting interest, wholly-owned group of companies
- “DG 3 Meaning of asset for this subpart** 20
- “Meaning of asset*
- “(1) For the purposes of this subpart, an **asset**, for a person and an income year, means an item of property—
- “(a) that a person uses partly for deriving income and partly for private use; and 25
- “(b) that—
- “(i) is comprised of land, including improvements to land:
- “(ii) has a cost to the person, of \$50,000 or more; and
- “(c) that is not in use— 30
- “(i) for at least 62 days in the income year; or
- “(ii) when the asset is typically used only on working days, for at least 62 working days in the income year.
- “Exclusions* 35
- “(2) Despite **subsection (1)**, an asset for the purposes of this subpart does not include—

- “(a) a motor vehicle:
- “(b) an asset whose expenditure, or a part of it, is apportioned for tax purposes on the basis of space, floor area, or another similar basis.
- “*What constitutes use* 5
- “(3) For the purposes of this subpart, the use of an asset is the active use of the asset for its intended purpose.
- “*Cost of asset*
- “(4) In **subsection (1)(b)(ii), sections DG 11(8)(a)(ii) and DG 16(1)(b)(ii)**, for an asset to which this subpart applies, the **cost** of the asset means the cost of the asset to the person, entity, partnership, limited partnership, or joint venture, excluding expenditure for which they are allowed a deduction under a provision of this Act outside this subpart, other than an amount of depreciation loss. 15
- “Defined in this Act: amount, asset, cost, deduction, depreciation loss, income, income year, land, limited partnership, partnership, private use, tax, working day
- “**DG 4 Meaning of private use for this subpart**
- “*What is private use?* 20
- “(1) For the purposes of this subpart, **private use**, for an asset and a person, means the use of the asset by the person or a person associated with them, regardless of whether the use is exclusive, or whether the person derives an amount of income in relation to the use. 25
- “*Private use when return below market value*
- “(2) If the income derived by the person from the use of the asset is an amount that is less than the market value amount, the use is treated as private use. For the purposes of this subpart, **market value** means the price at which the asset is provided for use at a particular time or for a particular season— 30
- “(a) in the open market; and
- “(b) freely offered; and
- “(c) made on ordinary terms; and
- “(d) to a member of the public at arm’s length. 35

“Exclusion from private use

- “(3) Despite **subsection (1)**, the use of an asset by a person does not amount to private use if—
- “(a) the asset is the kind of asset that requires expert or specialist knowledge in order for it to be used; and 5
 - “(b) the person has the required expert or specialist knowledge; and
 - “(c) the income derived directly or indirectly from the use of the asset is a market value amount; and
 - “(d) the amount derived includes an amount paid for the services of the person. 10

“Associated persons

- “(4) In **subsection (3)**, a person includes a person associated with them.

Example 15

Mary uses her yacht privately, rents it to her brother at market value, rents it to unrelated people at market value, and occasionally rents it at less than market value to friends. The use of the yacht by Mary, her brother, and her friends is regarded as private use. When the yacht is rented at market value to unrelated people, the use is not regarded as private use. And despite the market rent paid by her brother, his use of the yacht remains private use. 20

“Defined in this Act: amount, asset, associated person, income, market value, pay, private use 25

“DG 5 Meaning of interest expenditure for this subpart

“Interest expenditure

- “(1) In this subpart, **interest expenditure**, for a person to whom this subpart applies, means expenditure on interest, and includes an amount of interest on the sum of the outstanding balances of— 30
- “(a) financial arrangements entered into by the person, if the financial arrangement—
 - “(i) provides funds to the person; and
 - “(ii) gives rise to an amount for which the person would have a deduction: 35
 - “(b) fixed-rate foreign equity or fixed-rate shares that are—

- “(i) issued by the person; and
- “(ii) held by a person resident in New Zealand:
- “(c) stapled debt securities—
 - “(i) issued by the person; and
 - “(ii) held by a resident in New Zealand; and 5
 - “(iii) stapled to shares other than shares of a company that is a proportional-stapling company.
- “*Exchange rate fluctuations*
- “(2) **Subsection (1)** does not include a deduction for an amount that arises only from movement in currency exchange rates. 10
 - “Defined in this Act: amount, company, deduction, financial arrangement, fixed-rate foreign equity, fixed-rate share, interest, interest expenditure, proportional-stapling company, resident in New Zealand, share, stapled debt security
- “**DG 6 Associated persons: company rule modified** 15
 - Despite section YB 3(1) (Company and person other than company), for the purposes of this subpart, a company and a person other than a company are associated persons if—
 - “(a) the person has a voting interest in the company of 5% or more; or
 - “(b) the person’s share in the company gives them a right to use the asset. 20
 - “Defined in this Act: asset, associated person, company, share, voting interest
- “*When assets held simply*
- “**DG 7 Expenditure related to income-earning use**
- “*Expenditure on certain business and regulatory requirements* 25
- “(1) A person is allowed a deduction for expenditure or loss, including an amount of depreciation loss, to the extent to which the amount incurred—
 - “(a) relates solely to the use of an asset for deriving income of the person; and 30
 - “(b) is expenditure—
 - “(i) from which the person would not reasonably expect to receive a personal benefit:
 - “(ii) that the person must reasonably incur to meet a regulatory requirement so that they may use the 35

asset for deriving income and that would not have been incurred but for the requirement.

“Expenditure that must be apportioned

- “(2) Despite **subsection (1)** and for the avoidance of doubt, all expenditure on repairs and maintenance incurred in relation to an asset must be treated as expenditure that is limited under **section DG 8**. 5

Example

Mike operates a charter boat which he also uses privately. He incurs expenses including advertising costs, costs in meeting Maritime New Zealand survey requirements, and general maintenance costs. The advertising costs are fully deductible because they deliver no private benefit. The survey costs are fully deductible if they are incurred only for charter purposes. The maintenance costs are not deductible under this provision because they deliver a personal benefit as well as an income-earning benefit. A portion of these maintenance costs may be allowed as a deduction under **section DG 8**. 10 15

“Defined in this Act: amount, asset, deduction, depreciation loss, income

“DG 8 Expenditure limitation rule 20

“What this section applies to

- “(1) This section applies to an amount of expenditure or loss, including an amount of depreciation loss, that a person incurs for an income year in relation to an asset.

“Limited deduction 25

- “(2) The person is allowed a deduction for the income year to the extent of the amount calculated using the formula in **section DG 9(2)**.

“Treatment of interest expenditure

- “(3) For the purposes of **subsection (2)** and the apportionment formula,— 30

“(a) if the person is not a company, interest expenditure incurred in relation to the asset is included in the item **expenditure in section DG 9(3)(a)**:

“(b) if the person is a company, interest expenditure incurred in relation to the asset is apportioned under **section DG 11**. 35

“Depreciation recovery and loss on disposal

- “(4) In the treatment of assets generally,—
- “(a) depreciation recovery income on disposal is dealt with in section EE 49 (Amount of depreciation recovery income when item partly used for business): 5
- “(b) depreciation loss on disposal is dealt with in sections EE 44 to EE 48, and EE 50(6) and (7) (which relate to amounts of depreciation loss).

“Relationship with other sections

- “(5) This section— 10
- “(a) supplements the general permission and overrides the private limitation, but the other limitations still apply:
- “(b) overrides section EE 50(2) (Amount of depreciation loss when item partly used to produce income).

Example 15

Jim rents out his aeroplane at market value for 100 hours in an income year, and uses it for his personal enjoyment for 50 hours. Jim incurs general expenditure of \$10,000 in relation to the use of the plane. He may deduct two thirds of the expenditure (**section DG 9(2)**). The formula is $\$10,000 \times (100/(100 + 50)) = \$6,666.67$. 20

“Defined in this Act: amount, asset, business, company, deduction, depreciation loss, depreciation recovery income, general permission, interest expenditure, private limitation

“**DG 9 Apportionment formula** 25

“What this section does

- “(1) This section provides the formula for use in **sections DG 8 and DG 11 to DG 13** to calculate the way in which an amount of expenditure or loss is apportioned in relation to the income-earning use and private use of an asset. 30

“Formula

- “(2) The apportionment formula is—

$$\text{expenditure} \times \frac{\text{income-earning days}}{(\text{income-earning days} + \text{private days})}$$

“Definition of items in formula

“(3) In the formula,—

“(a) **expenditure** is the total expenditure or loss that is incurred by the person for an income year in relation to the asset, and that would be deductible in the absence of this subpart, other than expenditure that is— 5

“(i) related solely to the income-earning use of the asset as described in **section DG 7**; or

“(ii) related solely to the private use of the asset:

“(b) **income-earning days** is the total number of days in the income year for which the person derives income from the use of the asset when the amount of income derived is an amount that is equal to or more than the market value amount, including any days on which the use made of the asset is use described in **section DG 4(3)**: 10 15

“(c) **private days** is the total number of days in the income year on which the asset is in active use, and the day is not an income-earning day as described in **paragraph (b)**.

“Other units of measurement 20

“(4) A unit of measurement of time other than days, whether relating to hours, or nights, or anything else, is to be used in the formula and in **subsection (3)(b) and (c)**, if it achieves a more appropriate apportionment. For this purpose, the same unit must be used in relation to both items in **subsection (3)(b) and (c)**. 25

“Defined in this Act: amount, asset, deduction, income, income year, market value, private use

“When assets held in complex structures

“**DG 10 Interest expenditure rules** 30

Sections DG 11 to DG 14 provide for the apportionment of interest expenditure incurred by a company that holds an asset to which this subpart applies, and by other companies that are in the same group of companies as the company, and by shareholders. Companies must provide information disclosure 35

statements under **section 30D** of the Tax Administration Act 1994 to enable the calculations to be made.

“Defined in this Act: asset, company, group of companies, interest expenditure, shareholder

“DG 11 Interest expenditure: close companies 5

“What this section does

“(1) This section quantifies the amount of a deduction that a close company is allowed for an income year when—

“(a) the company holds an asset to which this subpart applies; and 10

“(b) the company incurs interest expenditure for the income year.

“Determining values and deductions

“(2) The company must first determine the amount of its debt value and its asset value for the income year, and then apply either **subsection (3)** or **subsections (4) to (6)**. 15

“Debt value less than asset value

“(3) If the debt value for the income year is equal to or less than the asset value for the income year, the company is allowed a deduction of a portion of interest expenditure incurred for the income year— 20

“(a) of an amount calculated using the formula in **section DG 9(2)**; and

“(b) treating the company’s total interest expenditure for the income year as if it were the item **expenditure** in the formula. 25

“Debt value more than asset value

“(4) If the debt value for the income year is more than the asset value for the income year, the company must calculate a reduced amount of interest expenditure for the income year using the formula— 30

$$\text{interest expenditure} \quad \times \quad \frac{\text{company's asset value}}{\text{company's debt value.}}$$

“Definition of items in formula

“(5) In the formula,—

- “(a) **interest expenditure** is the total amount of interest expenditure incurred by the company for the income year:
 - “(b) **company’s asset value** is the amount of the company’s asset value for the income year:
 - “(c) **company’s debt value** is the amount of the company’s debt value for the income year. 5
- “*Apportionment of reduced amounts*
- “(6) The company is allowed a deduction for the income year of a portion of the reduced amount described in **subsection (4)**,—
 - “(a) of an amount calculated using the formula in **section DG 9(2)**; and 10
 - “(b) treating the reduced amount as if it were the item **expenditure** in the formula.
- “*Net asset balance*
- “(7) When **subsection (3)** applies for an income year, the amount that remains outstanding after subtracting the debt value for the income year from the asset value for the income year (the **net asset balance**), must be used under **sections DG 12 to DG 14**, as applicable. 15
- “*Meaning of debt value and asset value* 20
- “(8) For the purposes of this subpart,—
 - “(a) **asset value** means the value of the asset at the end of an income year, using—
 - “(i) for land, including an improvement to land, the amount given by the later of either its most recent rating or its cost on acquisition (or its market value, if the transaction involves an associated person): 25
 - “(ii) for other property, its cost to the person:
 - “(b) **debt value** means the average outstanding amount that gives rise to the interest payable by the company, measured by reference to the amounts outstanding at the start of and at the end of an income year. 30

Example

Holiday Home Ltd holds a holiday home with a rateable value of \$200,000. The company has debt of \$40,000, with associated interest expenditure of \$4,000. Since the debt value is less than 35

Example—*continued*

the asset value, all the interest expenditure must be apportioned
(**section DG 11(3)**).

Boat Ltd has a charter boat that costs \$60,000. The company
has debt of \$100,000, with associated interest expenditure
of \$10,000. Since the debt value is more than the asset 5
value, the company must apportion interest expenditure of
\$6,000 (**section DG 11(4)–(6)**). The formula is $\$10,000 \times$
 $(\$60,000/\$100,000) = \$6,000$.

“Defined in this Act: amount, asset, asset value, associated person, close company,
cost, debt value, deduction, income, income year, interest, interest ex- 10
penditure, land, market value, pay

“DG 12 Interest expenditure: group companies

“When this section applies

“(1) This section applies for an income year when—

“(a) a close company (**company A**) has a net asset balance; 15
and

“(b) company A is a member of the same group of compan-
ies as another company (**company B**); and

“(c) company B has interest expenditure for which it is al-
lowed a deduction. 20

“How this section applies: looping rule

“(2) This section applies sequentially to every group company B
until—

“(a) the net asset balance for the income year is reduced to
zero, or is treated as reduced to zero; or 25

“(b) no other group companies exist to which this section
applies.

“Debt value less than net asset balance

“(3) If company B’s debt value for the income year is equal to or
less than the net asset balance for the income year, company B 30
is allowed a deduction of a portion of interest expenditure in-
curred for the income year,—

“(a) of an amount calculated using the formula in **section**
DG 9(2); and

“(b) treating company B’s total interest expenditure for the income year as if it were the item **expenditure** in the formula.

“*Recalculation of net asset balance*

“(4) In the application of **subsection (3)**, the amount of the net asset balance must be recalculated on each application, being reduced by an amount equal to each counted group company’s debt value. 5

“*Debt value more than net asset balance*

“(5) If company B’s debt value for the income year is more than the net asset balance for the income year, company B must calculate a reduced amount of interest expenditure for the income year using the formula— 10

$$\text{interest expenditure} \times \frac{\text{net asset balance}}{\text{company B's debt value.}}$$

“*Definition of items in formula*

“(6) In the formula,— 15

“(a) **interest expenditure** is the total amount of interest expenditure incurred by company B for the income year:

“(b) **net asset balance** is the amount of the net asset balance for the income year:

“(c) **company B’s debt value** is the amount of company B’s debt value for the income year. 20

“*Apportionment of reduced amounts*

“(7) Company B is allowed a deduction for the income year of a portion of the reduced amount described in **subsection (5)**,—

“(a) of an amount calculated using the formula in **section DG 9(2)**; and 25

“(b) treating the reduced amount as if it were the item **expenditure** in the formula.

“*Net asset balance zero*

“(8) Once a calculation is made under **subsection (5)**, company B’s net asset balance is treated as zero. 30

“Net asset balance

- “(9) If a net asset balance remains outstanding after the application of this section for an income year, the amount must be used under **sections DG 13 and DG 14**, as applicable.

Example

Holiday Home Ltd has an asset balance of \$160,000 (\$200,000 less \$40,000) and is wholly owned by Parent Ltd. Parent has debt of \$30,000, with associated interest expenditure of \$3,000. Since Parent’s debt value is less than the net asset balance, all of Parent’s interest expenditure must be apportioned (**section DG 12(3)**).

“Defined in this Act: amount, asset value, close company, company, debt value, deduction, group of companies, income year, interest expenditure

“DG 13 Interest expenditure: corporate shareholders

“When this section applies

- “(1) This section applies when—

- “(a) a net asset balance remains outstanding for an income year after the application of—

“(i) first, **section DG 12**, if applicable; or

“(ii) secondly, **section DG 11**; and

- “(b) 1 or more of the following companies, none of which is a member of a group of companies that includes company A, exists:

“(i) a company that is a shareholder in company A:

“(ii) a company that is a shareholder in a company that is a member of the same group of companies as company A and has a voting interest in company A:

“(iii) a company that has a voting interest in a company referred to in **subparagraph (i) or (ii)**.

“How this section applies: looping rule

- “(2) This section applies sequentially as follows:

“(a) first, to the companies referred to in **subsection (1)(b)(i) and (ii)**; and

“(b) secondly, to the extent to which the debt value of the company for the income year remains less than the company’s share of the net asset balance, to the companies

- that are shareholders in a company referred to in **paragraph (a)**; and
- “(c) so on, until either—
- “(i) the company’s share of the net asset balance for the income year is reduced to zero or is treated as reduced to zero; or 5
- “(ii) no other corporate shareholders exist to which this section applies.
- “Limitation by share in asset balance*
- “(3) The deduction that the company is allowed for interest expenditure incurred for the income year is limited by their share of the net asset balance. The share of the asset balance is calculated using the formula— 10
- net asset balance × company’s interest.
- “Definition of items in formula*
- “(4) In the formula in **subsection (3)**,— 15
- “(a) **net asset balance** is the amount of the net asset balance after the application of **section DG 11 or DG 12**, as applicable, and as recalculated under **subsection (6)**:
- “(b) **company’s interest** is the relevant voting interest in company A, expressed as a percentage. 20
- “Debt value less than asset balance*
- “(5) If the debt value for the company for the income year is equal to or less than its share of the net asset balance for the income year, the company is allowed a deduction of a portion of interest expenditure incurred for the income year,— 25
- “(a) of an amount calculated using the formula in **section DG 9(2)**; and
- “(b) treating the total interest expenditure for the income year as if it were the item **expenditure** in the formula.
- “Recalculation of asset balance* 30
- “(6) In the application of **subsection (5)**, the amount that is the company’s share of the net asset balance must be recalculated on each application, being reduced by an amount equal to each counted company’s debt value.

“Debt value more than asset balance

- “(7) If the debt value for the company for the income year is more than its share of the net asset balance, the company must calculate a reduced amount of interest expenditure incurred for the income year using the formula— 5

$$\text{interest expenditure} \times \frac{\text{company's share of net asset balance}}{\text{company's debt value.}}$$

“Definition of items in formula

- “(8) In the formula in **subsection (7)**,—
- “(a) **interest expenditure** is the total amount of interest expenditure incurred by the company for the income year:
 - “(b) **company's share of net asset balance** is the amount calculated for the company under **subsection (3)**: 10
 - “(c) **company's debt value** is the amount of the debt value of the company for the income year.

“Apportionment of reduced amounts

- “(9) The company is allowed a deduction for the income year of a portion of the reduced amount described in **subsection (7)**,— 15
- “(a) of an amount calculated using the formula in **section DG 9(2)**; and
 - “(b) treating the reduced amount as if it were the item **expenditure** in the formula. 20

“Net asset balance zero

- “(10) Once a calculation is made under **subsection (7)**, the amount that is the company's share of the net asset balance is treated as zero.

“Net asset balance

- “(11) If a net asset balance remains outstanding after the application of this section for an income year, the amount must be used under **section DG 14**. 25

Example

Parent Ltd has 2 equal corporate shareholders, company Y, which has debt of \$20,000 with associated interest expenditure of \$2,000, and company Z, which has debt of \$70,000 with associated interest expenditure of \$7,000. Each company's share of the net asset balance is \$65,000 (\$130,000 × 50%). 30

Example—*continued*

Since company Y’s debt value is less than its share of the net asset balance, all of its interest expenditure must be apportioned (**section DG 13(5)**). Company Z’s debt value is greater than its share of the net asset balance, so it must apportion interest expenditure of \$6,500 (**section DG 13(7)–(9)**). The formula is $\$7,000 \times (\$65,000/\$70,000) = \$6,500$. 5

“Defined in this Act: amount, company, debt value, deduction, group of companies, income year, interest expenditure, shareholder, voting interest

“DG 14 Interest expenditure: non-corporate shareholders

“When this section applies 10

“(1) This section applies for an income year when—

“(a) a net asset balance remains outstanding for an income year after the application of—

“(i) first, **section DG 13**, if applicable:

“(ii) secondly, **section DG 12**, if applicable: 15

“(iii) thirdly, **section DG 11**, if neither applies; and

“(b) a person exists who—

“(i) is not a company, other than a company acting as a trustee; and

“(ii) has a voting interest in company A; and 20

“(iii) has interest expenditure for which they are allowed a deduction.

“Amount to be apportioned

“(2) For a natural person, the amount of interest expenditure that must be apportioned is only the amount of interest that the person incurs on money borrowed to acquire shares in company A or in a company referred to in **section DG 13(1)(b)**. 25

“Method of apportionment

“(3) The apportionment is made using the rules set out in **section DG 13(2) to (10)**, treating the person as if they were the company. 30

Example

Company Y has 2 shareholders: Thomas, who has borrowed \$200,000 to acquire a 50% interest in the company, and Brent, who has borrowed \$10,000 to buy his 50% interest. Each has 35

Example—*continued*

a 50% share of the remaining net asset balance of \$45,000. The formula is $(\$65,000 - \$20,000) \times 50\% = \$22,500$. Since Thomas's debt value is greater than his share of the net asset balance, he must apportion 11.25% of his total interest expenditure (**sections DG 14 and DG 13(7)–(9)**). The formula is $22,500/200,000$. Since Brent's debt value is less than his share of the net asset balance, all of his interest expenditure must be apportioned (**sections DG 14 and DG 13(5)**).

5

“Defined in this Act: amount, company, deduction, income year, interest, interest expenditure, share, trustee, voting interest

10

“Quarantined expenditure

“**DG 15 Quarantined expenditure rules**

Sections DG 16 and DG 18 provide the rules that limit the amount of a person's deduction under **sections DG 7, DG 8, and DG 11 to DG 14** for an income year when the income derived from the use of the asset does not reach a specified threshold. The excess expenditure is quarantined and denied as a deduction for the income year. **Sections DG 17 and DG 19** provide for the allocation of the quarantined amount to a later income year when the income derived is sufficient to offset the expenditure. Companies must provide information disclosure statements under **section 30D** of the Tax Administration Act 1994 to enable the calculations to be made.

15

20

“Defined in this Act: amount, asset, company, deduction, income, income year

“**DG 16 Quarantined expenditure when asset activity negative**

25

“When this section applies

“(1) This section applies when—

“(a) a person incurs expenditure for which they are allowed a deduction that is limited under **section DG 8 or DG 11**, as applicable, for an income year; and

30

“(b) the amount of income derived for the income year from the use of an asset, other than an amount of income derived from an associated person, is less than 2% of—

“(i) for land, including an improvement to land, the amount given by the later of either its most recent

35

rating or its cost on acquisition (or its market value, if the transaction involves an associated person):

“(ii) for other property, the cost to the person.

“*Quarantined amount* 5

“(2) The amount of the person’s excess expenditure for the income year is calculated using the formula—

expenditure – asset income.

“*Definition of items in formula*

“(3) In the formula,—

“(a) **expenditure** is the total of the following amounts: 10

“(i) the total amount of deductions that the person is allowed for the income year under **sections DG 7, DG 8, and DG 11**, as applicable and after any necessary apportionment; and

“(ii) an amount of the person that was quarantined under this section for an earlier income year and is not yet allocated to an income year: 15

“(b) **asset income** is the total amount of income derived for the income year from the use of the asset.

“*No deduction for quarantined amount* 20

“(4) The excess expenditure calculated under **subsection (2)** is quarantined or remains quarantined, as applicable, and denied as a deduction for the income year.

“*Outstanding profit balance*

“(5) If the amount of expenditure for the income year is less than the amount of income for the income year, the excess income is the **outstanding profit balance** for the income year to be used under **section DG 18**. If the amount of expenditure for the income year is equal to or more than the amount of income for the income year, the outstanding profit balance is treated as zero. 25 30

“*Zero result*

“(6) For the purposes of the formula in **subsection (2)**, if the amount of income for the income year is greater than the

amount of expenditure for the income year, the result of the formula is treated as zero.

Example

David has a city apartment with a rateable value of \$300,000. He rents out the apartment and also uses it privately. He receives rent of \$4,000 from non-associates, and \$6,000 from associates. David's total allowable expenditure, under **sections DG 7, DG 8, and DG 11**, is \$15,000. Since David's income from non-associates is less than 2% of the apartment's rateable value, the excess expenditure of \$5,000 is quarantined under **section DG 16** and denied as a deduction. The amount quarantined may be allocated to a later income year under **section DG 17**.

“Defined in this Act: amount, asset, associated person, cost, deduction, income, income year, land, market value

“DG 17 Allocation of amounts quarantined under section DG 16

“When this section applies

- “(1) This section applies for an income year (the **current year**) when—
- “(a) a person has an amount of excess expenditure quarantined under **section DG 16** for an income year before the current year; and
 - “(b) the income that the person derives from the use of the asset for the current year is more than the amount of their deductions under **sections DG 7, DG 8, and DG 11**, as applicable.

“Deduction and allocation

- “(2) The amount of previously quarantined expenditure that the person is allowed as a deduction for the current year must not be more than the lesser of—

“(a) the amount referred to in **subsection (1)(a)**;

“(b) the amount calculated using the formula—

$$\text{asset income} - \text{expenditure.}$$

“Definition of items in formula

- “(3) In the formula,—

“(a) **asset income** is the total amount of income derived for the current year from the use of the asset:

“(b) **expenditure** is the total amount of deductions that the person is allowed for the current year under **sections DG 7, DG 8, and DG 11**, as applicable and after any necessary apportionment. 5

“*Outstanding profit balance*

“(4) If the lesser amount in **subsection (2)** is the quarantined amount referred to in **subsection (2)(a)**, an **outstanding profit balance** arises of an amount that is the difference between the amount of income for the current year and the amount of expenditure for the current year, including the quarantined amount allocated to the current year. The outstanding profit balance is available for use under **section DG 19**. 10

“*Zero result* 15

“(5) For the purposes of the formula in **subsection (2)**, if the amount of expenditure for the current year is greater than the amount of income for the current year, the result of the formula is treated as zero.

Example, continued 20

In the following income year, David derives \$10,000 from renting his city apartment. David’s total allowable expenditure, under **sections DG 7, DG 8, and DG 11**, is \$8,000. He also has expenditure of \$5,000 quarantined from the previous income year. David is able to deduct \$2,000 of that quarantined expenditure. The remaining \$3,000 continues to be quarantined and may be allowed as a deduction in a later income year under **section DG 17**. 25

“Defined in this Act: amount, asset, deduction, income, income year

“**DG 18 Quarantined expenditure: group companies and shareholders** 30

“*When this section applies*

“(1) This section applies when—

“(a) a person incurs expenditure for an income year for which they are allowed a deduction that is limited under 1 or more of **sections DG 12 to DG 14**; and 35

- “(b) the income year is an income year in which **section DG 16(1)(b)** applies.
- “*How this section applies: first looping rule*
- “(2) The first application of this section is to every group company B in sequence until no other group companies exist to which this subsection applies. 5
- “*How this section applies: second looping rule*
- “(3) The second application of this section is sequentially to—
- “(a) first, 1 or more of the following persons, none of which is a company referred to in **subsection (2)**: 10
- “(i) a person who is a shareholder in company A:
- “(ii) a person who is a shareholder in a company that is a member of the same group of companies as company A and has a voting interest in company A: 15
- “(b) secondly, a person who is a shareholder in a company referred to in **paragraph (a)**; and
- “(c) so on, until no other persons exist to which this subsection applies.
- “*Quarantined amount* 20
- “(4) The amount of the person’s excess expenditure for the income year is calculated using the formula—
- expenditure – outstanding profit balance.
- “*Definition of items in formula*
- “(5) In the formula,—
- “(a) **expenditure** is the total of the following amounts: 25
- “(i) the total amount of deductions that the person is allowed for the income year under **sections DG 12 to DG 14**, as applicable and after any necessary apportionment; and
- “(ii) an amount of the person that was quarantined under this section for an earlier income year and is not yet allocated to an income year: 30
- “(b) **outstanding profit balance**,—
- “(i) for company B, is the amount of the outstanding profit balance referred to in **section DG 16(5)**: 35

- “(ii) for a shareholder, is the amount that is the person’s share of the outstanding profit balance referred to in **section DG 16(5)**, calculated using the formula in **section DG 13(3)**, treating the outstanding profit balance as if it were the net asset balance. 5
- “*No deduction for quarantined amount*
- “(6) The excess expenditure calculated under **subsection (4)** is either quarantined or remains quarantined, as applicable, and is denied as a deduction for the income year. 10
- “*Recalculation of outstanding profit balance*
- “(7) For the purposes of **subsections (4) and (5)(b)**, the amount that is the outstanding profit balance must be recalculated on each application, being reduced by an amount equal to the amount of any deduction counted. 15
- “*Zero result*
- “(8) For the purposes of the formula in **subsection (4)**, if the amount of the outstanding profit balance for the income year is greater than the amount of expenditure for the income year, the result of the formula is treated as zero. 20

Example

Aircraft Ltd owns an aircraft to which the rules in this subpart apply. The income derived from the asset in the current year is less than 2% of the cost of the aircraft. The company has calculated an outstanding profit balance of \$12,000 after the application of **section DG 16(5)**. Aircraft is 100% owned by Parent Ltd, which has apportioned interest expenditure of \$5,000 calculated under **section DG 12**. Parent has 2 equal shareholders, Alisa who has apportioned interest expenditure of \$8,000, and Hamish who has apportioned interest expenditure of \$1,000, both calculated under **section DG 14**. Parent must apply **section DG 18** first, and is not required to quarantine any of its interest expenditure, as the outstanding profit balance is greater than its apportioned interest expenditure. The outstanding profit balance is reduced to \$7,000 (\$12,000 - \$5,000) under **section DG 18(7)**. Alisa’s and Hamish’s share of the outstanding profit balance is \$3,500 each (\$7,000 x 50%). Alisa must quarantine \$4,500 of interest expenditure (\$8,000 - \$3,500); Hamish is not required to quarantine any interest expenditure, as his interest 25 30 35

Example—*continued*

expenditure is less than his share of the outstanding profit balance.

“Defined in this Act: amount, asset, company, deduction, group of companies, income year, shareholder, voting interest

“DG 19 Allocation of amounts quarantined under section DG 18 5

“When this section applies

“(1) This section applies for an income year (the **current year**) when—

“(a) a person has an amount of excess expenditure quarantined under **section DG 18** for an income year before the current year; and 10

“(b) an outstanding profit balance referred to in **section DG 17(4)** is available for use for the current year.

“How this section applies 15

“(2) This section applies sequentially in the order set out in **section DG 18(2) and (3)** until the outstanding profit balance is reduced to zero.

“Deduction and allocation

“(3) The amount of previously quarantined expenditure that the person is allowed as a deduction for the current year must not be more than the lesser of— 20

“(a) the quarantined amount referred to in **subsection (1)(a)**:

“(b) the amount calculated using the formula— 25

outstanding profit balance – expenditure.

“Definition of items in formula

“(4) In the formula,—

“(a) **outstanding profit balance**,—

“(i) for company B, is the amount of the outstanding profit balance determined for the company for the current year under **section DG 17(4)**; 30

“(ii) for a shareholder, is the amount that is the person’s share of the outstanding profit balance for

the current year under **section DG 17(4)**, calculated using the formula in **section DG 13(3)**, treating the outstanding profit balance as if it were the net asset balance:

“(b) **expenditure** is the total amount of deductions that the person is allowed for the current year under **sections DG 12 to DG 14**, as applicable and after any necessary apportionment. 5

“Recalculation of outstanding profit balance

“(5) For the purposes of **subsections (3) and (4)(a)**, the amount that is the outstanding profit balance must be recalculated on each application, being reduced by an amount equal to the amount of any deduction for quarantined expenditure counted. 10

“Zero result

“(6) For the purposes of the formula in **subsection (3)**, if the amount of expenditure for the current year is greater than the amount of the outstanding profit balance for the current year, the result of the formula is treated as zero. 15

Example, continued

In the following income year, Aircraft has calculated an outstanding profit balance of \$16,000 after the application of **section DG 17**. **Section DG 19** does not apply to Parent or Hamish because they have no previously quarantined interest expenditure. However, **section DG 19** does apply to Alisa because she has \$4,500 of quarantined interest expenditure from the previous year. Alisa’s current year apportioned interest expenditure is \$7,000, calculated under **section DG 14**. Her share of the outstanding profit balance is \$8,000 (\$16,000 x 50%). Alisa is allowed a deduction of \$1,000 of previously quarantined expenditure (\$8,000 - \$7,000). Her remaining quarantined expenditure is \$3,500 (\$4,500 - \$1,000). 20 25 30

“Defined in this Act: amount, company, deduction, income year, shareholder

“Certain modifications to rules

“**DG 20 When income cannot be separately attributed**

“Exclusion from rules 35

“(1) **Sections DG 16 and DG 18** do not apply to the use of an asset for an income year when—

- “(a) the person derives an amount of income for the income year from the use of the asset in a business activity; and
- “(b) because of the nature of the activity, an amount cannot be separately attributed to the use of the asset.

“*Re-inclusion* 5

“(2) **Subsection (1)** does not apply if—

“(a) the person also uses the asset in deriving an amount of income that is separately attributable to the use of the asset; and

“(b) the use of the asset referred to in **paragraph (a)** is at least 80% of the total use of the asset both in the business activity as described in **subsection (1)** and as described in **paragraph (a)**. 10

Example

Paul uses a helicopter on his farm to check stock for 50 hours over the period of an income year, rents it out for 50 hours, and also uses it privately. While the amount of income is clear, the income Paul derives from using the helicopter in farming operations is not. The use of the helicopter meets the requirements for exclusion under **section DG 20(1)**, and does not meet the requirements for re-inclusion under **section DG 20(2)** as the time spent using the helicopter to earn rental income is only 50% of the total time that the helicopter is used to earn income. Any loss attributable to the helicopter is not quarantined. 15 20

“Defined in this Act: amount, asset, business, income, income year 25

“DG 21 Opting out of treatment under this subpart

“*Opt-out threshold*

“(1) If the amount of income derived for an income year from the use of an asset is less than \$1,000, the person who has the asset may choose to treat the income as exempt income under **section CW 8B** (Certain amounts derived from use of assets). 30

“*Quarantined expenditure*

“(2) If, in relation to the use of an asset in an income year, the person has an amount of quarantined expenditure for the income year, they may choose to treat the amount of income derived that gives rise to the quarantined expenditure as exempt income under **section CW 8B** for the income year. 35

“Consequences of opting out

- “(3) When a person who holds an asset chooses under **subsection (1) or (2)** to treat the income derived from the use of the asset as exempt income, any interest expenditure that must be apportioned under **section DG 9** is treated as expenditure incurred in deriving exempt income. 5

“Defined in this Act: amount, asset, exempt income, income, income year, interest expenditure

“DG 22 Application of rules to part years

“When this section applies 10

- “(1) This section applies when the total income-earning use, private use, and non-use of an asset of a person relates to only part of an income year.

“Non-use period

- “(2) For the purposes of **section DG 3(1)(c)**, the number of days is calculated using the formula— 15

$$\frac{\text{days}}{365} \times 62.$$

“When assets acquired during year: debt value

- “(3) For the purposes of **section DG 11(8)(b)**, if the company acquires the asset during the income year, the debt value is treated as the outstanding amount at the end of the income year. 20

“When assets disposed of during year: debt value

- “(4) For the purposes of **section DG 11(8)(b)**, if the company disposes of the asset during the income year, the debt value is treated as the outstanding amount at the start of the income year. 25

“When assets acquired during year: interest expenditure

- “(5) For the purposes of **sections DG 11 to DG 14**, when company A acquires an asset during an income year, the amount of interest expenditure that must be apportioned is calculated on a pro rata basis. 30

“Ring-fenced losses in part years

- “(6) For the purposes of **section DG 16(1)(b)**, the threshold is calculated using the formula—

$$\frac{\text{days}}{365} \times 2\%.$$

“Definition of item in formulas

- “(7) In the formula in **subsections (2) and (6)**, **days** is the number of days in the income year on which the person has the asset. 5

“Defined in this Act: amount, asset, company, debt value, income year, interest expenditure, private use”.

- (2) **Subsection (1)** applies for the 2013–14 and later income years. 10

20 Section DO 1 amended (Enhancements to land, except trees)

In section DO 1, in the heading, delete “, **except trees**”.

21 Section DO 2 amended (Erosion and shelter plantings)

- (1) In section DO 2, replace the heading with “**Plantings for erosion, shelter, and water protection purposes**”. 15

- (2) Replace section DO 2(2), other than the heading, with:

- “(2) The person is allowed a deduction for expenditure that they incur in planting or maintaining trees or plants, whether or not on the land, for the purpose of— 20

“(a) preventing or combating erosion of the land:

“(b) providing shelter to the land:

“(c) preventing or mitigating detrimental effects on a water-course or body of water from the discharge of farming or agricultural contaminants.” 25

- (3) **Subsection (2)** applies to a person for expenditure incurred—

(a) in the 2011–12 or a later income year:

(b) in an income year corresponding to a tax year beginning on or after 1 April 2008 and before 1 April 2011 if the person includes the expenditure as a deduction in a tax return made on or before the due date for a tax return for the income year. 30

22 Section DO 5 amended (Expenditure on land: planting of listed horticultural plants)

(1) In section DO 5(4), replace the formula with:

rate × diminished value.

(2) **Subsection (1)** applies for a person and a listed horticultural plant that the person acquires or plants after **the date of introduction of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill** (the **introduction date**), except if the person—

- (a) decides, on or before the introduction date, to purchase or plant the listed horticultural plant; and 10
- (b) on or before the introduction date,—
 - (i) enters a binding contract for the purchase or planting of the listed horticultural plant;
 - (ii) after deciding to purchase or plant the listed horticultural plant, incurs expenditure in relation 15 to the purchase or planting; and
- (c) for the person’s decision to purchase or plant the listed horticultural plant,—
 - (i) has available, for the Commissioner, documents dated on or before the introduction date that evidence that the person made the decision on or before the introduction date: 20
 - (ii) sends to the Commissioner a statutory declaration that the person made the decision on or before the introduction date. 25

23 Section DO 11 amended (Improvement destroyed or made useless)

- (1) In DO 11(1)(b), replace “irreparably damaged and made useless for the purpose of deriving income” with “made useless for the purpose of deriving the person’s income”. 30
- (2) In DO 11(1)(c), delete “irreparably damaged and”.
- (3) In DO 11(1)(d), replace “damage” with “uselessness”.
- (4) In DO 11(1)(e), replace “damage” with “uselessness”.
- (5) In section DO 11(2), replace “the improvement” with “the improvement plus a deduction for the amount of expenditure for 35

- removing the improvement from the land referred to in subsection (1)(a)”.
- (6) **Subsections (1) to (5)** apply for the 2010–11 and later income years.
- 24 New section DV 25 inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)** 5
- (1) After section DV 24, insert:
- “DV 25 Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests** 10
- “Deduction*
- “(1) A person is allowed a deduction for the amount of expenditure that the person has under **section EM 6** (Income and expenditure for fair dividend rate hedge portions). 15
- “Link with subpart DA*
- “(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.
- “Defined in this Act: amount, deduction, general limitation, general permission”.
- (2) **Subsection (1)** applies for the 2013–14 and later income years.
- 25 Section DW 4 amended (Deduction for general insurance outstanding claims reserve)** 25
- (1) After section DW 4(1), insert:
- “When this section does not apply*
- “(1B) This section does not apply for contracts that section DZ 10 (General insurance with risk period straddling 1 July 1993) applies to.” 30
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 26 New section EC 4B inserted (Compulsory use of herd scheme method for associated persons)**
- After section EC 4, insert: 35

“EC 4B Compulsory use of herd scheme method for associated persons*“When this section applies*

- “(1) This section applies if, in an income year (the **current year**), a person (the **transferor**) disposes of livestock of a type for which they use the herd scheme (the **transfer**) to an associated person (the **transferee**), and the transfer is not in the ordinary course of business. 5

“When this section does not apply

- “(2) This section does not apply to the transfer of livestock if,— 10
- “(a) the transferor and the transferee would not be associated if the transferee or an associate were not the descendants in relation to the transferor or an associate of the transferor; and
- “(b) for the transferor and associates of the transferor, but excluding their descended associates,— 15
- “(i) all of their specified livestock in the income year of the transfer have been disposed of; and
- “(ii) they do not derive income from the disposal of specified livestock after the current year. 20

“Compulsory use of herd scheme method

- “(3) Despite sections EC 7(2), EC 12(1), EC 22(1), and EC 25(1), the transferee is treated as choosing and giving a notice of election, with application beginning for the current year, to use the herd scheme for a type of livestock, if the formula in **subsection (4)** calculates zero or a positive amount for a class in the type of livestock. 25

“A definition and a formula

- “(4) The formula, for the purposes of **subsections (1) and (3)**, is— 30

hypothetical end herd scheme amount
– minimum herd scheme amount.

“Definition of items in formula

- “(5) In the formula—

- “(a) **hypothetical end herd scheme amount** is the lesser of the following 2 amounts, or the first amount if they are the same:
- “(i) the number of animals in the current year that the person would have of a class (the **relevant class**), adding back animals in all transfers described in **subsection (1)** that this section would apply to: 5
- “(ii) the number of animals of the relevant class that the person valued under the herd scheme at the end of the year before the current year: 10
- “(b) **minimum herd scheme amount** is the number of animals of the relevant class that the person has in the current year.
- “*Definitions*
- “(6) In this section,— 15
- “(a) **descendant** means the son, daughter, or grandchild of the transferor or of an associate of the transferor:
- “(b) **descended associate** means an associate of the transferor that would not be associated if they or another associate were not descendants in relation to the transferor or an associate of the transferor. 20
- “Defined in this Act: amount, associated, class, descendant, descended associate, herd scheme, income year, notice”.
- 27 Section EC 7 amended (Valuation methods)**
- (1) Replace section EC 7(5) with: 25
- “*Restrictions on use of valuation methods*
- “(5) Restrictions apply to the use of valuation methods, as described in sections EC 8 to EC 10.
- “*Exception to subsection (2): express written notice required in certain cases* 30
- “(6) Subsection (2) does not apply to the extent to which an election requires a notice under **section EC 11**.”
- (2) In section EC 7, in the list of defined terms, insert “notice”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 35

28 Section EC 8 replaced (Restrictions on use of herd scheme)

(1) Replace section EC 8 with:

“EC 8 Restrictions on use of herd scheme

“First restriction

5

“(1) A valuation method other than the herd scheme is not available to a person, in an income year after the 2011–12 income year, for a type of specified livestock if the person—

“(a) gives a notice of election, with application beginning for or before the income year, to use the herd scheme for the type of specified livestock; and

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“(b) does not give before 18 August 2011 a later notice of election, with application beginning for or before the income year, to use another valuation method for the type of specified livestock.

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“First exception: election after 18 August 2011 for fattening business

“(2) Despite **subsection (1)**, a valuation method other than the herd scheme is available to a person in an income year after the 2011–12 income year, if—

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“(a) the person gives a notice of election as described in **subsection (1)(a)**; and

“(b) the person gives, on or after 18 August 2011, a later notice of election to use another valuation method for the relevant type of specified livestock (the **livestock**); and

25

“(c) the later notice is given, with application beginning for the income year (the **starting income year**) in which female breeding livestock cease being intended to be used for breeding purposes; and

30

“(d) the livestock are used in a fattening farming business for and after the starting income year.

“Second exception: increase in a class

“(3) Despite **subsection (1)**, a valuation method other than the herd scheme is available to a person in an income year, to the extent of a person’s animals of a class, in an income year (the **current year**), that are in excess of the amount of animals of

35

the class that the person valued under the herd scheme at the end of the year before the current year.

“Second restriction

- “(4) A person who values livestock of a particular type under the herd scheme must value all male breeding stock of that type under the herd scheme in an income year if, in the income year, they also value any livestock of that type under the national standard cost scheme or under the cost price method. 5

“Defined in this Act: class, cost price, herd scheme, income year, national standard cost scheme”. 10

- (2) In section EC 8, replace **subsections (3) and (4)** with:

“Second exception: increase in a class

- “(3) Despite **subsection (1)**, a valuation method other than the herd scheme is available to a person in an income year, to the extent of a person’s animals of a class, in an income year (the **current year**), that are in excess of the person’s class closing animal balance. 15

“A definition and a formula

- “(4) **Class closing animal balance** means the number of animals of a class calculated using the formula— 20

$$\begin{array}{l} \text{last year’s class amount} \\ + \text{associated class transfers.} \end{array}$$

“Definition of items in formula

- “(5) In the formula,—

“(a) **last year’s class amount** is the animals of the relevant class that the person valued under the herd scheme at the end of the year before the current year: 25

“(b) **associated class transfers** is the amount, if positive, calculated under **section EC 4B(4)**, for the relevant class, that are transferred in the current year to the person to the extent to which **section EC 4B(3)** applies to the type of animals transferred. 30

“Second restriction

- “(6) A person who values livestock of a particular type under the herd scheme must value all male breeding stock of that type under the herd scheme in an income year if, in the income year,

- they also value any livestock of that type under the national standard cost scheme or under the cost price method.”
- (3) In section EC 8, in the list of defined terms, insert “amount” and “class closing animal balance”.
- 29 Section EC 11 amended (Restrictions on making elections)** 5
 In section EC 11(2)(b), replace “EC 19.” with “EC 19; and”, and after section EC 11(2)(b), insert:
 “(c) a later election, described in **section EC 8(2)(b) and (c)**, to value livestock of a particular type under a valuation method other than the herd scheme.” 10
- 30 Section EC 20 amended (Herd livestock disposed of before values determined)**
 (1) In section EC 20(1)(a), replace “specified livestock” with “the disposal of specified livestock”.
 (2) In section EC 20(1)(b), replace “herd livestock before the 1 February” with “specified livestock before the 1 November” 15
 (3) Repeal section EC 20(1)(c).
 (4) After section EC 20(1), insert:
 “*When this section does not apply*” 20
 “(1B) This section does not apply when, in an income year, a person’s specified livestock is disposed of, and **section EC 4B(3)** applies to the transfer.”
- 31 Section EC 21 repealed (Herd livestock on death before values determined)** 25
 Repeal section EC 21.
- 32 Section EE 60 amended (Total deductions in section EE 56)**
 (1) In section EE 60(3B), replace the subsection heading with “*Treatment of assets not available for use*”, and replace “an item that has been withdrawn from use” with “an item that is not available for use”. 30
 (2) **Subsection (1)** applies for the 2008–09 and later income years.

- 33 New subpart EM inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)**
- (1) After subpart EK, insert:
- “Subpart EM—Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests 5
- “EM 1 Australian non-attributing shares and attributing FDR method interests**
- “Application of this subpart 10*
- “(1) This subpart applies to determine the income and expenditure for a person’s hedges, to the extent to which their hedges have a fair dividend rate hedge portion (*see: subsection (2) below, and sections EM 5 to EM 7*), and their hedges hedge—
- “(a) Australian non-attributing shares for which— 15
- “(i) amounts derived from disposal would be either exempt income of the person under section CX 55 (Proceeds from disposal of investment shares), or the person’s capital receipt; and
- “(ii) the person determines the market value on each day in the income year: 20
- “(b) attributing interests in a FIF for which the person—
- “(i) calculates FIF income using the fair dividend rate method; and
- “(ii) uses section EX 53 (Fair dividend rate method for unit-valuing funds and others by choice); and 25
- “(iii) has a unit valuation period, in section EX 53, of 1 day.
- “Specific rules*
- “(2) In this subpart— 30
- “(a) **section EM 2** provides rules for who this subpart applies to:
- “(b) **section EM 3** provides rules for what hedges this subpart applies to:
- “(c) **section EM 4** provides rules for irrevocable elections to choose that eligible hedges are subject to this subpart: 35

- “(d) **section EM 5** provides rules that set maximum fair dividend rate hedge portions for a person’s eligible hedges:
- “(e) **section EM 6** provides the calculation to determine the income and expenditure for a person’s fair dividend rate hedge portions: 5
- “(f) **section EM 7** provides a quarterly test of the person’s fair dividend rate hedge portions, and provide rules that apply if the value of hedge portions to eligible hedged assets exceeds 1.05, including a rule to not apply this subpart: 10
- “(g) **section EM 8** provides some definitions for this subpart.
- “*Relationship with financial arrangements rules*
- “(3) This subpart, and not subpart EW (Financial arrangements rules), determines a person’s income and expenditure for their fair dividend rate hedge portions. 15
- “Defined in this Act: attributing interests, Australian non-attributing shares, eligible hedge, fair dividend rate hedge portion, fair dividend rate method, FIF, hedge, income 20
- “**EM 2 Who does this subpart apply to?**
- “*Who does this subpart apply to?*
- “(1) This subpart applies to a person if **section EM 1** applies to the person, to the extent to which the person— 25
- “(a) is listed in schedule 29, part A or B (Portfolio investment entities: listed investors), but is not a life insurer: 25
- “(b) is a separate identifiable fund forming part of a life insurer that holds investment subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund: 30
- “(c) is a fund that is equivalent to an investor class described in section HM 22(1) (Exceptions for certain funds): 30
- “(d) is a group investment fund, superannuation fund, or unit trust in which—
- “(i) 20 or more people hold an investor interest, and each person who holds an investor interest has 20% or less of the total investor interests for the fund or trust: 35

“(ii) a person described in **subsection (1)(a) or (b)** (a **listed person**) or a person whose only income is charitable income (a **charitable person**) holds an investor interest, and each person who is not a listed person or a charitable person holds an investor interest of 20% or less of the total investor interests for the fund or trust. 5

“Combining people and investor interests

“(2) For the purposes of applying **subsection (1)(d)(i) and (ii)**, if a person is associated with another person, they are treated as 1 person who holds their combined investor interests, if their combined investor interests total 5% or more of the total investor interests for the fund or trust. **Subsection (3)** overrides this subsection. 10

“Exception to combining people and investor interests 15

“(3) **Subsection (2)** does not apply to make 2 associated people into 1 person, or to combine investor interests of 2 associated persons, if 1 of them is a listed person.

“Defined in this Act: associated person, exempt income, group investment fund, income, investor class investor interest, life insurance policies, life insurer, superannuation fund, unit trust 20

“EM 3 What hedges does this subpart apply to?

This subpart applies to a person’s hedge (an **eligible hedge**) if **section EM 1** applies to the hedge, and the hedge—

“(a) is a contract to conditionally or unconditionally acquire or dispose of foreign exchange in return for New Zealand currency, or is a swap with one leg denominated in a foreign currency and the other leg denominated in New Zealand currency; and 25

“(b) is not an option; and 30

“(c) is not entered into with an associated person; and

“(d) has, under IFRSs, a fair value of zero when it is first entered into; and

“(e) is subject to an election under **section EM 4**.

“Defined in this Act: associated person, eligible hedge, hedge, IFRS 35

“EM 4 Irrevocable elections

“Elections

“(1) This subpart applies to a person’s eligible hedge, to the extent of their fair dividend rate hedge portion for the eligible hedge, if the person has made an election to apply this subpart to the eligible hedge when the hedge is first entered into. 5

“Elections: effect irrevocable

“(2) An election under **this section** is irrevocable and cannot be amended. The income and expenditure for the fair dividend rate hedge portion of the relevant hedge must be determined under this subpart. 10

“Elections: effect on some or all

“(3) The portion of a person’s eligible hedge that is not a fair dividend rate hedge portion does not give rise to income and expenditure under this subpart, despite an election for the eligible hedge, and subpart EW (Financial arrangements rules) determines a person’s income and expenditure for that portion. 15

“Defined in this Act: eligible hedge, fair dividend rate hedge portion, income

“EM 5 Fair dividend rate hedge portions

“Maximum calculated

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“(1) This section calculates the maximum fair dividend rate hedge portion for a person’s eligible hedge.

“Choice of fair dividend rate hedge portion

“(2) A person must, subject to the maximum calculated under this section, choose the fair dividend rate hedge portion for a person’s eligible hedge when the hedge is first entered into. The person’s choice of fair dividend rate hedge portion for an eligible hedge is irrevocable, and cannot be amended. 25

“Choice of formulas

“(3) A person may choose to use either **subsections (4) and (5), or subsections (6) to (10)**, to calculate the maximum fair dividend rate hedge portions for all of the person’s eligible hedges when the hedge is first entered into. They may not choose to use, for example, **subsection (4)** for some hedges and **subsection (6)** for other hedges. 30 35

“First formula

- “(4) The maximum fair dividend rate hedge portion for a person’s eligible hedge (the **calculation hedge**) is the lesser of 100% and the amount, expressed as a percentage, calculated, using the formula in this subsection, when the hedge is first entered into. The formula is—

$$\frac{1.05 \times (\text{eligible currency assets} + \text{proxied currency assets}) - \text{FDR hedges amount}}{\text{calculation hedge amount}}$$

calculation hedge amount.

“Definition of items in formula

- “(5) In the formula in **subsection (4)**, all items are expressed in the calculation currency (*see*: **eligible currency assets**), and—

“(a) **eligible currency assets** is the total market value of a person’s assets described in **section EM 1(1)(a) and (b)** that are denominated in the same currency (the **calculation currency**) that the calculation hedge hedges:

“(b) **proxied currency assets** is,—

“(i) unless **subparagraph (ii) or (iii)** applies, the total market value of a person’s assets described in **section EM 1(1)(a) and (b)** that are denominated in a currency (the **proxied currency**) other than the calculation currency, if an eligible hedge that is denominated in the calculation currency acts like hedging for the assets due to a relationship between exchange rate movements in the proxied currency and the calculation currency:

“(ii) zero, if the person has hedges denominated in the proxy currency:

“(iii) zero, if the person has a hedge, denominated in a currency other than the proxied currency or the calculation currency, that acts like hedging for the assets due to a relationship between exchange rate movements in the proxied currency and that other currency:

“(c) **FDR hedges amount** is the amount of calculation currency hedged by a person’s fair dividend rate hedge

portions, but excluding the portion for the calculation hedge:

“(d) **calculation hedge amount** is the amount of foreign currency that is hedged by the calculation hedge.

“*Second formula* 5

“(6) The maximum fair dividend rate hedge portion for a person’s eligible hedge (the **calculation hedge**) is the amount, expressed as a percentage, calculated using the formula in this subsection when the hedge is first entered into. **Subsections (8) to (10)** override this formula. The formula is— 10

$$1 - \frac{\text{non-eligible currency assets}}{\text{hedges amount.}}$$

“*Definition of items in formula*

“(7) In the formula in **subsection (6)**, all items are expressed in New Zealand currency, and—

“(a) **non-eligible currency assets** is the total market value of a person’s assets that: 15

“(i) are denominated in a foreign currency; and

“(ii) are not described in **section EM 1(1)(a) and (b)**:

“(b) **hedges amount** is the amount of foreign currency that is hedged by a person’s hedges including the calculation hedge. 20

“*Exception for more than 100% non-eligible currency asset hedges*

“(8) If the maximum fair dividend rate hedge portion for the calculation hedge is less than zero, then the fair dividend rate hedge portion for the hedge is zero. 25

“*Exception for over-hedging*

“(9) If the amount calculated using the formula in this subsection is greater than 1.05, then the fair dividend rate hedge portion for the calculation hedge is zero. The formula is—

$$\frac{\text{currency assets}}{\text{hedges amount.}}$$

“Definition of items in formula

“(10) In the formula in **subsection (9)**, all items are expressed in New Zealand currency, and—

“(a) **currency assets** is the total market value of a person’s assets that are denominated in a foreign currency: 5

“(b) **hedges amount** is the amount of foreign currency that is hedged by a person’s hedges including the calculation hedge.

“Relationship with subject matter

“(11) **Section EM 7** overrides this section. 10

“Defined in this Act: eligible hedge, fair dividend rate hedge portion, hedge, income

“EM 6 Income and expenditure for fair dividend rate hedge portions

“Using the formula to calculate income and expenditure 15

“(1) A person uses the formula in **subsection (2)** on each day that this subpart applies to them. A positive amount from the formula is a person’s income for their fair dividend rate hedge portions. A negative amount from the formula is a person’s expenditure for their fair dividend rate hedge portions. 20

“Formula

“(2) The formula for determining a person’s income and expenditure for their fair dividend rate hedge portions is—

$$\frac{\text{FDR portions' value} \times 0.05}{\text{days in the year.}}$$

“Definition of items in formula

“(3) In the formula,— 25

“(a) **FDR portions’ value** is the market value, in New Zealand currency, on the relevant day, of a person’s fair dividend rate hedge portions:

“(b) **days in the year** is the number of days in the income year in which the relevant day falls. 30

“Defined in this Act: amount, fair dividend rate hedge portion, income, income year

“EM 7 Quarterly test of fair dividend rate hedge portions

“(1) A person must use the first formula, in **subsection (2)**, on the last day of a quarter of an income year, to calculate their quarterly FDR hedging ratio.

“*First formula* 5

“(2) The formula for calculating the person’s quarterly FDR hedging ratio is—

$$\frac{\text{FDR hedges amount}}{\text{eligible currency assets.}}$$

“*Definition of items in formula*

“(3) In the formula in **subsection (2)**, all items are expressed in New Zealand currency, and— 10

“(a) **FDR hedges amount** is the total amount of foreign currency that is hedged by a person’s fair dividend rate hedge portions:

“(b) **eligible currency assets** is the total market value of a person’s assets described in **section EM 1(1)(a) and (b)**. 15

“*Second formula*

“(4) If a person’s quarterly FDR hedging ratio for a quarter is greater than 1.05 and **subsection (6)** does not apply, then, despite **section EM 5**, the fair dividend rate hedge portion of each eligible hedge, from 5 days after the last day of the quarter, is calculated using the formula— 20

$$\frac{0.85}{\text{quarterly FDR hedging ratio}} \times \text{FDR hedge portion.}$$

“*Definition of items in second formula*

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

“(a) **FDR hedge portion** is the fair dividend rate hedge portion of the relevant eligible hedge: 25

“(b) **quarterly FDR hedging ratio** is the person’s quarterly FDR hedging ratio for the relevant quarter.

“Subpart not applied for over-hedging

- “(6) If a person’s quarterly FDR hedging ratio is greater than 1.05 on the last day of two consecutive quarters of an income year (the **over-hedged year**), then this subpart will not apply to the person for the remaining quarters of the over-hedged year and the income year after the over-hedged year. 5

“Defined in this Act: fair dividend rate hedge portion, hedge, eligible hedge, income year, person, quarterly FDR hedging ratio

“**EM 8 Some definitions**

In this subpart,— 10

“**Australian non-attributing shares** means a person’s rights in a FIF in an income year if the rights—

“(a) are a share in a company resident in Australia at all times in the year when the person holds a right in the company; and 15

“(b) are not an attributing interest, because of the application of section EX 31 (Exemption for ASX-listed Australian companies)

“**eligible hedge** means a hedge described in **section EM 3**

“**fair dividend rate hedge portion** means the percentage portion of the hedging for an eligible hedge under this subpart 20

“**hedge** means a financial arrangement that a person enters into with the sole purpose of offsetting exposure to foreign currency exchange rate movements in the value of their assets, and **hedging** is the effect of holding a hedge for that purpose 25

“**investor interest** means—

“(a) if the relevant entity is a company, a shareholding that gives the holder an entitlement to a distribution of the proceeds from the entity’s investments; or

“(b) if the relevant entity is not a company, an interest that, under the rules of the entity, gives the holder an entitlement to a proportion of the funds available for distribution of the proceeds from the entity’s investments, and that distribution is the same as if the entity were a company and the holder were a shareholder in that company 30 35

“**quarterly FDR hedging ratio** means the ratio calculated using the formula in **section EM 7(2)**.”

- (2) **Subsection (1)** applies for the 2013–14 and later income years.
- 34 Section EX 21 amended (Attributable CFC amount and net attributable CFC income or loss: calculation rules)**
 In section EX 21(13)(f),— 5
- (a) replace “land, except trees” with “land”; and
- (b) replace “Erosion and shelter plantings” with “Plantings for erosion, shelter, and water protection purposes”.
- 35 Section GC 5 amended (Leases for inadequate rent)**
- (1) After section GC 5(1), insert: 10
- “*When this section does not apply*
- “(1B) This section does not apply when the property is an asset to which **subpart DG** (Expenditure related to use of certain assets) applies.”
- (2) In section GC 5, in the list of defined terms, insert “asset”. 15
- (3) **Subsection (1)** applies for the 2013–14 and later income years.
- 36 Section HA 33 amended (Revocation of shareholders’ elections: by event)**
- (1) In section HA 33(1)(c), replace “sections HA 28 and HA 29 apply” with “section HA 28(b) applies, or section HA 29 applies and the election is made in accordance with section HA 28(b),”. 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 25
- 37 Section LK 1 amended (Tax credits relating to attributed CFC income)**
- (1) Replace section LK 1(1)(d) with:
- “(d) the amount of foreign income tax paid by the person in relation to the CFC from which the income is derived: 30
- “(e) the amount of foreign tax paid, under legislation of another country or territory that is equivalent of the international tax rules, by a foreign company in relation to income derived by the CFC.”

- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 38 Sections LZ 2 to LZ 5 repealed**
- (1) Repeal sections LZ 2 to LZ 5.
- (2) **Subsection (1)** applies for the 2013–14 and later income years. 5
- 39 Section MB 1 amended (Adjustments for calculation of family scheme income)**
- In section MB 1(2)(a) replace “CW 28(1)(e)” with “**CW 28(2)(a)**”. 10
- 40 Section ME 3 amended (Meaning of net family scheme income)**
- (1) In section ME 3(3)(a)(i), replace “net income under section MB 1 (Adjustments for calculation of family scheme income)” with “family scheme income”. 15
- (2) In section ME 3, in the list of defined terms, insert “family scheme income”.
- (3) **Subsections (1) and (2)** apply for the 2013–14 and later tax years.
- 41 Section OB 71 amended (Imputation additional tax on leaving wholly-owned group)** 20
- In section OB 71(5)(a)(ii), replace “RM 2, and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
- 42 Section OB 72 amended (Imputation additional tax on joining wholly-owned group)** 25
- In section OB 72(6)(a)(ii), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
- 43 Section OB 72B amended (Limit on using entitlement to refund after joining wholly-owned group)**
- (1) In section OB 72B(3)(a)(ii), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”. 30

- (2) In section OB 72B(6), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
- 44 Section OP 6 amended (Provisions applying to consolidated imputation groups)**
In section OP 6(7), replace “sections RM 2 or RM 4 to RM 6” with “section RM 2, RM 4, or RM 5”. 5
- 45 Section RD 60 amended (Close company option)**
(1) In section RD 60(1)(a), replace “for the tax year” with “for the tax year, as modified by section RA 20(2) (Amalgamation of companies),”. 10
(2) **Subsection (1)** applies for the 2008–09 and later income years.
- 46 Section RM 2 amended (Refunds for overpaid tax)**
(1) Repeal section RM 2(2).
(2) **Subsection (1)** applies for the 2013–14 and later tax years. 15
- 47 Section RM 4 amended (Overpayment on amended assessment)**
(1) Repeal section RM 4(2).
(2) **Subsection (1)** applies for the 2013–14 and later tax years.
- 48 Section RM 6 repealed (Refunds after 4-year period ends)** 20
(1) Repeal section RM 6.
(2) **Subsection (1)** applies for the 2013–14 and later tax years.
- 49 Section RM 10 amended (Using tax refund to satisfy tax liability)**
In section RM 10(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”. 25
- 50 Section RM 13 amended (Limits on refunds for ICA companies)**
In section RM 13(1)(a), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”. 30

- 51 Section RM 17 amended (Treatment of further income tax paid)**
In section RM 17(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
- 52 Section RM 22 amended (Limits on refunds for Maori authorities)** 5
In section RM 22(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
- 53 Section RM 23 amended (Limits on refunds when Maori authority stops being Maori authority)** 10
In section RM 23(1), replace “sections RM 2 or RM 4 to RM 6” with “section RM 2, RM 4, or RM 5”.
- 54 Section RM 26 amended (Treatment of further income tax paid)**
In section RM 26(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5” 15
- 55 Section RM 28 amended (Limits on refunds for PCA persons)**
In section RM 28(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5” 20
- 56 Section RM 33 amended (Limits on refunds for certain unit trusts and group investment funds)**
In section RM 33(1)(a), replace “sections RM 2 or RM 4 to RM 6” with “section RM 2, RM 4, or RM 5”.
- 57 Section YA 1 amended (Definitions)** 25
(1) In the definition of **asset**, after paragraph (a), insert:
“(ab) is defined in **section DG 3** (Meaning of asset for this subpart) for the purposes of **subpart DG** (Expenditure related to use of certain assets) and **sections CC 1(2B) and CW 8B** (which relate to the treatment of certain income):” 30
(2) Insert, in appropriate alphabetical order:

- “**asset value** is defined in **section DG 11(8)(a)** (Expenditure limitation rule) for the purposes of **subpart DG** (Expenditure related to use of certain assets)”.
- (3) Insert, in appropriate alphabetical order:
“**Australian non-attributing shares** is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”.
- (4) Replace the definition of **bonus issue** with:
“**bonus issue** means the issue or subdivision of shares in a company, or the giving of credit for or forgiveness of an amount unpaid on any shares in a company, if the company receives no consideration for the issue, subdivision, crediting, or forgiveness other than the shareholder choosing not to receive an amount as an alternative to the issue or subdivision”.
- (5) Replace the definition of **bonus issue** with:
“**bonus issue** means—
“(a) the issue or subdivision of shares in a company, or the giving of credit for or forgiveness of an amount unpaid on any shares in a company, if the company receives no consideration for the issue, subdivision, crediting, or forgiveness other than the shareholder choosing not to receive an amount as an alternative to the issue or subdivision:
“(b) the issue of shares under a profit distribution plan”.
- (6) Replace the definition of **capital contribution**, paragraph (a)(iv) with:
“(iv) is paid, under the express terms and conditions of the agreement, as a contribution for capital contribution property.”.
- (7) Insert, in appropriate alphabetical order:
“**capital contribution property** means, for a recipient of an amount,—
“(a) depreciable property owned or to be acquired by the recipient:
“(b) an improvement for which expenditure is or would be deductible for the recipient under section DO 4, **DO 11**,

- DO 12, or DO 13 (which relate to farming, horticultural, aquacultural, and forestry improvements):
- “(c) a listed horticultural plant or land for which expenditure is or would be deductible for the recipient under section DO 5 or DO 6 (which relate to horticultural expenditure on land): 5
- “(d) a listed horticultural plant or land to the extent to which some but not all expenditure for replacement plants is deductible under section DO 6.”.
- (8) Insert, in appropriate alphabetical order: 10
 “**class closing animal balance** is defined in **section EC 8(4)** (Restrictions on use of herd scheme) for the purposes of that section”.
- (9) In the definition of **cost**, before paragraph (a), insert: 15
 “(aa) is defined in **section DG 3(4)** (Meaning of asset for this subpart) for the purposes of **subpart DG** (Expenditure related to use of certain assets):”.
- (10) Insert, in appropriate alphabetical order: 20
 “**debt value** is defined in **section DG 11(8)(b)** (Expenditure limitation rule) for the purposes of **subpart DG** (Expenditure related to use of certain assets)”.
- (11) Insert, in appropriate alphabetical order: 25
 “**descendant** is defined in **section EC 4B(6)** (Compulsory use of herd scheme method for associated persons) for the purposes of that section”.
- (12) Insert, in appropriate alphabetical order: 30
 “**descended associate** is defined in **section EC 4B(6)** (Compulsory use of herd scheme method for associated persons) for the purposes of that section”.
- (13) Repeal the definition of **development investments**. 30
- (14) Insert, in appropriate alphabetical order: 35
 “**eligible hedge** is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”.
- (15) Insert, in appropriate alphabetical order:

- “**fair dividend rate hedge portion** is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”.
- (16) In the definition of **FDP rules**, repeal paragraph (d). 5
- (17) Insert, in appropriate alphabetical order:
“**hedge** and **hedging** are defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”. 10
- (18) Insert, in appropriate alphabetical order:
“**interest expenditure** is defined in **section DG 5** (Meaning of interest expenditure for this subpart) for the purposes of **subpart DG** (Expenditure related to use of certain assets)”. 10
- (19) Replace the definition of **investor interest** with: 15
“**investor interest**,—
“(a) for an investor in a portfolio investment entity, means an interest in the entity that gives the holder an entitlement to a distribution of proceeds from the entity’s investments: 20
“(b) is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”. 20
- (20) In the definition of **market value**, after paragraph (b), insert: 25
“(bb) is defined in **section DG 4** (Meaning of private use for this subpart) for the purposes of **subpart DG** (Expenditure related to use of certain assets):”. 25
- (21) In the definition of **New Zealand superannuation**, in paragraph (b), repeal subparagraphs (ii) and (iii). 30
- (22) In the definition of **New Zealand superannuitant**, in paragraph (b), repeal subparagraph (ii). 30
- (23) Repeal the definition of **non-resident investment company**.
- (24) Replace the definition of **private use** with: 35
“**private use**— 35
“(a) for a motor vehicle, is defined in section CX 36 (Meaning of private use): 35

- “(b) for the purposes of **subpart DG** (Expenditure related to use of certain assets), is defined in **section DG 4** (Meaning of private use for this subpart)”.
- (25) Insert, in appropriate alphabetical order:
 “**quarterly FDR hedging ratio** is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”.
- (26) In the definition of **significant capital activity**, “land, except trees” is replaced by “land”.
- (27) Replace the definition of **veteran’s pension** with:
 “**veteran’s pension** means a veteran’s pension, other than a portable veteran’s pension, paid or payable under Part 6 of the War Pensions Act 1954”.
- (28) **Subsection (4)** applies for the 2008–09 and later tax years.
- (29) **Subsection (16)** applies for the 2008–09 and later income years.
- (30) **Subsections (6), (7), and (26)** apply for the 2011–12 and later income years.
- (31) **Subsections (1), (2), (3), (9), (10), (13), (14), (15), (17), (18), (19), (20), (23), (24), and (25)** apply for the 2013–14 and later income years.
- 58 Schedule 3 amended (Payment of provisional tax and terminal tax) amended**
- (1) In schedule 3, in the shoulder references, insert, in appropriate alphanumeric order, “RC 9”.
- (2) **Subsection (1)** applies for the 2008–09 income year and later income years.
- 59 Schedule 17 amended (Types and classes of livestock)**
- (1) In schedule 17, column 2,—
- (a) replace “*Friesian and related breeds*” with “*Friesian and related breeds, Jersey, and other dairy breeds*”; and
- (b) delete “*Jersey and other dairy breeds*” and the 6 items that follow that heading; and
- (c) delete “*Red deer*” and the 6 items that follow that heading; and

- (d) replace “*Wapiti, elk, and related crossbreeds*” with “*Red deer, wapiti, elk, and related crossbreeds*”.
- (2) **Subsection (1)** applies for the 2013–14 and later income years.
- 60 Schedule 20 amended (Expenditure on farming, horticultural, aquacultural, and forestry improvements) 5**
- (1) In schedule 20, parts A to G, column 3,—
- (a) replace “6” with “5” in each place where it appears:
- (b) replace “12” with “10” in each place where it appears:
- (c) replace “24” with “20” in each place where it appears. 10
- (2) **Subsection (1)** applies for a person and an improvement that the person makes after **the date of introduction of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill** (the **introduction date**), except if the person— 15
- (a) decides, on or before the introduction date, to make the improvement; and
- (b) on or before the introduction date,—
- (i) enters a binding contract for making the improvement: 20
- (ii) after deciding to make the improvement, incurs expenditure in relation to the improvement; and
- (c) for the person’s decision to make the improvement,—
- (i) has available for the Commissioner documents dated on or before the introduction date that evidence the person made the decision on or before the introduction date: 25
- (ii) sends to the Commissioner a statutory declaration that the person made the decision on or before the introduction date. 30
- 61 Schedule 32 amended (Recipients of charitable or other public benefit gifts)**
- (1) In schedule 32, insert, in appropriate alphabetical order, “Fund for Timor”, “OneSight New Zealand”, and “The Hunger Project New Zealand”. 35
- (2) **Subsection (1)** applies for the 2013–14 and later income years.

Part 2
Amendments to other Acts

Amendments to Tax Administration Act 1994

- 62 Tax Administration Act 1994**
Sections 63 to 72 amend the Tax Administration Act 1994. 5
- 63 Section 2 amended (Purpose of Act)**
Repeal section 2(4).
- 64 Section 16 amended (Commissioner may access premises to obtain information)**
- (1) In section 16(2), replace “section 103(3)(b)(ii)” with “sections 103(3)(b)(ii) and 103(7)”. 10
- (2) In section 16(6A), replace “sections 118” with “sections 102, 103(3)(b)(ii), 103(7), 115(1)(b), 118”.
- 65 Section 16C amended (Power to remove and retain documents for inspection)** 15
In section 16C(8), replace “sections 118” with “sections 102, 103(3)(b)(ii), 103(7), 115(1)(b), 118”.
- 66 New section 30D (Statements to shareholders when certain assets held by companies)**
- After section 30C, insert: 20
- “30D Statements to shareholders when certain assets held by companies**
- “(1) This section applies for an income year to a company to which 1 or more of **sections DG 11 to DG 19** of the Income Tax Act 2007 applies. 25
- “(2) The company must provide the following information, as applicable, to every shareholder of the company for the income year to enable the shareholder to calculate the amount of a deduction that may be allowed for the income year in relation to an asset to which **subpart DG** of that Act applies: 30
- “(a) their share of a net asset balance for the income year:
- “(b) their share of an outstanding profit balance for the income year:

“(c) other necessary information for the income year.”

67 Section 41A amended (Returns by persons with tax credits for charitable or other public benefit gifts)

(1) Replace section 41A(6) with:

“(6) A taxpayer may apply for a refund for a tax year in the 4-year 5
period beginning with—

“(a) the 1 April following the end of the taxpayer’s income
year corresponding to the tax year, if the taxpayer has a
standard balance date or an early balance date; or

“(b) the day after the end of the taxpayer’s income year cor- 10
responding to the tax year, if the taxpayer has a late bal-
ance date.”

(2) **Subsection (1)** applies for the 2013–14 and later tax years.

68 Section 120C amended (Definitions)

In section 120C(1), in the definition of **date interest starts**, 15
paragraph (c), replace “a GST refund” with “a GST refund,
other than a refund for a registered person who is a non-resi-
dent,”.

69 Section 125 amended (Certain rights of objection not conferred) 20

In section 125(j)(iii), delete “RM 6,”.

70 Section 138E amended (Certain rights of challenge not conferred)

In section 138E(1)(e)(iii), delete “RM 6,”.

71 Section 140C amended (Transitional imputation penalty tax payable in some circumstances) 25

After section 140C(5), insert:

“(6) Despite subsection (4), the company is not liable for imput-
ation penalty tax unless it pays a dividend with imputation
credits attached— 30

“(a) when the imputation ratio is greater than 28/72; and

“(b) after the earlier of—

- “(i) the date on which the company’s return of income for the 2010–11 tax year is filed:
- “(ii) 31 March 2012.”

- 72 Section 184 amended (Refund of tax paid on income subsequently exempted by Order in Council) 5**
In section 184, replace “RM 4 to RM 6” with “RM 4, RM 5”.

*Amendments to Goods and Services Tax Act
1985*

- 73 Goods and Services Tax Act 1985**
Sections 74 to 95 amend the Goods and Services Tax Act 1985. 10

- 74 Section 2 amended (Interpretation)**
In section 2(1), insert, in appropriate alphabetical order:
“**prize competition** means a scheme or competition— 15
“(a) for which direct or indirect consideration is paid to participate; and
“(b) that distributes prizes of money or in which participants seek to win money; and
“(c) for which the result is determined— 20
“(i) by the performance of the participant of an activity of a kind that may be performed more readily by a participant possessing or exercising some knowledge or skill; or
“(ii) partly by chance and partly by the performance of an activity as described in **subparagraph (i)**, 25
whether or not it may also be performed successfully by chance.”.

- 75 Section 5 amended (Meaning of term supply)**
(1) Before section 5(4), insert:
“(3B) For the purposes of this Act, when a person who is a non-resident ceases to be a registered person,— 30
“(a) any goods that are part of the assets of the taxable activity carried on by the person that are present in New Zealand at the time the person ceases to be registered

- are treated as supplied by the person in the course of the taxable activity at a time immediately before the person ceases to be registered:
- “(b) any services that would be supplied in New Zealand as part of the taxable activity carried on by the person at the time the person ceases to be registered are treated as supplied by the person in the course of the taxable activity at a time immediately before the person ceases to be registered.” 5
- (2) Replace section 5(10) with: 10
- “(10) For the purposes of this Act, an amount of money paid by a person to participate in gambling (including a New Zealand lottery) or in a prize competition is treated as a payment for a supply of services by the following:
- “(a) for gambling, by the person, society, licensed promoter, or organiser who under the Gambling Act 2003 conducts the gambling: 15
- “(b) for a prize competition, by the person who conducts the prize competition.”
- 76 Section 9 amended (Time of supply) 20**
- Replace section 9(2)(e) with:
- “(e) if the supply is made under section 5(10),—
- “(i) for an amount of money paid by a person to participate in gambling (including a New Zealand lottery), on the date on which the first drawing or determination of a result commences, but this subparagraph does not apply to an instant game played by means of a gaming machine as defined in section 4(1) of the Gambling Act 2003: 25
- “(ii) for an amount of money paid by a person to participate in a prize competition on the date on which the first drawing or determination of the prize competition commences:” 30
- 77 Section 10 amended (Value of supply of goods or services)**
- (1) In section 10(3), replace “(3D)” with “(3D), **(3DB)**,” 35
- (2) After section 10(3D), insert:

“(3DB) Subsection (3) does not apply when a person uses an asset described in **section DG 3** of the Income Tax Act 2007 for making taxable supplies.”

(3) Replace section 10(14) with:

“(14) If a supply of services is treated as having been made under **section 5(10)**, the consideration for the supply is calculated using the formula—

amounts received – prizes

“where—

“(a) **amounts received** is the total of all amounts in money received in relation to the supply— 10

“(i) for gambling, by the person, society, licensed promoter, or organiser who under the Gambling Act 2003 conducts the gambling:

“(ii) for a prize competition, by the person who conducts the prize competition: 15

“(b) **prizes** is the total amount of all prizes paid and payable in money in relation to the supply.”

(4) **Subsections (1) and (2)** apply for taxable periods starting on or after 1 April 2013.

78 Section 11 amended (Zero-rating of goods) 20

In section 11(1)(o)(ii), replace “section 11A(1)(s) or (t).” with “section 11A(1)(s) or (t); or” and insert:

“(p) the goods are—

“(i) jigs, patterns, templates, dies, punches, and similar machine tools to be used in New Zealand solely to manufacture goods that will be for export from New Zealand; and 25

“(ii) supplied to a recipient who is a non-resident, and is not registered.”

79 Section 19 amended (Accounting basis) 30

After section 19(1), insert:

“(1B) Despite subsection (1), if the Commissioner registers a non-resident person under **section 54B**, the person must account

for tax payable on a payments basis for the purpose of section 20.”

- 80 Section 19A amended (Requirements for accounting on payments basis)** 5
- (1) Repeal section 19A(1)(a)(ii).
- (2) After section 19A(1)(iii), insert:
“(iv) a non-resident; or”.
- 81 Section 19AB repealed (Local authorities accounting on payments basis on and after 1 July 2001)** 10
- Repeal section 19AB.
- 82 Section 19C amended (Tax payable, or refund, where change in accounting basis)**
- In section 19C(1), replace “section 19 or section 19A” with “section 19, 19A, or **87**, as applicable.”.
- 83 Section 20 amended (Calculation of tax payable)** 15
- (1) After section 20(3)(h), insert:
“(hb) an amount calculated in accordance with **section 20G** in relation to the supply of an asset during the taxable period.”.
- (2) In section 20(3C), replace “Subsection (3D) overrides” with “Subsections (3D) and **(3L)** override”. 20
- (3) In section 20(3J)(b), replace “sections 21 to 21H” with “**sections 20G** and 21 to 21H”.
- (4) After section 20(3J), insert:
“(3JB) For a supply to which **section 20G** applies, the recipient 25
must,—
“(a) on acquisition,—
“(i) determine the extent to which they intend to use
the goods, as described in subsection (3G); and
“(ii) account for input tax for the amount calculated 30
under subsection (3G) and (3H); and
“(b) make adjustments under **section 20G(4) and (5)** in
relation to the taxable supply referred to in **paragraph
(a)**.”

- (5) In section 20(3K), replace “a non-profit body” with “a non-profit body that is resident in New Zealand”.
- (6) After section 20(3K), insert:
- “(3L) For the purposes of subsection (3), for a registered person who is non-resident, input tax may be deducted only to the extent to which the goods or services are used for, or are available for use in, making taxable supplies, treating all the supplies made by the person as if they were made and received in New Zealand.”
- (7) **Subsections (1), (3), and (4)** apply for taxable periods starting on or after 1 April 2013.

84 New section 20G inserted (Treatment of supplies of certain assets)

- (1) After section 20F, insert:
- “20G Treatment of supplies of certain assets**
- “(1) A registered person who uses an asset described in **section DG 3** of the Income Tax Act 2007 for making taxable supplies has a deduction under **section 20(3)(hb)** of an amount calculated using the formula—

$$\frac{\text{input tax for asset}}{\text{asset}} \times \frac{\text{total income-earning days}}{\text{total income-earning days} + \text{total private days}}$$

- “(2) In the formula,—
- “(a) **input tax for asset** is the input tax on expenditure that the person incurs in relation to the use of the asset, other than expenditure that is—
- “(i) related solely to the income-earning use of the asset as described in **section DG 7** of that Act;
- or
- “(ii) related solely to the private use of the asset, as that term is defined in **section DG 4** of that Act;
- “(b) **total income-earning days** is the total number of days in the period on which the person supplies the asset when the consideration for the supply is at or above market value, as that term is defined in **section DG 4(2)** of that Act, including any days on which the use made of

- the asset is use described in **section DG 4(3)** of that Act:
- “(c) **total private days** is the total number of days in the period on which the asset is in active use as described in **section DG 3(3)** of that Act and the day is not an income-earning day as described in **paragraph (b)**. 5
- “(3) A unit of measurement of time other than days, whether relating to hours, or nights, or anything else is to be used in the formula and in **subsection (2)(b) and (c)**, if the use of the unit provides a fair and reasonable result. For this purpose, the same unit must be used in relation to both total income-earning days and total private days. 10
- “(4) The person must ascertain at the end of an adjustment period whether an adjustment is required to be made for any percentage difference in a supply of the asset for the period in relation to the actual use of the asset for making taxable supplies. 15
- “(5) If an adjustment is required, the person must, at the end of the adjustment period,—
- “(a) identify the percentage actual use of the asset in accordance with the formula in **subsection (1)** for making taxable supplies; and 20
- “(b) compare the percentage actual use with percentage intended use as described in **section 20(3JB)** or previous actual use, as applicable; and
- “(c) if a percentage difference arises, make an adjustment for any percentage difference for the adjustment period, applying section 21D(3) to the resulting amount. 25
- “(6) For the purposes of **subsection (5)**, all expenditure incurred in relation to the use of the asset is aggregated and included in the relevant adjustment unless section 21(2)(c) or (d) applies to the aggregated amount. 30
- “(7) Sections 8 and 21F apply to the disposal of the asset, treating the disposal as in the course or furtherance of a taxable activity.”
- (2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2013. 35

- 85 Section 21B amended (Adjustments when person or partnership becomes registered after acquiring goods and services)**
- (1) In section 21B(2), replace “sections 21 and 21A” with “sections **20G**, 21, and 21A, as applicable”. 5
- (2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2013.
- 86 Section 21D amended (Calculating amount of adjustment)**
- (1) In section 21D(3), replace “subsection (1)” with “subsection (1) and **section 20G**”. 10
- (2) In section 21D(3)(a), replace “section 20(3)(e)” with “section 20(3)(e) or **(hb)**, as applicable”.
- (3) **Subsections (1) and (2)** apply for taxable periods starting on or after 1 April 2013.
- 87 Section 21G amended (Definitions and requirements for apportioned supplies and adjustment periods)** 15
- (1) In section 21G(1), replace “20(3H),” with “20(3H), **20G**,”.
- (2) In section 21G(2), replace “sections 21” with “sections **20G**, 21”.
- (3) In section 21G(4), replace “section 21A” with “sections **20G** and 21A, as applicable,”. 20
- (4) **Subsections (1), (2), and (3)** apply for taxable periods starting on or after 1 April 2013.
- 88 Section 26 amended (Bad debts)**
- After section 26(2), insert: 25
- “(3) This section does not apply when the taxable supply is one made by a principal to an agent as described in **section 60(1B)(a)** if the agent has been paid for the supply described in **section 60(1B)(b)**.”
- 89 Section 46 amended (Commissioner’s right to withhold payments)** 30
- After section 46(1), insert:

- “(1B) For the purposes of subsections (1)(a), (4)(a), and (5), when a registered person is non-resident, the reference to a 15-day period is treated as a reference to a 90-day period following the day on which the registered person’s return was received by the Commissioner.” 5
- 90 Section 52 amended (Cancellation of registration)**
Repeal section 52(7).
- 91 New sections 54B and 54C inserted**
After section 54, insert:
- “54B Non-residents: registration”** 10
- “(1) Despite section 51(3), the Commissioner may register a person who is a non-resident and has not become liable to be registered under section 51(1) only if the Commissioner is satisfied that the person meets the following requirements:
- “(a) the person— 15
- “(i) is registered for a consumption tax in the country or territory in which they are resident; or
- “(ii) if the country or territory in which the person is resident does not have a consumption tax, is carrying on a taxable activity, and has a level of taxable activity in a country or territory that would render them liable to be registered under section 51(1) if they were carrying out the taxable activity in New Zealand; and 20
- “(b) the amount of the person’s input tax for the first taxable period after the date of registration in New Zealand is likely to be more than \$500; and 25
- “(c) the person’s taxable activity does not involve a supply of services in relation to which it is reasonably foreseeable that the services will be received in New Zealand by a person who is not a registered person. 30
- “(2) For timing purposes, when a person becomes resident or becomes non-resident,—
- “(a) the day on which the person becomes resident is treated as the end of a taxable period: 35
- “(b) the day on which the person becomes non-resident is treated as the end of a taxable period.

“54C Non-residents: cancellation of registration

- “(1) Section 52 applies to the cancellation of registration of a non-resident person as modified by this section.
- “(2) The Commissioner may, in addition to the powers provided under section 52(5) and (5A), cancel the person’s registration 5 if—
- “(a) the Commissioner is satisfied that the person no longer meets the requirements of **section 54B(1)(a)**;
 - “(b) for 3 consecutive taxable periods, the person has either not filed a return or has filed a late return. 10
- “(3) When **subsection (2)(b)** applies and the person’s registration is cancelled,—
- “(a) the effective date of the cancellation is the first day of the third period referred to in **subsection (2)(b)**;
 - “(b) the person may not apply to become a registered person 15 again until a period of 5 years has expired, starting on the date of cancellation, and this exclusion period applies also to a non-resident associate of the person.
- “(4) The Commissioner may cancel the registration of a person if the person fails to satisfy the Commissioner that they meet the 20 requirements described in **section 54B(1)**, and they are—
- “(a) a non-resident registered person who registers between **the day of introduction of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill** and 1 April 2014: 25
 - “(b) a resident registered person who becomes non-resident.”

92 Section 55 amended (Group of companies)

- (1) After section 55(1), insert:
- “(1B) Despite subsections (1) and (4)(a), a registered person may 30 not apply to be a member of a group of companies or for a further company to be a member of a group of companies, if the resulting group would have both resident and non-resident persons as members.”
- (2) After section 55(8), insert: 35
- “(9) As a transitional measure, if a group of companies formed after **the day of introduction of the Taxation (Livestock Valu-**

ation, Assets Expenditure, and Remedial Matters) Bill

has as a member a registered person who is a non-resident, the representative member must apply under subsection (4) for an alteration to the group to exclude the non-resident member of the group. Alternatively, the representative member may 5 similarly apply to exclude a resident member of the group, so that no group of companies exists that has both resident and non-resident persons as members of the same group.

- “(10) If, despite **subsection (9)**, a group of companies continues to exist with both resident and non-resident persons as members, the Commissioner may— 10
- “(a) treat the group as consisting only of those members who are resident; and
 - “(b) notify the non-resident member or the representative member that the membership of the non-resident person is terminated from a specified date.” 15

93 Section 60 amended (Agents and auctioneers)

After section 60(1), insert:

- “(1B) Despite subsection (1), when a principal and their agent are both registered persons and agree in writing that this subsection applies to a supply of goods and services, the supply is treated for the purposes of the Act as 2 separate supplies, being: 20
- “(a) a supply of goods and services from the principal to the agent; and 25
 - “(b) a supply of those goods and services from the agent to the recipient, treating the agent as if they were the principal for the purpose of the supply.
- “(1C) For a supply to which **subsection (1B)** applies, if the principal accounts for tax payable on a payments basis, they are liable to account for tax payable on the supply referred to in **subsection (1B)(a)** as if they accounted for tax payable on an invoice basis.” 30

94 Section 75 amended (Keeping of records)

- (1) Replace section 75(3) with: 35

- “(3) Subject to subsections (4) to (7), every registered person must keep, for a period of at least 7 years after the end of the taxable period to which they relate, the records listed in subsection (2) and records that are sufficient to enable ready ascertainment by the Commissioner or an officer authorised by the Commissioner of the registered person’s liability to tax.” 5
- (2) After section 75(3), insert:
- “(3BA) A registered person required by **subsection (3)** to keep and retain a record must keep and retain the record—
- “(a) in English, or in a language in which the Commissioner authorises the person under **subsection (6)** to keep the record or the type of record; and 10
- “(b) at a place in New Zealand, or at a place outside New Zealand where—
- “(i) the Commissioner authorises the registered person under **subsection (6)** to keep the record or the type of record: 15
- “(ii) the record is kept by a person authorised by the Commissioner under **subsection (6)** to keep records for persons that include the registered person.” 20
- (3) After section 75(5), insert:
- “(6) The Commissioner may, upon application in writing by a registered person or another person, authorise for the purposes of **subsection (3BA)**,— 25
- “(a) a registered person to keep and retain a record or a type of record—
- “(i) in a language other than English:
- “(ii) at a place outside New Zealand:
- “(b) a person to hold, for a registered person, records— 30
- “(i) at places outside New Zealand; and
- “(ii) in a form approved by the Commissioner; and
- “(iii) accessible by the Commissioner in a way approved by the Commissioner.
- “(7) The Commissioner may, for an authorisation under **subsection (6)** of a person,— 35
- “(a) impose reasonable conditions on the authorisation:
- “(b) reasonably vary the conditions on the authorisation:

- “(c) withdraw the authorisation, upon request by the person or after giving reasonable notice of the withdrawal:
- “(d) give public notice of an action under **subsection (6)(b)** or this subsection, in a publication chosen by the Commissioner.”

5

95 New section 87 inserted (Change of accounting basis: transitional provision for certain local authorities)

After section 86, insert:

“87 Change of accounting basis: transitional provision for certain local authorities

10

“(1) This section applies to a local authority referred to in the Goods and Services Tax (Local Authorities Accounting on Payments Basis) Order 2009.

“(2) From 1 July 2013, the local authority must account for tax payable on an invoice basis.

15

“(3) On the change of accounting basis, the local authority may spread the tax payable under section 19C(1) and calculated under section 19C(3) evenly over a period of 72 months commencing on 1 July 2013. If the full amount is not divisible into exactly equal instalments, the final instalment carries the difference.

20

“(4) If a local authority changes their accounting basis before 1 July 2013, the amount of the tax payable must be calculated on the day before the date on which the change is to take effect, although the amount remains available to be paid as described in **subsection (3)**.

25

“(5) No late payment penalty, shortfall penalty, or interest under Part 7 of the Tax Administration Act 1994 arises for the local authority as a result of its application of the spreading provision in **subsection (3)**, whether or not the authority incurs a tax liability because it changes its accounting basis before 1 July 2013.”

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Amendment to KiwiSaver Act 2006

96 Section 4 amended (Interpretation)

- (1) In section 4 of the KiwiSaver Act 2006, in the definition of **salary or wages**, paragraph (a)(i), replace “(6)(b)” with “(6)(b) to (bd)”. 5
- (2) In section 4 of the KiwiSaver Act 2006, after the definition of **salary or wages**, paragraph (a)(i), insert:
- “(ia) a payment under a Voluntary Bonding Scheme that is funded by the Ministry for Primary Industries, the Ministry of Health, or the Ministry of Education; and”. 10

Amendment to Student Loan Scheme Act 2011

97 Section 202 amended (Provisions of Tax Administration Act 1994 and Income Tax Act 2007 to apply to this Act)

- In section 202 of the Student Loan Scheme Act 2011, in the words before paragraph (a), replace “RM 2, RM 4, and RM 6” with “RM 2, and RM 4”. 15

Amendment to Stamp and Cheque Duties Act 1971

98 Section 86I amended (Application of approved issuer levy and zero-rating) 20

- In section 86I of the Stamp and Cheque Duties Act 1971, replace “Income Tax Act 2007 and section 86J of this Act” with “Income Tax Act 2007, an exemption under a double tax agreement, and section 86J of this Act”. 25

Amendments to Income Tax Act 2004

99 Income Tax Act 2004

Sections 100 to 107 amend the Income Tax Act 2004.

100 New section CD 21BA inserted (Issues to shareholders of rights to subscribe for or sell back shares) 30

- (1) After section CD 21, insert:

**“CD 21BA Issues to shareholders of rights to subscribe for or
sell back shares**

“Issue of rights to subscribe for shares

“(1) The issue by a company to a shareholder of a right to subscribe
for a share, or to sell a share in the company to the company, 5
is not a dividend.

“Issue of shares under rights to subscribe for shares

“(2) The issue by a company of a share to a person for consideration
less than the market value, immediately before the issue, of a
share in the same class of shares, is not a dividend if— 10

“(a) the person subscribes for the share under a right (a **sub-
scription right**) issued by the company to a shareholder
holding shares in the share class before the issue of the
right; and

“(b) the company does not, as part of the issue of the sub- 15
scription right, give the person a right to dispose of the
share to the company.

“Premiums from issue of rights to subscribe for shares

“(3) A distribution by a company to a shareholder is not a dividend
if— 20

“(a) the company issues to the shareholder a right (the **sub-
scription right**) to subscribe for a share at a given price
(the **subscription price**); and

“(b) the shareholder fails or is ineligible to exercise the sub- 25
scription right; and

“(c) another person subscribes for the share corresponding
to the subscription right at a price (the **clearing price**)
of more than the subscription price; and

“(d) the distribution to the shareholder represents all or part
of the difference between the clearing price and the sub- 30
scription price.

“Defined in this Act: bonus issue in lieu, company, consideration, dividend,
share, shareholder”.

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

**101 Section CR 3 amended (Income for general insurance 35
outstanding claims reserve)**

(1) After section CR 3(1), insert:

“When this section does not apply

“(1B) This section does not apply for contracts that section DZ 10 (General insurance with risk period straddling 1 July 1993) applies to.”

(2) **Subsection (1)** applies for the 2005–06 and later income 5 years.

102 Section CW 25 replaced (Services for members of Parliament)

(1) Replace section CW 25 with:

“**CW 25 Services for members of Parliament** 10

An amount is exempt income of a person to the extent to which it is income of the person and is not exempt income under another provision of subpart CW, if the amount is travel, accommodation, attendance, and communication services, as defined in section 20A(7) of the Civil List Act 1979, and,— 15

“(a) the amount is—

“(i) referred to in section 20A of that Act:

“(ii) paid under section 25 of that Act; and

“(b) the amount is—

“(i) provided to a person to whom any of section 20 25(1)(b) to (e) of that Act applies:

“(ii) provided to a member of the family of a person described in **subparagraph (i)**.

“Defined in this Act: amount, exempt income, income”.

(2) **Subsection (1)** applies for the 2005–06 and later income 25 years.

103 Section CX 11 replaced (Services for members of Parliament)

(1) Replace section CX 11 with:

“**CX 11 Services for members of Parliament** 30

“When fringe benefit arises

“(1) A fringe benefit arises when travel, accommodation, attendance, and communications services are exempt income under **section CW 25** (Services for members of Parliament).

“Relationship with sections CX 5 and CX 24

“(2) This section overrides sections CX 5 and CX 24.

“Defined in this Act: exempt income, fringe benefit”.

(2) **Subsection (1)** applies for the 2005–06 and later income years. 5

104 Section DW 3 amended (Deduction for general insurance outstanding claims reserve)

(1) After section DW 3(1), insert:

“When this section does not apply

“(1B) This section does not apply for contracts that section DZ 10 10
(General insurance with risk period straddling 1 July 1993)
applies to.”

(2) **Subsection (1)** applies for the 2006–07 and later income years.

105 Section EC 7 amended (Valuation methods)

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(1) Replace section EC 7(5) with:

“Restrictions on use of valuation methods

“(5) Restrictions apply to the use of valuation methods, as de-
scribed in sections EC 8 to EC 10.

*“Exception to subsection (2): Express written notice required 20
in certain cases*

“(6) Subsection (2) does not apply to the extent to which an election
requires a notice under section EC 11.”

(2) In section EC 7, in the list of defined terms, insert “notice”.

(3) **Subsections (1) and (2)** apply for the 2005–06 and later in- 25
come years.

106 Section EE 51 amended (Total deductions in section EE 47)

(1) In section EE 51(3B), replace the subsection heading with 30
“Treatment of assets not available for use”, and replace “an
item that has been withdrawn from use” with “an item that is
not available for use”.

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

107 Section OB 1 amended (Definitions)

- (1) In the definition of **bonus issue**, replace paragraph (a) with:
- “(a) means the issue or subdivision of shares in a company, or the giving of credit for some or all of the amount unpaid on any shares in a company, or the forgiveness of some or all of an amount unpaid on any shares in a company, if the company receives no consideration for the issue, subdivision, crediting, or forgiveness other than consideration by way of the shareholder’s electing not to receive money or money’s worth as an alternative to the issue or subdivision; and”.
- (2) **Subsection (1)** applies for the 2005–06 and later tax years.

Amendment to Social Security Act 1964

108 Section 70 amended (Rate of benefits if overseas pension payable)

In section 70(4) of the Social Security Act 1964, delete “and section CW 28 of the Income Tax Act 2007”.

Non-resident investment companies Orders in Council

109 Non-resident investment companies Orders in Council revoked

- (1) Revoke the Income Tax (Non-Resident Investment Companies) Order 1970 (SR 1970/138).
- (2) Revoke the Income Tax (Non-Resident Investment Companies) Order 1972 (SR 1972/19).
- (3) Revoke the Income Tax (Non-Resident Investment Companies) Order (No. 2) 1972 (SR 1972/248).
- (4) Revoke the Income Tax (Non-Resident Investment Companies) Order (No. 3) 1974 (SR 1974/277)

*Amendment to Search and Surveillance Act
2012*

- 110 Schedule amended (Powers in other enactments to which all or part of Part 4 of Search and Surveillance Act 2012 applies)** 5
- (1) In the Schedule of the Search and Surveillance Act 2012, in the first item relating to the Tax Administration Act 1994, column 2, replace “16(4)” with “16”.
- (2) In the Schedule of the Search and Surveillance Act 2012, in the first item relating to the Tax Administration Act 1994, column 3, replace “obtain and execute warrant to enter private dwelling if issuing officer is satisfied that exercise of applicant’s functions under section 16 of Tax Administration Act 1994 requires physical access to that dwelling” with “have full and free access to things described in section 16 of Tax Administration Act 1994 for purpose of inspection as described in that section, including making extracts and copies”. 10 15
- (3) In the Schedule of the Search and Surveillance Act 2012, in the first item relating to the Tax Administration Act 1994, column 4, replace “sections 118” with “sections 102, 103(3)(b)(ii), 103(7), 115(1)(b), 118”. 20
- (4) In the Schedule of the Search and Surveillance Act 2012, the item relating to the Tax Administration Act 1994, section 16C(2), column 4, replace “sections 118” with “sections 102, 103(3)(b)(ii), 103(7), 115(1)(b), 118”. 25
-