

Student Loan Scheme Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

The Bill gives effect to reforms announced in the Budget 2012 to improve the value of the student loan scheme and ensure that repayment obligations are determined on a fair and equitable basis for all borrowers regardless of the types of income they earn.

The Bill amends the Student Loan Scheme Act 2011 (the **Act**) to improve repayments from overseas-based borrowers by introducing, from the date of enactment of the Bill, data-matching with the New Zealand Customs Service to locate borrowers in serious default when they enter or leave New Zealand.

To ensure borrowers earning different types of income are treated fairly, the Bill amends the Act to broaden, from 1 April 2014, the definition of income for student loans to largely align with the definition of income used for Working for Families tax credits and student allowances.

The Bill also includes amendments that revisit aspects of the design of the student loan scheme to ensure that the administration of the Act is as efficient as possible. These amendments include the following:

- all borrowers who have income extra to salary and wages will have an end-of-year square-up repayment obligation only if that extra income is \$1,500 or more over the annual repay-

ment threshold (currently \$19,084). This reverses a distinction enacted in 2011 between different types of extra income, whereby some but not all borrowers are assessed on every dollar over the annual repayment threshold:

- the current late payment interest regime is largely retained and the changes due to come into force from 1 April 2013 are repealed:
- end-of-year square-up repayment obligations will revert to being payable on the borrower's terminal tax date, rather than being payable in instalments.

Amendments are also made to the Customs and Excise Act 1996 and the Privacy Act 1993 as a consequence of the new data-matching with the New Zealand Customs Service.

Regulatory impact statement

The Ministry of Education produced a regulatory impact statement on 18 April 2012 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.minedu.govt.nz/StudentSupportPackageBudget2012>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill is in 3 Parts:

- the provisions of *Part 1* that are listed in *clause 2(1)* are deemed to have come into force on 1 April 2012 and apply for the 2012–2013 and later tax years. The rest of *Part 1* comes into force on the day after the date on which the Bill receives the Royal assent:
- the provisions in *Part 2* come into force on 1 April 2013 and apply for the 2013–2014 and later tax years:
- the provisions in *Part 3* come into force on 1 April 2014 and apply for the 2014–2015 and later tax years.

Part 1

Amendments to principal Act and other Acts coming into force before 1 April 2013

Clause 3 provides that the Bill amends the Student Loan Scheme Act 2011 (the **Act**).

Clause 4 provides that the provisions of the Bill that are deemed to come into force on 1 April 2012 apply for the 2012–2013 and later tax years.

Clause 5 amends the commencement section by repealing the provision that would otherwise bring Schedule 7 into force on 1 April 2013. This is consequential on the repeal of section 221 (*see clause 36*) and Schedule 7 (*see clause 40*). The combined effect of these clauses of the Bill is that the amendments to the Act set out in Schedule 7 will no longer be made to the Act on 1 April 2013.

Clause 6 amends section 4, which deals with the meaning of terms used in the Act, consequential on the amalgamation of existing subparts 2 and 3 of Part 2 (*see clause 13*). In *new subpart 2* of Part 2, all income that is not salary or wages of a New Zealand-based borrower is dealt with as adjusted net income. The concepts of pre-taxed income (currently dealt with in subpart 2 of Part 2) and other income (currently dealt with in subpart 3 of Part 2) are therefore discontinued and these and all associated terms are replaced with terms appropriate to the concept of adjusted net income. This is subject to the qualification that the concept of pre-taxed income remains in the Act until 1 April 2014 for a limited purpose only (*see the analysis of clause 13, new section 73(5)*).

Clause 7 amends section 5, which defines the term unpaid amount for the purposes of the Act, to reflect the different terms used in *new subpart 2* of Part 2 and also to take account of *new section 115A*, which allows the Commissioner of Inland Revenue (the **Commissioner**) to reassess an overseas-based borrower's repayment obligations in certain circumstances (*see clause 19*). *Clause 7(4)* amends the definition of the term overseas-based instalment amount so that a borrower who has to pay the instalments of an overseas-based repayment obligation for a tax year on, for example, 30 September and on 31 March (in accordance with section 112(1) and (2)) but who does not pay either instalment, will have only one unpaid amount on 31 March. That amount will be the sum of the 2 instalments. The

effect of the current definition is that an overseas-based-borrower in this situation has 2 unpaid amounts on 31 March, being the amount of each instalment.

Clause 8 amends section 15(1), which deals with how a borrower may cancel his or her loan contract, by removing the requirement that the borrower pay back any interest accrued. This requirement is redundant because a borrower's repayment of the loan, as part of the cancellation process, is effective from the date of the original draw-down and any interest charged is reversed.

Clause 9 amends section 28, which imposes an obligation on a borrower to notify the Commissioner if the borrower is absent from New Zealand for more than 184 days, to include a reference to *new section 193C* (inserted by *clause 32*). *New section 193C* requires a borrower, if there is a change to the contact details provided to the Commissioner under section 28, to notify the Commissioner of those changed details.

Clauses 10 and 11 amend sections 31 and 32, which are preliminary provisions dealing with the application and interrelationship of subparts 2 and 3 of Part 2, consequential on the amalgamation of those 2 subparts (*see clause 13*).

Clause 12 amends section 67(2) to provide that if a significant overdeduction is made, the Commissioner must notify the borrower. This has the effect of allowing the Commissioner to notify the borrower by any of the methods provided for in section 211. Currently, section 67(2) requires the notification to be in writing.

Clause 13 changes the rules relating to end-of-year assessment and payment, by replacing subparts 2 and 3 of Part 2 with *new subpart 2*. This amendment, which applies from 1 April 2012 for the 2012–2013 and later tax years, incorporates the following main changes:

- *new subpart 2 of Part 2 (new subpart 2)* sets out 1 set of rules governing the treatment of all income that is currently dealt with in 2 separate sets of rules: the first, in subpart 2, covering income defined as “pre-taxed income”, the second, in subpart 3, covering income defined as “other income”. *New subpart 2* applies to all New Zealand-based borrowers who derive \$1,500 or more of adjusted net income for a tax year and whose income from adjusted net income and salary or wages is \$1,500 or more over the annual repayment threshold. Ad-

justed net income is defined in *new section 73(1)* as the borrower's annual gross income other than from salary or wages, less the borrower's annual total deductions. *Subsections (2) to (4)* of that section set out adjustments (relating to the treatment of losses) that must be applied for the purposes of calculating adjusted net income. *Subsection (5)* has the effect that for the 2 year period until 1 April 2014, when the amendments in Part 3 of the Bill come into force and the definition of adjusted net income in *new section 73* is replaced with the new, broadened, definition of income for student loans for the 2014–2015 and later tax years, the adjustments specified in *subsections (2) to (4)* do not apply to borrowers who are currently subject to the pre-taxed income rules in subpart 2 of Part 2:

- the \$1,500 threshold has the effect that borrowers who are currently subject to the “other income” rules in subpart 3 of Part 2 will now only be assessed if their income from all sources (including salary or wages) is \$1,500 or more over the annual payment threshold, bringing the assessment of this income into line with the current treatment of pre-taxed income:
- the Act currently aligns end-of-year payment obligations (known as remaining repayments) with the borrower's interim payment dates, with effect from the 2012–2013 tax year. The rules governing these remaining repayments are duplicated in subparts 2 and 3 of Part 2, as pre-taxed income repayment obligations and other income repayment obligations respectively. The amendments made by *clause 13* have the effect of substituting a single terminal payment obligation and due date for the existing, potentially multiple, remaining repayments and due dates under existing subparts 2 and 3. Under *new subpart 2*, all payments are due in full on the borrower's terminal tax due date (a reversion to the same rules as applied under the Student Loan Scheme Act 1992):
- consequential on the replacement of remaining repayment obligations with a single terminal payment obligation, the provisions dealing with interim repayments (which reflect the current scheme of remaining repayment obligations and require end-of-year payment obligations to be spread over instalments (sections 82(2) and 95(2)) are not carried forward into *new subpart 2*:

- *new subpart 2* does not carry forward the sunset provision in section 97(4), which currently has the effect of ending, from 1 April 2014, the requirement for borrowers who are registered for GST to pay their interim payments in 3 instalments. This means that borrowers who file GST returns 6-monthly will continue to be able to make their 3 interim payments separately from their 2 instalments of provisional tax:
- because there will be some borrowers who meet the criteria for the application of *new subpart 2* but who are not required to file income tax returns, a provision that requires borrowers to file a declaration of their adjusted net income is included in the new subpart (*new section 74*). This applies to borrowers who are not required to file a return of income or to file a declaration of world-wide income under section 114 (which applies to New Zealand-based borrowers who are non-resident).

Clause 14 amends the definition of consolidated loan balance in section 110, which relates to the repayment obligations of overseas-based borrowers, so that all borrowers who are overseas-based at the start of the tax year must be included in the annual calculation of borrowers' overseas-based repayment obligations based on their balances at the start of the tax year, regardless of whether they are on a repayment holiday or not. Currently, the effect of section 110 is that overseas-based borrowers whose repayment holiday ends part way through the tax year have their overseas-based repayment obligation based on the borrower's balance at the time the repayment holiday ends.

Clause 15 amends section 111, which provides for exceptions to the repayment obligations of overseas-based borrowers under section 110. The intended effect of section 111 is to ensure that a borrower's overseas-based repayment obligation is limited to the borrower's loan balance and the borrower is not required to pay more than that balance. However, the definition of loan balance in section 111(5) does not currently take into account amounts that may already have been assessed for a prior tax year but are not yet due. To correct this, *clause 15* amends the definition to require that any repayment obligations that are not yet due be subtracted. Further amendments to the provision are consequential on the amendments to section 110.

Clause 16 amends section 112 to give the Commissioner a general discretion to determine the dates on or before which a borrower must

pay his or her overseas-based repayment obligations, and the amount of those instalments, in circumstances where the Commissioner considers this necessary or appropriate. Currently, the default rule is that overseas-based borrowers pay by 2 equal instalments on or before the end of September and the end of March.

Clause 17 consequentially amends section 114(3)(a) so that it refers to the filing of a declaration of adjusted net income instead of a declaration of pre-taxed income.

Clause 18 amends section 115(2), which relates to repayment of obligations of borrowers who are overseas-based for part of the tax year, consequential on *new section 115A*.

Clause 19 inserts *new section 115A*, which applies when an overseas-based borrower returns to New Zealand and intends to stay in the country for the 183-day period required under section 22 in order for the borrower to become New Zealand-based. Currently, a borrower in this situation can be required to make payments during the 183-day period towards an overseas-based repayment obligation, which is then retrospectively reassessed. This is because the borrower retains his or her overseas-based status until the 183-day rule is met and then has his or her New Zealand-based status backdated to the date that he or she returned to the country. *New section 115A* enables the Commissioner to reassess a borrower's overseas-based repayment obligation before the end of the qualifying period, in expectation of the borrower's change of status, if the borrower notifies the Commissioner that he or she has returned to New Zealand, intends to become New Zealand-based, and from what date. The section also retains the Commissioner's ability to review the overseas-based repayment obligation if the borrower does not meet the expectation that he or she will pass the 183-day qualifying period or if the borrower becomes New Zealand-based on some date other than the date originally notified to the Commissioner. *Section 115A(4)* clarifies that if the Commissioner reassesses a borrower's overseas-based repayment obligation under the section, the borrower nonetheless continues to be treated as an overseas-based borrower for all other purposes (for example, interest continues to be calculated in accordance with the borrower's overseas-based status) until the borrower becomes New Zealand-based.

Clause 20 amends section 120, which requires the Commissioner to notify a borrower in writing if the borrower is found to have made an

excess repayment. The effect of the amendment is that the Commissioner's obligation to notify only applies if a borrower is subject to *new subpart 2* (ie, is a New Zealand-based borrower who has income other than, or as well as, salary or wages) and is therefore subject to an end-of-year square-up of his or her payment obligations (unlike borrowers who are overseas-based or who are predominantly wage or salary earners and have their repayment obligations set at the beginning of the year).

Clause 21 amends section 132, which gives a borrower who has made an excess repayment the option of having the repayment refunded or having it transferred to satisfy a future repayment obligation. Currently, the section requires borrowers to make this choice within 6 months of being notified of the excess repayment under section 120. The effect of the amendment is to require borrowers to make the choice by the later of 6 months from the date that they are notified under section 120 or 6 months after the end of the tax year that the excess payment is for.

Clause 22 amends section 144 so that the Commissioner has the discretion not to collect a repayment obligation or part of a repayment obligation if the amount involved is \$20 or more, but less than \$344. Currently, the Commissioner has no discretion if the amount is exactly \$20.

Clause 23 amends section 154, which enables borrowers with unpaid amounts to enter into an arrangement with the Commissioner to pay by instalments. The amendment enables a borrower to also enter into a pre-emptive arrangement in relation to an amount where the amount is not yet due but the borrower knows that he or she will not be able to meet the payment obligation in full and on time.

Clause 24 amends section 155, which relates to late filing penalties for certain declarations. The effect of the amendment is that penalties no longer apply for borrowers who do not declare their worldwide income by the required date.

Clause 25 amends section 156 consequential on the amendment to section 155.

Clause 26 amends section 161 to provide for relief from the imposition of a student loan shortfall penalty (either by way of reduction or removal) where a borrower has successfully disputed the imposition of a shortfall penalty for income tax. Currently, the section only pro-

vides for relief if a borrower has successfully challenged (as opposed to disputed) the imposition of such a shortfall penalty.

Clause 27 replaces the cross-heading above section 27 so that the cross-heading that refers not only to rights to challenge but also to challenge procedures.

Clause 28 inserts *new section 174A*, which provides that challenges under the Act must follow the same procedures as challenges under the Inland Revenue Acts (as set out in Part 8A of the Tax Administration Act 1994). The effect is that challenges will be determined by the relevant court. Currently, section 188 of the Act allows the Commissioner to allow or disallow a challenge.

Clause 29 inserts *new section 182A*, which provides for borrowers to challenge a decision of the Commissioner under section 107B not to grant the borrower a repayment holiday.

Clause 30 removes the power of the Commissioner to allow or disallow a challenge, as a consequence of the amendment made by *clause 28*.

Clause 31 amends section 191(1) to ensure that the repayment obligations on all salary and wage payments are limited to the loan balance as at the last day of the month that the pay period falls in. Currently, the section applies to borrowers who derive only salary and wages in a tax year whereas it is intended to apply to all salary and wage deductions.

Clause 32 inserts *new section 193C*. This requires a borrower, if his or her contact details change, to notify the Commissioner of the changed details.

Clause 33 amends section 204, which authorises the Commissioner to recall or demand repayment of all or any part of a loan balance or loan advance, to ensure that it applies to contracts signed on, as well as those signed before or after, the date that the section came into force.

Clause 34 amends section 208, which provides for disclosure of information between the Inland Revenue Department and the New Zealand Customs Service for information-matching purposes. The amendment adds, as one of the purposes of the section, assisting the Commissioner to locate borrowers who are in serious default in relation to student loans, as they enter or leave New Zealand.

Clause 35, which is deemed to have come into force on 1 April 2012, amends the regulation-making power in section 215 by including *new section 16A* and section 107A in the list of provisions in paragraph (d) under which regulations may be made specifying requirements for further information to be provided. Section 107A relates to the requirement for a borrower to nominate a contact person at the time of making an application for a repayment holiday if the borrower intends to be overseas-based. *New section 16A* (inserted by section 7 of the Student Loans Scheme Amendment Act 2012 with effect from 1 January 2013) requires a loan manager in certain circumstances to notify the Commissioner of details held about the borrower's contact person.

Clause 36 repeals section 221, which, but for its repeal, would have had the effect of amending the Act in accordance with the provisions in Schedule 7 with effect from 1 April 2013. The substance of the amendments in Schedule 7 that are still intended to proceed on 1 April 2013, is carried forward into the provisions in *Part 2* of the Bill. These provisions also incorporate relevant changes that would have been made on 1 April 2013 by section 57 of the Student Loan Scheme Amendment Act 2012.

Clauses 37 and 38, respectively, repeal Schedules 3 and 4. These schedules relate to the application of provisional tax rules to interim payments of pre-taxed income (Schedule 3) and other income (Schedule 4). Consequential on *new subpart 2, clause 37* substitutes *new Schedule 4*, as set out in *Schedule 2*, which deals with the application of the provisional tax rules to adjusted net income.

Clause 39 amends Schedule 6, which comprises savings and transitional provisions.

Clause 39(1) recasts clause 6 to omit subclause (1)(b). This provision is no longer required because the intended change from a tax-year regime to a whole-of-debt regime is no longer proceeding (*see the analysis of clause 51*).

Clause 39(2) amends clause 12 of Schedule 6 to clarify how instalment arrangements that are entered into by borrowers between 1 April 2012 and 31 March 2013, but require some payments to be made after 1 April 2013, will be treated following the introduction of the new instalment and late payment of interest rules from 1 April 2013 (*see clause 56*). The effect is that if a borrower keeps to the terms of the arrangement entered into with the Commissioner inter-

est imposed during the instalment arrangement will be written off in keeping with the current practice. However, if the borrower fails to pay an instalment on time, the late payment interest rules applying during the period the instalment remains in default will be applied.

Clause 40 repeals Schedule 7 consequential on the repeal of section 221 by *clause 35*.

Clause 41 consequentially amends the Act as set out in *Schedule 1* of the Bill.

Clause 42 amends a reference in the Accident Compensation Act 2001 consequential on the replacement of subparts 2 and 3 of Part 2 with *new subpart 2*.

Clauses 43 to 46 amend the Customs and Excise Act 1996 to provide for information matching between Customs and the Inland Revenue Department (*clause 45*) and to allow the Commissioner direct access to departure and arrival information (*clause 46*) to assist the Commissioner to locate borrowers who are in serious default (as defined in *clause 44*), as they enter or leave New Zealand.

Clause 47 amends the Privacy Act 1993 section 103(1C). Currently, this section has the effect of ensuring that the Commissioner of Inland Revenue is not constrained by section 103(1) of that Act from taking immediate action to recover financial support, under the Child Support Act 1991, owing by a person who is identified through the information-matching and direct access to information provisions that apply under sections 280K and 280L of the Customs and Excise Act 1996. *Clause 47* amends section 103(1)(C) to ensure that the Commissioner is in the same position for the purposes of taking action to recover money owed by a borrower in serious default under the Student Loan Scheme Act 2011 if the borrower is identified under the equivalent information-matching and access to information provision that applies under the amendments to section 280H of the Customs and Excise Act 1996.

Clause 48 repeals section 57 of the Student Loan Scheme Amendment Act 2012, which amended Schedule 7 from 1 April 2013 (see the analysis of *clause 36*).

Clause 49 consequentially amends the Tax Administration Act 1994 to replace references to pre-taxed and other income with a reference to adjusted net income. It also amends the Schedule of that Act to

restore the Student Loan Scheme Act 1992 to the list of Acts that are considered as Inland Revenue Acts.

Part 2

Amendments that apply for 2013–2014 and later tax years

Clause 50 amends the meaning given to the terms consolidated loan balance, loan balance, and repayment obligation and also inserts a definition for the term underestimation penalty in section 4(1), arising from changes made by *Part 2* of the Bill.

Clause 51 amends the meaning of unpaid amount in section 5. This amendment is different from the amendment that clause 1 of Schedule 7 of the 2011 Act would have been made to this term from 1 April 2013.

First, the amendment affects what late payment interest may be charged on. Under the amendment made by *clause 51*, late payment interest for borrowers required to make instalment payments during the year (overseas-based borrowers, and New Zealand-based borrowers who are not solely salary or wage earners but derive other income, or who derive only other income) will continue to apply only from the last instalment date, rather than from each instalment date (as would have been the case, from 1 April 2013, under clause 1 of Schedule 7 of the 2011 Act). In conjunction with this change, a new underestimation penalty is introduced (*see clause 58*) and this penalty is added to the definition of unpaid amount in section 5, with the effect that late payment interest may be charged on it.

Secondly, the amendment has the effect that the meaning of unpaid amount will continue to reflect the current period-by-period treatment of unpaid amounts rather than, from 1 April 2013, shifting to a new aggregate treatment of unpaid amounts, as would have been the case under the amendments in clause 1 of Schedule 7 of the 2011 Act in that—

- under the current provisions of the Act, a borrower can have multiple unpaid amounts comprising different kinds of arrears (for example, interim payment defaults, overseas-based instalment defaults) and different periods of assessment (for example a borrower may have interim payment defaults for the 2012–2013 tax year and the 2013–2014 tax year). Each un-

paid amount is liable for late payment interest if that amount is \$344 or more. This is known as period-by-period treatment:

- from 1 April 2013, under the provisions of clause 1 of Schedule 7, the meaning of unpaid amount would have changed so that a borrower only had a single unpaid amount made up of all the different components in default. These amendments are not carried forward in *clause 51*.

As well as adding the new underestimation penalty to the definition of unpaid amount, *clause 51* adds an amount that must be paid in accordance with a written notification under section 52, a late filing penalty, and a student loan shortfall penalty. This has the effect that late payment interest may be charged on these also.

Clause 52 repeals section 117, with the effect that repayment deductions taken from overseas-based borrowers who receive New Zealand salary or wages cannot be offset against the borrower's overseas-based borrower repayment obligations from 1 April 2013.

Clause 53 amends section 119 consequentially on the repeal of section 117.

Clause 54 carries forward the amendments currently set out in clause 3 of Schedule 7.

Clause 55 amends section 139 to future-proof the interest rate in that section by replacing the references to the set interest rate of .843% with the term late payment interest rate. This term is then defined in *new subsection (3)* as meaning the base rate plus 4%, calculated as an equivalent monthly rate and expressed as a percentage to 3 decimal places. (.843% is the monthly equivalent of an annual rate of 10.6% per annum, which is the base interest rate plus 4% at the time that the Act was passed).

Clause 56 replaces section 141, which deals with the application of late payment interest on an unpaid amount where the borrower has entered into an agreement to pay the amount over a period of time (an instalment arrangement). Currently under the Act, these borrowers are still charged late payment interest on the unpaid amount, which is then all written off at the end of the arrangement. Under the replacement section, borrowers will be charged late payment interest but at the reduced rate of the base interest rate plus 2% (*new section 141(2)*), instead of the base interest rate plus 4% as provided in *new section 139(3)*.

Clause 57 carries forward the amendment to the Act currently set out in clause 6 of Schedule 7; it replaces section 146.

Clause 58 inserts *new section 161A*, which provides that a borrower is liable to pay an underestimation penalty (calculated in accordance with the formula in the section), if the borrower has underestimated his or her end-of-year repayment obligation in respect of a tax year to the extent that meets the criteria set out in *new section 161A(1)*.

Clauses 59 and 60 carry forward the amendments to the Act currently set out in clauses 7 and 8 of Schedule 7. These replace section 194 (with *new sections 194 to 194D*) and section 197. The only change made to these original amendments is in *new section 194*, where an underestimation penalty is added to the definition of current year obligations for the purposes of *new sections 194A to 194D*.

Clause 61 carries forward the amendment in clause 9 of Schedule 7; it repeals section 219.

Clause 62 Repeals clause 6(1)(b) of Schedule 6 (which deals with savings and transitional provisions). This provision was included in the Schedule in preparation for the changes to the regime for unpaid amounts (from a tax-year regime to a whole-of-debt regime) that would have resulted from the commencement of certain provisions in Schedule 7 on 1 April 2013 (*see the analysis of clause 51*). These provisions are repealed by the Bill and therefore clause 6(1)(b) of Schedule 6 is no longer required.

Part 3

Amendments that apply for 2014–2015 and later tax years

Clauses 63 to 66 come into force on 1 April 2014 and apply for the 2014–2015 and later tax years. These clauses have the effect of broadening the definition of income for student loan repayment purposes to include certain types of income that are not currently taken into account for the purposes of calculating a borrower's repayment obligation. This has the effect of largely aligning with the definition of income used for Working for Families tax credits. This is done by replacing the definition of adjusted net income in *new section 73* (as substituted from 1 April 2012 by *clause 13* of the Bill) with a new definition providing that adjusted net income has the same meaning as net income in section YA 1 of the Income Tax Act 2007 but with

the adjustments set out in *new Schedule 3* of the Act (inserted by *clause 66*), and excluding salary and wages.

Under the amendment, the definition of income for student loan purposes is broadened to include the following types of income:

- attributed company income:
- attributed trust income:
- major fringe benefits received by shareholder-employees in closely held companies:
- unlocked portfolio investment entity income:
- tax-exempt salary and wages under international agreements (such as salaries received by employees of international organisations like the OECD):
- certain overseas pensions:
- main income equalisation scheme deposits:
- 50% of non-taxable private pensions and annuities:
- distributions from a retirement savings scheme when the person has retired early:
- distributions from trusts, not being beneficiary income, where the recipient is not the settlor:
- distributions from superannuation schemes that relate to contributions made by a person's employer within the last 2 years, when the person has not retired (excluding KiwiSaver and locked-in superannuation schemes).

Incorporating the Income Tax Act 2007 definition of net income in the definition of adjusted net income in the *new section 73* means that there is no longer any need for the definition to refer to annual gross income minus annual gross deductions (as in the definition applying from 1 April 2012 (see *clause 13, new section 73*)) because that is what net income is. *Clause 63* therefore repeals the definitions of annual gross income and annual total deduction in section 4 (along with the definition of pre-taxed income, which remains in the Act until 1 April 2014 for the purposes of *new section 73(5)*) and *clause 65* consequentially amends the Act to reflect the removal of these terms.

Clause 66 inserts *new Schedule 3* of the Act, which sets out the adjustments for the purposes of *new section 73*.

Hon Peter Dunne

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**Student Loan Scheme Amendment
Bill (No 2)**

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**Student Loan Scheme Amendment
Bill (No 2)**

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	73	Meaning of adjusted net income	37
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Schedule 1

Consequential amendments to principal Act

Schedule 2	40
Schedule 4 replaced	
Schedule 3	43
New Schedule 3 inserted	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Student Loan Scheme Amendment Act (No 2) **2012.**
- 2 Commencement** 5
- (1) **Sections 6, 7(1) and (3), 10, 11, 13, 16, 17, 24, 25, 35, 37, 38, 39(2), 41, 42, and 49** are deemed to have come into force on 1 April 2012.
- (2) The rest of **Part 1** comes into force on the day after the date that this Act receives the Royal assent. 10
- (3) **Part 2** comes into force on **1 April 2013.**
- (4) **Part 3** comes into force on **1 April 2014.**

Part 1
Amendments to principal Act

- 3 Principal Act** 15
This Act amends the Student Loan Scheme Act 2011 (the **principal Act**).
- 4 Application of provisions deemed to have come into force on 1 April 2012** 20
The provisions of this Act that are deemed to have come into force on 1 April 2012 apply for the 2012–2013 and later tax years.
- 5 Section 2 amended (Commencement)**
Repeal section 2(5).

6 Section 4 amended (Interpretation)

- (1) In section 4(1), definition of **adjusted net income**, replace “section 88A” with “**section 73**”.
- (2) In section 4(1), insert in its appropriate alphabetical order:
“**end-of-year repayment obligation** means the repayment 5
obligation of a New Zealand-based borrower for the adjusted
net income the borrower derives for a tax year, calculated in
accordance with **section 77 or 78**”.
- (3) In section 4(1), definition of **declaration of pre-taxed in-**
come, replace “**pre-taxed income**” with “**adjusted net in-** 10
come”.
- (4) In section 4(1), replace the definition of **interim payment**
with:
“**interim payment** means the amount that a borrower is
obliged to pay towards the next tax year’s end-of-year re- 15
payment obligation in accordance with **section 82 or 83** or
section 84 or 85”.
- (5) In section 4(1), repeal the definitions of **net pre-taxed in-**
come, **other income**, **other income repayment obligation**,
pre-taxed repayment obligation, and **remaining repay-** 20
ment.
- (6) In section 4(1), definition of **repayment obligation**, replace
paragraphs (c) and (d) with:
“(c) an end-of-year repayment obligation.”
- (7) In section 4(1), insert in its appropriate alphabetical order: 25
“**terminal payment** means the amount that a borrower is
obliged to pay in relation to an end-of-year repayment obliga-
tion in accordance with **section 80 and section 81 or 85**”.
- (8) Replace section 4(2) with:
“(2) A reference to a borrower estimating his or her end-of-year 30
repayment obligation is a reference to a borrower making a fair
and reasonable estimate of his or her end-of-year repayment
obligation in accordance with section RC 7 of the Income Tax
Act 2007, as applied by **section 86** and **Schedule 4** of this
Act.” 35

- 7 Section 5 amended (Meaning of unpaid amount)**
- (1) Replace section 5(1)(a) with:
“(a) a terminal payment:”.
- (2) In section 5(2), definition of **due date**, paragraph (b)(ii), replace “under section 112(3) or 115(1)(d)” with “under section 112(3), 115(1)(d), or **115A**”.
- (3) In section 5(2), definition of **interim payment default**, paragraph (a)(i) and (ii), replace “pre-taxed repayment obligation or other income repayment obligation” with “end-of-year repayment obligation”.
- (4) In section 5(2), replace the definition of **overseas-based instalment default** with:
“**overseas-based instalment default** means the sum of the instalments of an overseas-based borrower’s repayment obligations for a tax year that must be paid in accordance with subpart 5 of Part 2.”
- 8 Section 15 amended (Right to cancel loan contract)**
- (1) In section 15(1)(b), delete “; and”.
- (2) Repeal section 15(1)(c).
- 9 Section 28 amended (Borrower to notify Commissioner of absence from New Zealand of 184 or more days)**
- After section 28(2), insert:
“(3) *See section 193C* concerning the obligation on a borrower if there is a change in any of the contact details provided to the Commissioner under this section.”
- 10 Section 31 amended (Repayment obligations that apply to New Zealand-based borrowers and overseas-based borrowers)**
- In section 31(1)(a), replace “subparts 1 to 3” with “**subparts 1 and 2**”.
- 11 Section 32 amended (Interrelationship between subparts 1 to 3)**
- (1) In the heading to section 32, replace “**1 to 3**” with “**1 and 2**”.

- (2) Replace section 32(3) to (8) with:
- “(3) If a borrower derives only income other than salary or wages, **subpart 2** applies to that borrower.
- “(4) If a borrower derives income from salary or wages and income other than from salary or wages, **subparts 1 and 2** both apply to that borrower.” 5
- 12 Section 67 amended (Procedure if significant over-deduction made)**
In section 67(2), delete “in writing”.
- 13 Subparts 2 and 3 of Part 2 replaced** 10
Replace subparts 2 and 3 of Part 2 with:
“Subpart 2—Repayment obligations for New Zealand-based borrowers with income other than, or as well as, salary or wages
- “**72 Application of this subpart** 15
This subpart applies to New Zealand-based borrowers—
“(a) who derive \$1,500 or more of adjusted net income for a tax year; and
“(b) whose income from adjusted net income and salary or wages (if any) for that tax year is \$1,500 or more above 20
the annual repayment threshold.
- “**73 Meaning of adjusted net income**
“(1) In this Act, **adjusted net income** means a borrower’s income calculated in accordance with the formula— 25
$$a = b - c$$

where—
a is the borrower’s adjusted net income
b is the borrower’s annual gross income other than from salary or wages
c is the borrower’s annual total deductions. 30
- “(2) However, the income and deductions for any investment activity, or for any business, for a tax year are ignored when calculating a borrower’s adjusted net income for that tax year if, treating the borrower as having only the income and deduc-

tions of that investment activity or of that business, the borrower would have a net loss for that year.

- “(3) For the purposes of applying **subsection (2)**, 2 or more business or investment activities may be treated as a single activity if the Commissioner considers that those business or investment activities are of a kind that are normally carried on in association with each other. 5
- “(4) For the purposes of applying **subsection (2)**, as modified by **subsection (3)**, deductions that relate to an asset used in carrying on 2 or more business or investment activities must be appropriately apportioned between those activities on the basis of the use of that asset in those activities. 10
- “(5) **Subsections (2) to (4)** do not apply to a borrower whose only income for the tax year is from pre-taxed income, or pre-taxed income and salary and wages. 15
- “(6) In this section,—
 “**business** has the same meaning as in section YA 1 of the Income Tax Act 2007
 “**investment activity** has the same meaning as in section MB 3(5) of the Income Tax Act 2007. 20
- “**74 Declaration of adjusted net income**
- “(1) If this subpart applies to a borrower and the borrower is not required to file a return of his or her income for the tax year or provide details of his or her annual gross income and annual total deductions under section 114, the borrower must make a declaration of the borrower’s adjusted net income. 25
- “(2) The declaration of adjusted net income must be made—
 “(a) by notifying the Commissioner in a manner acceptable to the Commissioner; and
 “(b) on or before— 30
 “(i) 7 July in the tax year following the tax year in which the adjusted net income was derived; or
 “(ii) if the borrower has received an extension of time to make the declaration in accordance with **section 75**, the date on which the borrower is required to make the declaration; or 35

“(iii) if the Commissioner has granted the borrower an extension of time to make the declaration (other than in accordance with **section 75**), the date on which the borrower is required to make the declaration as specified by the Commissioner. 5

“**75 Extension of time for making declaration of adjusted net income**

A borrower may apply to the Commissioner for an extension of time for the making of a declaration of adjusted net income in accordance with section 37(3) to (5) of the Tax Administration Act 1994, and those subsections apply, as far as applicable and with all necessary modifications, as if— 10

“(a) the reference to ‘the due date required under this section’ were a reference to ‘the due date required under **section 74(2)(b)(i)** of the Student Loan Scheme Act 2011’; and 15

“(b) every reference to a taxpayer were a reference to a borrower; and

“(c) every reference to a return or a return of income were a reference to a declaration of adjusted net income. 20

“**76 Commissioner to assess borrower’s end-of-year repayment obligation**

“(1) The Commissioner must assess the amount (if any) of a borrower’s end-of-year repayment obligation for a tax year as soon as practicable after the borrower provides— 25

“(a) his or her return of income for that tax year; or

“(b) details of his or her annual gross income and annual total deductions under section 114; or

“(c) his or her declaration of adjusted net income.

“(2) In making the assessment, the Commissioner may have regard to— 30

“(a) any document provided under **subsection (1)**;

“(b) any other information that the Commissioner considers to be relevant.

“(3) The assessment must be made in accordance with this subpart and the loan contract. 35

- “(4) Section 203 applies if there is an inconsistency between this subpart and the loan contract.
- “(5) The Commissioner must, as soon as practicable after making the assessment, notify the borrower in writing of—
- “(a) the borrower’s end-of-year repayment obligation; and 5
 - “(b) the due dates, if any, on or before which the end-of-year repayment obligation must be paid (*see sections 81, 84, and 85*); and
 - “(c) the amounts, if any, that must be paid on or before those due dates. 10
- “Compare: 1992 No 141 s 15
- “77 **Calculation of borrower’s end-of-year repayment obligation if salary or wages less than annual repayment threshold**
- “(1) **Subsection (2)** applies if, in relation to a tax year,— 15
- “(a) this subpart applies to a borrower; and
 - “(b) the gross income that the borrower derived from salary or wages is less than the annual repayment threshold.
- “(2) The borrower’s end-of-year repayment obligation for the tax year must be calculated in accordance with the formula— 20
- $$a = b \times (c - d)$$
- where—
- a is the borrower’s end-of-year repayment obligation for the tax year
 - b is the repayment percentage 25
 - c is the income that the borrower derives from adjusted net income and from salary or wages for the tax year
 - d is the annual repayment threshold.
- “(3) If the borrower’s end-of-year repayment obligation for the tax year is zero or less, the borrower has no end-of-year repayment obligation for the tax year. 30
- “78 **Calculation of borrower’s end-of-year repayment obligation where salary or wages equal to or more than annual repayment threshold**
- “(1) **Subsection (2)** applies if, in relation to a tax year,— 35
- “(a) this subpart applies to a borrower; and

- “(b) the gross income that the borrower derived from salary or wages is equal to or more than the annual repayment threshold.
- “(2) The borrower’s end-of-year repayment obligation for the tax year must be calculated in accordance with the formula— 5
- $$a = b \times c$$
- where—
- a is the borrower’s end-of-year repayment obligation for the tax year
- b is the repayment percentage 10
- c is the income that the borrower derives from adjusted net income for the tax year.
- “**79 Payment of end-of-year repayment obligation**
- “(1) A borrower whose end-of-year repayment obligation for a tax year is greater than zero must pay a terminal payment— 15
- “(a) calculated in accordance with **section 80**:
- “(b) on or before the due date under **section 81** or a due date determined by the Commissioner under **section 85**.
- “(2) **Subsection (3)** applies to a borrower if—
- “(a) the borrower’s end-of-year repayment obligation for a tax year is \$1,000 or more; or 20
- “(b) the borrower has not made a declaration of adjusted net income for a tax year, provided a return of income, or provided details of his or her annual gross income and annual gross deductions under section 114 for a tax year, and the amount of the borrower’s end-of-year repayment obligation for the immediately preceding tax year was \$1,000 or more. 25
- “(3) A borrower must also pay interim payments for the tax year—
- “(a) calculated in accordance with **section 82 or 83**: 30
- “(b) on or before the due dates determined in accordance with **section 84 or 85**.
- “(4) However, a borrower is not liable to make interim payments for a tax year if the borrower’s end-of-year repayment obligation for that year is less than \$1,000. 35

“80 Calculation of terminal payment for tax year

“(1) The amount of a borrower’s terminal payment for the tax year must be calculated in accordance with the formula—

$$a = (b - c) - (d - c)$$

where—

a is the amount of the borrower’s terminal payment

b is the borrower’s end-of-year repayment obligation for the tax year

c is the amount of the borrower’s interim payments for the tax year in accordance with **section 82 or 83**

d is the sum of any amounts that satisfy (so far as they extend) the borrower’s end-of-year repayment obligation for the tax year.

“(2) However,—

“(a) if the sum of $(b - c)$ is less than zero, then it must be treated as if it were zero; and

“(b) if the sum of $(d - c)$ is less than zero, then it must be treated as if it were zero.

“81 Due date for terminal payment

A borrower must pay his or her terminal payment on or before the borrower’s **terminal tax date**, as defined in section YA 1 of the Income Tax Act 2007, for the tax year.

“82 Calculation of interim payments for next tax year

“(1) The amount of each of the borrower’s interim payments for the tax year may vary and must be calculated separately in accordance with the formula—

$$a = b \times (c \div d) - e$$

where—

a is the amount of the borrower’s interim payment

b is, as applicable,—

(i) the amount of the borrower’s estimated end-of-year repayment obligation for the tax year; or

(ii) the amount of the borrower’s uplifted end-of-year repayment obligation for the tax year

- c is a number reflecting which of the interim payments for the tax year is being calculated (for example, 2 if the second interim payment for the tax year is being calculated)
- d is the total number of interim payment due dates the borrower has for the tax year 5
- e is the aggregate amount of all of the borrower's interim payments for the tax year that were due before the interim payment being calculated.
- “(2) For the purposes of this section, the total number of interim payment due dates a borrower has is determined by reference to the number of interim payments the borrower must make as determined in accordance with **section 84 or 85**. 10
- “(3) In this section, **uplifted end-of-year repayment obligation**— 15
- “(a) means— 15
- “(i) the amount of the borrower's end-of-year repayment obligation for the immediately preceding tax year multiplied by 105%; or
- “(ii) if the borrower did not make a declaration of adjusted net income for the immediately preceding tax year, the amount of the borrower's end-of-year repayment obligation for the year before the immediately preceding tax year multiplied by 110%; but 20
- “(b) the amount calculated in accordance with **paragraph (a)** must not exceed the sum of the borrower's loan balance on 1 April of the relevant tax year plus any loan advances made or charged to the borrower for that tax year after that date. 25
- “Compare: 1992 No 141 s 27 30
- “**83 Commissioner may assess interim payments if information for preceding year not provided**
- “(1) The Commissioner may assess a borrower's interim payments for a tax year in the manner set out in section RC 6(3) of the Income Tax Act 2007 if, for the immediately preceding tax year, the borrower did not provide— 35
- “(a) his or her return of income; or

- “(b) details of his or her annual gross income and annual total deductions under section 114; or
- “(c) his or her declaration of adjusted net income under **section 74**.
- “(2) **Section 82** does not apply if the Commissioner makes an assessment in accordance with **subsection (1)**. 5
- “**84 Due dates for payment of interim payments**
- “(1) A borrower must pay an interim payment for a tax year on or before each of the dates on which the borrower must pay his or her provisional tax for that tax year in accordance with the provisional tax rules. 10
- “(2) However,—
- “(a) if a borrower uses a GST ratio to determine his or her provisional tax for a tax year and that year is not a transitional year for the borrower, the due dates for the payment of the borrower’s interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower’s balance date: 15
- “(b) if a borrower uses a GST ratio to determine his or her provisional tax for a tax year and that year is a transitional year for the borrower, the due dates for the payment of the borrower’s interim payments are every second date in the table headed ‘**GST ratio provisional taxpayers**’ in Part B of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower’s balance date, except that— 20
- “(i) if the borrower has only 1 payment date, the borrower has only 1 due date; and
- “(ii) if the borrower has an odd number of payment dates, then the last payment date does not apply to the borrower: 30
- “(c) if a borrower does not pay provisional tax for a tax year, the due dates for the payment of the borrower’s interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower’s balance date: 35

- “(d) if a borrower pays provisional tax on a 6-monthly basis for the 2012–13 tax year, the due dates for the payment of the borrower’s interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower’s balance date. 5
- “(3) In this section, **GST ratio** and **transitional year** have the same meanings as in section YA 1 of the Income Tax Act 2007.
- “**85 Commissioner’s powers in relation to due dates**
- “(1) The Commissioner may determine the dates on or before which a borrower must pay his or her terminal payment or interim payments for a tax year if— 10
- “(a) the borrower requests the Commissioner to determine the borrower’s terminal payment due date or interim payment due dates; or 15
- “(b) the Commissioner considers it necessary or appropriate in the circumstances.
- “(2) The dates determined by the Commissioner under **subsection (1)** may differ from the dates specified in **section 81 or 84**.
- “(3) If the Commissioner determines the dates on or before which a borrower must pay his or her terminal payment or interim payments for a tax year,— 20
- “(a) the Commissioner must, as soon as practicable, notify the borrower in writing—
- “(i) of that fact; and 25
- “(ii) of the dates determined by the Commissioner; and
- “(b) the amount of the terminal payment or the interim payments must be calculated by reference to those dates.
- “(4) This section overrides **sections 81 and 84**. 30
- “Compare: 1992 No 141 s 30(2)
- “**86 Interim payments to be paid in same manner as provisional tax**
Subject to **Schedule 4**,—

“(a) interim payments for a borrower’s end-of-year repayment obligation for a tax year are payable in the same manner as provisional tax; and

“(b) a borrower must comply with the requirements of the provisional tax rules. 5

“Compare: 1992 No 141 s 28

“**87 Consequence of failure to meet repayment obligations**

A borrower may be liable to pay late payment interest if the borrower does not meet his or her repayment obligations under this subpart (*see* section 139(1)).” 10

14 Section 110 amended (Repayment obligations of overseas-based borrowers)

(1) Replace section 110(1) with:

“(1) This section applies to an overseas-based borrower who—

“(a) is not or is no longer entitled to a repayment holiday under section 107B or 108A(2); and 15

“(b) has not had his or her overseas-based repayment obligation reassessed under **section 115A**.”

(2) Replace section 110(6)(a) and (b) with:

“(a) if a borrower was not overseas-based at the start of the tax year, the borrower’s consolidated loan balance on the date on which the borrower became overseas-based; and 20

“(b) if a borrower was overseas-based at the start of the tax year (**year A**), the sum determined by— 25

“(i) including the amount of the borrower’s consolidated loan balance on 31 March in the year prior to year A (the **previous year**); and

“(ii) including the amount of any annual administration fee charged under section 189 for the previous year; and 30

“(iii) subtracting any 10% bonus the borrower is entitled to under Part 3 for an excess repayment for the previous year.”

- 15 Section 111 amended (Exceptions to repayment obligations of overseas-based borrowers)**
- (1) Replace section 111(4) with—
- “(4) This section—
- “(a) overrides section 110; and 5
- “(b) does not apply to an overseas-based borrower who has had his or her overseas-based repayment obligation reassessed under **section 115A**.”
- (2) Replace section 111(5) with:
- “(5) In this section, **loan balance** means,— 10
- “(a) if a borrower was not overseas-based at the start of the tax year, the borrower’s loan balance on the date on which the borrower became overseas-based less the amount of any repayment obligations that are not yet due; and 15
- “(b) if a borrower was overseas-based at the start of the tax year (**year A**), the sum determined by—
- “(i) including the amount of the borrower’s loan balance on 31 March in the year prior to year A (the **previous year**); and 20
- “(ii) including the amount of any annual administration fee charged under section 189 for the previous year; and
- “(iii) subtracting any 10% bonus the borrower is entitled to under Part 3 for an excess repayment for the previous year; and 25
- “(iv) subtracting the amount of any repayment obligations that are not yet due.”
- 16 Section 112 amended (Repayment to be made by instalments)** 30
- Replace section 112(3) with:
- “(3) However, the Commissioner may determine the dates on or before which a borrower must pay instalments of his or her overseas-based repayment obligations, and the amount of those instalments, if the Commissioner considers it necessary or appropriate in the circumstances. 35

- “(4) If the Commissioner makes a determination under **subsection (3)**, the Commissioner must, as soon as practicable, notify the borrower in writing—
- “(a) of that fact; and
 - “(b) of the dates and the amounts determined by the Commissioner.” 5
- 17 Section 114 amended (Notification of worldwide income by New Zealand-based non-resident borrowers)**
Replace section 114(3)(a) with:
- “(a) a declaration of adjusted net income; or” 10
- 18 Section 115 amended (Repayment obligations of borrowers who are overseas-based for part of tax year)**
In section 115(2), after “despite anything to the contrary in this Act”, insert “, except as provided in **section 115A**”.
- 19 New section 115A inserted (Reassessment of overseas-based borrower’s repayment obligation in year of return to New Zealand)** 15
After section 115, insert:
- “115A Reassessment of borrower’s overseas-based repayment obligations in year of return to New Zealand** 20
- “(1) The Commissioner may reassess a borrower’s overseas-based repayment obligation if the borrower notifies the Commissioner—
- “(a) that the borrower has returned to New Zealand; and
 - “(b) that he or she intends to become New Zealand-based; 25
 - and
 - “(c) of the specific date from which he or she expects to become New Zealand-based.
- “(2) The borrower must notify the Commissioner of any other information that the Commissioner may reasonably require for the purposes of either or both of the following: 30
- “(a) establishing any of the matters in **subsection (1)**:
 - “(b) the reassessment.
- “(3) If the Commissioner reassesses a borrower’s overseas-based repayment obligation under this section,— 35

- “(a) the reassessment must be made in accordance with section 115, as if the borrower were New Zealand-based from the date notified by the borrower under **subsection (1)(c)**; and
- “(b) section 109(6) and (7) apply to the reassessment as if it were an assessment under that section. 5
- “(4) Despite the reassessment of a borrower’s overseas-based repayment obligation under this section, the borrower continues to be treated as an overseas-based borrower for all other purposes (for example, interest continues to be calculated in accordance with the borrower’s overseas-based status) until the borrower becomes New Zealand-based. 10
- “(5) The Commissioner may review a reassessment of a borrower’s overseas-based repayment obligation made under this section if— 15
- “(a) the borrower does not become New Zealand-based; or
- “(b) the borrower becomes New Zealand-based from a date that is different from the expected date notified to the Commissioner under **subsection (1)(c)**.”
- 20 Section 120 amended (Commissioner must notify borrower of excess repayment) 20**
- Replace section 120(1) with:
- “(1) Subsection (2) applies if **subpart 2** of Part 2 applies to a borrower and—
- “(a) an excess repayment is made for the borrower; or 25
- “(b) upon investigation by the Commissioner of the borrower’s repayment obligation for a prior tax year, the Commissioner is satisfied that—
- “(i) the repayment obligation assessed by the Commissioner is incorrect; and 30
- “(ii) as a result, an excess repayment has been made.”
- 21 Section 132 amended (Borrower may receive refund or apply excess repayment to future repayment obligations) 35**
- Replace section 132(2) with:
- “(2) To exercise a choice under subsection (1), the borrower must notify the Commissioner in a manner acceptable to the Com-

missioner within 6 months after whichever is the latest of the following:

“(a) the date on which the borrower was notified of the excess repayment in accordance with section 120:

“(b) the day after the end of the tax year to which the excess repayment relates: 5

“(c) the day after the due date of the final instalment of the borrower’s overseas-based repayment obligation.”

22 Section 144 amended (Power of Commissioner in relation to small amounts) 10

In section 144(2)(a), replace “is more than \$20” with “is \$20 or more”.

23 Section 154 amended (Application for instalment arrangement)

In section 154(1)(a), replace “an unpaid amount; and” with “an unpaid amount or an amount that is not yet due; and”. 15

24 Section 155 amended (Late filing penalty for certain declarations)

Replace section 155(5) with:

“(5) In this section, **declaration** means a declaration of adjusted net income.” 20

25 Section 156 amended (Due dates for payment of late filing penalty)

In section 156(b) and (c), delete “or 114A”.

26 Section 161 amended (Student loan shortfall penalty reduced or removed to reflect change to shortfall penalty) 25

In section 161(1)(a), after “a borrower”, insert “disputes or”.

27 Cross-heading above section 174 replaced

Replace the cross-heading above section 174 with:

“Rights to challenge and challenge procedures”.

28 New section 174A inserted (Part 8A of Tax Administration Act 1994 applies to challenges under this Act)

After section 174, insert:

“174A Part 8A of Tax Administration Act 1994 applies to challenges under this Act 5

The procedures under Part 8A of the Tax Administration Act 1994 apply, with all necessary modifications, to a challenge of a matter under this Act.”

29 New section 182A inserted (Challenge to decision concerning repayment holiday) 10

After section 182, insert:

“182A Challenge to decision concerning repayment holiday

A borrower may challenge a decision by the Commissioner under section 107B not to grant the borrower a repayment holiday, on the ground that the decision is not fair and reasonable.” 15

30 Section 188 repealed (Commissioner’s decision on challenges)

Repeal section 188.

31 Section 191 amended (Limit on repayment obligation for pay period or tax year) 20

In section 191(1), replace “derives only” with “derives”.

32 New section 193C inserted (Changes relating to contact details of borrower)

After section 193B, insert: 25

“193C Changes relating to contact details of borrower

If there is a change in any of the borrower’s contact details, the borrower must promptly notify the Commissioner of the changed details.”

- 33 Section 204 amended (Commissioner may exercise rights in loan contracts to recall loans)**
In section 204(3)(c), replace “before or after” with “before, on, or after”.
- 34 Section 208 amended (Disclosure of information between Inland Revenue Department and New Zealand Customs Service for information-matching purposes)** 5
Replace section 208(1) with:
“(1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the New Zealand Customs Service for the purpose of establishing an information-matching programme to assist the Commissioner to— 10
“(a) verify whether borrowers are New Zealand-based or overseas-based; and 15
“(b) verify whether borrowers are New Zealand residents; and
“(c) locate, when they enter or leave New Zealand, borrowers who are in **serious default** (within the meaning of section 280G of the Customs and Excise Act 1996) in relation to student loans.” 20
- 35 Section 215 amended (Regulations)**
Replace section 215(d) with:
“(d) specifying further information requirements in accordance with sections 10(2)(d), 13(i), 16(2)(a)(viii), 16A(1)(e) or 107A(2)(e).” 25
- 36 Section 221 repealed (Amendments to this Act)**
Repeal section 221.
- 37 Schedule 3 repealed** 30
Repeal Schedule 3.
- 38 Schedule 4 replaced**
Replace Schedule 4 with the **Schedule 4** set out in **Schedule 2** of this Act.

39 Schedule 6 amended

(1) In Schedule 6, replace clause 6(1) with:

“(1) Any amount that the Commissioner has refrained from collecting from the borrower in accordance with section 51(3) of the Student Loan Scheme Act 1992 and that remains unpaid on the close of 31 March 2012 is added to a borrower’s loan balance under this Act.” 5

(2) In Schedule 6, replace clause 12(1) with:

“(1) This clause applies if—

“(a) a borrower— 10

“(i) has entered into an instalment arrangement with the Commissioner on or before 31 March 2012 in relation to an amount (the **instalment amount**) that must be paid under the Student Loan Scheme Act 1992; and 15

“(ii) some of the payments that are required under the instalment arrangement must be paid on or after 1 April 2012; or

“(b) a borrower—

“(i) has entered into an instalment arrangement with the Commissioner under this Act between 1 April 2012 and 31 March 2013 (inclusive) in relation to an amount (the **instalment amount**) that must be paid under this Act; and 20

“(ii) some of the payments that are required under the instalment arrangement must be paid on or after 1 April 2013.” 25

40 Schedule 7 repealed

Repeal Schedule 7.

41 Consequential amendments to principal Act 30

Amend the principal Act as set out in **Schedule 1**.

Amendments to other Acts

42 Accident Compensation Act 2001 amended

(1) This section amends the Accident Compensation Act 2001.

- (2) In section 123(2)(i), replace “subparts 1 to 3” with “**subparts 1, 2,**”.

43 Customs and Excise Act 1996 amended

Sections 44 to 46 amend the Customs and Excise Act 1996.

44 Section 280G amended (Defined terms for sections 280H and 280I) 5

In section 280G, insert in their appropriate alphabetical order:

“**serious default** means the state of having an unpaid amount due and owing under the Student Loan Scheme Act 2011 and satisfying criteria established in a manner to be determined by the Commissioner 10

“**unpaid amount** has the meaning given to it by section 5 of the Student Loan Scheme Act 2011.”

45 Section 280H amended (Disclosure of arrival and departure information for purposes of Student Loan Scheme Act 2011) 15

- (1) Replace section 280H(1) with:

“(1) The purpose of this section is to facilitate the exchange of information between the Customs and the Department for the purposes of assisting the Commissioner to— 20

“(a) verify whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act 2011:

“(b) verify whether borrowers are New Zealand residents for the purposes of that Act: 25

“(c) locate, when they enter or leave New Zealand, borrowers who are in serious default in relation to a student loan.”

- (2) After section 280H(4)(d), insert:

“(e) information provided by the borrower when arriving in or, as the case may be, departing from New Zealand.” 30

46 Section 280I amended (Direct access to arrival and departure information for purposes of Student Loan Scheme Act 2011)

Replace section 280I(1) with:

- “(1) The purpose of this section is to facilitate the Department’s access to information stored in a database for the purpose of assisting the Commissioner to— 5
- “(a) verify whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act 2011: 10
 - “(b) verify whether borrowers are New Zealand residents for the purposes of that Act:
 - “(c) verify whether borrowers are in New Zealand for the purposes of that Act:
 - “(d) locate, when they enter or leave New Zealand, borrowers who are in serious default in relation to a student loan.” 15

47 Privacy Act 1993 amended

- (1) This section amends the Privacy Act 1993.
 - (2) Replace section 103(1C) with: 20
- “(1C) Nothing in subsection (1) prevents the Commissioner of Inland Revenue from immediately taking action to recover amounts relating to—
- “(a) unpaid amounts owed to the Commissioner by an individual who is in serious default identified in information supplied to the Commissioner under section 280H of the Customs and Excise Act 1996; or 25
 - “(b) financial support under the Child Support Act 1991 owed to the Commissioner by an individual who is identified in information supplied to the Commissioner under section 280K or 280L of the Customs and Excise Act 1996.” 30

48 Student Loan Scheme Amendment Act 2012 amended

- (1) This section amends the Student Loan Scheme Amendment Act 2012. 35
- (2) Repeal section 57.

49 Tax Administration Act 1994 amended

- (1) This section amends the Tax Administration Act 1994.
- (2) In section 3(1), definition of **tax**, paragraphs (a)(x) and (d)(ix), replace “a pre-taxed repayment obligation, an other income repayment obligation,” with “an end-of-year repayment obligation” 5
- (3) In the Schedule, after the item relating to the Stamp Duty Abolition Act 1999, insert “Student Loan Scheme Act 1992”.

Part 2**Amendments to principal Act that apply
for 2013–2014 and later tax years** 10**50 Section 4 amended (Interpretation)**

- (1) In section 4(1), definition of **consolidated loan balance**, replace paragraphs (b) and (c) with:
“(b) any unpaid amount” 15
- (2) In section 4(1), definition of **loan balance**, after paragraph (a)(iv), insert:
“(iva) an underestimation penalty; and”.
- (3) In section 4(1), definition of **repayment obligation**, replace paragraph (c) with: 20
“(c) any amount that must be paid by a borrower in accordance with a written notification under section 52:
“(d) end-of-year repayment obligation:”.
- (4) In section 4(1), insert in its appropriate alphabetical order:
“**underestimation penalty** means a penalty that a borrower is 25
liable to pay under **section 161A**”.

51 Section 5 amended (Meaning of unpaid amount)

After section 5(1)(e), insert:

- “(f) an amount that must be paid by a borrower in accordance with a written notification under section 52: 30
“(g) a late filing penalty:
“(h) a student loan shortfall penalty:
“(i) an underestimation penalty.”

- 52 Section 117 repealed (Overseas-based borrower’s standard and Commissioner deductions satisfy overseas-based repayment obligation)**
Repeal section 117.
- 53 Section 119 amended (meaning of excess repayment)** 5
In section 119(3), definition of **total obligations**, replace paragraph (b) with:
“(b) any standard deductions that were deducted in the tax year, except a significant over-deduction; and”.
- 54 Sections 134 to 137 and cross-heading replaced**
Replace sections 134 to 137 and the cross-heading above section 134 with:
“Loan interest charged for borrowers who are overseas-based 15
- “134 Loan interest charged for borrowers who are overseas-based**
“(1) A borrower is liable to pay loan interest on his or her loan balance for each day that the borrower is overseas-based.
“(2) Loan interest must be calculated in accordance with the formula— 20
- $$a = (b \times c) \div 365$$
- where—
a is the loan interest
b is the borrower’s loan balance on the relevant day 25
c is the base interest rate.
- “135 Loan interest calculated daily and charged and compounded monthly**
“(1) Loan interest is calculated each day that a borrower is overseas-based and has a loan balance. 30
“(2) Loan interest is charged and added to the borrower’s loan balance on the last day of each month.

“(3) However, no interest is charged or added under **subsection (2)** for a month if the loan balance is paid in full on or before the last day of that month.

“**136 Notification that loan interest has compounded**

If loan interest is added to a borrower’s loan balance in accordance with **section 135(2)**, the Commissioner must, at least once in the following 12 months, notify the borrower in writing of— 5

“(a) the opening and closing dates of the period covered by the notification; and 10

“(b) the borrower’s loan balance on the opening and closing dates; and

“(c) the date and amount of all loan interest charged to the borrower during the period covered by the notification.

“Compare: 1992 No 141 s 43(1) 15

“**137 Loan interest written off for quick repayment of consolidated loan balance**

“(1) This section applies to a person who—

“(a) was an overseas-based borrower; and

“(b) would subsequently have been treated as being New Zealand-based except that he or she ceased to be a borrower because of **paragraph (c)**; and 20

“(c) fully repaid his or her consolidated loan balance before the end of the period of 183 consecutive days under which the borrower would have been treated as being New Zealand-based. 25

“(2) Loan interest that is charged on the person’s loan balance is reduced to zero for the period—

“(a) starting on the first day of the 183-day period; and

“(b) ending on the day on which the person’s consolidated loan balance was fully repaid. 30

“Compare: 1992 No 141 s 38AM”.

55 Section 139 amended (Late payment interest charged on unpaid amount)

(1) In section 139(2)(a) and (b), replace “0.843% of” with “the late payment interest rate multiplied by”. 35

- (2) After section 139(2), insert:
- “(3) In this section, **late payment interest rate** means the base interest rate plus 4%, calculated as an equivalent monthly rate expressed as a percentage and truncated to 3 decimal places.”
- 56 Section 141 replaced (Monthly late payment interest written off if instalment arrangement complied with)** 5
Replace section 141 with:
- “141 Late payment interest reduced if instalment arrangement complied with**
- “(1) This section applies if— 10
- “(a) a borrower is liable to pay late payment interest on an unpaid amount under section 139; and
- “(b) the borrower has entered into an instalment arrangement in relation to the unpaid amount in accordance with section 154. 15
- “(2) For each month that the borrower meets his or her obligations under the instalment arrangement, any late payment interest that the borrower is liable to pay on the unpaid amount for that month must be calculated as if, in the definition of late payment interest rate in **section 139(3)**, the reference to base interest rate plus 4% were a reference to base interest rate plus 2%. 20
- “(3) However, **subsection (2)** applies only to the days in a month during which an instalment arrangement applies.”
- 57 Section 146 replaced (Commissioner may grant relief from late payment interest)** 25
Replace section 146 with:
- “146 Commissioner may grant relief from late payment interest**
- “(1) **Subsection (2)** applies—
- “(a) if a borrower has been charged with late payment interest; and 30
- “(b) regardless of whether that late payment interest has been paid, either in whole or in part; and
- “(c) if an application is made under section 145(1)(a) for relief from late payment interest. 35

- “(2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the late payment interest as the Commissioner considers equitable.
- “(3) If late payment interest is cancelled,— 5
- “(a) the borrower’s consolidated loan balance is decreased by the amount of the cancelled late payment interest; and
- “(b) if the late payment interest has been added to the borrower’s unpaid amount under section 141(2), the borrower’s unpaid amount is decreased by the amount of the cancelled late payment interest; and 10
- “(c) any payment made in excess of the remaining amount of late payment interest payable (if any) by the borrower (an **excess payment**) must be offset against the borrower’s consolidated loan balance as follows: 15
- “(i) first, against any unpaid amount; and
- “(ii) secondly, against the loan balance; and
- “(d) the Commissioner must refund any remaining excess payment to the borrower (*see* sections 199 and 200). 20
- “Compare: 1992 No 141 s 53”.

58 New section 161A and cross-heading inserted

After section 161, insert:

“Underestimation penalty

- “**161A Underestimation penalty where interim payments underestimated as at terminal payment date** 25
- “(1) A borrower is liable to pay an underestimation penalty if the borrower has estimated his or her end-of-year repayment obligation in respect of a tax year and, on the due date for the borrower’s last interim payment for the tax year,— 30
- “(a) the estimate applying is less than 80% of the borrower’s end-of-year repayment obligation and is less than the borrower’s end-of-year repayment obligation would have been had the borrower not estimated; and
- “(b) the amount of the interim payments made on or before 35 the due date for the borrower’s last interim payment is less than 80% of the borrower’s end-of-year repayment obligation for the year.

“(2) The amount of the underestimation penalty is calculated in accordance with the formula—

$$a = (b - c) \times 10\%$$

where—

- a is the amount of the underestimation penalty 5
- b is the borrower’s end-of-year repayment obligation for the tax year
- c is the greater of—
 - (i) the amount of the borrower’s estimate, applying at the due date for payment of the last interim payment; and 10
 - (ii) the amount of the interim payments paid on or before the due date for payment of last interim payment.

“(3) A penalty imposed under this section is payable on or before the borrower’s due date for payment of his or her terminal payment under **section 81 or 85.**” 15

59 Section 194 replaced (Order in which salary or wage deductions and payments offset against borrower’s consolidated loan balance) 20
Replace section 194 with:

“194 Definition used in sections 194A to 194D

In **sections 194A to 194D**, **current year obligations** means each of the following that has a due date in or for the tax year in which the payment was received by the Commissioner: 25

- “(a) an amount that must be paid by a borrower in accordance with a written notification under section 52: 25
- “(b) a terminal payment:
- “(c) an interim payment:
- “(d) an instalment of an overseas-based borrower’s repayment obligation for a tax year that must be paid in accordance with section 112 or 115(1)(d): 30
- “(e) a late filing penalty:
- “(f) a student loan shortfall penalty:
- “(g) an underestimation penalty. 35

“194A Order in which salary or wage deduction offset against borrower’s consolidated loan balance

“(1) A standard deduction received by the Commissioner in respect of a borrower must be offset against the borrower’s loan balance. 5

“(2) A Commissioner deduction for the purposes set out in section 49(1)(a) received by the Commissioner in respect of a borrower must be offset against the borrower’s loan balance.

“(3) A Commissioner deduction for the purpose set out in section 49(1)(b) received by the Commissioner in respect of a borrower must be offset as follows: 10

“(a) first, against any unpaid amount the borrower has; and

“(b) secondly, any remainder must be offset against the borrower’s current year obligations; and

“(c) thirdly, any remainder must be offset against the borrower’s loan balance. 15

“(4) A borrower deduction received by the Commissioner in respect of a borrower must be offset as follows:

“(a) first, against any unpaid amount the borrower has; and

“(b) secondly, any remainder must be offset against the borrower’s current year obligations; and 20

“(c) thirdly, any remainder must be offset against the borrower’s loan balance.

“Compare: 1992 No 141 s 50

“194B Order in which payments offset against borrower’s consolidated loan balance 25

A payment received by the Commissioner in respect of a borrower’s consolidated loan balance must be offset as follows:

“(a) first, against any unpaid amount the borrower has; and

“(b) secondly, any remainder must be offset against the borrower’s current year obligations; and 30

“(c) thirdly, any remainder must be offset against the borrower’s loan balance.

“Compare: 1992 No 141 s 50

“194C Exception to sections 194A and 194B if instalment arrangement entered into

“(1) This section applies to borrower deductions or payments that—

“(a) are made by, or on behalf of, a borrower who has entered into an instalment arrangement in accordance with section 154; but 5

“(b) are not made for the borrower to meet his or her obligations under the instalment arrangement.

“(2) The borrower deductions and payments must be offset as follows: 10

“(a) first, against the borrower’s current year obligations; and

“(b) secondly, any remainder must be offset against any unpaid amount the borrower has; and 15

“(c) thirdly, any remainder must be offset against the borrower’s loan balance.

“(3) This section overrides **sections 194A and 194B**.

“194D Manner in which salary or wage deductions and payments are offset

20

“(1) A salary or wage deduction or payment that is offset against an unpaid amount must be credited to the borrower’s unpaid amount.

“(2) A salary or wage deduction or payment that is offset against current year obligations must— 25

“(a) be offset against each of the borrower’s current year obligations in the order in which those obligations become due, from the earliest to the latest; and

“(b) if a terminal payment and an interim payment are due on the same date, be offset against the terminal payment before being offset against the interim payment; and 30

“(c) be credited to the borrower’s loan balance.

“(3) A salary or wage deduction or payment that is offset against a loan balance must be credited to the borrower’s loan balance.

“Compare: 1992 No 141 s 50”. 35

60 Section 197 replaced (Write-off of consolidated loan balance)

Replace section 197 with:

“197 Write-off of consolidated loan balance

“(1) A borrower’s consolidated loan balance must be reduced to zero if— 5

“(a) the borrower dies; or

“(b) the Commissioner has reasonable grounds for believing that the borrower has died.

“(2) The Commissioner may reduce a borrower’s consolidated loan balance to zero if that balance is less than \$20. 10

“(3) Subsection (1)(a) has effect from the day on which the borrower died.

“(4) Subsection (1)(b) has effect from the day on which the borrower is believed to have died. 15

“(5) Subsection (2) has effect from the day on which the Commissioner exercises his or her discretion to reduce the consolidated loan balance to zero.

“(6) If a borrower’s consolidated loan balance is reduced to zero under subsection (1)(a) or (2), that action may not be reversed. 20

“(7) Subsection (6) applies despite anything to the contrary. “Compare: 1992 No 141 s 60”.

61 Section 219 repealed (Early applications and issues of certificates for transition to this Act) 25

Repeal section 219.

62 Schedule 6 amended

In Schedule 6, repeal clause 6(1)(b).

Part 3

Amendments to principal Act that apply for 2014–2015 and later tax years 30

63 Section 4 amended (Interpretation)

In section 4(1), repeal the definitions of **annual gross income**, **annual total deduction**, and **pre-taxed income**.

64 Section 73 replaced (Meaning of adjusted net income)

Replace **section 73** with:

“73 Meaning of adjusted net income

In this Act, **adjusted net income** means **net income**, as defined in section YA 1 of the Income Tax Act 2007, with the adjustments set out in **Schedule 3** of this Act (including any adjustment determined by the Commissioner under **clause 15** of that schedule) and excluding salary or wages.”

65 Amendments consequential on repeal of definitions of annual gross income and annual total deduction

In the following provisions, replace “annual gross income and annual total deductions” with “adjusted net income” in each place: sections **74(1)**, **76(1)(b)**, **79(2)(b)**, **83(1)(b)**, 114(2) and (4), 114A(2), 155(5)(b) and 202(d), and Schedule 1, clause 11(2).

66 New Schedule 3 inserted

After Schedule 2, insert the **Schedule 3** set out in **Schedule 3** of this Act.

Schedule 1**s 41****Consequential amendments to principal
Act****Section 54**

Replace section 54(1)(b)(ii) and (iii) with: 5

“(ii) in the case of a borrower to whom **subpart 2** applies, adjusted net income.”

Section 115

In section 115(1)(a),—

(a) replace “subparts 1 to 3” with “subparts 1 and **2**”; and 10

(b) replace “subparts 2 and 3” with “**subpart 2**”.

In section 115(1)(b), replace “subparts 1 to 3” with “subparts 1 and **2**”.

Section 119

In section 119(3), definition of **total obligations**, replace paragraphs 15

(d) and (e) with:

“(d) any end-of-year repayment obligation for the tax year; and”.

Section 144

Repeal section 144(1)(b) and (d). 20

Section 157

In section 157, definition of **repayment obligation shortfall**, paragraph (a), replace “other income repayment obligation” with “end-of-year repayment obligation”.

Section 190

Replace section 190(1)(a) with: 25

“(a) derives adjusted net income; and”.

Section 191

Replace section 191(2) with: 30

“(2) If a borrower derives adjusted net income for a tax year, the borrower’s end-of-year repayment obligation for that tax year

Section 191—*continued*

must not exceed the amount of the borrower’s loan balance on the last day of that tax year.”

Section 195

In section 195(4)(b), replace “pre-taxed payment obligation or other income repayment obligation for that tax year” with “end-of-year 5 repayment obligation for that tax year”.

Section 202

In section 202(d), replace “a declaration of pre-taxed income” with “a declaration of adjusted net income”.

Schedule 6

10

In Schedule 6, clause 14(3), replace “other income payments” with “interim payments”.

In Schedule 6, clause 14(3)(b), replace “other income repayment obligations” with “end-of-year repayment obligations”.

Schedule 2**s 38****Schedule 4 replaced****Schedule 4****ss 4(2), 86****Application of provisional tax rules for
purposes of section 86**

5

Interim payments for adjusted net income to be
paid in same manner as provisional tax

1 The provisional tax rules apply for the purposes of **section 86**, as far as applicable and with all necessary modifications, as if— 10

(a) every reference to provisional tax were a reference to the amount of interim payments payable by a borrower; and

(b) every reference to a person, a person liable to pay provisional tax, or a provisional taxpayer were a reference to a borrower; and 15

(c) every reference to residual income tax were a reference to the amount of an end-of-year repayment obligation; and

(d) every reference to income tax were a reference to an end-of-year repayment obligation; and 20

(e) every reference to an instalment were a reference to an interim payment; and

(f) every reference to a return of income were a reference to,— 25

(i) for a borrower who is required to make a declaration of their adjusted net income, that declaration; and

(ii) for a borrower who is required to notify the Commissioner of the borrower's annual gross income and annual total deductions under section 114 of this Act, that notification; and 30

(g) every reference to \$2,500 or less (being the threshold below which a person is not required to make provisional tax payments during the year) were a reference to the \$1,000 threshold in **section 79**; and 35

Schedule 4—*continued*

- (h) every reference to section RC 10 of the Income Tax Act 2007 or to an amount calculated under section RC 10 of the Income Tax Act 2007 were a reference to **section 82** of this Act or to the amount of a borrower's interim payments calculated in accordance with **section 82** of this Act; and 5
 - (i) the reference in section RC 9(9) of the Income Tax Act 2007 to interest calculated under section 120KC of the Tax Administration Act 1994 were a reference to late payment interest calculated under section 139 of this Act. 10
- 2 However,—
- (a) sections LB 2, RC 3, RC 4, RC 5(6) and (8), RC 7(6), RC 8, RC 11, RC 15 to RC 19, RC 24, RC 28 to RC 35, RC 37 to RC 39, RZ 3, and RZ 5B of the Income Tax Act 2007, and the definition of early-payment discount in section RC 40 of that Act, do not apply to an interim payment; and 15
 - (b) section RC 5(2) of the Income Tax Act 2007—
 - (i) applies only if the borrower's end-of-year repayment obligation for the second preceding tax year is \$1,000 or more; and 20
 - (ii) applies as if the calculation in that section were a reference to the calculation in **section 82** of this Act; and 25
 - (c) for a borrower required to either make a declaration of adjusted net income or notify the Commissioner of the borrower's annual gross income and annual total deductions under section 114 of this Act, section RC 5(3) of the Income Tax Act 2007— 30
 - (i) applies only if the borrower's end-of-year repayment obligation for the second preceding tax year is \$1,000 or more; and
 - (ii) for a declaration of adjusted net income or a notification of the borrower's annual gross income and annual total deductions under section 114 of 35

Schedule 4—*continued*

this Act for the immediately preceding tax year, or an estimate of the end-of-year repayment obligation, that is not filed by the due date for payment of the final interim payment, applies as if the borrower has filed a statement showing an estimate of the end-of-year repayment obligation for that tax year equal to the total amount of interim payments paid by the borrower on or before that date. 5

Compare: 1992 No 141 s 28

Schedule 3 **s 66**
New Schedule 3 inserted
Schedule 3 **s 73**
Adjustments to net income for purposes
of section 73, applying from 1 April 2014 5
for 2014–2015 and later tax years

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1 Interpretation

In this schedule, unless the context otherwise requires—

- (a) any term or expression that is defined in the Income Tax Act 2007 and used, but not defined, in this schedule has the same meaning as in the Income Tax Act 2007; and 10
- (b) **Act** means the Income Tax Act 2007.

Schedule 3—*continued*

- 2 Adjustments to net income for purpose of determining adjusted net income**
For the purposes of **section 73** of this Act, the adjustments to net income in **clauses 3 to 15** apply for the purposes of determining adjusted net income. 5
- 3 Non-resident's foreign-sourced income**
The adjusted net income of a borrower who is non-resident includes the net income of the non-resident's foreign-sourced income, as if the borrower were a New Zealand resident.
- 4 Borrowers who carry on business and investment activities** 10
- (1) The income and deductions for any investment activity, or for any business, for a tax year are ignored when calculating a borrower's adjusted net income for that tax year if, treating the borrower as having only the income and deductions of that investment activity or of that business, the borrower would have a net loss for that year. 15
- (2) For the purposes of applying **subclause (1)**, 2 or more business or investment activities may be treated as a single activity if the Commissioner considers that those business or investment activities are of a kind that are normally carried on in association with each other. 20
- (3) For the purposes of applying **subclause (1)**, as modified by **subclause (2)**, deductions that relate to an asset used in carrying on 2 or more business or investment activities must be appropriately apportioned between those activities on the basis of the use of that asset in those activities. 25
- Compare: 2007 No 97 s MB 3
- 5 Exempt income included** 30
An amount derived by the borrower is not treated as exempt income if it is—
- (a) an amount referred to in section CW 28(1)(e) of the Act (which relates to overseas pensions):

Schedule 3—*continued*

- (b) an amount of salary or wages that is exempt from income tax under an Act, or under a regulation or Order in Council made under an Act, that is listed in Schedule 38 of the Act (Acts exempting income from tax: income included in family scheme income). 5

Compare: 2007 No 97 s MB 1(2)

6 Income from portfolio investment entities

- (1) An amount of income attributed by a portfolio investment entity to the borrower for an income year—
- (a) is not included in adjusted net income of the borrower for the income year if the portfolio investment entity is a superannuation fund or retirement savings scheme: 10
- (b) is included in adjusted net income of the borrower for the income year if **paragraph (a)** does not apply.
- (2) A distribution from a listed PIE that is derived by the borrower in an income year is included in adjusted net income of the borrower for the income year. 15

Compare: 2007 No 97 s MB 1(5)

7 Refunds from main income equalisation accounts

A refund under sections EH 8 to EH 26 of the Act (which relate to refunds from main income equalisation accounts) of a deposit made on or after 1 April 2014 is not included in adjusted net income of a borrower, except to the extent that the refund is interest payable to the borrower under section EH 6 of the Act (Interest on deposits in main income equalisation account). 20 25

Compare: 2007 No 97 s MB 9

8 Borrowers who are shareholders in close companies

If a borrower is a major shareholder in a close company on the last day of the company's balance date for financial purposes and the company has paid the major shareholder a dividend in the income year,— 30

Schedule 3—*continued*

- (a) the amount of the borrower's adjusted net income calculated under the formula in **paragraph (b)** is reduced by the total dividends for the income year; and
- (b) the borrower's adjusted net income includes an amount calculated using the formula— 5
- $$(a \div b) \times c$$
- where—
- a is the number of shares issued by the company and held by the borrower, excluding fixed-rate shares, on the last day of the company's accounting year 10
- b is the number of shares issued by the company, excluding fixed-rate shares, on the last day of the company's accounting year
- c is the net income of the company for the company's accounting year. 15

Compare: 2007 No 97 s MB 4

9 Treatment of distributions from superannuation schemes

- (1) **Subclause (2)** applies if a borrower receives a distribution from a superannuation scheme in an income year and— 20
- (a) an employer of the borrower has made contributions to the superannuation scheme in the income year in which the distribution was received or in the 2 income years immediately before that income year; and
- (b) the borrower continues to work for the employer for 1 month or more after the date of the distribution; and 25
- (c) the borrower has not received the distribution from the superannuation scheme as a result of, and on or after, the borrower's retirement from employment with an employer who was a contributor to the scheme. 30
- (2) For the purposes of calculating adjusted net income, the distribution (excluding any amount attributable to a contribution by the borrower as a member of the superannuation scheme) is adjusted net income of the borrower derived in the tax year

Schedule 3—*continued*

or tax years that corresponds to the income year or years in which the employer contributions were made.

Compare: 2007 No 97 s MB 5

- 10 Treatment of distributions from retirement savings schemes** 5
- (1) **Subclause (2)** applies if—
- (a) a borrower receives a distribution of a retirement scheme contribution from a retirement savings scheme in an income year; and
 - (b) RSCT has been withheld from the contribution; and 10
 - (c) at the time of the distribution, the person—
 - (i) is not eligible for New Zealand superannuation; and
 - (ii) is eligible for a distribution of a retirement scheme contribution from a retirement scheme contributor. 15
- (2) For the purposes of calculating adjusted net income, the distribution is adjusted net income of the person derived in the income year in which the distribution is made. 20
- Compare: 2007 No 97 s MB 6
- 11 Borrowers who are settlors of trusts**
- (1) **Subclause (3)** applies if a borrower is the settlor of a trust (the **borrower's trust**) at a time in the income year, other than solely as a result of providing personal services for less than market value in the administration of the trust or the maintenance of trust property. 25
- (2) However, **subclause (3)** does not apply if—
- (a) the trustee of the borrower's trust is registered as a charitable entity under the Charities Act 2005;
 - (b) the borrower's trust is solely for the benefit of a local authority; 30
 - (c) interest and dividends derived by the trustee of the borrower's trust would be exempt income of the trustee under section CW 45 (Funeral trusts) of the Act;
 - (d) the borrower's trust is a superannuation fund: 35

Schedule 3—*continued*

- (e) the borrower and the members of the borrower's family are not permitted to benefit from the borrower's trust except under an order of a court.
- (3) If this subclause applies, the adjusted net income of the borrower for that income year includes an amount calculated in accordance with the following formula: 5
- $$(a + b - c) \div d$$
- where—
- a is the net income of the trustee of the borrower's trust for the income year reduced, to not less than zero, by the amount of the trustee's income that vests or is paid by the trustee as beneficiary income for the income year 10
- b is the total of amounts calculated for companies in which, at the end of the company's income year, the trustee of the borrower's trust and associated persons hold voting interests of 50% or more, or market value interests of 50% or more if there is a market value circumstance, with the amount for each company being calculated by multiplying the company's net income for the income year by the trustee's voting interest or market value interest in the company at the end of the income year 15
- c is the total amount, not exceeding b, of dividends that are derived by the trustee of the borrower's trust in the income year from companies referred to in item b of the formula 20
- d is the number of settlors of the borrower's trust, including the borrower, to which this clause applies. 25

Compare: 2007 No 97 s MB 7

- 12 Income from fringe benefits** 30
- (1) **Subclause (2)** applies if—
- (a) a borrower is an employee of a company in which the borrower and associated persons hold—
- (i) voting interests of 50% or more; or

Schedule 3—*continued*

- (ii) market value interests of 50% or more (if a market value circumstance exists); and
 - (b) the company provides a fringe benefit that must be attributed to the borrower under section RD 47 of the Act (Attribution of certain fringe benefits). 5
 - (2) The adjusted net income of the borrower for the income year includes an amount equal to the total of the following amounts:
 - (a) the taxable value of the fringe benefits that the company must attribute to the borrower under sections RD 47 to RD 49 of the Act for the income year; and 10
 - (b) the company's FBT liability in relation to the borrower under section RD 50 of the Act (Employer's liability for attributed benefits) for the income year.
- Compare: 2007 No 97 s MB 8
- 13 Income from deposits in main income equalisation accounts** 15
- The adjusted net income of a borrower for an income year includes the amount of a deduction under section DQ 1 of the Act (Main income equalisation scheme) allowed for a payment made to the Commissioner under section EH 4 of the Act (Main deposit) for an accounting year, corresponding to the same tax year as does the income year, and for a business of—
- (a) the borrower:
 - (b) a company that meets the requirements of section MB 4 of the Act for the borrower's adjusted net income to be affected by net income of the company for the accounting year: 25
 - (c) a trustee of a trust that meets the requirements of section MB 7 for the borrower's adjusted net income to be affected by net income of the trustee for the accounting year: 30
 - (d) a company in which a trustee referred to in **paragraph (c)** and associated persons hold a voting interest of 50%

Schedule 3—*continued*

or more, or a market value interest of 50% or more if a market value circumstance exists.

Compare: 2007 No 97 s MB 9

14 Income from certain pensions and annuities

If, in the income year, a borrower derives a pension or an annuity that is exempt income of the borrower under section CW 4 of the Act (Annuities under life insurance policies) or is a pension from a superannuation fund, the adjustable net income of the borrower for the income year—

- (a) includes half the amount of pension or annuity derived in the income year; and 10
- (b) does not include the other half of the amount of pension or annuity derived in the income year.

Compare: 2007 No 97 s MB 10

15 Payments from trusts, not being beneficiary income, and where borrower not settlor 15

- (1) For the purposes of calculating adjusted net income, a borrower must include all payments from trusts in the adjusted net income of the person derived in the income year in which the distribution is made where— 20
 - (a) the distribution is not beneficiary income in relation to the borrower; and
 - (b) the borrower is not the settlor of the trust.
- (2) The Commissioner may, in his or her discretion, determine the circumstances in which payments from a trust should be excluded for the purposes of calculating adjusted net income. 25