Inland Revenue
Te Tari Taake

NEW LEGISLATION > ACT COMMENTARY

Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025

Public Act 2025 No 09

Issued: April 2025

The commentary articles provide an explanation of the changes made by the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025. The Act introduces a generic response to emergency events, along with other provisions.

FIRST PUBLISHED

May 2025 by Policy, Inland Revenue,
PO Box 2198, Wellington 6140.

Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 – commentary on the Act

The document is available at
https://www.taxpolicy.ird.govt.nz/publications/2025/ac-emergency-response-tax-act

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Overview

The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 was introduced on 26 August 2024. It received its first reading on 29 August 2024, its second reading on 4 March 2025 and its third reading on 25 March 2025. The new Act received Royal assent on 29 March 2025.

The Act amends:

- Income Tax Act 2007
- Tax Administration Act 1994
- Goods and Services Tax Act 1985
- KiwiSaver Act 2006
- Gaming Duties Act 1971
- Stamp and Cheque Duties Act 1971
- Income Tax Act 2004
- Student Loan Scheme Act 2011
- Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022
- Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023
- Child Support Act 1991
- Accident Compensation Act 2001
- Local Government Act 2002
- Resale Right for Visual Artists Regulations 2024
- Goods and Services Tax (Grants and Subsidies) Order 1992.

Legislative amendments

The Act:

- sets the annual rates of income tax for the 2024–25 tax year
- introduces a generic response to emergency events
- gives legislative effect to the Crypto-Asset Reporting Framework
- incorporates amendments made to the Common Reporting Standard
- introduces "scheme pays" for the taxation of transfers from recognised overseas pension schemes
- allows retrospective registration for approved issuer levy

- increases the exempt employee share scheme threshold
- authorises a one-off information-sharing arrangement between Inland Revenue and the Ministry of Business, Innovation and Employment to encourage uptake of the New Zealand Business Number
- allows young persons aged under 16 to enrol in KiwiSaver provided one of their guardians contracts directly with a provider
- ensures appropriate tax outcomes for artists and other right holders who receive resale royalties under the Resale Right for Visual Artists Act 2023
- provides that the Auckland Future Fund (AFF) is exempt from income tax
- implements the final-year fees-free scheme (which replaced the first-year fees-free scheme)
- adds seven charities to the list of donee organisations
- makes other remedial amendments.

Annual income tax rates for 2024–25

Section BB 1 and schedule 1 of the Income Tax Act 2007

Summary of amendment

Section 3 of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 sets the annual income tax rates that apply for the 2024–25 tax year at the rates specified in schedule 1 of the Income Tax Act 2007. These rates reflect the changes made in Budget 2024.

Effective date

The amendment is effective for the 2024–25 tax year.

Background

Section BB 1 of the Income Tax Act 2007 requires that the income tax rates be set by an annual taxing Act.

Generic response to emergency events

Generic response to emergency events

Sections CC 2B, CC 2C, CE 1, CW 16B, CW 16C, CW 19B, CZ 29B, CZ 37, DB 70, EZ 80, EZ 81, YA 1, and subpart FP of the Income Tax Act 2007
Sections 3, 6J, 183ABA, 226H, 226I, and schedule 7 of the Tax Administration Act 1994

Summary of amendments

The amendments improve Inland Revenue's ability to provide timely tax relief following emergency events by building certain tax relief measures into the legislation, any of which could be activated by an Order in Council.

Effective date

The amendments took effect on 1 April 2025.

Background

Tax relief has been provided during past emergency events and in the subsequent recovery phase depending on the nature of the event. These responses were initiated through a combination of Commissioner of Inland Revenue (the Commissioner) discretions, Orders in Council and primary legislative amendments.

A more streamlined and timely process has been put in place for the measures that would have previously required primary legislation to activate. This process has been achieved by building the measures into the legislation and using Orders in Council to activate them when there is an emergency event that warrants their use. This will still leave Ministers with discretion over which measures to apply to a particular emergency. Such a generic approach had been suggested by the Finance and Expenditure Committee that considered the proposed tax relief measures for the 2023 North Island flooding events, as contained in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024.

Key features

The new step-down approach has involved amending primary legislation to incorporate, on a generic basis, the tax measures from past major emergency events that proved to be useful to affected taxpayers, (such as taxation rollover relief and turning off the bright-line test). These measures are largely contained in new subpart FP of the Income Tax Act 2007 (ITA).

A new activating provision in the Tax Administration Act 1994 (TAA) enables activation of any of those measures by Order in Council in a future emergency. An Order in Council should take no more than two months to activate, compared with up to a year when amending primary legislation This provides earlier certainty for taxpayers impacted by an emergency event.

The amendments also:

- involve changing the current Order in Council power to remit use of money interest (UOMI) into a Commissioner's discretion to expedite the activation, and
- include a new limited information-sharing power consistent with that already available to other agencies in a national emergency. This additional measure is in response to Inland Revenue (in previous emergencies) being generally[1] unable to share relevant information to help other agencies deliver assistance when requested to do so.

Detailed analysis

Process for past events

For past emergency events, tax responses have been initiated through a combination of:

- Commissioner discretions for:
  - waiving late filing and payment penalties
  - early withdrawals from/late deposits into the income equalisation deposits scheme, and
  - the declaration of an event as an emergency event so support payments to relieve the adverse impacts of that event are not included as family scheme income for Working for Families purposes.
- Orders in Council for:
  - the remission of UOMI
  - declaring certain support payments not to be taxable grants or subsidies for GST purposes, and
  - extension of filing times for research and development tax credits.
- Primary legislative amendments when there is an unexpected tax liability (such as depreciation recovery income, or the application of the bright-line test to a local authority property buy-out) that would not have arisen but for the event. This category is the principal issue.

[1] An exception was made for the COVID-19 pandemic, when specific legislation was enacted that allowed information to be shared.

Amending primary legislation can be resource-intensive and creates uncertainty for taxpayers while the necessary Parliamentary approvals are obtained, even though such legislation is generally backdated to the beginning of the event.

Although each event has its own characteristics, comparable legislative changes were provided for the Canterbury and Hurunui/Kaikōura earthquakes, and the 2023 North Island flooding events. This included the provision of capped tax-free employer payments and fringe benefits to support employees who needed alternative accommodation and transport, as well as the extension of the time period for tax-free accommodation allowances for those working away from home on major earthquake and flood-related reconstruction projects.

Legislative tax measures were also enacted for the Mycoplasma bovis outbreak. These enabled the additional income arising from the forced sale of livestock to be spread over six years to match expected stock replacement.

Emergency event definition

The amendments rely on existing definitions of "emergency" and the declarations of an emergency under other legislation, rather than creating a totally new definition for income tax purposes. This approach had already been used to enable the Commissioner to declare an emergency event so that support payments made to relieve the effects of that event would not be included as family scheme income for Working for Families purposes.

A definition of "emergency event" as an emergency in accordance with section 4 of the Civil Defence Emergency Management Act 2002[2] and declared an emergency under that Act has been inserted in section 3(1) of the TAA (with a consequential cross-reference in the definition section of the ITA). For the purposes of the Civil Defence Emergency Management Act, an emergency declaration is either:

- a state of national emergency under section 66 of that Act, or
- a state of local emergency under section 68 of that Act.

The exercise of powers under section 121 or 122 of the Biosecurity Act 1993 to examine, test for, and destroy a particular biosecurity pest/risk has also been included in the definition. This covers

[2] **emergency** means a situation that—
(a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and

(b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and

(c) cannot be dealt with by emergency services, or otherwise requires a significant and co-ordinated response under this Act.

situations such as the programme for eradicating Mycoplasma bovis or any future foot and mouth outbreak.

This combination of events is considered the most appropriate to cover the likely broad range of natural disasters that could occur in New Zealand. It could also potentially cover major technological failures that could arise, for example, from a cyberattack.

A state of national emergency has been declared three times in New Zealand, in response to:

- the February 2011 Christchurch earthquake
- the COVID-19 pandemic, and
- Cyclone Gabrielle flooding.

However, there have been substantially more local emergencies over the same period. For example, the flooding that occurred in Auckland over Auckland Anniversary weekend 2023 was initially only designated a local emergency. It was only once flooding had also occurred in the Gisborne and Hawke’s Bay regions that the Government declared a state of national emergency existed and incorporated the Auckland floods. Another example is the Hurunui/Kaikōura earthquakes, which were declared a local emergency.

From a tax perspective, some events, such as a drought or very localised event, have required fewer measures and have been largely handled through the Commissioner’s discretions. That process will continue. More widespread and/or protracted events have needed a wider set of measures regardless of whether they have been declared a national or local emergency. This means the generic measures need to cover both. The common theme for tax purposes is that the event creates unexpected income for a significant number of taxpayers.

The provisions enable relevant responses to be decided at the time, rather than being automatically activated or triggered by an emergency event. The streamlined activation process facilitates this, with the definition of “emergency event” simply setting the boundary as to what events might ultimately lead to activation of any of the generic tax measures. Ministerial decisions will still be required, and Orders in Council initiated, for situations not covered by the Commissioner’s discretions.

The Order in Council will specify the start date of the emergency event to avoid any ambiguity. The emergency event period will generally end on the last day of the income year that is five years after the income year in which the emergency event occurred. That five-year period can, however, be extended by Order in Council made under new section 6J of the TAA, in recognition that some emergency events involve a protracted period of settlement and recovery. For example, relief was extended for the Canterbury earthquakes but that required changing primary legislation. Using the Order in Council process removes the potential complications and time pressures that could arise from trying to enact an extension through primary legislation.

Remission of UOMI

The Act makes an amendment to section 183ABA of the TAA that allows the Commissioner to remit UOMI following the declaration of an emergency event. This is a change in process only, because currently the Commissioner can choose not to charge interest on late payments by taxpayers when enabled to do so by an Order in Council. The Order in Council power is retained for rare situations when an event has not been declared an emergency under the Civil Defence Emergency Management Act 2002, but it is still considered warranted to remit UOMI.

Information sharing

The Act includes an amendment to schedule 7 of the TAA to provide Inland Revenue with an information-sharing power consistent with that already available to other agencies in a national emergency. This additional measure is in response to Inland Revenue being generally unable to share information in a timely manner to help other agencies deliver assistance in previous emergencies (except for the COVID-19 pandemic). Such a power contributes to a more coherent and efficient whole-of-government response.

The power is activated by Order in Council and gives the Commissioner a discretion to share sensitive revenue information with other agencies that need and request that information to help in delivering assistance in an emergency, provided certain requirements are met.

The specific requirements are:

- The power is only available for events that are declared national emergencies. The Commissioner needs to be satisfied that sharing the information is reasonable, practical, and not undesirable. For example, sharing the information will not undermine the integrity of the tax system.
- The information is readily available.
- A written agreement needs to be drawn up and agreed between the Commissioner and the party that requested the information specifying the information to be shared.
- In addition, the following implicit safeguards apply:
    - The power is consistent with the Civil Defence National Emergencies (Information Sharing) Code 2020.[3] That code sets out the situations when government agencies can share information with other agencies in an emergency.
    - Information can only be shared for as long as is necessary to fulfil the purpose of the information requests for that event.

[3] Issued by the Privacy Commissioner under the Privacy Act 2020.

Included measures

The generic measures are summarised in the following table.

Measure	Previous mechanism	New mechanism	When previously used
Taxation rollover relief[4] for: ▪ revenue account property ▪ depreciable property ▪ amortisable land improvements	Primary legislation	Order in Council	Canterbury and Kaikōura earthquakes 2023 North Island flooding events
Depreciation amendments associated with rollover relief	Primary legislation	Order in Council	Canterbury and Kaikōura earthquakes 2023 North Island flooding events
Capped employer payments and fringe benefits, and extended tax-free accommodation period	Primary legislation	Order in Council	Canterbury earthquakes 2023 North Island flooding events
Income spreading provisions for forced livestock sales	Primary legislation	Order in Council	Mycoplasma bovis outbreak commencing 2017
Turning off the bright-line test and other time-based land sale rules[5]	Primary legislation	Order in Council	Canterbury earthquakes 2023 North Island flooding events (Local/central government buy-outs were provided in both cases)
Information sharing for a specific event	N/A	Order in Council providing Commissioner with discretion to share information for a national emergency,	COVID-19 pandemic response, through specific primary legislation

[4] Deferral of the unexpected income resulting from an insurance payout on a destroyed asset provided the asset is replaced.
[5] If a residential property is sold within a set period of time after being acquired, the owner may have to pay income tax on any gain on the sale.

Measure	Previous mechanism	New mechanism	When previously used
		subject to safeguards	
Remission of UOMI	Order in Council	Generally, Commissioner discretion	Regularly used for large-scale emergencies including Hawke's Bay gastro-medical event

These measures were selected based on the measure:

- having been applied to multiple past emergency events (either local or national emergency events) or it being a measure for a specific type of emergency event (ie, a biosecurity event)
- being used by affected taxpayers, and
- having limited fiscal impact.

If a past measure was used by a relatively limited number of taxpayers, was overly complex, or had a significant fiscal cost, it was excluded because the measure would likely not be used in future emergency events. Measures with a significant fiscal cost should continue to be subject to both Ministerial and Cabinet decision-making and Parliamentary approval. This ensures that discretionary decision-making is limited. A number of the additional measures suggested by submitters to the Finance and Expenditure Committee were not included in the package of measures on the above grounds.

Consequential amendments

Several consequential amendments are required to the ITA to ensure that the emergency event measures interact correctly with the wider tax rules. These amendments are contained in new sections CC 2B, CC 2C and CW 19B and amended sections CE 1, CW 16B, CW 16C, CZ 29B, and CZ 37. These consequential amendments include ensuring that any income or exempt income under new subpart FP is, respectively, income or not income under Part C of the ITA.

Detailed analysis of measures

The tax technical detail for the relevant past generic measures can be found in:

- Tax Information Bulletin Vol 36, No 4, May 2024.
- Special report: Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021 (28 April 2021).
- Special Report: Tax relief for North Island flooding events (4 April 2023).

New subpart FP

This new subpart covers most of the generic measures. Section FP 1 provides an outline of the subpart and its measures. Section FP 2 provides that the subpart applies when the Governor-General has made an Order in Council under section 6J of the TAA declaring that one or more of the provisions in subpart FP apply in relation to the relevant emergency event. Section FP 3 contains the subpart definitions.

Taxation rollover relief

These changes provide the option of taxation rollover relief for any of the following assets destroyed[6] by an emergency event:

- Land or buildings held as revenue account property for which insurance or other compensation is provided, which results in a profit over its cost price (see new sections FP 5 to FP 7).
- Depreciable property subject to depreciation recovery income because of an insurance payout (see new sections FP 8 to FP 11).
- Amortised farmland improvements for which income arises because of an insurance payout (see new section FP 12).

The taxation rollover relief defers the unexpected income that arises in such situations provided the person intends to replace the assets. The relief is for a maximum of five years. Some general guidance on the rollover provisions is contained in new section FP 4.

Common features

In all three cases, the additional income is suspended until the replacement asset is acquired, subject to the five-year maximum period. When the asset is replaced (or partially replaced if the replacement expenditure is incurred gradually), the suspended income impacts on the cost of the replacement asset, reducing that cost for tax purposes. The income suspension also ceases if the business ceases operations or no longer intends to acquire a replacement asset, in which case the suspended income is brought to account in that earlier income year.

Because rollover relief is optional, the taxpayer will need to elect to use their chosen option and notify the Commissioner of their election. Generally, this must be done by the date their return of income is required to be filed for each income year that they elect to use rollover relief. The Commissioner may allow the person to file the notice at a later date if the Commissioner considers there are exceptional circumstances.

[6] Irreparably damaged or useless for income-earning purposes.

Whether there are “exceptional circumstances” will depend on the facts and circumstances of the particular case, and on whether those facts and circumstances provide a person with a reasonable justification for not filing a notice by a due date. Certain information (such as a description of the affected property, the amount replaced in the year, and the remaining amount of suspended income) is required as part of the notification. Its purpose is to ensure that the taxpayer turns their mind each year to deciding whether they still intend to replace the asset.

Points of difference

The formula varies for each of the three types of rollover relief because the income being deferred differs. This is best illustrated by the following examples.

Example 1: Revenue account asset

A taxpayer’s revenue account building located in the Manawatū is destroyed by a flooding event. The flooding event has been declared an emergency event and new sections FP 4 to FP 7 have been selected from the tax relief measures and activated by Order in Council.

The building originally cost $1.5 million. The replacement insurance proceeds are $3 million, and the replacement building (costing $3 million) is completed on 15 June 2037. In the absence of rollover relief, the building owner will have taxable income of $1.5 million (under section CG 6). New section FP 6 allows the owner to defer that income tax liability by allocating an amount of $1.5 million to the replacement building.

As a result of negotiations between the building owner and the insurance company, the insurance proceeds can be reasonably estimated on 30 September 2034.

In the tax return for the tax year ending on 31 March 2035, the building owner files an election to defer the $1.5 million of income pending replacement of the building. Provided the taxpayer continues to elect to defer the income, it remains suspended for the tax years ending on 31 March 2036 and 31 March 2037.

Because the replacement building is completed on 15 June 2037, the tax return for the tax year ending 31 March 2038 will include the new building at a cost of $1.5 million (being the $3 million cost of the new building less the $1.5 million rollover relief, in accordance with new sections FP 6 and FP 7). New section FP 6(1) provides that the person's suspended recovery income is the amount by which the compensation exceeds their cost deductions for the destroyed property. New section FP 7 reduces the cost of the replacement property by reference to the replacement cost adjustment in section FP 6(3) or (5), as relevant. In this example, section FP 6(5) is relevant because the replacement cost and the insurance payout are equal.

A notice will have to be filed with the tax return for the year ended 31 March 2038 advising that the deferred income has been rolled into the tax base for the replacement asset. The taxpayer must also give notice that the amount of unallocated suspended income has been reduced by $1.5 million to $0. The notice requirements are contained in section 226H of the TAA.

When the replacement asset is eventually sold, the difference between the $1.5 million cost and the sales proceeds will be taxable, provided the building is sold for more than $1.5 million. (In this context, new section FP 7 specifies the cost of the revenue account property for the purposes of section DB 23.)

Example 2: Depreciable asset

Plant and equipment destroyed by an earthquake had a cost of $1 million. The earthquake has been declared an emergency event and new sections FP 8 to FP 11 have been selected as one of the tax relief measures.

On the day of the earthquake, the plant and equipment had an adjusted tax book value of $700,000. The owner receives an insurance payout of $1 million. The net depreciation recovered is, therefore, $300,000, and this becomes the suspended recovery income. The replacement assets are acquired over two years at a cost of $400,000 per year. In year three, the owner decides to acquire no more replacement assets.

Under new section FP 9, the $300,000 suspended recovery income is allocated as follows:

- Year 1 ($400,000 x $300,000) / $1,000,000 = $120,000
- Year 2 ($400,000 x $300,000) / $1,000,000 = $120,000

The cost of the replacement plant and machinery, for depreciation purposes, is reduced in total by $240,000, in accordance with new section FP 10 and in conjunction with new section FP 11. (New section FP 11 specifies the value or cost of the replacement item for the purposes of the depreciation provisions in subpart EE, depending on which depreciation method the taxpayer is using.)

In accordance with new section FP 8, the remaining suspended recovery income balance of $60,000 (representing the portion of assets not replaced) is taxed (under section CG 1) in the year the taxpayer decides to make no further investment in replacement property.

Example 3: Farmland improvement

Crop support frames costing $50,000 have been amortised under section DO 4 of the ITA (improvements to farmland). Their amortised value is $26,500 when they are destroyed by a cyclone. The cyclone has been declared an emergency event and new section FP 12 has been selected as one of the tax relief measures. Insurance proceeds of $75,000 are received.

The remaining expenditure ($26,500) can be deducted under section DO 11.

Under new section FP 12, the insurance payout is income to the extent of the various deductions that have been allowed ($50,000 in total).

The taxpayer elects, under new section FP 12, to apply rollover relief to this amount of income and replaces the destroyed frames at a cost of $75,000.

In accordance with new section FP 12(5), the cost of the replacement frames for the purposes of amortisation under section DO 4 is $25,000 because the insurance income of $50,000 is less than the replacement cost of $75,000 by that amount

Depreciation amendments associated with rollover relief

Deductibility of expenses when no income-earning activity

New section FP 13, in conjunction with new section DB 70, addresses the situation when some taxpayers are no longer able to deduct their ongoing expenses or loss relating to their income-earning activity. For example, this may occur when land is not physically accessible due to silt or a building is not accessible due to an earthquake, resulting in the business activity being so disrupted by the emergency event that there is no longer a sufficient nexus between the expenses and the income-earning activity.

The new sections provide certainty on the deductibility of expenses or losses for affected taxpayers who intend to continue their income-earning activities. To qualify, the person must:

- have an income-earning activity in the "affected area" immediately before the emergency event, and
- during the period of interruption, have incurred expenditure or loss (the interruption expenditure) in meeting an obligation relating to the income-earning activity and that interruption expenditure does not meet the requirements of the general deductibility permission (in section DA 1 of the ITA), but would have done so but for the interruption, and
- resume the income-earning activity before an income year that is five income years after the income year in which the emergency event first occurs.

If all these conditions are met, the person is allowed to deduct the expenditure in the year their income earning is resumed.

Damaged depreciation property that is uneconomic to repair

The standard tax depreciation rules do not provide an appropriate outcome when there is an insurance payout on an asset damaged by an emergency event and the asset has been assessed as uneconomic to repair. This is because the tax rules distinguish between assets that are repairable and those that are irreparably damaged or rendered useless for earning income. Assets that are uneconomic to repair are generally included in the former category because they can be technically repairable. The consequence is that a taxpayer might face a significant unexpected tax liability when an insurance amount was received for the damaged asset.

To help overcome this problem, new section FP 14 provides for a deemed disposal and reacquisition of assets that are damaged by an emergency event and are assessed by the person receiving the insurance payout as uneconomic to repair. This better aligns their depreciation treatment with that of assets that have been irreparably damaged by an emergency event. Rollover relief is then available for those assets.

The asset is deemed to be reacquired for nil consideration on the same day as the deemed disposal (which is for the amount of insurance), meaning that any post-emergency event repairs to the damaged building are capitalised rather than being treated as deductible expenditure.

In some cases, it may take the taxpayer a while to reach a judgement that the asset is not economic to repair. The Finance and Expenditure Committee noted that Inland Revenue assured them they would act in a taxpayer friendly way should the timing of the deemed disposal result in interest and penalties.

Example 4: Asset uneconomic to repair

An asset has a cost of $5 million, accumulated depreciation deductions of $4 million, and an adjusted tax value of $1 million. It is damaged by an earthquake. The earthquake has been declared an emergency event through an Order in Council and new section FP 14 has been selected from the tax relief measures. The company that insures the asset decides it has an obligation under the insurance policy to pay out $10 million.

The owner makes the reasonable assessment that the asset is no longer fit for purpose and is uneconomic to repair. The insurance payout is sufficient to fund a replacement. The damaged asset is retained by the insured party and put to another, less productive, use.

New section FP 14 will apply in these circumstances. The damaged asset is treated as being disposed of for $10 million and reacquired for nil consideration on the date of the earthquake that caused the asset to be uneconomic to repair. Because the asset was treated as having been disposed of, the owner of the asset could apply the optional matching rule in new section FP 14 to smooth the timing of income calculated under section EE 48.

Under section EE 48, the result is:

- original cost – $5 million
- depreciation deductions – $4 million
- adjusted tax value – $1 million
- amount for disposal (consideration) – $10 million
- depreciation recovery income – $4 million
- capital gain – $5million.

Provided a replacement asset is acquired, rollover relief (under new sections FP 8 to FP 11) is available to the asset owner for the $4 million of depreciation recovery income.

Cap on depreciation recovery income

Any insurance proceeds that exceed the sum of the asset's adjusted tax value and expenditure on repairing the asset are taxable under section EE 52 of the ITA. As a result, the tax rules may end up taxing more than the amount of earlier depreciation deductions allowed for the asset. In the context of an emergency event, this means that some taxpayers may face significant unanticipated income tax liabilities in relation to damaged (but repairable) assets.

Accordingly, if activated, new section FP 15 limits depreciation recovery income to the amount of depreciation deductions previously taken when insurance proceeds are received for a repairable depreciable asset damaged by the relevant emergency event.

Example 5: Depreciation recovery income cap

An asset valued at $5 million is damaged by a flooding event but is repairable. The flooding event has been declared an emergency event and new section FP 15 has been selected as one of the tax relief measures.

The asset has an adjusted tax value of $1 million, with depreciation deductions of $4 million taken. Insurance proceeds of $7 million are received, with $1 million of the proceeds being spent on repairing the asset. Under section EE 52, the depreciation recovery income is $5 million. However, new section FP 15 caps the amount of depreciation recovery income at $4 million. The remaining $1 million is treated as a capital gain.

Property that is available for use

For an item of property to be depreciated for tax purposes, it must be used in a business or be available for use. However, it was not clear how this rule should be applied when access to depreciable property is temporarily restricted because of an emergency. New section FP 16, when activated as one of the emergency responses for a particular emergency event, addresses this issue by treating the item as being available for use during the period of restricted access. This is on the proviso that the asset was available for use immediately before the restriction was imposed. Depreciation could therefore be claimed.

Optional timing rule when damage results in disposal

New section FP 17 provides an optional rule to smooth the timing of income and deductions when insurance proceeds have been received for depreciable property that has been irreparably damaged or rendered useless for earning income because of an emergency event. The timing rule also applies to depreciable assets that are uneconomic to repair and to which new section FP 14 applies.

The optional rule applies to individual items of depreciable property, in line with the general approach under the depreciation rules. The new section provides that any income or deductions is recognised at the earlier of:

- the first income year in which:
    - the insurance receipt is, or has been, derived or able to be reasonably estimated, and
    - the cost of disposing of the item is, or has been, incurred or able to be reasonably estimated, and
    - the consideration from the disposal of the item is, or has been, derived or able to be reasonably estimated, or

- the income year that is five income years after the income year in which the emergency event first occurred.

Whether insurance proceeds and other amounts can be reasonably estimated is essentially a question of fact, which depends on the individual circumstances of each case.

New section FP 17 overrides the normal depreciation timing rules. The section could also be applied to assets depreciated in a pool. A person who opts to use the matching rule is required to use it for all their items of depreciable property that meet the criteria for applying the rule. This is to prevent taxpayers "cherry-picking" the assets to which they apply the rule. A taxpayer's election to use the matching rule is reflected in the tax position they take in their return of income for each tax year – no prior notice of election is required.

Example 6: Optional timing rule for disposal

Equipment originally costing $10,000 is irreparably damaged by a storm. The storm has been declared an emergency event and new section FP 17 has been selected as one of the tax relief measures.

The asset's tax book value is $7,000, with $3,000 of accumulated depreciation deductions. The disposal costs are reasonably estimated in the 2034–35 income year to be $1,000. The insurance proceeds received for the asset are reasonably estimated in the 2035–36 income year as being $9,000. The equipment has a scrap value of $100, which is reasonably estimated in 2034–35. Applying the new matching rule, any income or deductions are recognised in the 2035–36 income year because this is when all the insurance proceeds, disposal costs and disposal proceeds could be reasonably estimated. Accordingly, in the 2035–36 income year, new section FP 17 applies to determine the amount of depreciation recovery income or depreciation loss.

Optional timing rule when damage does not result in disposal

New section FP 18 introduces an optional rule to smooth the timing of income and deductions when insurance proceeds have been received for a depreciable asset that has been damaged in an emergency event, but the asset is repairable.

The rule is broadly similar to new section FP 17 in design except, in this case, the asset is economically repairable. Again, the owner needs to choose to apply the timing rule to all their depreciable assets that meet the requirements, including assets depreciated in a pool. The timing rule provides that any income or deductions are recognised at the earlier of:

- the first income year in which:
    - the insurance receipt is, or has been, derived or able to be reasonably estimated, and
    - the cost of repairing the asset is, or has been, incurred or able to be reasonably estimated, or
- the income year that is five income years after the income year in which the emergency event first occurred.

Example 7: Optional timing rule when no disposal

Machinery originally costing $100,000 is damaged by a flooding event. The flooding event has been declared an emergency event and new section FP 18 is one of the tax relief measures activated by Order in Council.

The asset's adjusted tax value is $60,000, with $40,000 of accumulated depreciation deductions. The insurance proceeds are estimated in 2032–33 as being $110,000. Repair costs are estimated in the 2034–35 income year to be $20,000, and $10,000 is actually incurred in each of the 2034–35 and 2035–36 income years.

Applying the matching rule, any income or deductions are recognised in the 2034–35 income year because this is when the insurance proceeds and total repair costs can reasonably be estimated. Accordingly, in the 2034–35 income year, sections CG 4 and EE 52 apply.

The repair costs are deductible under the general deductibility rules.

Section CG 4 treats $20,000 of the insurance proceeds as taxable because this is the amount of insurance proceeds that recovers deductible expenditure.

Section EE 52 requires the amount by which the insurance proceeds are more than the repair expenditure to be deducted from the adjusted tax value, as follows:

Adjusted tax value of $60,000 less ($110,000 – $20,000) = −$30,000

As the result is negative, the adjusted tax value is reduced to nil and depreciation recovery income under section EE 52 is $30,000.

Optional adjustment to assets under thin capitalisation rules

When activated, new section FP 19 provides an optional adjustment to how group assets are measured for the purposes of the thin capitalisation rules when assets have been damaged by an emergency event. The adjustment mitigates a timing problem that arises because insurance proceeds may be recognised for tax purposes at a later date than the damage caused by an emergency event.

The thin capitalisation rules are based on accounting measures of assets. For accounting purposes, damaged assets are immediately impaired or derecognised (that is, no longer considered an asset). In contrast, insurance proceeds cannot be recognised until they are reasonably expected.

New section FP 19 is designed to mitigate this timing difference by allowing certain taxpayers to carry back known insurance proceeds to the date on which an asset was impaired or derecognised as a result of damage caused by an emergency event. The amount that could be carried back is limited to the lesser of the amount of damage or the related insurance proceeds.

Without this option, a business could be temporarily disadvantaged in terms of how much debt they could carry on their balance sheet under the thin capitalisation rules, resulting in reduced interest deductions.

A person who chooses to use this option is required to notify the Commissioner and provide certain information.

Tax relief for employers' welfare contributions to employees

Generally, payments and benefits provided by an employer to an employee are taxable, either as monetary remuneration or by way of fringe benefit tax (FBT).

Following an emergency event, employers may make ex-gratia welfare contributions of cash or benefits to their flood-affected employees. The generic tax-relief measures include two measures that allow certain amounts and benefits to be exempt from income tax or FBT.

The exemptions can be applied to:

- accommodation
- "sundry" fringe benefits when the employer cannot reasonably estimate which employees received which benefits, and
- the first $5,000 of monetary remuneration and fringe benefits of the kind that the employer can reasonably be expected to know which employees received which benefits.

These measures are inter-linked. New section FP 20, in conjunction with new section CW 19B, provides that income (which can include accommodation benefits) derived by an employee from an employer is exempt income if it meets all the following requirements:

- it is provided by the employer for the purpose of relief of employees from the adverse effects of an emergency event
- it would otherwise be assessable income
- it is derived in the eight-week period beginning on the first day of the relevant emergency event
- it does not replace a PAYE income payment, that is, it is not paid in substitution for wages or salary
- it does not depend on the seniority of the employee
- if the employee is associated with the employer, it is also available to an unrelated full-time employee, and
- the employer treats the income as being exempt income of the employee.

Example 8: Payment of accommodation allowance

Klover Kiwifruit Ltd (KKL) has been adversely affected by a flood in the Northland area. Its kiwifruit orchard has been badly damaged. It is a family-owned business that has several long-serving staff (including some family members) who live in dwellings near the property. Those dwellings have been substantially damaged by the flooding and are not currently liveable.

Kevin Klover, the owner of KKL, tells staff to find alternative accommodation and advises that the company will provide the staff with an accommodation allowance until the staff can get back to some sense of normality after the impact of the flooding. KKL pays an accommodation allowance to its staff for eight weeks. All employees have the same entitlement and, therefore, it is not relevant that some payments were made to associated family members of Kevin.

The flooding event has been declared an emergency event and new section FP 20 has been selected from the tax relief measures and activated by Order in Council. Therefore, the staff (including the family members) could treat the accommodation allowance paid as exempt income because it meets the requirements of new section FP 20.

FBT exemption

Similarly, new section FP 21 provides that a benefit received by an employee from an employer is exempt from FBT if all the following requirements are met:

- it is for the purpose of relief of employees from the adverse effects of an emergency event
- it will otherwise be a fringe benefit
- it is received in the eight-week period beginning on the first day of the relevant emergency event
- it does not replace a PAYE income payment, that is, it is not paid in substitution for wages or salary
- it does not depend on the seniority of the employee
- if the employee is associated with the employer, it is also available to an unrelated full-time employee, and
- the employer treats the benefit as not being a fringe benefit.

If the employer can estimate the value of a benefit that an employee has received for an emergency event, the benefit is exempt from FBT to the extent that the $5,000 employee income exemption for the relevant emergency event under new section FP 14 was not used to exempt employee income.

Example 9: Specific benefit

Hannah is an employee of Harris Hardware Ltd (HHL), which is a hardware company based in Marlborough. Hannah is a keen cyclist and travels to work and most other places on her e-bike. She has access to a work ute during the day to allow her to fulfil delivery orders. No private use of the vehicle is permitted, and the vehicle is locked in a garage at HHL’s premises during the evenings and at weekends.

Hannah lives in a rural area that was hit hard by an earthquake. The earthquake has been declared an emergency event and new sections FP 20 and FP 21 have been selected from the tax relief measures.

Hannah's e-bike was damaged during the earthquake, so she is unable to get around. Carl, the owner of HHL, allows Hannah to use the work ute to travel to and from home as well as to assist her neighbours in the clean-up of their properties. This private use of the vehicle usually incurs FBT.

HHL also provided a cash payment of $500 to each of its staff that was paid as exempt income under new section FP 20.

HHL could treat the provision of the vehicle as exempt from FBT up to the value of $4,500 (the maximum aggregate amount of exempt cash and fringe benefits permitted is $5,000).

Projects of limited duration

New section FP 22 provides for a modified definition of "projects of limited duration" for projects related to a specific emergency event to recognise the extended timeframes that those rebuilding projects could take. If this measure is activated by Order in Council, the value provided, or expenditure incurred, by an employer on accommodation for employees working on those projects will be exempt income for the employees.

The provision then applies for the purposes of section CW 16B (Accommodation expenditure: out-of-town secondments and projects) when:

- the employment duties of an employee require them to work on a project of limited duration for rebuilding or recovery in areas affected by an emergency event, and
- the distant workplace is a workplace in the areas affected by the emergency event.

The usual three-year time limit in the definition of "project of limited duration" is then extended to five years.

Example 10: Extended time limit

Rory Roads Ltd (RRL) provides contracting services, primarily road building. They have a large plant based in Napier that services the area. They also have a plant based in Christchurch that services the South Island.

In May 2030, with the need to assist in rebuilding the roading infrastructure in the Napier area following a major earthquake, the owner of RRL asks 20 of the Christchurch crew to relocate to Napier to assist with the work for the foreseeable future. The earthquake has been declared an emergency event and new section FP 22 has been selected as one of the tax relief measures.

Rory provides those employees with accommodation in Napier for the duration of the project, which is expected to be four to five years. The exemption in new section FP 22 applies to treat the provision of that accommodation as exempt income (subject to the other criteria in section CW 16B being satisfied).

Biosecurity emergency event tax relief

New section FP 23 enables the taxable income arising when breeding stock need to be culled in response to a qualifying biosecurity emergency event to be spread over six income years following a biosecurity emergency event, provided the stock is intended to be replaced.

Background

Some farmers may have significant unexpected taxable income through their herds being culled following a primary sector and government decision to eradicate or manage a biosecurity event in New Zealand. The income arises through the stock being sold or compensation being paid, or a combination of both.

The issue arises for farmers who have used a cost-based method (that is, national standard cost (NSC) or the self-assessed cost scheme/cost price method) to value their breeding stock on hand for tax purposes. This is because the difference between the total proceeds received from the cull and the cost of the stock would be income. This creates a cash-flow issue for those farmers who purchase replacement livestock after the cull. The replacement stock would be valued at its purchase price and could not, for tax purposes, be immediately written down to the homebred cost to offset the income.

To avoid this outcome, new section FP 23, if activated by Order in Council, enables the proceeds from the cull to be transferred from the year of the cull and to be spread evenly over the following six income years following the first occurrence of an emergency event. This ability to spread is optional.

Key features

The income could only be spread if:

- A person had, as part of their business, livestock of a type covered by the relevant Order in Council on hand at the start of the income year in which the culling of stock took place that they use for breeding and those stock were valued under either NSC or the cost price method at the end of the income year before the cull year. The focus on mixed-age breeding stock is to ensure that the spread is provided to those who have sizeable additional income as a result of the cull given that female breeding stock make up a high proportion of a standard herd. (Breeding stock includes not only mature female animals but also immature female stock intended for future breeding in the business, as well as any male animals used in breeding.)
- In the cull year, some or all the person's animals of that type of livestock needed to be destroyed because of the biosecurity emergency event, using the powers in either section 121 or 122 of the Biosecurity Act 1993. Those provisions enable Biosecurity New Zealand to examine organisms and give directions. Normally the whole herd is destroyed, but in some isolated cases only a portion needs to be destroyed.

- The person expects to have replaced a significant portion of the culled stock by the end of the income year following the cull year. (The expectation is that the culled livestock are replaced with purchased stock.)
- The replacement stock continues to be valued using, as relevant, NSC or the cost price method. This is to ensure that farmers cannot enter the herd scheme on more advantageous terms than those not affected by the biosecurity emergency event.

Given that a livestock owner might use a couple of valuation methods in combination, not all the breeding stock might be valued at cost. However, only the income derived from the culling of the breeding stock valued under NSC or the cost price method could be spread. The income equalisation scheme may be able to be used to mitigate the income implications of the cull for the income arising from the culling of stock valued under another valuation method or stock culled from a fattening stock business valued under NSC.

Owners of the affected livestock, including sharemilkers, are covered, that is, the ability to spread income from the cull is not limited to just the owners of farmland with livestock.

The qualifying proceeds from the cull comprise payments from the slaughterhouse, top-up compensation from the Government for the difference between the normal market value for the stock and the payments from the slaughterhouse, and, in some cases, further compensation to cover the additional cost of purchasing equivalent replacement stock.

The Order in Council enacting the provision will indicate the types and classes of livestock for which the spread is available for the specific biosecurity emergency event. The types of livestock will be selected from those listed in schedule 17 of the ITA. Although that schedule lists cattle (beef and dairy), deer, goats, pigs and sheep, the nature of the future emergency event will determine which of these types will be selected. Most likely, an Order will focus on cattle, sheep or deer, or a combination of these. The Mycoplasma bovis outbreak, for example, impacted cattle.

The livestock owner will need to indicate which type(s) of livestock their election covered and apply it separately for each type of livestock impacted by the cull. The spreadable amount will be calculated for each type and class of breeding animal using the formulae in new sections FP 24 and FP 25.

For each type of livestock, the formula basically multiples the number of breeding stock for the relevant class that are valued under either NSC or the cost price method by the total proceeds received for the stock in that class and divides it by the number of culled stock for that class. For an example of how this formula applied in the Mycoplasma bovis outbreak, see: Special report: Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021.

If this option is used, the maximum amount that could be deposited in the taxpayer's main income equalisation scheme account is reduced in accordance with the amendments to sections EZ 80 and EZ 81 of the ITA.

New section FP 26 sets out the Order in Council making power specifying one or more types or classes of livestock set out in schedule 17 of the ITA to which sections FP 23 to FP 25 apply for a specific emergency event.

Relevant current legislation

The livestock valuation rules are contained in subpart EC of the ITA, including the requirements that apply when using multiple valuation options and the restrictions on switching between valuation options. These rules ensure that the cost of stock on hand is valued appropriately and that the cost of purchases is not deducted ahead of their being sold.

Emergency event relief: Turning off bright-line and other timing tests

New section FP 27 ensures that the bright-line and other land-based timing tests in the ITA do not apply to a person who has had their land purchased by the Crown or a local authority following an emergency event.

The ITA contains a set of time-based tests that, if not met, result in any gain or loss on disposal of the property being either taxable or deductible. The most well-known test is the "bright-line". The bright-line test taxes property sold on or after 1 July 2024 if it is sold within two years of acquisition. There are also a series of 10-year tests for land dealers, developers and associated parties.

Normally the various time-based tests should potentially apply when there is a compensatory buy-out. However, also under normal circumstances, the owner could decide to hold on to the property for more than the minimum period to avoid the tax implications. However, the owner has, in effect, little option other than to sell when offered a compensatory buy-out (such as from the Crown or local authority) on a property that has been designated as unsafe for habitation because of an emergency event.

New section FP 27 turns off the bright-line and other timing tests so the buy-out means that not only are there no gains but also no losses for tax purposes.

New section FP 27 ensures that the timing tests are turned off regardless of the legislative vehicle used to make the buy-out offers, provided that the disposal is as a result of an emergency event.

Crypto-Asset Reporting Framework

Crypto-Asset Reporting Framework

Sections 3(1), 89C(lba), 94A(1), 94E, 142L, 142M, 143(2C), 185E(6), 185U, and 226E of the Tax Administration Act 1994

Summary of amendments

The amendments give legislative effect in New Zealand to the *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* (CARF) developed by the Organisation for Economic Co-operation and Development (OECD).

Effective date

The amendments take effect on 1 April 2026. On this timeframe:

- New Zealand-based reporting crypto-asset service providers will be required to collect information on the transactions of reportable users that operate through them from 1 April 2026.
- These reporting crypto-asset service providers will need to report this information to Inland Revenue by 30 June 2027, and Inland Revenue will exchange this information with other tax authorities (to the extent it relates to reportable users resident in that other jurisdiction) by 30 September 2027.

Background

The CARF provides for the collection and automatic exchange of information on crypto-assets. The CARF requires reporting crypto-asset service providers (RCASPs) to provide tax authorities with information on crypto-asset transactions for its reportable users. This information is then exchanged between tax authorities that have implemented the rules.

The material in this Act commentary item explains New Zealand's proposed implementation of the CARF. It does not provide comprehensive analysis of the rules themselves. The rules themselves, including associated commentary and guidance, are available on the OECD's website. Further information on where this material can be accessed is included at the end of this item.

Crypto-assets are digital representations of value that can be transferred, stored or traded electronically. Instead of relying on a financial institution to verify transactions, crypto-asset transactions are confirmed by computers operating on the crypto-assets network. This is known as distributed ledger technology and blockchain is a form of this technology.

Since the introduction of Bitcoin in 2009, the market for crypto-assets worldwide has experienced fast growth and development. There are currently more than 22,000 crypto-assets with a market capitalisation of almost NZ$4 trillion. The technological innovations brought about by the growth of crypto-assets and blockchain technology has also led to the development of new products, such as decentralised finance, non-fungible tokens, and the growth of the metaverse. Between 6% to 10% of New Zealanders own some crypto-currency according to three different online surveys that were conducted in 2022.[7] Inland Revenue analytics show that 80% of crypto-asset activity by New Zealanders is undertaken through offshore exchanges.

The rapid growth of crypto-assets has also led to the development of new investment products and payment practices. The characteristics of the technology that underlies crypto-assets, cryptography, poses unique challenges for tax administrations from a tax compliance perspective. The crypto-assets that utilise this technology can be stored and transferred in a decentralised manner, without reliance on traditional intermediaries. This has given rise to a new set of intermediaries, such as crypto-asset exchanges and wallet providers, that are currently subject to little regulatory oversight. In many cases, the intermediary will be located in a different jurisdiction to its users, and it is difficult for tax authorities to obtain information about their tax residents if this information is held offshore.

This development means that tax authorities do not have visibility over income derived through crypto-assets like they do with income generated through more traditional sources. Inland Revenue receives regular income information from employers and investment income payers. For employees, Inland Revenue receives income information from employers on a regular basis. For those with investment income, Inland Revenue receives information from companies, banks, and other investment vehicles on a regular basis. Inland Revenue relies on this information to administer the tax system. This information is used to make sure that taxpayers are paying the right amount of tax and are receiving correct entitlements under social policy schemes.

On an international stage, there has been increased impetus to ensure that tax authorities retain visibility over income or investment earning opportunities that are facilitated for individuals through large-scale intermediaries. For example, the OECD developed the Common Reporting Standard (CRS), which already imposes information gathering and reporting obligations on financial institutions in relation to financial account information about people and entities investing outside their tax residence jurisdiction. More recently, the OECD has developed rules for the platform economy to ensure tax authorities have visibility over income that taxpayers earn through their activities on digital platforms (such as ride-sharing and short-stay accommodation). The platform economy reporting rules took effect in New Zealand on 1 January 2024.

[7] Financial Markets Authority, *2022 Investor Confidence Survey*. Survey conducted March and April 2022.
Financial Services Council, *Money and You* research report. Survey conducted January 2022.
Finder Cryptocurrency adoption index, August 2022.

Against this background, the OECD has developed the CARF, which is available for jurisdictions to implement. This OECD standard provides a standardised framework for the automatic exchange of tax-relevant information on crypto-assets. It makes changes to the CRS to ensure that crypto-related assets held through traditional financial intermediaries are subject to reporting. It also includes other minor technical amendments to improve the usability of the CRS.

The changes related to the CRS are covered in Amendments to Common Reporting Standards below.

All legislative references in this commentary item are to the Tax Administration Act 1994 (TAA) unless otherwise stated.

Key features

The key features of the amendments include:

- incorporating the CARF into the TAA
- changes to the TAA necessary to support the interpretation and implementation of the CARF in New Zealand
- requiring RCASPs (and crypto-asset users) to comply with the requirements set out in the CARF, including self-certification procedures, due diligence requirements, reporting and record keeping
- new civil penalties that will apply if RCASPs and crypto-asset users do not comply with their obligations under the CARF
- a regulation-making power that will enable the Governor-General to make Orders in Council that block the effect of future changes to the CARF if necessary, and
- New Zealand will enable domestic reporting under the CARF to ensure that New Zealand RCASPs report information in respect of New Zealand residents.

Detailed analysis

Key terms

To help give effect to the CARF in New Zealand, a definition of "crypto-asset reporting framework" is included in section 3(1) of the TAA. This definition refers to Part I of the CARF document. A wider definition of "CARF document" is also included in section 3(1) and this definition refers to the OECD publication in its entirety, which also includes the amendments to the Common Reporting Standard. The CARF itself is set out in Part I of the CARF document.

New section 185U(1) also provides that any terms used in the TAA that relate to the CARF have the same meanings as they have in the CARF. This ensures that New Zealand's law remains consistent with the CARF, even though the CARF is incorporated by reference.

For the avoidance of doubt, it is noted that other Inland Revenue Acts currently contain definitions for "cryptoasset" and "cryptocurrency" (see section 2(1) of the Goods and Services Tax Act 1985 and section YA 1 of the Income Tax Act 2007 (ITA)) that, although broadly similar, differ slightly to the OECD CARF definitions. The definitions in those Acts continue to apply for the purposes of those Acts.

Although new section 185U(1) makes it clear that the OECD terms apply for the purposes of the TAA, this is subject to the proviso "unless the context otherwise requires". The intention here is that any defined term that is subsequently added to the TAA that conflicts with a term in the CARF can take on a separate meaning for the purposes of interpreting other provisions. However, the definitions set out in the CARF take precedence for any provisions in the TAA that pertain to New Zealand's implementation of the CARF.

Key terms defined in CARF

Although the following terms are not defined directly in New Zealand legislation, they are terms that are defined in the CARF that are useful context to include in this commentary item.

A **"reporting crypto-asset service provider"** means any individual or entity that, as a business, provides a service effectuating exchange transactions for or on behalf of customers, including by acting as a counterparty, or as an intermediary, to such exchange transactions, or by making available a trading platform.

The term **"relevant crypto-asset"** means any crypto-asset that is not a Central Bank digital currency, a specified electronic money product or any crypto-asset for which the reporting crypto-asset service provider has adequately determined that it cannot be used for payment or investment purposes.

The term **"exchange transaction"** means any:

- exchange between relevant crypto-assets and fiat currencies, and
- exchange between one or more forms of relevant crypto-assets.

The term **"crypto-asset user"** means an individual or entity that is a customer of a reporting crypto-asset service provider for purposes of carrying out relevant transactions. An individual or entity, other than a financial institution or a reporting crypto-asset service provider, acting as a crypto-asset user for the benefit or account of another individual or entity as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as a crypto-asset user, and such other individual or entity is treated as the crypto-asset user. When a reporting crypto-asset service provider provides a service effectuating reportable retail payment transactions for or on behalf of a merchant, the reporting crypto-asset service provider must also treat the customer that is the counterparty to the merchant for such reportable retail payment transaction as the crypto-asset user with respect to such reportable retail payment transaction, provided that the reporting crypto-asset service provider is required to verify the identity of such customer by virtue of the reportable retail payment transaction pursuant to domestic anti-money laundering rules.

The term **"reportable user"** means a crypto-asset user that is a reportable person.

The term **"excluded person"** means (a) an entity the stock of which is regularly traded on one or more established securities markets; (b) any entity that is a related entity of an entity described in clause (a); (c) a governmental entity; (d) an international organisation; (e) a Central Bank; or (f) a financial institution other than an investment entity described in Section IV E(5)(b).

These terms are correct at date of publication. These terms are far from exhaustive. Please refer to the CARF itself for the rules and defined terms.

Overview

In summary, the new rules affect:

- reportable users that operate through RCASPs and transact in relevant crypto-assets, and
- RCASPs that facilitate exchange transactions on behalf of reportable users.

Under the CARF, RCASPs must collect and report personal information (such as the name, address, date of birth and tax identification number) for all its reportable users, along with aggregate level data on all relevant crypto-asset transactions in relation to each reportable user. This data includes information on crypto-to-crypto transactions, crypto-to-fiat transactions and transfers of relevant crypto-assets (such as to a wallet address). RCASPs must also carry out due diligence procedures and obtain valid self-certification from crypto-asset users to determine whether they are a reportable user (by verifying their identity and tax jurisdiction).

An RCASP is required to report crypto-asset transaction information on its users to Inland Revenue. To the extent this information relates to New Zealand tax residents, Inland Revenue will use it for tax administration and compliance purposes, such as ensuring that New Zealanders pay the correct amount of tax on their crypto-asset income. When information relates to non-resident users, Inland Revenue will share this information with the relevant tax authority of the non-resident user, who could also use the information for tax administration purposes.

Although the CARF rules do not enable domestic reporting as a default setting, New Zealand will enable domestic reporting under the CARF to ensure that New Zealand RCASPs report information in respect of New Zealand residents. This will be achieved by adding New Zealand to the list Inland

Revenue will maintain of "reportable jurisdictions" under the CARF. This list will be made publicly available ahead of the 1 April 2026 commencement date for the CARF in New Zealand.

Example 11: Basic operation of CARF in New Zealand

Jacob (a New Zealand tax resident) and Kelvin (a non-resident for tax purposes) operate through a New Zealand-based crypto-asset exchange called Bit-Trade to buy and sell crypto-assets.

Under the amendments to implement the CARF in New Zealand, Bit-Trade is an RCASP and must collect identifying information from Jacob and Kelvin and provide this, along with data on all relevant crypto-asset transactions for the pair, to Inland Revenue.

Inland Revenue:

- Can use the information it receives from Bit-Trade about Jacob for tax administration purposes (such as ensuring that Jacob has returned the correct amount of tax on any profit he has made from his crypto-asset trading activity).
- Must share the information it receives about Kelvin with the tax authority in the jurisdiction in which Kelvin is a tax resident. Kelvin's tax authority could then use this information for tax administration purposes.

Example 12: Information to be reported under CARF

Ben (a New Zealand resident) buys and sells bitcoin through a New Zealand crypto-asset exchange, "KraymondCoin".

Ben loads New Zealand dollars onto his exchange account at KraymondCoin and purchases 0.1 Bitcoin (BTC) for $10,000 (including a $30 transaction fee).

BTC goes up in value and, three months later, Ben decides to sell half of the BTC he has purchased. Ben sells 0.05 BTC for $6,000 and receives $5,980 after the exchange transaction fee is deducted.

BTC continues to rise and Ben worries that he is missing out. Two weeks later, Ben decides to purchase more, this time paying $12,000 for 0.075 BTC (including a $40 transaction fee).

Three weeks later, Ben sells 0.1 BTC for $18,000 (out of which he pays a $60 transaction fee).

Ben's acquisitions and disposals of BTC through KraymondCoin can be summarised as follows:

Acquisitions of BTC	Disposals of BTC
0.1 BTC = NZ$9,970	0.05 BTC = NZ$5,980
0.075 BTC = NZ$11,960	0.1 BTC = NZ$17,940
Aggregate acquisition: 0.175 BTC = NZ$21,930	**Aggregate disposal:** 0.15 BTC = NZ$23,920

The XML schema prescribes the format of reporting line items. However, at a high level, KraymondCoin is required to report the following aggregate information to Inland Revenue in respect of Ben's transactions under the CARF:

	Gross amount paid/received	Aggregate number of units	Number of relevant transactions
Acquisitions of BTC	NZ$21,930	0.175 BTC	2 acquisition transactions
Disposals of BTC	NZ$23,920	0.15 BTC	2 disposal transactions

New section 185U(4)(d) requires that the information that relates to a tax year is reported to Inland Revenue within three months of the end of that tax year. The reporting period is for the 1 April to 31 March tax year, so information must be reported to Inland Revenue by 30 June following the tax year to which it relates.

Penalties are also applied to RCASPs and crypto-asset users that do not comply with their obligations under the CARF. These penalties are covered later in this commentary item.

Implementing CARF in New Zealand

The CARF will be incorporated into New Zealand law by reference instead of full transposition. This is consistent with how other international information-sharing initiatives have been implemented in New Zealand.

Part 11B of the TAA contains provisions related to international-sharing agreements. This is made clear by section 185E, which states that the purpose of this Part is to give effect to and implement foreign account information-sharing agreements.

In light of this, new section 185E(6) provides that new section 185U imposes requirements on a person in relation to the CARF, thus giving effect to the CARF in New Zealand.

Automatic flow-through of changes made to CARF

A key feature of the amendments is that any changes made at the OECD level to the CARF will automatically flow through into New Zealand law unless explicitly blocked by an Order in Council made by the Governor-General on recommendation of the Minister of Revenue. This is set out in section 226E and is covered later in this commentary item.

Implementation and administration of CARF

New section 185U contains various provisions that are necessary to support the interpretation, administration, and implementation of the CARF in New Zealand.

New section 185U(2) provides that an RCASP must comply with the requirements of the CARF.

New section 185U(3) provides that a crypto-asset user must provide information to a person (such as an RCASP) if that information is necessary for that person to comply with the requirements of the CARF.

It is noted that, under the CARF, an RCASP is subject to the rules and has a reporting obligation in a jurisdiction if they satisfy any of the reporting nexus requirements (for example, being tax resident in a jurisdiction or having a regular place of business in that jurisdiction).

In circumstances when an RCASP has a reporting nexus to more than one jurisdiction, there is a hierarchy of nexus rules to enable the RCASP to determine in which jurisdiction they have the reporting obligation and to avoid double reporting. Because these rules are incorporated by way of reference to the OECD standard in New Zealand law, RCASPs should refer to the OECD CARF document itself to determine the relevant reporting obligation.

Example 13: Application of CARF in New Zealand

Crypto-ex is a large crypto-asset service provider that is headquartered and tax resident in the EU. Crypto-ex also has a regular place of business in New Zealand that deals with onboarding New Zealand customers and providing these customers with technical assistance when necessary.

Although Crypto-ex has a reporting nexus to New Zealand by virtue of having a place of business in New Zealand, it does not have a reporting obligation in New Zealand. This is because it is tax resident in the EU and, under the hierarchy of nexus rules in the CARF, tax residency in a jurisdiction is considered a higher nexus when determining in which jurisdiction the RCASP has a reporting obligation.

Crypto-ex therefore has a reporting obligation in the EU. This means the reporting requirements and due diligence procedures will be completed by Crypto-ex in the EU. The EU will exchange information with New Zealand to the extent it relates to New Zealand residents operating through Crypto-ex.

As previously mentioned, new section 185U(1) provides that, for the purposes of the TAA, terms used in the TAA that relate to the CARF have the same meanings as they have in the CARF.

New section 185U(4) further clarifies how certain provisions in the CARF apply in New Zealand. It specifies that:

- references to “jurisdiction” in the CARF are to be taken as references to New Zealand, unless the context requires otherwise (paragraph (a))
- the “effective date” for the CARF in New Zealand is 1 April 2026 (paragraph (b))
- the “reporting period” is a tax year, which is 1 April to 31 March (paragraph (c))

- the information subject to the reporting requirements under the CARF must be reported by the RCASP to Inland Revenue within three months of the end of the tax year to which the information relates (paragraph (d)).

New section 185U(4) also contains provisions related to record keeping and self-certification, which will be discussed below.

Record-keeping requirements

New section 185U(4)(e) requires RCASPs to retain records of all documentation and data obtained under the CARF for a period of at least seven years after the end of the tax year to which the information relates.

Standard Practice Statement SPS 21/02 *Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori* applies to customers who are required to keep records under the Inland Revenue Acts. It is intended that RCASPs must therefore keep records in accordance with SPS 21/02. This means that these records must be kept in New Zealand and in English or te reo Māori unless the RCASP has approval from the Commissioner of Inland Revenue to store records outside New Zealand or in another language.

Due diligence procedures

An RCASP must conduct due diligence procedures for the purposes of determining whether a crypto-asset user is a reportable user. For these purposes, the RCASP must obtain valid self-certification from all crypto-asset users operating through it.

A self-certification contains identifying information about the user, including their tax residency, and must be signed or otherwise positively affirmed by the crypto-asset user to be valid.

For pre-existing crypto-asset users that are already operating through the RCASP prior to the implementation of the rules in New Zealand (ie, before 1 April 2026), the RCASP must obtain valid self-certification within a 12-month period following the effective date for the rules. New section 185U(3)(f) provides that the relevant date for the definition of "preexisting individual crypto-asset user" is 31 March 2026. Similarly, 31 March 2026 is the relevant date for the definition of "preexisting entity crypto-asset user" in new section 185U(3)(g). The effect of this is that the RCASP has a 12-month period until 31 March 2027 to obtain a valid self-certification in respect of pre-existing users (users who had an account with the RCASP prior to New Zealand's rules taking effect on 1 April 2026).

When establishing a relationship with a crypto-asset user who has not previously transacted through the RCASP (ie, a new user rather than a pre-existing user), the expectation is that the

RCASP obtains valid self-certification when the user signs up to the platform and before facilitating exchange transactions on behalf of that user.

An RCASP that does not adhere to the self-certification requirements will be subject to New Zealand's penalty provisions. Similarly, a crypto-asset user that fails to provide an RCASP with the information necessary for the RCASP to comply with its obligations under the CARF will also be subject to penalties. The penalty regime is discussed later in this commentary item.

Form, due date and use of information under CARF

The CARF requires RCASPs to provide information to tax authorities in accordance with the relevant XML schema. This ensures that the data tax authorities receive will be in a standardised format that is capable of being exchanged between tax authorities.

RCASPs that have a reporting requirement in New Zealand are required to provide information in respect of reportable users operating through them to Inland Revenue by 30 June each year (within three months following the end of the New Zealand tax year on 31 March). This reporting date is set by reference to the CARF and new section 185U(4)(d)).

This information is then exchanged by Inland Revenue with other foreign jurisdictions to the extent it relates to users resident in that jurisdiction. Under this exchange, Inland Revenue also receives information from other jurisdictions that have implemented the CARF in relation to New Zealand resident users operating through RCASPs in those jurisdictions.

Inland Revenue will use the information it receives under the CARF (and from foreign tax authorities) for tax administration purposes. This includes ensuring that crypto-asset users returned the correct amount of tax on their crypto-asset income.

Enforcement and penalties

Jurisdictions that implement the CARF are required to implement effective enforcement provisions to address any non-compliance by:

- RCASPs with reporting obligations, and
- crypto-asset users who operate through RCASPs.

The Act makes new civil penalties in the TAA that could apply to RCASPs and crypto-asset users that fail to comply with their obligations under the CARF. The penalties are based on the penalties introduced to the TAA when the CRS and platform economy rules were implemented in New Zealand.

The definition of "civil penalty" in section 3(1) is amended to include references to the new penalty provisions for RCASPs (new section 142L) and crypto-asset users (new section 142M). This ensures that late payment penalties and use of money interest apply when penalties have been assessed if they have not been paid by the due date.

Consistent with the penalty provisions for CRS and the platform economy, the civil penalties under the CARF are also discretionary and must be assessed by the Commissioner before they become payable. New section 94E(1) provides that the Commissioner may make an assessment of the amount of a penalty under new sections 142L and 142M (the new penalty provisions) that, in the Commissioner's opinion, ought to be imposed. However, this discretion is tempered by new section 94E(2), which provides that the section does not apply to the extent to which a person establishes in proceedings challenging the assessment that the assessment is excessive or that they are not chargeable with the penalty.

The Commissioner can make an assessment of a penalty under new sections 142L and 142M without the need to issue a notice of proposed adjustment (NOPA), see amended section 89C(lba).

New sections 142L(6) (for RCASPs) and 142M(2) (for crypto-asset users) provide that any penalty assessed by the Commissioner under those sections becomes payable on the later of:

- 30 days after the date on which the Commissioner makes the assessment for the penalty, and
- the date set out by the Commissioner in the notice of assessment for the penalty as being the due date for payment of the penalty.

Penalties when RCASPs fail to comply

New section 142L(1) provides that the section applies when an RCASP does not comply with the requirements they have in New Zealand under new section 185U. This means that an RCASP can be liable for penalties if they do not comply with their obligations under the CARF.

Under new section142L(2), an RCASP is liable for a penalty of $300 for each occasion that they do not comply with the requirements of the CARF. This is capped at a maximum of $10,000 per tax year under new section 142L(5)(a). RCASPs are not be liable if their non-compliance is due to circumstances outside their control, see new section142L(3). However, they are still liable for this penalty if a crypto-asset user has not provided them with a valid self-certification as required by the CARF, even if this is beyond their control.

An RCASP that does not obtain valid self-certification is still liable for penalties under new section 142L(3) on the basis that the OECD guidance requires jurisdictions to have strong measures in place to ensure valid self-certifications are obtained. Self-certification is an important component of the CARF that is used to verify the identity and tax residence of crypto-asset users and to therefore determine whether they are a reportable user under the CARF. The obligation to obtain valid self-certification from a crypto-asset user sits with the RCASP under the CARF. However, this penalty will not apply to an RCASP that prevents a crypto-asset user from transacting via the RCASP if they have not provided valid self-certification in accordance with the CARF.

New section 142L(4) sets out penalties that may be applied in circumstances when an RCASP does not take reasonable care to comply with the requirements of the CARF and no penalties have been imposed under new section 142L(2). In these circumstances, the Commissioner can assess penalties payable on each occasion the RCASP is identified as having failed to take reasonable care to meet a requirement of the CARF. On the first occasion, the Commissioner can assess a penalty of $20,000. On subsequent occasions, the Commissioner can assess a penalty of $40,000. The total amount of penalties that can be assessed for a tax year will be $100,000 under new section 142L(5)(b).

Example 14: Penalties for RCASPs

Inland Revenue anticipates receiving information from a New Zealand-based RCASP in respect of reportable users operating through it. Inland Revenue does not receive this information by 30 June (three months from the end of the tax year). Inland Revenue writes to the New Zealand-based RCASP and asks when to expect the information.

The RCASP responds stating that they refuse to comply with their obligations under the CARF.

On this occasion, the Commissioner imposes a $20,000 penalty under new section 142L(4).

Following the imposition of the penalty, the New Zealand-based RCASP starts to adhere to the reporting requirements and provides Inland Revenue with the relevant aggregate transaction information for its reportable users as required by the CARF.

Despite now providing information as required, Inland Revenue notices that the RCASP only obtains valid self-certifications from some of its users. Inland Revenue imposes multiple $300 penalties under new section 142L(2) for each occasion that the RCASP does not comply, quickly hitting the $10,000 cap in new section 142L(5). Inland Revenue also writes to the RCASP advising them of the self-certification requirements under the CARF. The RCASP responds, stating that the self-certification requirements are not a priority for them, and it continues to not obtain valid self-certification from crypto-asset users.

On this occasion, the Commissioner imposes a $40,000 penalty under new section 142L(4).

As the above example demonstrates, penalties under section 142L(2) are intended to apply for more minor breaches under the CARF. Penalties levied under section 142L(4) apply at a much higher standard, and will only be levied when the RCASP does not take reasonable care to comply with their obligations. Notwithstanding the above, all penalties are discretionary. Inland Revenue intends to take a light touch approach to penalties in the first instance, and aims to work with RCASPs to ensure compliance with the rules.

Example 15: Penalties for RCASPs

Kryptotrade is a New Zealand-based RCASP that reports to Inland Revenue under the CARF. In the information provided to Inland Revenue, several datapoints are missing for a small number of users. In this particular case, the data is missing the aggregate market value of transactions for two crypto-asset users for all their relevant crypto-asset transactions. These datapoints have been included for all Kryptotrade's other users.

Although this amounts to non-compliance with the requirements under the CARF, Inland Revenue decides not to issue any penalties to Kryptotrade in the first instance and writes to them outlining that this information is missing and must be provided under the CARF. Inland Revenue requests that this information is provided within 10 working days of the letter.

Kryptotrade does not respond to this request. Inland Revenue issues Kryptotrade with two $300 penalties under section 142L(2).

Penalties when crypto-asset users fail to comply

A crypto-asset user is liable for a penalty of $1,000 under new section 142M for a failure to provide information to a person (for example, to an RCASP) if the information is necessary for the person to comply with the requirements of the CARF in relation to the crypto-asset user or related person.

Example 16: Penalties for crypto-asset users

Simon is a crypto-asset user who buys and sells crypto-assets through a New Zealand-based RCASP. Simon has been a customer of the RCASP since 2019 and is a pre-existing individual crypto-asset user under the CARF. Simon is a non-resident for tax purposes in New Zealand.

As Simon is a pre-existing user, the RCASP must obtain valid self-certification from Simon by 1 April 2027 (ie, by 12 months after the effective date of the CARF in New Zealand).

For the RCASP to obtain valid self-certification from Simon, Simon must provide the RCASP with personal information about himself, including his jurisdiction of residence for tax purposes, and ensure that his self-certification is signed or positively affirmed by him.

Simon does not provide this information because he knows that it could result in information about his crypto-asset transactions being shared with his tax authority.

Under new section 142M, the Commissioner can assess a penalty of $1,000 against Simon.

Absolute liability and strict liability offences will not apply

Section 143(2C) is amended to include a reference to the CARF. This ensures no person may be convicted of an absolute or strict liability offence for not complying with a requirement under the CARF.

Regulations related to CARF

Section 226E contains a regulation-making power that enables the Governor-General to make Orders in Council that provide for the effect or lack of effect of a change to the CRS, the time period to which such changes may apply, and how that effect may apply to a person or group of persons.

Section 226E is amended to include reference to the CARF.

As a default position, changes made to the CARF by the OECD will take effect in New Zealand without the need for regulation or legislative change to incorporate the effect of those changes in New Zealand. This is intended to ensure that New Zealand's rules are equivalent with other OECD member countries that have also implemented the rules.

The purpose of the amendment to section 226E is to provide a mechanism to block changes from having effect in New Zealand that may be inappropriate. This could include, for example, changes that are optional and that the Government decides should not have legislative effect.

Detailed guidance on CARF

The purpose of this Act commentary item is to focus on the specific amendments to New Zealand's tax laws to give effect to the OECD CARF.

The CARF itself is available on OECD's website at *https://web-archive.oecd.org/temp/2023-11-10/642426-crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm*

Amendments to Common Reporting Standard

Amendments to Common Reporting Standard

Sections 3(1), 185N(7) and (12), and schedule 2 of the Tax Administration Act 1994

Summary of amendments

The Act gives effect to a number of amendments to the Common Reporting Standard (CRS) that were adopted by the Organisation for Economic Co-operation and Development (OECD) Council in June 2023. The amendments support the Crypto-Asset Reporting Framework (CARF) (outlined above) and also make several minor technical changes to improve the usability of the CRS. The Act also includes several consequential amendments that are necessary to implement the CRS amendments.

Effective date

The amendments to the CRS take effect on 1 April 2026.

The first year for which reports under the amended CRS are required is the 2026–27 tax year, and these are due in 2027.

Background

The OECD and G20 developed the CRS for automatic exchange of information (often referred to as "AEOI") to improve tax transparency and combat tax evasion. The CRS is the global framework for the collection, reporting and exchange of financial account information between tax authorities about persons that invest outside their jurisdiction of tax residence. The CRS requires in-scope financial institutions to meet specified due diligence and reporting requirements about non-resident account holders and controlling persons. An in-scope financial institution reports the specified account information to its domestic tax authority, and the authority then shares the information with the tax authority in the account holder's or the controlling person's jurisdiction of tax residence under the CRS.

These amendments to the CRS follow the first comprehensive review of the CRS and have been released together with the CARF. The amendments comprise changes to both the CRS Rules and Commentary and result in changes to the supporting XML schema.

New Zealand implemented AEOI and the CRS[8] in 2017. The approach adopted was to incorporate the CRS into the Tax Administration Act 1994 (TAA) by reference to the OECD standard, subject to

[8] See the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017.

modifications for New Zealand purposes. This approach reduces the risk of inadvertent differences between domestic legislation and the CRS and broadly enables amendments to flow into New Zealand law. As a result, only minimal changes are required to New Zealand legislation to give effect to the amendments to the CRS and to provide for New Zealand's specific requirements.

To support these amendments, Inland Revenue's guidance will be updated to set out the amended CRS obligations.

Key Features

The CARF and the CRS are separate, complementary, frameworks. The amendments to the CRS ensure a smooth interaction between the CRS and the CARF. The amendments also incorporate several minor or technical amendments to improve the CRS.

The key amendments to the CRS:

- include new digital financial products that are alternatives to holding money or financial assets in an account that is currently subject to CRS reporting
- change the definition of financial asset to include derivatives referencing crypto-assets and the definition of investment entity to include those investing in crypto-assets
- introduce stronger due diligence procedures and more detailed reporting requirements to include contextual information about the account holders, controlling persons, and the financial accounts they own, and
- exclude capital contribution accounts intended for the incorporation of a new company or a pending capital increase.

For New Zealand purposes, the amendments are incorporated in New Zealand law automatically by section 185O of the TAA. The new definition of "CARF document" in section 3(1) of the TAA confirms the application of the CARF and the 2023 update to the CRS. This Act sets the effective dates for the amendments to the CRS and makes other changes to ensure its implementation in New Zealand.

Detailed analysis

New digital financial products

Electronic money products and central bank digital currencies are functionally similar to a traditional bank account and may therefore entail tax compliance concerns similar to those associated with bank accounts currently covered by the CRS.

The defined terms under Section VIII of the CRS are amended to ensure that the reporting and due diligence requirements under the CRS also apply to depository institutions that hold electronic money products and central bank digital currencies.

Definitions of "financial asset" and "investment entity"

The CRS requires financial institutions to apply due diligence and reporting requirements to investments in derivatives and interests in funds and wealth management vehicles. The amendments expand the definitions of "financial asset" and "investment entity" in Section VIII of the CRS to include investments in derivatives referencing crypto-assets and interests in funds and wealth management vehicles that hold crypto-assets. The definition of "passive income" in section 3(1) of the TAA is amended accordingly to include relevant crypto-assets. However, unless they choose otherwise, financial institutions are not required to report the information on certain assets that have to be reported under the CARF.

New due diligence and reporting requirements

New reporting requirements are included in Section I of the CRS to require additional information, such as the type of financial account, the roles of equity interest holders and controlling persons in an investment entity, and whether valid self-certification has been provided. The additional requirements in Sections II to VII of the CRS strengthen the due diligence procedures, such as the conditions under which financial institutions can rely on anti-money laundering (AML)/know your client (KYC) procedures.

Exclusion of certain capital contribution accounts

The definition of "excluded account" in Section VIII of the CRS is amended to include capital contribution accounts. These accounts hold funds for a limited period of time for the purpose of the incorporation of a new company or a pending capital increase. To avoid misuse of such accounts, they can only be treated as excluded for a maximum period of 12 months.

Other minor amendments

Under section 185O(3)(b) of the TAA, the CRS standard is treated as applying consistently with the Commentary on the CRS. The CRS update includes amended Commentary. This is intended to increase consistency in the application of the CRS and to incorporate guidance and responses to frequently asked questions that have been released by the OECD since the initial implementation of the CRS.

New Zealand specific changes

Wider approach to CRS

New Zealand adopted the wider approach to the CRS. The wider approach is intended to minimise compliance effort by enabling due diligence to apply to all non-residents, regardless of whether the person is resident in a reportable jurisdiction (one with which New Zealand shares CRS information). The approach to due diligence is mandatory for all New Zealand financial institutions. Financial institutions are only required to report information on accounts that belong to a resident of a reportable jurisdiction. However, they have the option of reporting all account information to Inland Revenue, meaning that they do not need to further sort non-resident data.

The wider approach was given effect in New Zealand through schedule 2, part 1, item 2 of the TAA by replacing sections I to VII of the CRS with the text of Annex 5 included in the CRS publication. Annex 5 contains an extract from Sections I to VII that has been amended to reflect the wider approach.

Although the definition of "CRS standard" under section 3(1) of the TAA includes any future amendments to the CRS, parts of the current amendments to the CRS might be nullified under the current law because the wider approach in Annex 5 was not correspondingly amended by the OECD. As such, while there has been no change to the application of the wider approach to due diligence in New Zealand, schedule 2, part 1 of the TAA has been amended to ensure that any amendments to the CRS are automatically incorporated while also retaining the application of the wider approach. Additional items in schedule 2, part 1, have also been amended to ensure that the CRS works as intended.

Lower/higher value accounts

The CRS requires more stringent due diligence requirements for pre-existing individual and entity accounts with aggregate balances above certain thresholds (US$1 million for individual accounts and US$250,000 for entity accounts). This is intended to reduce the compliance burden.

An individual or entity account is deemed a pre-existing account if the financial account is maintained by a financial institution the day before the implementation of the CRS. The due diligence requirements that apply to the individual or entity account depend on the aggregate balance of the account.

With the inclusion of new financial assets, the amended CRS approved by the OECD includes an amended definition of "pre-existing account" to cater for financial accounts that should be treated as pre-existing accounts solely by virtue of the amendments to the CRS. However, corresponding adjustments have not been made to the provisions that determine if the account should be subjected to less or more stringent due diligence requirements.

The amendments under schedule 2, part 1 of the TAA clarify that the due diligence requirement that applies to a financial account that becomes a pre-existing account solely by virtue of the amendments to the CRS depends on the aggregate balance of the financial account.

Qualified non-profit entities

A non-profit entity, such as a charity, is required to report under the CRS if it meets the definition of a "reporting financial institution". Very few New Zealand charities are required to report under the CRS and there is no evidence that the existing treatment of non-profit entities has led to unintended consequences in New Zealand.

As such, New Zealand is not implementing the optional provision to include a "qualified non-profit entity" as a "non-reporting financial institution" (see the Commentary on Section VIII of the CRS).

Dates

The OECD left the dates for the amendments to the CRS to take effect unspecified. For New Zealand, the first year the changes come into operation is the 2026–27 tax year, with the first reports being made in 2027. This is in line with the OECD's expected timeline for jurisdictions to incorporate the changes in 2026 and to commence exchange under the amended CRS in 2027. Changes to schedule 2 specify the relevant dates for implementation of the amended CRS.

When appropriate, the provisions in section 185N and schedule 2 of the TAA that refer to initial implementation date of the CRS have also been amended to incorporate the implementation of the amendments to the CRS.

Taxation of transfers from overseas pension schemes

Taxation of transfers from overseas pension schemes

Sections CF 3(7), LA 5(2), LB 6BA, RA 6BB, RA 10(1)(a), RA 15(1)(cb) and (3)(b), RI 1–RI 5, RM 8B, YA 1, and schedule 1, part A, clause 17 of the Income Tax Act 2007
Sections 22D(3)(a)(vi), (3)(c)(iii) and (3B), 25B(5), 25C(d), 25E(1)(hb), 25LB, 31D, 57C, 98C, 108(1C)(a)(iib), and 143A(5)(gb) of the Tax Administration Act 1994
Sections 4(1), 220C, 220D, and schedule 1, clause 16B of the KiwiSaver Act 2006

Summary of amendments

The amendments address two issues that affect the transfer of overseas pension funds to New Zealand.

The amendments to the Income Tax Act 2007 (ITA) and the Tax Administration Act 1994 (TAA) provide for a "scheme pays" option, which allows a person transferring their overseas pension fund to certain New Zealand superannuation schemes to elect to have the New Zealand scheme pay the tax due on the transfer on the person's behalf.

The amendments to the KiwiSaver Act 2006 allow certain currently "locked-in" funds that a person transferred from the United Kingdom (UK) to a New Zealand KiwiSaver scheme to be transferred to a New Zealand qualifying recognised overseas pension scheme (QROPS), so that the balance of the person's funds in the KiwiSaver scheme can be transferred to another provider without UK tax implications.

Effective date

The amendments to introduce "scheme pays" take effect on 1 April 2026.

The amendments to allow the transfer of locked-in UK funds from KiwiSaver schemes to QROPS took effect on 1 April 2025.

Background

New Zealand's system for taxing retirement savings

New Zealand has a "taxed, taxed, exempt" (TTE) system for taxing retirement savings – scheme contributions from employment income and investment returns are taxed, but withdrawals are exempt.

Under this system, foreign pension transfers to New Zealand, when made outside the four-year transitional residence period,[9] result in New Zealand tax payable at an individual's marginal rate on some of the lump sum transferred. Broadly, the tax applies only to the amount of income accrued in the pension fund (fund growth) after the person became New Zealand tax resident or after their transitional period ended (when applicable). The tax on transfer is a catch-up of the tax that would have been paid on the fund if it had been invested in New Zealand from the time the person became fully resident here. In some cases, the amount of tax payable can be substantial, such as when a person transfers a large pension fund many years after becoming New Zealand resident.

United Kingdom's system for taxing retirement savings

In contrast to New Zealand, the UK has an "exempt, exempt, taxed" (EET) system for taxing retirement savings. Contributions and investment returns are exempt, but withdrawals are taxed.

Because contributions and investment returns are not taxed, the UK has strict rules governing transfers of UK pension funds to overseas schemes and subsequent payments from those schemes. Transfers to overseas schemes are only permitted free of tax if the receiving scheme is a QROPS. Broadly, QROPS are schemes that must comply with the UK rules for pension schemes. These include a rule that generally disallows withdrawals from the fund before the UK's minimum retirement age (currently 55).

Transfers to overseas schemes that are not QROPS are subject to unauthorised payment charges of up to 55%. In effect, the charges claw back the tax relief given to the pension funds accumulated in the UK.

Similar tax charges apply to withdrawals or transfers from QROPS made before age 55.

Although time limits apply to these UK charges, ongoing issues for migrants arise.

Problem 1: Payment of tax on transfer

New Zealand's TTE system means some migrants who transfer their pension fund to a QROPS after many years in New Zealand are met with a substantial tax liability, which they struggle to pay without making a withdrawal from the fund itself. However, doing so triggers UK tax charges. This creates a barrier to QROPS transfers.

Problem 2: Locked-in KiwiSaver schemes

KiwiSaver schemes ceased to be recognised by HMRC, the UK tax authority, as QROPS from 6 April 2015[10] because they allow withdrawal before age 55 in various circumstances, such as the purchase

[9] During the transitional residence period, a migrant's passive foreign-sourced income is exempt from New Zealand tax. Transitional residence is a concession to reduce compliance costs for migrants who are new to New Zealand.
[10] KiwiSaver schemes continued to be able to receive transfers until 17 June 2015, due to a short transitional concession.

of a first home. Consequently, UK pension funds transferred to KiwiSaver schemes before this change are in some cases unable to be transferred to another KiwiSaver scheme or managed without UK tax charges applying (ie, they are locked in). This causes issues for migrants and KiwiSaver providers wanting to transfer funds between schemes.

Key features

Payment of tax on transfer – "scheme pays"

New subpart RI of the ITA allows a person who is transferring their UK pension fund to a New Zealand QROPS or non-UK pension fund to a participating KiwiSaver scheme[11] to elect to have the New Zealand scheme pay the New Zealand tax due on transfer on the person's behalf, out of the transferred funds. This election, referred to in this commentary as "scheme pays", has the following features:

- The tax – "transfer scheme withholding tax" (TSWT) – is imposed at a flat rate of 28% of the "assessable withdrawal amount",[12] and is intended to be a final tax.
- "Scheme pays" is only available for transfers, not withdrawals; tax on withdrawals from overseas pension schemes remains payable by the individual, at marginal rates.
- "Scheme pays" is only available for transfers to QROPS and KiwiSaver schemes. All QROPS are required to offer "scheme pays". KiwiSaver providers may choose whether to offer it.
- The person can still choose to pay the tax themselves under current rules; "scheme pays" is optional for the person.
- Within 10 working days of the day the person derives the foreign superannuation withdrawal,[13] the person must notify the scheme of:
    - the assessable withdrawal amount
    - the information the transfer scheme requires to enable it to provide the investment income information under section 25LB of the TAA (see Detailed analysis), and
    - whether they are electing "scheme pays".
- Changes to Subpart 3E of the TAA ensure that the investment income rules apply to "foreign superannuation withdrawals" received by all scheme providers that offer "scheme pays". These providers must submit investment income information reports, due by the 20th of the month

[11] As explained further in Detailed analysis, the availability of "scheme pays" for transfers of non-UK pension funds to KiwiSaver schemes is motivated by equity considerations that arise as a consequence of creating the "scheme pays" mechanism for UK pension transfers.

[12] This is the taxable portion of the transferred amount, calculated using either the schedule method or the formula method provided in section CF 3 of the ITA.

[13] The day the person derives the foreign superannuation withdrawal will be the day the scheme receives the transfer of the foreign pension funds.

following the relevant transfer. They must do this regardless of whether the person has elected "scheme pays".

- An assessable withdrawal amount for which the person has not elected "scheme pays" is "reportable income", under section 22D of the TAA, enabling the person's tax account to be pre-populated with the assessable income.
- If the person elects "scheme pays", the scheme is required to withhold and pay the tax due (TSWT) to the Commissioner by the 20th day of the following month. The transfer scheme must file a return in the prescribed form, under new section 57C of the TAA (see Detailed analysis).
- The person is liable for providing the correct assessable withdrawal amount and personal information to the scheme.
- A "scheme pays" election by the person is irrevocable.
- Under new section 98C of the TAA, the Commissioner can make an assessment of TSWT.
- If the assessable withdrawal amount is incorrect, the Commissioner may assess the person for any shortfall under existing provisions in the TAA.
- Refunds of overpaid amounts will only be made to the scheme under new section RM 8B of the ITA.
- Several minor consequential amendments have also been made to ensure "scheme pays" works as intended. These include amendments relating to: tax credits (sections LA 5(2) and LB 6BA of the ITA); exceptions to knowledge offences (section 143A(5)(gb) of the TAA); and the time bar (section 108(1C)(a)(iib) of the TAA).

Locked-in KiwiSaver schemes – election to transfer UK funds to QROPS

New sections 220C and 220D and clause 16B of schedule 1 of the KiwiSaver Act 2006 allow a KiwiSaver provider or individual member to elect for the member's locked-in UK retirement funds to be transferred from the KiwiSaver scheme into a New Zealand QROPS. After the UK funds have been transferred to the QROPS, the remaining balance of the KiwiSaver account can then be transferred to another KiwiSaver scheme without UK tax implications.

The election comes with the following features:

- If the individual member makes the election, they must notify the KiwiSaver provider and obtain the written consent of the QROPS to receive the transfer.
- If the KiwiSaver provider makes the election, it must obtain the written consent of the member and the designated QROPS.
- The provider or individual can designate any QROPS to receive the transfer. However, there is no legislative requirement for a QROPS to accept the transfer; it is up to KiwiSaver providers and members to get written consent from a QROPS to receive locked-in UK funds.

- The amount of locked-in funds is the "QROPS accumulation". It is defined in section 4 of the KiwiSaver Act as the "net value"[14] of the original amount transferred from the UK scheme to the KiwiSaver scheme (prior to 17 June 2015), whether directly or through one or more other KiwiSaver schemes, New Zealand QROPS, or foreign QROPS. The provider or investor should have records to support the calculation of the locked-in amount. Only that amount can be transferred into a QROPS, with the balance remaining subject to the KiwiSaver rules.
- The entire amount of locked-in UK funds must be transferred to the QROPS in one transaction.

Detailed analysis

As briefly noted in Background above, transfers of UK pension funds to overseas schemes that are not QROPS are subject to UK tax charges of up to 55%. Transfers and withdrawals made from QROPS before age 55 are also subject to such charges, but certain time limits apply to these. These limits are a "10-year non-residence rule" and an additional "five years from transfer rule".[15]

This UK tax treatment creates two issues for migrants, discussed below.

Payment of tax on transfer – "scheme pays"

Currently, migrants wanting to transfer their UK pension funds to a QROPS outside the transitional residence period must generally pay the transfer tax out of personal funds. They cannot withdraw from the transferred funds to pay the tax without incurring UK tax charges of up to 55%, since the withdrawal for that purpose would always be within the time limit. However, for many migrants, paying the tax themselves is difficult – particularly when the tax due is substantial.

The "scheme pays" option resolves this issue. The QROPS will withhold the tax from the transferred funds and pay it to Inland Revenue directly, and the UK will not impose any tax charges because no funds will flow to the migrant personally.[16] In effect, "scheme pays" eliminates the cashflow barrier to QROPS transfers and thereby enables more migrants to move their pension funds to New Zealand.

There are a number of design considerations for "scheme pays". Below is an analysis of each of the key features outlined in the previous section.

Tax due under "scheme pays"

The tax payable by the scheme under "scheme pays" (TSWT) is imposed at a flat 28% of the "assessable withdrawal amount" (as defined in section CF 3(7) of the ITA) notified to the scheme by the person. If correctly accounted for, this is a final tax on the assessable withdrawal amount for the

[14] See Detailed analysis for more information about "net value" and the calculation of the QROPS accumulation.
[15] PTM 113210 – International: UK tax charges on non-UK schemes: the member payment charges and taxable property charges: the member payment charges: basic principles – HMRC internal manual
[16] Inland Revenue consulted HMRC when developing these proposals.

person; the amount is treated as schedular income under section YA 1 and subject to tax at 28% under new clause 17 of schedule 1 of the ITA, regardless of the person's marginal tax rate.

The flat rate is simple for Inland Revenue's systems and reduces the risk of miscalculations that might result in tax flowing back to the individual, in breach of the UK's rules.

"Scheme pays" available only for transfers, not withdrawals

"Scheme pays" is not available for withdrawals. Tax on a withdrawal must still be paid by the individual, at their marginal rate. There is no cashflow issue with tax on withdrawals, because the individual has the cash out of which to pay the tax.

"Scheme pays" available only for transfers to QROPS and KiwiSaver schemes

"Scheme pays" is only available for transfers to a "transfer scheme", defined in section YA 1 of the ITA as:

- a QROPS, or
- a KiwiSaver scheme that chooses to withhold and pay TSWT under subpart RI (ie, that chooses to offer "scheme pays").

A definition of "QROPS" is provided in section YA 1 – a superannuation scheme in New Zealand that is a QROPS for the purposes of the Finance Act 2004 (UK).

All QROPS are required to offer "scheme pays". This is primarily to ensure the cashflow issue with payment of tax on transfers from the UK is addressed. It will also help Inland Revenue to identify taxable transfers and ensure the correct amount of tax is paid on them.

However, KiwiSaver providers can choose whether to offer the service. The main reason for allowing KiwiSaver providers to offer "scheme pays" is to create equity between migrants transferring funds from the UK and migrants transferring funds from other countries – not to resolve a cashflow issue. The KiwiSaver rules permit a withdrawal to pay tax, so there will often be no cashflow issue with payment of tax on transfers to KiwiSaver schemes from foreign schemes outside of the UK. Accordingly, it is appropriate that it be optional for them to offer "scheme pays". Only schemes that offer "scheme pays" are subject to reporting and other obligations for TSWT.

"Scheme pays" election optional for person

"Scheme pays" is optional for the person. This means that migrants with a marginal rate lower than 28% can still pay the tax themselves if they want and are able to. Migrants with a higher marginal rate can also pay the tax themselves if they prefer to do so.

Notification and reporting requirements for transfers

Under new section 31D of the TAA, within 10 working days of the day the person derives the foreign superannuation withdrawal, the person must notify the scheme of:

- the assessable withdrawal amount[17]
- the information the transfer scheme requires to enable it to provide the investment income information under section 25LB of the TAA, and
- whether they are electing "scheme pays".

The information specified in section 25LB of the TAA corresponds to rows 1, 2, 5, 8, 9 and 22 of schedule 6, table 1 of the TAA and includes the name of the payer (scheme) and the tax file number of the payer and investor as well as any further information required by the Commissioner. The intention is that both the foreign superannuation withdrawal and the assessable withdrawal amount are reported to Inland Revenue as appropriate.[18]

The transfer scheme is required to provide this information to the Commissioner via monthly digital reports.

Transfers of overseas pension funds have been brought into the income investment reporting provisions in the TAA as follows:

- under new section 25C(d) of the TAA, foreign superannuation withdrawals that are income under section CF 3(2)(b) of the ITA (ie, that are withdrawals for reinvestment in a superannuation scheme in New Zealand) are investment income if that superannuation scheme is a transfer scheme
- under new section 25B(5) of the TAA, a transfer scheme is treated as the "payer" of a foreign superannuation withdrawal
- under new section 25E(1)(hb) of the TAA, a transfer scheme is a person who must provide investment income information to the Commissioner.

The due date for the investment income information report is the 20th of the month following the month of the relevant transfer.

This information will flow into the individual's myIR account.

Assessable withdrawal amount treated as "reportable income" if "scheme pays" election not made

If the person does not elect "scheme pays" and instead chooses to pay the tax themselves, the assessable withdrawal amount is "reportable income" as provided by amendments to section 22D of the TAA. The amount will be extracted from the information report provided by the scheme to

[17] As calculated by the person using one of the methods in section CF 3 of the ITA.
[18] The assessable withdrawal amount needs to be reported for two reasons: (1) so that the person's tax account can be pre-populated with the amount if the person has *not* elected "scheme pays"; and (2) so that the Commissioner can check whether TSWT has been correctly withheld at 28% if the person *has* elected "scheme pays".

the Commissioner and included in the person's pre-populated account with Inland Revenue, for the purposes of determining their income tax liability for the year.

An assessable withdrawal amount will never be "reportable income" if the scheme that received the relevant transfer (foreign superannuation withdrawal) does not offer "scheme pays", because that scheme is not subject to investment income reporting requirements in relation to the transfer.

Scheme must pay tax and file return if "scheme pays" elected

If the person elects "scheme pays", the scheme must pay the tax on transfer. The scheme cannot decline to pay the tax from the person's transferred funds.

The due date for the tax is the 20th of the month following the transfer. This is in line with payment deadlines for tax on other investment income paid for a particular month. The scheme must file a return in the prescribed form under new section 57C of the TAA, showing:

- the total amount of TSWT withheld for the period
- the total amount of assessable withdrawal amount from which TSWT has been withheld for the period
- further information the Commissioner considers relevant.

This requirement for the scheme to file a return for the investment income is in line with filing requirements for other payers of investment income, such as multi-rate portfolio investment entities.

In contrast to the information report under section 25LB, which should show the details of *each* transfer for the month (when there are multiple), the return under section 57C is aggregated and should show the *total* amount of assessable withdrawal amounts and TSWT withheld from them.

Liability for correct information

The person is responsible for providing to the scheme the correct personal information (such as name and IRD number) and the amount of their assessable withdrawal amount.

The scheme is only liable for tax on the notified amount (when the person elects "scheme pays"). If the amount notified by the person to the scheme turns out to be less than the correct taxable amount, then the person is liable for, and needs to pay to Inland Revenue, the shortfall together with any applicable interest and penalties. However, the tax will still be payable at 28% rather than the person's marginal rate.

The reason for making the person liable for calculating the correct assessable withdrawal amount is that the person – not the scheme – has the information required to do so. The scheme is unlikely to know details such as the person's period of New Zealand tax residence, which is required for the assessable withdrawal amount to be calculated. The scheme may need to advise the person of the exact amount of the transfer from the overseas superannuation scheme, of which the assessable withdrawal amount is a portion.

"Scheme pays" election irrevocable

"Scheme pays" elections are irrevocable, under section RI 2(3). Allowing a person to change their mind and pay the tax themselves after the scheme had already paid the tax would create additional, unwarranted complexity.

Commissioner may make assessment of TSWT

Under new section 98C of the TAA, the Commissioner may make an assessment of the amount of TSWT payable by a scheme.

The Commissioner can use this assessment power if he has reason to believe that the amount of TSWT paid was incorrect. The Commissioner will issue an assessment either requiring the scheme to pay an assessed shortfall or refunding an assessed overpayment to the scheme.

It should be noted that this assessment power is not applicable when the mistake is with the assessable withdrawal amount. As previously indicated,[19] in this case, the Commissioner will assess the *person* for any shortfall of TSWT, under existing provisions in the TAA. This is because it is the person, not the scheme, who is liable for the correct calculation of the assessable withdrawal amount (on which the TSWT is calculated). However, an overpayment of TSWT resulting from an overstatement of the assessable withdrawal amount by the person will still be refunded to the scheme, not the person, under new section RM 8B of the TAA.

Example 17: "Scheme pays" election

In 2017, Emma migrated from the UK to New Zealand. Emma has a UK pension fund, which she decided to leave in the UK in case she planned to return one day. However, over time she becomes settled in New Zealand and, in January 2027, Emma transfers her UK pension fund to a New Zealand QROPS (which is a portfolio investment entity (PIE)).

Using the formula method, Emma works out that the assessable withdrawal amount portion of her transferred funds is NZ$300,000. Her marginal tax rate is 39%. Emma does not have sufficient liquid funds to pay the $117,000 of tax due. She also does not want to make a withdrawal from the QROPS to pay the tax because the UK would impose charges of up to 55% of the transferred amount.

Instead, Emma decides to elect "scheme pays". Within 10 working days of the transfer, she notifies the QROPS of her election, and provides her personal information and the assessable withdrawal amount. The QROPS withholds $84,000 (being 28% of $300,000) from the total amount transferred and pays it directly to Inland Revenue by 20 February (the following month). At the same time, the scheme files a return showing the total amount of TSWT withheld, and total amount of assessable withdrawal amount from which that TSWT was withheld, for the month of January 2027. The scheme also provides an electronic information report showing the required details of each transfer received in January.

[19] See above Liability for correct information.

There is no further tax to pay on the transferred amount. Going forward, the investment returns Emma earns through the QROPS will be taxed under the PIE regime.

Locked-in KiwiSaver schemes – election to transfer UK funds to QROPS

KiwiSaver schemes ceased to be included in the UK's QROPS regime on 6 April 2015 (although transfers already in progress could be completed by 17 June 2015 without incurring UK tax charges).

There has been uncertainty among some KiwiSaver providers and members as to the status of funds transferred prior to 17 June 2015. In particular, there has been uncertainty as to whether such funds can be transferred to another KiwiSaver scheme without triggering UK tax charges. Several UK tax rules contribute to this uncertainty.

First, as previously noted, UK pension funds can only be transferred to an overseas scheme free of UK tax charges if the funds are transferred to a QROPS. If UK funds are transferred to a non-QROPS, charges of up to 55% apply.

However, under the five-year non-residence rule in force at the time KiwiSaver schemes ceased to be recognised as QROPS, UK tax charges do not apply to payments made in relation to a member's transferred funds if the member is not UK resident at the time of the payment and was not UK resident earlier in the tax year or in any of the five previous tax years.

The application of these rules to historic KiwiSaver scheme transfers is as follows.

Since KiwiSaver schemes had self-identified as QROPS prior to 6 April 2015, many migrants from the UK transferred their UK pension funds to a KiwiSaver scheme and were then free to transfer between KiwiSaver schemes if they or the providers wished. However, after 17 June 2015, a transfer to a different KiwiSaver scheme became subject to unauthorised payment charges. Therefore, in effect, migrants were "locked in" to the KiwiSaver provider they were with on that date.

Nevertheless, this was time limited. If a locked-in migrant was not UK resident earlier in the tax year, or in any of the five previous UK tax years, they would be able to transfer KiwiSaver schemes without incurring unauthorised payment charges, and in that sense, they would no longer be locked in. The UK tax year runs from 6 April to the following 5 April, so migrants could have ceased to be locked in from 6 April 2021.

However, KiwiSaver providers have had continuing obligations for locked-in members. These will include individuals who have had a period of UK residence since 17 June 2015, causing the five-year non-residence rule to reset for them. KiwiSaver providers have therefore continued to advocate for a solution to the locked-in issue.

The new amendments to the KiwiSaver Act allow a KiwiSaver provider or an individual member to elect for the member's locked-in UK retirement funds to be transferred from the KiwiSaver scheme into a New Zealand QROPS. After the UK funds have been transferred to a QROPS, the remaining balance of the KiwiSaver account can then be transferred without UK tax implications. This is because the KiwiSaver account will no longer contain the funds to which UK tax rules had applied.

Below is an analysis of each of the key features outlined previously.

Consent requirements for election

The consent requirements recognise that the choice of retirement savings provider is an investment decision that should be left to members, when practicable. The requirements also recognise that a QROPS should not be legally obliged to receive transfers of locked-in funds, as this would be an overreach for a very confined issue.

New sections 220C and 220D of the KiwiSaver Act provide the consent requirements for individuals and KiwiSaver providers respectively:

- If the individual member makes the election, they must:
  - notify the KiwiSaver provider of their intention to transfer the locked in funds to a designated QROPS, and
  - obtain the written consent of the QROPS to receive the transfer.
- If the KiwiSaver provider makes the election, it must obtain the written consent of:
  - the member, for the provider to transfer the locked-in UK funds to a designated QROPS, and
  - the designated QROPS, to receive the transfer.

It is up to providers, members and QROPS to agree between themselves how to manage the transfers of locked-in funds.

Any QROPS may receive transfer

The provider or individual can designate any QROPS to receive the transfer. There is no "default" QROPS. However, as noted, there is no legislative requirement for a QROPS to accept such transfers; it is up to KiwiSaver providers and members to get written consent from the QROPS to receive locked-in UK funds.

Locked-in amount for purposes of transfer ("QROPS accumulation")

"QROPS accumulation" is defined in section 4 of the KiwiSaver Act as the net value of the original amount transferred from the UK scheme to the KiwiSaver scheme (prior to 17 June 2015), whether directly or through one or more other KiwiSaver schemes, New Zealand QROPS, or foreign QROPS. This is the amount that represents the locked-in funds.

"Net value" is an existing definition in section 4 of the KiwiSaver Act. In relation to a member's accumulation, it means the value of the accumulation once any appropriate debits and credits have been made to account for things like fees, permitted withdrawals, and positive and negative investment returns.

The definition of "QROPS accumulation" includes direct and indirect transfers. This recognises that funds may have been transferred in a variety of legitimate ways, and should still be permitted to be transferred to a QROPS, provided adequate records have been kept (explained further below).

Strictly speaking, the "locked-in" amount is the original amount transferred from the UK scheme to the KiwiSaver scheme (directly or indirectly), since it is only this amount that could be subject to UK charges. However, in some cases the original amount of UK funds transferred may not be easily identifiable – only the amount held currently, which includes investment returns (and possibly other debits and credits).

Including investment returns on the original locked-in amount is a practical response to this issue. Further, using the "net value" also broadly puts the migrant in the financial position they would have been in if their UK funds had been transferred to the QROPS in the first place.

When the KiwiSaver provider has incomplete information about the "net value" of the UK funds, then it can transfer the UK-related amount it is able to ascertain. This amount may be the original amount of UK funds transferred plus any investment returns the provider is aware of.

An example of this situation could be when complete information was not provided to the provider of the current KiwiSaver scheme. For instance, the previous provider may have reported to the current provider only the original amount of UK funds transferred, and omitted investment returns (or reported only aggregate investment returns across all funds in the KiwiSaver scheme). In such a case, the current provider does not need to approach the previous provider to ask for the additional information. It can simply transfer the original amount of UK funds to the designated QROPS.

The current provider should have, or obtain from the individual, records to support its calculation of the "QROPS accumulation". This is because it is important to distinguish between locked-in funds and other funds. The remaining balance will continue to be subject to the KiwiSaver rules.

UK funds transferred to QROPS in single transaction

The entire QROPS accumulation must be transferred to the QROPS in a single transaction. A one-time, "all or nothing" approach is simpler than allowing multiple partial transfers. It also mitigates the potential risk to the integrity of the KiwiSaver rules outlined above, because the complexity of multiple transfers could more easily result in more than the net value of locked-in UK funds being transferred to a QROPS.

Example 18: Election to transfer locked-in UK funds from KiwiSaver scheme to QROPS

On 30 September 2014, soon after migrating from the UK to New Zealand, Richard transferred his UK pension fund of NZ$400,000 to a KiwiSaver scheme. The KiwiSaver scheme was understood to be a QROPS, so no UK tax charges applied to the transfer.

However, on 6 April 2015, Richard's KiwiSaver scheme (and all KiwiSaver schemes) ceased to be recognised by the UK as a QROPS. The UK funds transferred to his KiwiSaver continued to be treated as QROPS funds, but now Richard could not transfer to another KiwiSaver scheme without incurring UK tax charges; he was locked into his current KiwiSaver scheme.

On 3 July 2025, Richard is notified by his KiwiSaver provider that the scheme is winding up, and all its members will be transferred to another better-performing KiwiSaver scheme. This will be a transfer under the KiwiSaver Act.

The KiwiSaver provider decides to transfer Richard's locked-in UK funds to a designated QROPS. The provider obtains the written consent of:

- Richard, for the provider to transfer the locked-in UK funds to a designated QROPS, and
- the designated QROPS, to receive the transfer.

The provider then transfers the portion of Richard's KiwiSaver accumulation attributable to UK funds to the QROPS. The amount transferred is $450,000, comprising the original $400,000 of UK funds and $50,000 of investment growth on that $400,000. The KiwiSaver provider has records that show the UK funds were ring-fenced so they could be separately identified.

There are no adverse UK consequences because it is a transfer to a QROPS, and Richard never had access to the funds.

Now that the UK funds have been transferred out of Richard's KiwiSaver scheme, the provider initiates the transfer of the KiwiSaver. The remaining balance in Richard's KiwiSaver account is transferred to the new KiwiSaver scheme with no UK tax implications.

Other policy items

Approved issuer levy retrospective registration

Section 86H(3), (4), and (5) of the Stamp and Cheque Duties Act 1971
Sections 32M(2C) and 138E(1)(e)(iib) of the Tax Administration Act 1994
Section RP17B(14)(aa) of the Income Tax Act 2007

Summary of amendments

The amendments to the Stamp and Cheque Duties Act 1971 (SCDA), the Tax Administration Act 1994 (TAA) and the Income Tax Act 2007 (ITA) allow a New Zealand borrower paying interest to a non-associated non-resident lender to register a security for approved issuer levy (AIL) retrospectively if the borrower did not register it on time, in certain circumstances. This allows AIL to be paid on interest paid prior to registration, rather than non-resident withholding tax (NRWT).

Effective date

The amendments took effect on 1 April 2025. Retrospective registration is available from 1 April 2025 and the backdated date of registration cannot be before that date.

Background

NRWT versus AIL

The default position is that a New Zealand borrower paying interest to a non-resident lender is required to withhold non-resident withholding tax (NRWT) from the payments at 10% or 15%.[20] However, if the borrower is not associated with the lender, they can instead opt to pay AIL on the interest payments at 2% (or in certain cases 0%[21]), which reduces the NRWT liability to zero.

The AIL regime was introduced in 1991 to reduce the cost of third-party debt provided by non-residents to New Zealand borrowers. Foreign lenders can typically demand a certain after-tax return on their investment. Therefore, unless the lender can easily claim a full credit for New Zealand NRWT in its home jurisdiction, it will typically require the borrower to gross up their interest payments to cover the NRWT, which increases the cost of capital for the borrower. The AIL regime significantly reduces the tax cost to the borrower in situations when the lender is passing that cost onto them.

[20] Depending on whether New Zealand has a double tax treaty with the country in which the lender is resident.
[21] The 0% rate is only applicable to certain widely held retail bonds.

Requirements for paying AIL

To pay AIL rather than NRWT on a particular security, the borrower is required to:

- either be an approved issuer or become an approved issuer
- apply to register the security, and
- pay the amount of AIL for the security.

Previously, a security always had to be registered before an interest payment was made for NRWT to be zero-rated on that interest payment.

No historical scope for retrospective registration of securities

If a borrower did not register a security for AIL at the outset and sometime later the Commissioner of Inland Revenue became aware of the mistake, the borrower could register the security at that later time, but only on a prospective basis. This meant they continued to have an NRWT liability on any interest payments already made. The Commissioner did not have the administrative flexibility to allow retrospective registration for AIL.

While not common, Inland Revenue dealt with several cases of borrowers mistakenly not registering securities for AIL on time. In some cases, the borrower realised the mistake and disclosed it to Inland Revenue; in other cases, the mistake was discovered on review. Regardless, Inland Revenue’s practice was to enforce the existing NRWT obligation on the interest payments made prior to registration, in accordance with the AIL/NRWT legislation.

Key features

New section 86H(3) of the SCDA allows a New Zealand borrower paying interest to a non-associated non-resident lender to apply to register the security for AIL retrospectively if the borrower did not register it on time. Retrospective registration will only be approved if the Commissioner is satisfied that the delay in making the application:

- was caused by an oversight, or
- occurred despite reasonable efforts by the borrower to make the application before the date of the first interest payment.

There is no deadline for the Commissioner to consider applications for retrospective registration.

New section 86H(4) provides that, in evaluating whether the delay in registration was caused by an oversight or occurred despite the person’s reasonable efforts, the Commissioner may consider the following factors, which are neither exhaustive nor individually determinative:

- the explanation and evidence that the borrower has provided as to the cause of the error
- the borrower’s history of compliance with their tax obligations

- whether the documentation recording the money lent includes a clause dealing with AIL
- whether the borrower has already paid an amount that would have been AIL if the security had been registered and the person had been an approved issuer
- the tax residence of the borrower over the term of the security
- the duration of the delay in applying for the registration, and
- whether the borrower has made a voluntary disclosure of the error.

Additional features to note:

- Retrospective registration is available both for securities on which AIL is payable at 2% and securities qualifying for 0% AIL.
- Under new section 32M(2C) of the TAA, if the Commissioner backdates a person's date of registration, the person is also treated as being an approved issuer from the date of registration (if the person was not already an approved issuer).
- Under new section 138E(1)(e)(iib) of the TAA, a decision by the Commissioner in relation to retrospective registration is not challengeable.
- At the Commissioner's discretion, a borrower may use funds in a tax pooling account to satisfy an AIL liability resulting from a successful application for retrospective registration, by virtue of new section RP 17B(14)(aa) of the ITA.

Detailed analysis

Application for retrospective registration

The borrower must apply for retrospective registration of a security in writing and in a form approved by the Commissioner, per the requirements of existing section 86G of the SCDA. The application should consist of:

- the completed standard form for registration of a security
- a letter outlining the request for retrospective registration
- a copy of the security agreement
- any supporting evidence.

The letter should include a detailed explanation of the reason for the delay in registration. It should also indicate the date from which the borrower wishes for the security to be treated as registered. This can be any date between (and including) the date the loan agreement was signed and the date the application for registration is submitted to the Commissioner, provided it is no earlier than 1 April 2025.

The Commissioner has no legislative deadline to approve or decline applications. However, the Commissioner will process applications as soon as practicable, so that there is certainty as to whether AIL or NRWT is payable.

Delay must be caused by oversight or occur despite effort to register on time

Retrospective registration is restricted to cases when the delay in registration:

- was caused by an oversight, or
- occurred despite reasonable efforts by the borrower to make the application before the date of the first interest payment.

The first category – "oversight" – covers cases when a borrower unintentionally failed to make any attempt to register the security on time (before the first interest payment).

The second category covers cases when the borrower was aware of their AIL obligations and attempted to register the security on time but was unable to do so due to extenuating circumstances.

The purpose of limiting the concession to unintentional delays is to support voluntary compliance with the AIL regime. If retrospective registration were permitted in all circumstances, taxpayers could deliberately not comply with the regime in the knowledge that, if they were audited, they would get the same basic outcome as if they had registered for and paid AIL on time (although interest and penalties could also be payable in the former case).

Factors considered by Commissioner in evaluating cause of delay

The amendments include some factors the Commissioner may consider in evaluating whether the borrower is applying for retrospective registration of a security for AIL because of an oversight, or after making a reasonable effort to register the security before the first interest payment. These factors are included to guide operational staff in assessing applications and give borrowers some idea of whether their application is likely to be successful. These factors are not exhaustive because the Commissioner might want to consider other factors not initially contemplated. Similarly, no factor is individually determinative; building an accurate picture of the nature of an error will involve consideration of multiple factors.

Explanation and evidence

In the letter requesting retrospective registration, the borrower should explain what caused their delay in applying for registration. If possible, the borrower should also attach evidence to support the explanation given in the letter. The Commissioner will be more likely to approve an application that includes a fulsome explanation and evidence, because it will be easier to assess whether the delay in registration was unintentional.

Borrower's compliance history

If the borrower has a poor compliance history with AIL and NRWT, or with tax obligations generally, the Commissioner will be less inclined to regard the cause of the delay leading to retrospective registration as an oversight. This is because a pattern of non-compliance is indicative of a general disregard for tax obligations.

Whether loan agreement includes AIL clause

An AIL clause is a clause in a loan agreement that generally stipulates the borrower will register as an approved issuer, register the security for AIL, and pay AIL on the interest payments. Such a clause is generally evidence that the borrower intended to register the security and pay AIL. From the Commissioner's perspective, this increases the likelihood that the failure to register the security on time was an oversight.

By contrast, the mere presence of a gross-up clause in the agreement will not be seen as evidence that the borrower intended to register the security for and pay AIL. While a gross-up clause indicates that the borrower should have registered for AIL (since they will otherwise bear the cost of NRWT), it does not indicate that they actually contemplated AIL and intended to pay it.

Whether borrower already paid AIL on security

If the borrower has already paid an amount equivalent to AIL[22] on the security they are seeking to retrospectively register, and therefore has been at least partly compliant with the AIL regime, the Commissioner is more likely to consider that the borrower's failure to register the security on time was an oversight. This will normally be a strong indicator of intent to comply.

Tax residence of borrower during term of security

If the borrower was non-resident at the time the loan agreement was signed, there will logically be no AIL clause, since the borrower was not in New Zealand's tax net. This makes it more likely that the borrower's failure to register the security for AIL was an oversight. When they moved to New Zealand sometime during the term of the security, they may not have appreciated their new withholding tax obligations in relation to their interest payments to the non-resident lender.

[22] Technically, under legislation, a borrower is not treated as paying "AIL" unless they are an approved issuer and the security is registered. However, if a borrower already has an AIL account open because they are an approved issuer, they can pay an amount equivalent to AIL on a security despite having failed to register the security. If the borrower does not already have an AIL account open, this is not possible.

Duration of delay in applying for registration

The longer the delay in registration,[23] the less likely the Commissioner will regard it as an oversight. This is because the borrower has had longer to become aware of their mistake and disclose it. However, there is no deadline after which the Commissioner will decline applications for retrospective registration in all cases.

Whether borrower made voluntary disclosure of error

If the borrower makes a voluntary disclosure of the error, it is less likely that they deliberately did not comply with the AIL regime, since they have chosen to draw the Commissioner's attention to the error. Therefore, the Commissioner will regard it as more likely that the error was an oversight.

Other features

Retrospective registration available for AIL at 2% or 0%

Retrospective registration will be available for securities subject to either 2% or 0% AIL. Only certain widely held securities qualify for 0% AIL, but there is no policy reason not to allow such securities to be registered retrospectively, just as securities subject to 2% AIL can be, if the conditions are met.

Commissioner will also backdate approved issuer status if necessary

In some cases, a borrower who failed to register a security for AIL on time and applies to register it retrospectively may also be new to AIL and may not be an approved issuer either. In such cases, if the Commissioner approves the application for retrospective registration (which will include the borrower's election to become an approved issuer), the Commissioner will backdate the borrower's new approved issuer status to the same date as the registration. This is necessary because being an approved issuer is a precondition for paying AIL.

If the borrower was already an approved issuer prior to applying for retrospective registration, the above does not apply.

Commissioner's decision in relation to retrospective registration not challengeable

A decision by the Commissioner to decline an application for retrospective registration is not challengeable.

[23] The period between the date of the first interest payment on the security on which there was an NRWT liability and the date on which the borrower applies for retrospective registration.

It is customary for matters left to the discretion of the Commissioner not to be challengeable because the challenge procedures were designed to deal with interpretative disagreements relating to a person's tax assessment and not the application of administrative discretions. This is reflected in section 138E(1)(e) of the Tax Administration Act 1994, which lists a large number of other discretions for which no right of challenge is conferred.

Inland Revenue will assess applications for retrospective registration in good faith and may request or accept additional information from the borrower in support of their case if important information is missing from the initial application. Inland Revenue can still reconsider a decision if further information shows that the decision was made on incorrect facts.

If the borrower is not satisfied with the way their application has been handled, they may engage Inland Revenue's internal complaints process. If the borrower is still unsatisfied following the complaints process, they will have recourse to other processes that exist to resolve disagreements about how statutory discretions have been exercised, such as the Ombudsman and judicial review.

Use of tax pooling funds to satisfy new AIL liability

AIL has been added to the categories of tax for which, on application by a person, the Commissioner has the discretion to allow the person to use funds in a tax pooling account to meet a new liability.[24]

If a borrower wishes to use pooling funds to pay an AIL liability resulting from a successful application for retrospective registration of a security, they should include this request in the letter submitted with the application. In accordance with section RP 17B(13) of the ITA, the Commissioner may allow the use of pooling funds if satisfied that the borrower did not choose not to comply with their tax obligations, and did not fail to take reasonable care to comply with those obligations.

Effective date

Under new section 86H(5) of the SCDA, retrospective registration is available from 1 April 2025 and the backdated date of registration cannot be before that date. This means it will not be possible for borrowers to come forward and claim refunds of NRWT paid because of failures to register securities for AIL on time that occurred before 1 April 2025.

[24] The categories are provided in section RP 17B(14) of the ITA.

Example 19: Most factors in favour – retrospective registration likely to be approved

On 13 May 2025, the New Zealand-headquartered Dolphin Bank signs a loan agreement with the US-headquartered Jellyfish Bank to borrow NZ$60 million at 5% interest per annum. The term of the security is five years, and the interest payments are monthly. Dolphin is not associated with Jellyfish.

When negotiating the terms of the loan agreement, Jellyfish makes it clear that Dolphin will have to bear the cost of any New Zealand taxes due on the interest payments. To avoid having to gross up the interest payments to cover NRWT at 10%, Dolphin decides it will pay AIL (2%), and includes an AIL clause in the loan agreement. Dolphin is already an approved issuer; it has issued many other securities to foreign lenders, which it has registered on time and paid AIL on time for.

Dolphin makes its first interest payment to Jellyfish on the new security on 1 June 2025. However, there has recently been a change of staff on Dolphin's tax team, and during the handover the new tax manager forgot to register the security for AIL. He also fails to pay AIL after interest payments are made.

In March 2026, while preparing Dolphin's annual tax return, the tax team realises that the security with Jellyfish was not registered and no AIL has been paid on it. Dolphin promptly applies to the Commissioner to register the security retrospectively from the date of the loan agreement. In its letter, Dolphin explains the cause of the error and provides documentation showing that new staff were recruited shortly before the first interest payment on the security was due. Dolphin also attaches a copy of the loan agreement.

The Commissioner is likely to approve Dolphin's application for retrospective registration because Dolphin:

- provided an explanation and evidence for the cause of the delay in registering the security, showing that it was an oversight
- had a perfect compliance record with AIL previously
- included an AIL clause in the loan agreement (which it provided to the Commissioner)
- voluntarily disclosed the error, and
- made the application after a relatively short delay (nine months).

If the Commissioner backdates the date of registration of the security, Dolphin will owe AIL rather than NRWT on the ten interest payments already made. The interest payments totalled $2.5 million, so the AIL due will be $50,000. NRWT at 10% would be approximately $250,000, so Dolphin will save approximately $200,000 in tax. Dolphin will then continue to pay AIL on the interest payments going forward

Example 20: Most factors unfavourable – retrospective registration unlikely to be approved

On 1 July 2025, the New Zealand-headquartered Anion Energy Ltd signs a loan agreement with the UK-headquartered Eternity Bank to borrow NZ$40 million at 6% interest per annum. The term of the security is three years, and the interest payments are quarterly. Anion is not associated with Eternity.

In the loan agreement, there is a clause stipulating that Eternity will not bear the cost of any New Zealand taxes due on the interest payments. However, there is no detail as to whether Anion will pay AIL or NRWT.

Anion is not an approved issuer. It does not notify the Commissioner that it wishes to become one or register the security for AIL. Anion also has a variable record with tax compliance generally; it has been late on a number of end-of-year return filings.

Anion makes seven interest payments to Eternity between 1 September 2025 and 1 March 2027, on which it pays neither AIL nor NRWT.

In April 2027, Inland Revenue audits Anion and discovers that it has not been meeting its New Zealand tax obligations in relation to its interest payments to Eternity. On 20 April 2027, Anion applies to register the security for AIL retrospectively from the day before the first interest payment. In its letter, Anion states that it intended to register the security for AIL but forgot to do so. It provides no further explanation of the mistake and does not provide a copy of the loan agreement.

The Commissioner is unlikely to approve Anion's application for retrospective registration, because Anion:

- provided only a very brief and unsubstantial explanation of the cause of the error
- did not provide a copy of the loan agreement to the Commissioner, meaning the Commissioner could not see whether it contained an AIL clause (which it did not)
- did not voluntarily disclose the error, and
- has a variable record with tax compliance generally.

If the Commissioner declines the application for retrospective registration, Anion will owe NRWT rather than AIL on the seven interest payments already made. The interest payments totalled $4.2 million, so the NRWT due will be approximately $420,000.[25] Anion can still potentially become an approved issuer and pay AIL going forward.

Example 21: Borrower already paid AIL – retrospective registration likely to be approved

On 3 February 2026, Bicentennial Tech, a New Zealand company, borrows NZ$30 million from Okane Plus – a Japanese investment bank. The parties are not associated. The term of the security is four years, and interest at 7% per annum is payable monthly.

There is an AIL clause in the loan agreement. Bicentennial is already an approved issuer, and has other securities that it has registered and is paying AIL on.

Bicentennial does not register the security for AIL before making its first interest payment to Okane Plus on 3 March 2026. The employee who is normally responsible for registering securities is away on leave for several weeks in February and neglects to delegate the task to a colleague. However, when the employee returns in March, he arranges for Bicentennial to pay AIL on the first interest payment via myIR. Bicentennial then continues to pay the equivalent of AIL on the unregistered security each month.

[25] See previous footnote.

In July 2027, Inland Revenue initiates a risk review of Bicentennial and discovers that it has neglected to register the loan from Okane Plus. Now realising the mistake, Bicentennial makes a voluntary disclosure and applies to register the security retrospectively.

The Commissioner is likely to approve Bicentennial's application for retrospective registration. Although the company only disclosed the mistake on a risk review, it has consistently paid the equivalent of AIL by the due date, and there is nothing in the disclosure or Bicentennial's compliance history to suggest that it deliberately disregarded the registration requirement. Moreover, the loan agreement that Bicentennial included in its application contains an AIL clause.

If the Commissioner approves Bicentennial's application, the company will owe AIL rather than NRWT on the 17 interest payments already made. The interest payments totalled $2,975,000, so the AIL due will be $59,500, which has already been paid by Bicentennial so there will be no further liability. NRWT at 10% would be approximately $297,500, so Bicentennial will have saved approximately $238,000 in tax.

Example 22: Borrower not New Zealand resident when security entered into – retrospective registration likely to be approved

On 15 December 2025, Katie, a resident of the United Kingdom, takes out a £500,000 interest-only mortgage from the UK-headquartered Eternity Bank (her bank) on a rental property in London. The mortgage has a fixed interest rate of 4% per annum, and interest payments are monthly. The mortgage agreement includes a standard gross-up clause. However, this is not relevant to Katie at the time she signs the agreement since she is paying interest domestically. She makes her first interest payment on 1 January 2026.

On 30 September 2026, Katie moves to New Zealand. She holds onto her UK rental property and continues making interest payments to Eternity Bank (from her account with that bank).

Katie automatically qualifies for New Zealand's transitional residence exemption, so for the first four years of her New Zealand tax residence she has no tax obligations in relation to her interest payments to Eternity Bank. On 1 October 2030, Katie ceases to be a transitional resident. However, she does not realise this means she now has an NRWT liability on her monthly interest payments to Eternity Bank.

In January 2032 Katie gets a tax agent, who notices that Katie has not been withholding NRWT from her interest payments to Eternity Bank. Katie makes a voluntary disclosure of the error on 15 January and applies to register the security for AIL retrospectively from 30 September 2030 – a day before the first interest payment on the mortgage on which there was a New Zealand NRWT liability.

The Commissioner is likely to approve Katie's application for retrospective registration. Because Katie was not a New Zealand tax resident at the beginning of the term of the security, it is clear why Katie did not consider AIL, and why there is no AIL clause in the mortgage agreement. In addition, the duration of the delay in applying for registration was relatively short (16 months), and Katie made a voluntary disclosure.

If the Commissioner approves the application, Katie will owe AIL rather than NRWT on the 16 interest payments made to Eternity Bank since she became New Zealand tax resident. Converted from UK pounds to NZ dollars at the prevailing exchange rate, those interest payments totalled $59,200, so the AIL due will be $1,184. NRWT at 10% would be approximately $5,920, so Katie will save approximately $4,736 in tax. She will then continue to pay AIL on future interest payments.

Example 23: Delay despite borrower's reasonable effort to register on time – retrospective registration likely to be approved

Entomoth is a newly incorporated New Zealand food company. On 9 April 2025, it borrows NZ$50 million from Talon – an Estonian investment bank – at 8% interest per annum, to help fund some of its setup costs. Interest payments are monthly, beginning on 1 May 2025. Entomoth includes an AIL clause in the loan agreement.

The designated tax manager is aware that Entomoth needs to apply to register the security for AIL before 1 May. However, Entomoth is still in the process of applying for an IRD number, and cannot register the security until the number has been issued.

The IRD number is issued on 8 June 2025. Entomoth now applies to register the security for AIL retrospectively from 30 April – the day before the first interest payment. In its letter, Entomoth explains that it is a new company and would have registered the security before the first interest payment if it had had an IRD number.

The Commissioner is likely to approve Entomoth's application. Entomoth made reasonable efforts to register the security by the date of the first interest payment by making the application as soon as it had obtained all the information necessary to do so. The delay in registration occurred due to the duration of an Inland Revenue process. Entomoth could have contacted Inland Revenue in April to alert the Commissioner to the expected delay, but it is still clear from the circumstances that the delay was not intentional.

If the Commissioner approves the application, Entomoth will owe AIL rather than NRWT on the two interest payments already made to Talon. The interest payments totalled $666,667, so the AIL due will be $13,333. NRWT at 15%[26] would be approximately $100,000, so Entomoth will save approximately $86,667 in tax.

[26] At the time of publication, New Zealand does not have a double tax agreement with Estonia, so the standard interest NRWT rate of 15% would apply.

Exempt employee share scheme threshold increase

Section CW 26C(2) of the Income Tax Act 2007

Summary of amendment

The amendment increases the thresholds used for exempt employee share schemes to recognise past inflation and provide a buffer against future inflation. The maximum value of the shares that can be offered increases from $5,000 to $7,500, and the maximum benefit provided increases from $2,000 to $3,000.

Effective date

The amendment is effective for offers of shares made under exempt employee share schemes on and after 1 April 2025.

Background

Employee share schemes are arrangements whereby shares in an employer company are provided in whole or in part in return for services. These are an important way of remunerating employees in New Zealand and internationally. A "benefit" received under an employee share scheme is generally taxable income.

Employers can provide exempt benefits to employees under an exempt employee share scheme. The intention of this exemption is to reduce compliance costs for schemes that are offered to all, or almost all, a business's employees, and when both the benefit of the scheme and the amount required to be invested by an employee to get that benefit are limited.

As prescribed by section CW 26C of the Income Tax Act 2007, the eligibility criteria included, among other things, the following conditions:

- the maximum market value of the shares provided to an employee is $5,000 a year
- the maximum discount an employer can provide on the market value of the shares to an employee is $2,000 a year
- 90% or more of full-time permanent employees who are not subject to the securities law of other jurisdictions must be eligible to take part in the scheme, and
- any minimum period of service that may be required before an employee becomes eligible to take part must not exceed three years.

The two thresholds above (namely, those that govern the maximum market value of shares that may be provided to an employee and the maximum permissible discount on the shares' market value) were last set in 2018.

Key features

In recognition of the impact of inflation since the thresholds were last set and to provide a buffer against future inflation, the amendments increase:

- the maximum market value of the shares provided from $5,000 to $7,500 a year, and
- the maximum benefit that can be provided from $2,000 to $3,000 a year.

This is to make it easier for companies in the start-up and tech sectors to attract and retain talent through the use of employee share schemes.

Example 24: Exempt employee share scheme

A Co offers an employee share scheme to its employees. This is offered to all its employees provided they have worked at A Co for a period of three years.

A Co provides these shares at a market value of $7,500 with a discount rate of $3,000. This means that employees are required to spend $4,500 to receive the shares.

If offers of shares occur before 1 April 2025

A Co has exceeded the thresholds for use of an exempt employee share scheme prescribed by the current section CW 26C.

The discount provided by A Co is considered employment income, and it is therefore a taxable benefit under the general regime. A Co is allowed a deduction for the benefit provided to the employee and any money spent establishing or managing the exempt scheme.

If offers of shares occur on or after 1 April 2025

A Co is within the new thresholds for an exempt employee share scheme prescribed by the changes to section CW 26C. It also meets all the eligibility criteria for operating an exempt employee share scheme, which include but are not limited to:

- offering the shares to all (or almost all) of its employees, and
- having a minimum period of service to receive the shares that does not exceed three years.

A Co is operating an exempt scheme and is required to notify Inland Revenue that the scheme exists.

The discount provided by A Co is exempt income for the employee. A Co will be denied a deduction for the benefit provided to the employee. However, it will be allowed a deduction for establishing or managing the exempt scheme.

New Zealand Business Number information sharing

Schedule 7, part C, subpart 1, clause 25(1)(b) and (3B) of the Tax Administration Act 1994

Summary of amendment

The amendment authorises Inland Revenue to share the contact address and tax file numbers of unincorporated entities with the Ministry of Business, Innovation and Employment (MBIE). This will be carried out in a one-off exercise.

Effective date

The amendment took effect on 30 March 2025.

Background

Unincorporated entities can voluntarily register for a New Zealand Business Number (NZBN), whereas companies are automatically assigned an NZBN. The voluntary aspect of registering is meant to reduce compliance costs for unincorporated entities that may not require an NZBN. However, there has been a relatively slow uptake in unincorporated entities registering for an NZBN.

Without widespread uptake, the effectiveness of NZBNs in supporting business confidence and certainty and creating smoother business interactions is reduced since the data held in the register is incomplete.

MBIE would like to address this issue through an email campaign aimed at unincorporated entities without an NZBN that would communicate the benefits of NZBNs and the process of registering. This would utilise the contact details and IRD numbers for unincorporated entities that Inland Revenue holds.

To authorise the sharing of this information, the provision in the Tax Administration Act 1994 (schedule 7, part C, subpart 1, clause 25) needs to be amended to enable information to be shared for the purpose of undertaking the email campaign.

At the select committee stage, in response to the Office of the Privacy Commissioner’s submission, officials recommended amending the provision to clarify that the information sharing, and the use of this information is limited to the specific duties and functions relating to the New Zealand Business Number Act 2016, rather than the broader functions of MBIE.

The provision was also amended to reference the information sharing being carried out by way of a single transfer of data, and will be repealed through section 201(5) of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 on 1 April 2026. This reflects the policy intent of the information share being carried out on a one-off basis and provides transparency around the limitations of the authorisation of the information sharing.

Enrolling persons aged under 16 in KiwiSaver

Section 35 of the KiwiSaver Act 2006

Summary of amendment

The amendment allows young persons under the age of 16 to enrol in KiwiSaver if one of their guardians contracts directly with a provider in the name of the young person.

Effective date

The amendment takes effect on 1 July 2025.

Background

The ability of prospective KiwiSaver members to enrol in KiwiSaver varies with age. For example, provided they meet the eligibility criteria:

- Persons aged 18 or over can join KiwiSaver by either contracting directly with a KiwiSaver provider or enrolling through their employer.
- Persons aged 16 to 17 who have a guardian can enrol in KiwiSaver if the person and one of their guardians jointly contracts directly with a provider in the name of the person.
- Persons aged under 16 and who are not in the care of Oranga Tamariki can join KiwiSaver provided all their guardians contract directly with a provider in the name of the young person.

These settings seek to balance access to KiwiSaver against the rights of parents and guardians to make decisions about the welfare of the young people they are responsible for.

However, the current enrolment rules can pose a challenge for solo parents in situations when it is difficult to secure the agreement of a former partner who is a guardian of the young person.

Under the amendment, young people under the age of 16 can enrol in KiwiSaver provided one of their guardians contracts directly with a provider in the name of the young person. This encourages young people to begin saving for their retirement and reduces the barriers to enrolling in KiwiSaver.

Overseas donee status

Schedule 32 of the Income Tax Act 2007

Summary of amendments

The amendments:

- add seven charities to the list of donee organisations in schedule 32 of the Income Tax Act 2007 (donors to these charities are eligible for tax benefits on their donations)
- remove six organisations that have ceased operating from schedule 32, and
- update references to three organisations to align with name changes.

Effective date

The effective dates are:

- additions to schedule 32 took effect on 1 April 2024
- the addition of the New Zealand Memorial Museum Trust – Le Quesnoy took effect on 1 April 2025
- removals from schedule 32 took effect on 30 March 2025
- name changes took effect as listed below under "Updated references".

Background

Donors to organisations listed in schedule 32 are entitled, as individual taxpayers, to a tax credit of $33^1/_3$% of the monetary amount donated up to the amount of their taxable income. Companies and Māori authorities may claim a deduction for donations up to the level of their net income. Charities that apply funds towards purposes that are mostly outside New Zealand must be listed in schedule 32 before donors become eligible for these tax benefits.

Detailed analysis

Additions to schedule 32

- Altus Resource Trust
- Kapuna Education Charitable Trust
- Kiwi Trust for Palestinian Children Relief

- New Zealand Memorial Museum Trust – Le Quesnoy
- ReliefAid
- Rescue and Prevent Trust
- Support Services for Humanity (donee status is for a limited time, ending on 31 March 2029).

Removals from schedule 32

- Help a Child Foundation
- Operation Vanuatu Charitable Trust
- Sampoerna Foundation Limited
- SpinningTop Trust
- The Food Bank of New Zealand
- Together for Uganda.

Updated references

References to the following organisations are updated to align with name changes:

- "Community Action Overseas (Oxfam NZ)" to "Oxfam Aotearoa", with effect from 25 May 2021
- "Cotton On Foundation Limited" to "Cotton On Foundation New Zealand Limited", with effect from 1 April 2022
- "Altus Resource Trust" to "Altus Pacific Aid", with effect from 8 May 2024.

Artist resale royalty tax implications

Sections 2(1), 3(4)(c), 5(29), 20(3)(ib), 26B, and schedule "Non-taxable legislative charges", clause 2 of the Goods and Services Tax Act 1985
Sections CC 9B, CC 9C, DB 69A, and YA 1 of the Income Tax Act 2007
Regulations 6 and 10 of the Resale Right for Visual Artists Regulations 2024

Summary of amendments

The amendments ensure the appropriate income tax and goods and services tax (GST) treatment for the artist resale royalty scheme set out in the Resale Right for Visual Artists Act 2023.

Effective date

The amendments took effect on 1 December 2024, the same date the artist resale royalty scheme came into force.

Background

The Resale Right for Visual Artists Act 2023 established a scheme to ensure that creators of visual art are recognised and rewarded when their work is sold on the secondary market. The scheme came into force on 1 December 2024.

Under the scheme, eligible artists and other right holders (such as the estates of deceased artists) are entitled to a payment that is 5% of the resale value of any "qualifying resales" of their "original visual artwork", referred to as a "resale royalty", when sold on the secondary market. For the resale royalty to apply, among other criteria, "qualifying resales" must have a resale value of at least $2,000 excluding any applicable GST. The resale royalty must generally be paid by the seller (the art vendor) or the art market professional (such as the auction house that managed the sale of the art) to a collection agency. The collection agency is responsible for collecting and distributing the resale royalty to eligible artists and other right holders, among other things. In recognition of the collection agency's costs, it is entitled to retain 20% of the resale royalty it collects.

No specific tax law changes were made when the scheme was introduced. Inland Revenue considered the tax implications of the scheme in further detail after it came into force. This highlighted several issues with the law, including:

- The GST treatment of resale royalties and the services provided by the collection agency.

- The treatment of the amounts retained by the collection agency from resale royalties for income tax and GST purposes.

The amendments made by the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 address these issues.

Key features

The amendments:

- Require sellers (art vendors) and art market professionals to provide information to the collection agency about whether the qualifying resale of original visual artwork was or was not a taxable supply for GST purposes.
- Include, if the qualifying resale of original visual artwork that gives rise to the resale royalty is **not** a taxable supply for GST purposes, a requirement for GST-registered artists and right holders who receive the resale royalty in respect of or in relation to their taxable activities to account for GST on the resale royalty.
- Clarify the amount retained by the collection agency is a fee for administrative services it provides artists and right holders in administering the scheme and is therefore liable for GST registration.
- Clarify the deductibility of the collection agency's fees for eligible artists and right holders who are liable for income tax, and GST, as applicable.

Detailed analysis

Artists and right holders

Goods and services tax implications

Sections 20(3)(ib) and 26B of the GST Act

Artists and right holders who receive resale royalties will only need to account for GST on them in certain circumstances.

There are no GST implications for artists and right holders who are not registered for GST.

Artists and right holders who are registered for GST may in some circumstances need to account for GST on resale royalties they receive by including them in their GST returns. This is because, even though artists and right holders are not making a supply of any goods or services, the resale royalties are treated for GST purposes like they are further consideration for the supply of the original artwork when certain conditions are met. This means that GST-registered artists and right holders who receive resale royalties may need to account for GST on them, ensuring they are treated similarly to other artists and right holders who are not registered for GST (who also are unable to deduct GST on costs they incur).

Accounting for GST on resale royalties (section 26B of the GST Act)

If an artist or right holder who is registered for GST is paid a resale royalty, whether they need to account for GST on the resale royalty depends on whether:

- the resale royalty is paid in respect of or in relation to their taxable activity, and
- the qualifying resale of the original visual artwork that gave rise to the resale royalty was itself a taxable supply.

If the resale royalty is paid to a GST-registered artist or right holder and it **is not** in relation to, or in respect of, the artist or right holder's taxable activity, they do not need to account for GST on the resale royalty. This means they will not include it in their GST return.

Example 25: Resale royalty is not in respect of, or in relation to, person's taxable activity

Kelvin is a GST-registered plumber. He is also a successor entitled to a resale royalty on the subsequent sale of original artwork produced by a distant relative of his, Martha.

Kelvin does not need to account for GST on the resale royalty he receives, because it is not in respect of, or in relation to, his taxable activity as a plumber.

If a resale royalty is paid to a GST-registered artist or right holder and **it does** relate to, or is in respect of, their taxable activity, they will not need to account for GST on the resale royalty if the collection agency has notified the artist or right holder that the sale of the qualifying artwork that gave rise to the resale royalty **was itself a taxable supply** for GST purposes.

If it was a taxable supply that was subject to GST at the rate of 15%, then the artist or right holder does not need to account for GST on the resale royalty. This is because if the resale royalty was included in their GST return, the resale royalty would, in effect, be double-taxed.

Example 26: Qualifying resale of original artwork notified as taxable supply at 15%

An auction house manages the resale of qualifying artwork that sells for $2,300. The sale price includes GST. The auction house pays a resale royalty of $100 to the collection agency and notifies the collection agency at the time of payment that the sale of the artwork was a taxable supply subject to GST of 15%.

The collection agency pays the resale royalty to Harriett. It also notifies Harriett that the sale of the artwork was a taxable supply subject to GST of 15%.

Harriett is a GST-registered artist. However, because the sale of the artwork that gave rise to the resale royalty was a taxable supply, she does not need to account for GST on the resale royalty in her own GST return.

In some circumstances, the sale of qualifying artwork may be an export that is subject to GST at the rate of 0%. If this applies, the artist or right holder must include the resale royalty in their GST return, but in the box for "Zero-rated supplies". No GST will be payable on the resale royalty.

Example 27: Qualifying resale of original artwork notified as a taxable supply at 0%

An auction house manages the sale of qualifying artwork that sells for $11,500. The sale of the artwork is subject to GST.

However, the artwork is exported, and GST therefore applies at the rate of 0%.

The auction house pays a resale royalty of $575 to the collection agency. It also notifies the collection agency that the rate of tax that applied to the artwork was 0%.

The collection agency informs the artist, Kaitlyn, that the sale of the artwork that gave rise to the resale royalty was subject to GST at the rate of 0%.

Kaitlyn is a GST-registered artist. She must include the resale royalty of $575 in her GST return in the box for "Zero-rated supplies".

If the sale of the qualifying artwork **was not** itself a taxable supply where GST applied at the rate of 15% or 0%, the artist or right holder receiving the resale royalty will need to account for GST on the full resale royalty (including the amount retained by the collection agency) by including it in their GST return in the box for "Total sales and income". The effect of this is they will be liable to account for GST equal to the tax fraction of the full amount of the resale royalty.

A person who needs to account for GST on a resale royalty must do so in the GST return for the taxable period in which the resale royalty is paid to them by the collection agency. This applies regardless of the person's accounting basis.

Example 28: Qualifying resale of original artwork not notified as a taxable supply

Judd sells an original artwork privately and does not involve an art market professional. There is an agreement between the parties (Judd and the purchaser) to voluntarily treat the resale of the artwork as subject to a resale royalty of 5% under the Resale Right for Visual Artists Act (a "voluntary qualifying resale").

The sold artwork is an original visual artwork produced by Laura, an artist. Judd is therefore required to pay a resale royalty to the collection agency. The art sells for $4,600, but GST does not apply to the sale.

Judd pays the resale royalty of $230 to the collection agency. He notifies the collection agency that the sale of the qualifying artwork was not subject to GST.

The collection agency pays the resale royalty to Laura and notifies her the sale of the artwork was not subject to GST. Laura is a GST-registered artist, and because the resale royalty relates to her taxable activity, she must account for GST on the resale royalty.

Laura includes the resale royalty of $230 in the "Total sales and income" box of her GST return. Laura does this in her GST return that covers the taxable period in which she is paid the resale royalty.

Deducting GST for the collection agency's services (section 20(3)(ib) of the GST Act)

A GST-registered artist or right holder who receives a resale royalty is generally able to deduct input tax equal to the tax fraction of the amount of the resale royalty that is retained by the collection agency. This is the amount of GST that should be shown on any taxable supply information (that is, invoice) provided by the collection agency. This deduction should be taken in the GST return for the same taxable period in which the resale royalty was paid, despite the person's accounting basis for GST.

Example 29: Timing of GST input tax deduction

Following on from the facts in Example 28 Laura should deduct GST input tax on the collection agency's services by including its fee of $46 in her GST return. She includes this in the "Total purchases and expenses" box in the GST return that covers the taxable period in which she is paid the resale royalty.

No requirement for taxable supply information

If an artist or right holder must account for GST on a resale royalty they receive, they are not treated as making a supply of any goods or services to another person. This means they will not need to provide taxable supply information.

Sellers (art vendors) and art market professionals

Goods and services tax implications

Section 26B of the GST Act; regulations 6 and 10 of the Resale Right for Visual Artists Regulations 2024

To enable an artist or right holder who receives a resale royalty to determine the correct GST treatment, art vendors and art market professionals who are liable to pay resale royalties to the collection agency must provide information about the qualifying resale of original visual artwork to the collection agency. This information includes:

- whether the qualifying resale of the original visual artwork was a taxable supply, and
- the rate of tax (either 15% or 0%) of the supply, if applicable.

This information must be provided in the same way as all other information required to be provided by art vendors and art market professionals to the collection agency.

When an art vendor or art market professional pays a resale royalty to the collection agency, this is not consideration for a supply of any goods or services for GST purposes. This means that GST will not be collected on the resale royalty and input tax deductions will not be available to art vendors or art market professionals.

Transitional implications of retrospective amendments

Before the amendments were made, the resale royalty was treated as consideration for a supply of goods or services by the collection agency to the payer of the resale royalty. This meant that GST applied, and the payer (the art vendor or art market professional) may have been entitled to an input tax deduction when the resale royalty was invoiced or paid. However, these new rules will apply retrospectively, with effect from 1 December 2024. This means GST should not have applied. This also means any taxable supply information provided by the collection agency that showed GST as being applicable to resale royalties should be corrected, and any GST that applied to the resale royalty should also be corrected.

Example 30: GST previously paid on resale royalty by art market professional or art vendor

A sale of qualifying artwork occurs in December 2024. This gives rise to a requirement for the art vendor (or art market professional) to pay a resale royalty to the collection agency.

In accordance with the law applying at that time, the collection agency issued an invoice for the resale royalty and the invoice showed the resale royalty was subject to GST of 15%. The art vendor (or art market professional) pays the resale royalty (inclusive of GST) to the collection agency. If the art vendor or art market professional was registered for GST, it may have deducted input tax in relation to the resale royalty.

Following the law change, the collection agency issues supply correction information to the art vendor (or the art market professional). The supply correction information shows that the resale royalty was not subject to GST. This means:

- Any input tax deduction taken by a GST-registered art vendor or art market professional would need to be accounted for as an adjustment of GST (as no GST input tax was deductible).
- Any output tax paid by the collection agency on the resale royalty would need to be accounted for as an adjustment of GST (as no GST was payable).

These adjustments would occur in the GST return for the taxable period in which the supply correction information was provided.

Income tax implications

Sections CC 9B and DB 69A of the ITA

If a person receives a resale royalty that is business income of the person, new section CC 9B of the Income Tax Act 2007 (ITA) sets out that the income of the person is the full amount of the resale royalty, and not the net amount received from the collection agency.

Example 31: Income is equal to full amount of resale royalty

Qualifying artwork is sold at auction with a value of $23,000. This includes GST of $3,000.

The auction house that managed the resale of the artwork pays a resale royalty equal to $1,000 to the collection agency. The collection agency is entitled to retain $200 as a fee for its services, being 20% of the resale royalty. It pays Harry, an artist, the balance of $800.

Harry is liable for income tax on the resale royalty because it relates Harry's business of producing artworks. He is treated as deriving income equal to $1,000.

When a person receives a resale royalty that is subject to income tax,[27] they are also entitled to a deduction for the part of the resale royalty retained by the collection agency as a fee for its services. New section DB 69A of the ITA permits this deduction.

Example 32: Deduction available for amount kept by collection agency

Following on from the facts in Example 31, Harry is entitled to a deduction for the amount retained by the collection agency for its services. The usual rules apply to determine whether the amount of the deduction is GST-inclusive or GST-exclusive (that is, if Harry is a GST-registered person, the deduction for income tax purposes will be GST-exclusive, but if he is not a GST-registered person, the deduction will be GST-inclusive).

Collection agency

The collection agency is responsible for collecting resale royalties from art vendors and art market professionals, for distribution to eligible artists and right holders. The Resale Right for Visual Artists Act and associated regulations allow the collection agency to keep a percentage of resale royalties collected in recognition of the collection agency's services to artists and right holders.

Goods and services tax implications

Sections 3(4)(c) and 5(29) of the GST Act

The collection agency provides administrative services associated with collecting and distributing resale royalties to artists and right holders. New section 3(4)(c) clarifies that the services provided by the collection agency are not financial services for the purposes of the GST Act.

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[27] A resale royalty paid to an artist who was in business when they created the artwork will be liable for income tax on the resale royalty they receive (whether it comes from a resale made in New Zealand or overseas). The changes made by the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 did not change this outcome.

New section 5(29) sets out that the amount retained by the collection agency is treated as a fee paid by artists and right holders for its services.

New section 3(4)(c) of the GST Act sets out that the services provided by the collection agency are not financial services.

Income tax implications

Section CC 9C of the ITA

New section CC 9C of the ITA sets out that the collection agency has income equal to the part of the resale royalties it is entitled to retain. It is not liable for income tax on the full amount of the resale royalties it collects.

Consequential amendments

Section 2(1) and clause 2 in the schedule "Non-taxable legislative charges" of the GST Act; section YA 1 of the ITA

Definitions

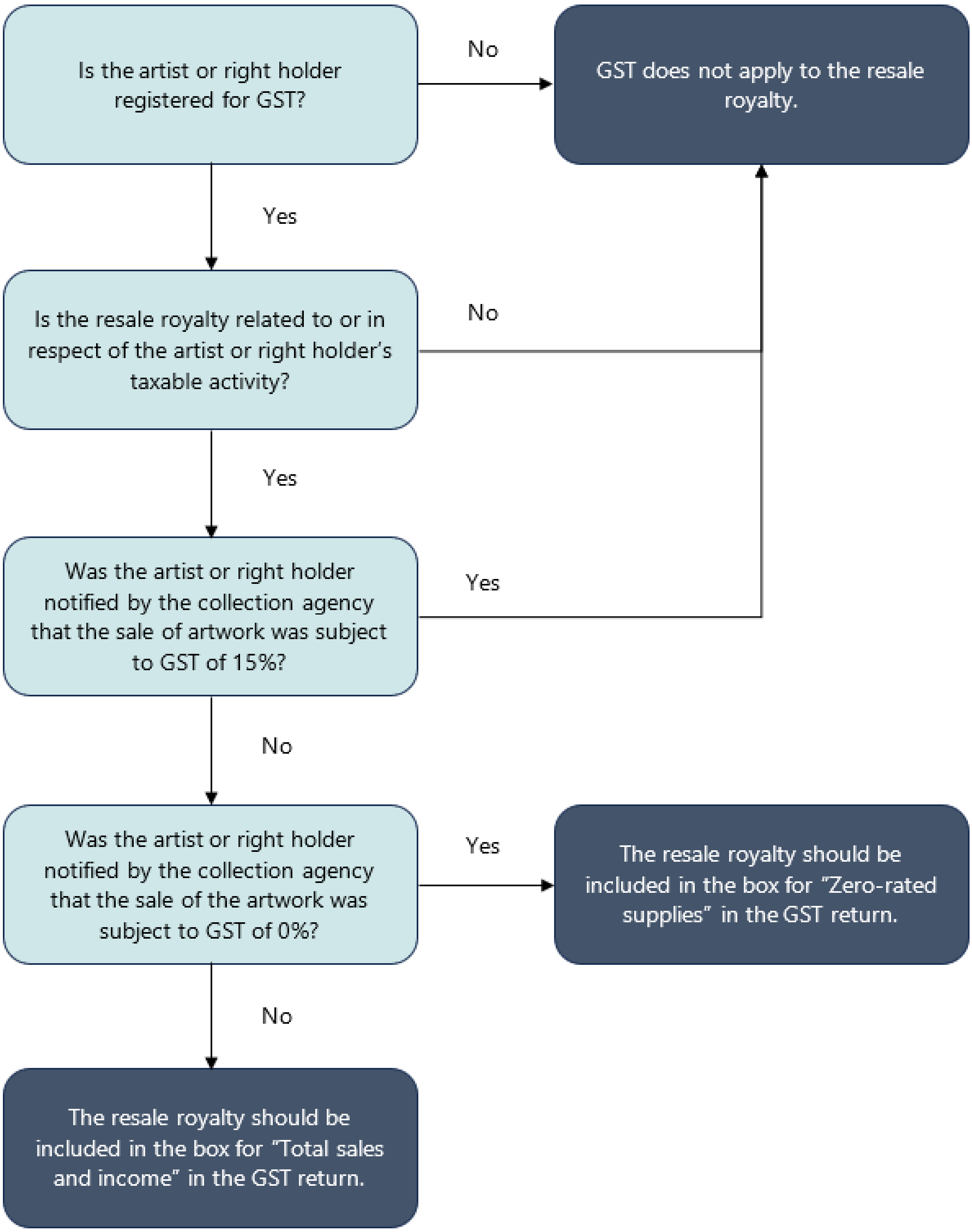
The GST Act and the ITA have been amended to include references to relevant terms from the Resale Right for Visual Artists Act.

Inclusion of amounts on the schedule of non-taxable legislative charges

Because specific rules apply to determine the GST treatment of resale royalties, the schedule of non-taxable legislative charges has been amended to include a reference to amounts payable under the Resale Right for Visual Artists Act. This ensures the general rules for legislative charges, which treat charges, including fees and levies, payable under legislation as consideration for a supply of goods or services (subject to several exceptions) do not apply to resale royalties.

How to determine whether to include resale royalty in GST return

This flowchart can be used to determine whether an artist or right holder who receives a resale royalty must include it in their GST return.



Auckland Future Fund income tax exemption

Sections CW 39B and YA 1 of the Income Tax Act 2007

Section 2(1) of the Goods and Services Tax Act 1985

Summary of amendments

The amendments provide that the Auckland Future Fund (AFF) is exempt from income tax but subject to GST.

Effective date

The amendments apply from 30 March 2025.

Background

Auckland Council has established the AFF as a long-term investment fund for the benefit of the current and future communities of the Auckland region. The Council is promoting the Auckland Council (Auckland Future Fund) Bill. This is a local Bill, with the purpose of fostering public confidence in the administration of the AFF, while enabling the Council to retain the flexibility to make decisions about the entity or body that holds and manages the AFF.

As a local authority, Auckland Council is exempt from income tax. Under current law, the AFF will be taxable, yet will be undertaking activities that could be directly undertaken by the Council.

Key features

The amendments provide that the AFF is exempt from income tax and deemed to have a taxable activity for GST purposes (similar to local authorities).

Final-year fees-free

Sections 3(1), 7AAAA, 120C(1)(a)(iv), 120C(2)(c), and schedule 7, clause 39D of the Tax Administration Act 1994
Sections 4(1), 119(2)(e), 194(2)(c), and 195B of the Student Loan Scheme Act 2011

Summary of amendments

The first-year fees-free scheme has been replaced with a final-year fees-free scheme from 1 January 2025. Payments of an eligible learner's fees will be made following completion of their study programme.

Effective date

The final-year fees-free scheme began on 1 January 2025. The design is being implemented over the course of 2025 with systems ready for first payments to learners to be made from January 2026.

Background

The objectives of the final-year fees-free policy are:

- to incentivise learners, particularly disadvantaged learners, to progress through and finish their programme of study
- to reward learners who complete their programme of study, and
- to reduce the overall cost of study.

Key features

The amendments to the Tax Administration Act 1994:

- allow Inland Revenue to administer final-year fees-free
- amend the definition of "tax" to include an amount payable in relation to an entitlement made under the scheme for the purposes of various provisions
- allow for the fees-free entitlement to be credited against a student loan and/or paid to the learner
- require Inland Revenue to publish on an internet site the eligibility requirements, which would include:
    - the eligibility and entitlement parameters, and

  - requiring the learner to apply for their final-year fees-free entitlement within 12 months of their completion date (with a transitional rule for those who complete before 31 December 2025 who will have until 31 December 2026 to apply)
- authorise Inland Revenue to share information with the Tertiary Education Commission and vice versa, and
- allow for the imposition of use of money interest when a learner does not have a student loan, and an amount is paid to them in error.

The amendments to the Student Loan Scheme Act 2011:

- credit the final-year fees-free entitlement effective as at the completion date
- ensure the credit of the final-year fees-free entitlement does not satisfy the learner's repayment obligation
- ensure the credit of the final-year fees-free entitlement cannot be offset against assessments or late payment interest
- ensure the credit of the final-year fees-free entitlement is not treated as an excess repayment, and
- allow the amount that determines an overseas-based borrower's repayment obligation to be reduced by any fees-free entitlement paid to the loan.

GST remedials

Zero-rating rules for international vessels exempt from import entries

Section 11A(1)(iba) of the Goods and Services Tax Act 1985

Summary of amendment

The amendment ensures that services provided directly in connection with temporarily imported commercial vessels are zero-rated for GST purposes.

Effective date

The amendment took effect on 30 March 2025.

Background

Services that are provided directly in connection with temporarily imported goods are zero-rated for GST purposes. The policy rationale for zero-rating these services is that they ultimately relate to consumption that will occur outside New Zealand when the goods are re-exported. This accords with the destination principle, which is a widely adopted international taxation principle that assigns the right to tax consumption of goods and services to the country in which those goods and services are destined to be consumed.

There is a disparity in the GST treatment that applies to services provided directly in connection with temporarily imported non-commercial vessels and commercial vessels that are passing through New Zealand. The issue is that services provided in relation to temporarily imported non-commercial vessels are zero-rated for GST purposes, but services provided in relation to commercial vessels that are passing through New Zealand are subject to GST. By way of example, cleaning or repair services provided in relation to a non-commercial temporarily imported yacht are zero-rated, but the same services provided in relation to a commercial ship that is temporarily in New Zealand are currently standard rated.

It is contrary to the policy intent for GST to apply to these services. This is because the services are provided in relation to vessels that are merely passing through New Zealand and thus ultimately reflect consumption that will occur outside New Zealand.

This treatment of these services also creates inefficiencies in the GST system because it means that foreign entities that operate commercial vessels need to register for GST in New Zealand to claim back the GST charged on these services. By contrast, if services provided in relation to commercial vessels were zero-rated for GST purposes, the foreign entities that operate these vessels would not be required to register for GST.

Detailed analysis

Prior to this amendment, section 11A(1)(i) of the Goods and Services Tax Act 1985 (GST Act) provided that services supplied directly in connection with goods referred to in sections 136 and 137 of the Customs and Excise Act 2018 are zero-rated for GST purposes. These sections in the Customs and Excise Act refer to temporarily imported goods, but exclude vessels that are used commercially from the scope of the zero-rating rule.

The Act amends the scope of section 11A(1)(i) of the GST Act to also include services provided directly in connection with specific vessels that are exempt from import entry under regulation 25 of the Customs and Excise Regulations 1996. The scope of the zero-rating rule is expanded to also include services provided directly in connection with commercial vessels that are not used for cargo or passengers (see regulation 25(1)(b)), commercial vessels that engage in the movement of cargo or passengers (see regulation 25(1)(ba)), and any craft that arrives solely for repair during the course of an international voyage (see regulation 25(1)(c)). The amendment also applies to aircraft that are temporarily in New Zealand as part of an international voyage, military craft performing duties on behalf of a foreign country, and certain goods associated with export (see regulation 25(1)(a), (bb), (d), (da), (g) and (h)).

Approved taxable period end dates

Sections 15(1), (5)(a), 15B(4), (4B), 15C(1), (3), (3B), (3C), 15D(1)(a), 15E(2), (2B), 15EB, 15EC, and 15ED of the Goods and Services Tax Act 1985

Summary of amendments

The amendments provide greater flexibility for GST-registered taxpayers to have alternative dates approved by the Commissioner of Inland Revenue (the Commissioner) as their taxable period end dates, provided good commercial reasons exist for those dates.

All legislative references are to the Goods and Services Tax Act 1985 (GST Act).

Effective date

The amendments have effect on and after 30 March 2022.

Background

Under the GST Act, a registered person's taxable period generally ends on the last day of a month. However, since the introduction of GST, there has been provision in the GST Act for a registered person to apply to the Commissioner for approval to have a taxable period ending on a different day, provided the requested end date meets certain requirements.

There are businesses that operate on the "4-4-5" accounting calendar for their finance functions, including income tax reporting and GST returns. The 4-4-5 calendar structure divides the year into four quarters of 13 weeks, with each quarter grouped into two four-week "months" and one five-week "month". Amendments were made in 2022 to better enable registered persons operating on the "4-4-5" accounting calendar to seek the Commissioner's approval to have taxable period end dates that align with their accounting cycle. However, the amendments were not entirely successful in achieving this outcome.

Key features

Amendments have been made to ensure the law provides the desired level of flexibility for the Commissioner to approve a registered person's requested taxable period end dates. The changes apply equally to monthly, two-monthly and six-monthly filers, as well as non-resident suppliers who are required to file quarterly.

The amendments:

- Provide broad discretion for the Commissioner to approve the taxable period end dates of a registered person if the Commissioner is satisfied that:
  - the person has good commercial reasons for those end dates, and
  - approving the change in the person's end dates is consistent with the purpose of the rules allowing approved taxable period end dates (the purpose of the rules is set out in a new "purpose" provision).

  These changes replace the rules that were formerly in sections 15E(2) and 15EB in their entirety.
- Provide the Commissioner with a power to prescribe methods that some registered persons may use to determine their approved taxable period end dates and the corresponding filing and payment due dates. The prescribed methods apply to registered persons filing monthly or two-monthly who are approved to have taxable period end dates based on a four-weekly accounting cycle.

Detailed analysis

Wider Commissioner's discretion to approve alternative end dates

Sections 15E(2) and 15EB have been replaced in their entirety.

New section 15E(2) provides that a taxable period may have an end date that is not the last day of a month if the Commissioner approves a change in end date for a registered person under section 15EB.

Section 15EB(1) is a purpose provision for the rules for approved taxable period end dates. Under this subsection, the Commissioner may approve a change in a registered person's taxable period end date under section 15EB(2) to reduce the person's compliance costs.

For example, the person may have an accounting cycle for their finance functions that is not based on calendar months (such as the 4-4-5 accounting cycle mentioned above). In this situation, the person may wish to have taxable period end dates that are aligned with their accounting cycle to reduce their compliance costs. Another example might be when a registered person is applying for an approved taxable period end date as a "one off" because they intend to join or leave a GST group during a taxable period.

New section 15EB(2) sets out that, on application by a registered person, the Commissioner may approve an end date for the person's taxable period that is not the last day of a month. The Commissioner may approve the person's requested end date if the Commissioner is satisfied that:

- the person has good commercial reasons for it, and
- making the change is consistent with the purpose set out in section 15EB(1) for making changes to taxable period end dates (namely, reducing compliance costs that would arise for the person if they were required to have taxable period end dates based on the last day of a month).

The discretion for the Commissioner in new section 15EB(2) is similar to the former rule, which allowed the Commissioner to approve a taxable period end date for a registered person if the Commissioner was satisfied there were good commercial reasons for the person's chosen date. The main difference is the former rule only applied when the person requested an end date that was a specific date in the month (for example, the 20th of the month, regardless of the day of the week on which it falls). For instance, the former rule did not apply when the taxpayer's chosen end date was a specific day of the last week in the relevant period.

The new rule makes no such distinction between an end date that is a specific date in the month and one that is a given day of the week, and is broad enough to accommodate either scenario.

The new rules also enable approvals of taxable period end dates to apply indefinitely, rather than being time-limited to only apply for one year (as has been the Commissioner's past practice with taxpayers using the 4-4-5 accounting cycle). An application to change the end date of a taxable period will still need to be made in writing. This can be done online using myIR.

Removal of restrictions for end date based on specific day of the week

The new rules also remove restrictions that previously applied when a registered person filing monthly or two-monthly sought approval for an end date that was a specific day of the last week in the period and fell outside seven days before or after the end of the month. This means that:

- The former requirement that the person's accounting systems do not allow the use of an end date within seven days of the end of the month (which was problematic for some businesses using a 4-4-5 accounting cycle and for businesses using a four-weekly cycle) no longer applies.
- The former rules that limited the length of the person's taxable period to just four or eight weeks also no longer apply.

Example 33: Monthly filer using 4-4-5 accounting cycle

Company A, a monthly filer for GST, uses the 4-4-5 accounting calendar for its finance and other reporting functions. Each four- or five-week "month" in its accounting cycle usually ends on a Thursday, except the June taxable period, which always ends on 30 June (being Company A's balance date) regardless of the day of the week on which it falls.

Based on Company A's accounting calendar for its 2025–26 financial year, Company A is approved by the Commissioner to have the following taxable period end dates shown in the table below.

Taxable period	Approved end date
July 2025	31 July 2025
August 2025	28 August 2025
September 2025	2 October 2025
October 2025	30 October 2025
November 2025	27 November 2025
December 2025	1 January 2026
January 2026	29 January 2026
February 2026	26 February 2026
March 2026	2 April 2026
April 2026	30 April 2026
May 2026	28 May 2026
June 2026	30 June 2026 (balance date)

The Commissioner is satisfied that Company A has good commercial reasons for these taxable period end dates and that approving these end dates is consistent with the purpose of the rules allowing approved taxable period end dates (because the dates are based on the normal accounting cycle used by Company A for its finance functions, and it would be expensive for Company A to re-run periods outside of its normal accounting cycle).

The Commissioner's approval also extends to allowing Company A to continue to use taxable period end dates that are aligned with its 4-4-5 accounting calendar on an ongoing basis (that is, for future financial years).

Example 34: Two-monthly filer using 4-5-4 accounting cycle

Company B, a two-monthly filer for GST, uses the 4-5-4 accounting calendar for its finance and other reporting functions. Each four- or five-week "month" in its accounting cycle usually ends on a Friday. Company B would like to have taxable period end dates for GST that are aligned with this accounting cycle, except for the February/March taxable period, which would always end on 31 March (being Company B's balance date) regardless of the day of the week on which it falls.

Based on Company B's accounting calendar for its 2025–26 financial year, Company B is approved by the Commissioner to have the following taxable period end dates shown in the table below (as well as to have taxable period end dates based on its 4-5-4 accounting calendar on an ongoing basis).

Taxable period	Approved end date
April/May 2025	30 May 2025
June/July 2025	25 July 2025
August/September 2025	26 September 2025
October/November 2025	28 November 2025
December 2025/January 2026	23 January 2026
February/March 2026	31 March 2026 (balance date)

The Commissioner is satisfied that Company B has good commercial reasons for these taxable period end dates and that approving these end dates is consistent with the purpose of the rules allowing approved taxable period end dates.

It does not matter that one of Company B's end dates (23 January) is more than seven days before the relevant month end or that future end dates might also be more than seven days before or after the relevant month end.

Extension of wider discretion to six-monthly and quarterly filers

The widening of the Commissioner's discretion to approve taxable period end dates (if there are good commercial reasons for those dates) does not only apply to monthly and two-monthly filers, but also applies to:

- Six-monthly filers. Previously, six-monthly filers could only apply to have taxable period end dates approved by the Commissioner if those dates were not more than seven days before or after the last day of the month. This restriction does not exist under the new rules, meaning six-monthly filers are now on an equal footing with monthly and two-monthly filers.
- Non-resident suppliers who are required by section 15(6) to have three-month (quarterly) taxable periods. Before the 2022 changes, the rules allowed these non-resident suppliers to apply to the Commissioner for a taxable period end date that is not the last day of a month,

but changes made in 2022 meant the rules no longer allowed for this. The new rules restore the pre-2022 position that these registered persons may apply for approved taxable period end dates, but without the previous "seven days before or after" restriction.

When change in end date would take effect

New section 15EC applies when a registered person has approval under section 15EB(2) to change the end date of their taxable period. The rule provides that the change in taxable period end date takes effect at:

- the end of the taxable period in which the person applies (for example, if a registered person filing monthly applies during March to change the last day of each of their taxable periods to the 28th of the relevant month, the first taxable period that the change in end date will be effective for is the April taxable period, as this is the first taxable period after the end of the March taxable period), or
- the end of a later taxable period nominated by the person and approved by the Commissioner.

It also provides that the Commissioner may approve a change in the end date of the person's taxable period to take effect at the start of the taxable period in which the person applies for the change, but only if the person can show that it was not practicable for them to apply for the change before the start of that taxable period. In this context, "not practicable" means it was not possible in practice for the person to have applied for the change before the start of the relevant period. For example, if a newly GST-registered person wishes to change their taxable period end date effective from the start date of their registration (so that the change in end date applies for their very first taxable period), it clearly would not be practicable for the person to have applied for the change before they had even registered for GST.

Other situations when it might not be practicable for a registered person to apply to change their taxable period end date before the start of the first taxable period they wish the change to be effective for include when:

- A person sells their company to another person and the vendor wishes to align the end date of the last taxable period under their ownership (as a one-off change in the company's taxable period end date) with the date of the shareholding change. In this situation, the date of the shareholding change may not be known until close to the settlement date, so it might not always be possible in practice for the vendor to apply for the change in end date before the start of the relevant taxable period.
- A company joins a GST group part way through a taxable period and, similar to the shareholding change example above, the company wishes to align the end date of that taxable period with the date that it joins the group. As in the shareholding change example,

the effective date for a company joining a GST group may not be known until very shortly before the event.

Length of time change in end date is effective for

An approval of a registered person's change in taxable period end date has effect until:

- the Commissioner withdraws the approval because the Commissioner considers the person does not have good commercial reasons for their end date or the approval is not consistent with the purpose set out in section 15EB(1)
- the person changes to using the "default" taxable period end dates (being the last day of a month), or
- a new approved taxable period end date takes effect, if the person re-applies under section 15EB(2) for a new taxable period end date.

Changing from approved end dates to default end dates

There may be situations when a registered person who has approved taxable period end dates may wish to change from using those dates to the default (month end) dates. For example, this may arise when the person purchases a new accounting system.

Section 15E(2) now provides that a registered person who has a change of end date approved under section 15EB(2) may subsequently choose to use the default end date. If they choose to do so, they must notify the Commissioner of this change.

In other situations, the Commissioner might discover that a person with approved taxable period end dates does not actually have good commercial reasons for those end dates, or the approval of those dates might not be consistent with the purpose of the rules set out in section 15EB(1). In this situation, the Commissioner may withdraw the approval for the person's end dates, meaning the person may be required to change back to using the default end dates if no other end date has been approved under section 15EB(2).

In either case (when the person chooses to change to the default end dates, or the Commissioner withdraws approval for the person's current end dates), a change to the default end dates takes effect under section 15ED at:

- the end of the taxable period in which the person chooses to use the default end date, or in which the Commissioner withdraws approval for the end dates that were previously approved under section 15EB(2), or
- the end of a later taxable period nominated by the person and approved by the Commissioner.

Power for Commissioner to prescribe method for determining approved end dates and corresponding due dates

The rules that were formerly in section 15E(2B) and (2C) have been replaced with a power for the Commissioner to prescribe a method for certain registered persons that are approved to have taxable period end dates based on their accounting cycle to determine which of the reporting or "cut-off" dates in their accounting cycle are their approved end dates.

The former rules applied whenever a registered person had a taxable period with an end date that was not the last day of the month. However, it appears those rules were intended for a specific and relatively rare scenario, being when a registered person filing monthly or two-monthly was approved by the Commissioner to have taxable period end dates that were aligned with a four-weekly accounting cycle.

For a monthly filer in this situation, dividing their GST cycle into taxable periods of four weeks (or approximately four weeks) each would result in the person, in theory, having thirteen periods that are equivalent to a one-month taxable period in the year, when in fact they can only have twelve taxable periods over the course of a year. Likewise, for a two-monthly filer, dividing their GST cycle into taxable periods of approximately eight weeks each would result in the person having six and a half periods that are equivalent to a two-month period in the year (rather than six).

In both cases, there needs to be some way to deal with the "leftover" four-week period and to determine which dates the person may have as their approved end dates, as well as their corresponding filing and payment due dates. The rules in former section 15E(2B) and (2C) were intended to resolve these matters, but they only provided one (rather prescriptive and complex) method for determining the relevant dates when other methods may also make sense and be simpler for taxpayers to apply.

To address these issues, new section 15EB(5) applies to a registered person who has:

- a one-month or two-month taxable period, and
- approved taxable period end dates that are based on an accounting cycle that consists of 13 periods in a year that are each four weeks (or approximately four weeks) in length.

Section 15EB(5) sets out that the Commissioner may prescribe methods that a registered person in this situation may use to determine an approved taxable period end date for their circumstances. Such prescribed methods will be published shortly on the Inland Revenue Tax Technical website (taxtechnical.ird.govt.nz). These will include the method that was provided for in former section 15E(2B) and (2C), along with an alternative that some taxpayers may prefer to apply.

Taxpayers using a prescribed method to determine their approved taxable period end dates still need to tell Inland Revenue what those dates are before the end of the relevant month.

Consequential amendments

The following consequential amendments have also been made:

- Repealing the changes that were made to sections 15(1) and (5)(a), 15C, and 15D in 2022, thus reinstating the respective versions of those sections that applied before the 2022 amendments. As outlined above, the provisions setting out when changes in taxable period end dates take effect are now contained in new sections 15EC and 15ED, rather than in section 15D.
- Minor wording changes to section 15B(4) and (4B). Previously, section 15B(4B) referred to section 15E(2B), which as outlined above has now been repealed. Under the new version of section 15(4B), a person's cycle of taxable periods is deemed to be aligned with their balance date (as per the requirement of section 15B(4)) if their last taxable period before their balance date ends on a date approved by the Commissioner under section 15EB(2).

Permanent change of use rule and assets acquired before 1 April 2023

Section 143(3) of the Taxation (Annual Rates for 2022‑23, Platform Economy, and Remedial Matters) Act 2023

Summary of amendment

The amendment allows section 21FB of the Goods and Services Tax Act 1985 (GST Act) to apply to assets acquired before 1 April 2023, so long as the relevant permanent change of use adjustment is made in a return for a taxable period starting on or after 1 April 2023.

Effective date

The amendment took effect on 1 April 2023.

Background

As part of 2023 reforms to simplify the GST adjustment rules, section 21FB of the GST Act was replaced by section 143(2) of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 (PERM Act) to enable a one-off GST adjustment to be made when there was a permanent change of use, rather than requiring two or more adjustments over consecutive adjustment periods. This was intended to reduce compliance costs, particularly for taxpayers who acquired business assets before registering for GST.

The application provision for the reform in section 143(3) of the PERM Act was "from a registered person's adjustment period starting on or after 1 April 2023". However, the interaction of this application provision and the definition of "first adjustment period" in section 21G of the GST Act created an unintended consequence.

If a person purchased a business asset before 1 April 2023 and subsequently registered for GST in the current year, they were required to initially apply the pre-1 April 2023 version of section 21FB, which required them to make two adjustments. In this case, the relevant adjustment period starts on "the date of acquisition" (which occurred on a date before 1 April 2023), rather than from the beginning of the tax year in which the adjustment occurs.

The amendment replaces the application date in section 143(3) so that section 143(2) of the PERM Act (which replaced section 21FB of the GST Act) applies to a registered person's adjustments made in returns for taxable periods starting on or after 1 April 2023.

Temporary registration for certain types of deemed supplies

Sections 51(2) and 51B(4), (5), and (6) of the Goods and Services Tax Act 1985

Summary of amendments

The amendments expand the scope of the temporary GST registration rules so they can also be applied to an unregistered person who is subject to the existing deemed supply rule in section 5(16C) of the Goods and Services Tax Act 1985 (GST Act).

Effective date

The amendment took effect on 30 March 2025.

Background

If an unregistered person receives a supply of land that was incorrectly zero-rated, they may be liable to return GST on that land. In these cases, section 51B(4) to (6) of the GST Act provides the Commissioner of Inland Revenue with the ability to temporarily register the person for GST, assess GST on the supply of the land, and then deregister that person.

The amendments expand the scope of the temporary GST registration rules so these rules can also apply to an unregistered person who is subject to the existing deemed supply rule in section 5(16C).

Section 5(16C) applies to deem a supply of goods or services (usually land) to be considered a taxable supply in cases when a person has previously claimed input tax deductions but failed to correctly account for output tax when they deregistered or changed their use to non-taxable use. Section 5(16C) may also apply to a person who had applied section 21FB to increase their non-taxable use of the goods or services in contemplation of selling those goods. In both cases, the disposal of the goods is deemed to be a supply made by the person in the course or furtherance of a taxable activity.

The changes reduce administration costs by making it easier for the Commissioner to assess and collect GST under this deemed supply rule. They reduce compliance costs because the liable taxpayer can be deregistered from GST immediately after the GST is assessed (so is not required to continue filing GST returns).

Agreed adjustment methods and limitations on adjustments

Section 21(2) of the Goods and Services Tax Act 1985

Summary of amendment

The amendment clarifies that when a registered person agrees an adjustment method with the Commissioner of Inland Revenue under section 21(4) or (4B) of the Goods and Services Tax Act 1985 (GST Act), then this agreed method will override the limitations on making adjustments listed in section 21(2).

Effective date

The amendment took effect on 18 March 2019.

Background

Under section 21(4) and (4B) of the GST Act, GST registered persons can agree a "fair and reasonable" adjustment method with the Commissioner to reduce their compliance costs.

Most agreed adjustment methods typically apply to all the registered person's inputs, regardless of the value of those inputs.

However, section 21(2) of the GST Act states that annual adjustments are "not permitted" on inputs purchased for $10,000 or less. It was previously unclear if this limitation would apply if the adjustment method that was agreed under section 21(4) or (4B) allows the registered person to make GST adjustments for all their inputs (not just those acquired for more than $10,000).

The amendments clarify that the agreed adjustment method overrides the limitation in section 21(2) and apply retrospectively from 18 March 2019, the date "not required" was changed to "not permitted" in the opening words of section 21(2).

Clarification of taxable activity exclusion on deregistration

Section 6(3)(e) of the Goods and Services Tax Act 1985

Summary of amendment

The amendment clarifies that the taxable activity exclusion for certain goods in section 6(3)(e) of the Goods and Services Tax Act 1985 (GST Act) includes supplies that occur due to the person deregistering from GST.

Effective date

The amendment is effective for supplies made on or after 1 April 2011.

Background

When a person deregisters from GST, section 5(3) of the GST Act deems them to make a supply of any goods or services currently used in their taxable activity.

In April 2023, new section 6(3)(e) was added to the definition of taxable activity to exclude certain qualifying goods from being part of a registered person's taxable activity when the goods are sold (so they would not be required to charge GST for these goods). The qualifying goods will typically be dwellings that have a mainly private or exempt use and some minor business use (such as a home office) that the person has treated as not being used to make their taxable supplies.

The policy intention, reflected in the Bill commentary and *Tax Information Bulletin* guidance on this rule, noted that section 6(3)(e) is intended to apply to supplies that include the deemed supply that occurs when a person de-registers from GST. However, the opening words of section 6(3)(e) previously referred to a "supply of goods by way of sale" and the deemed supply is not an actual sale.

The amendment changes the opening words to insert a reference to a supply made under section 5(3) and to remove the words "by way of sale". The amendment has the same application date as section 6(3)(e) of the GST Act. However, a savings provision ensures it does not apply to supplies for which an assessment has been made before 30 August 2022.

Limitation on final deduction for non-taxable use of land supplied by property developer

Section 21F(6) of the Goods and Services Tax Act 1985

Summary of amendment

The amendment clarifies that section 21F(6) of the Goods and Services Tax Act 1985 (GST Act) also applies to property developers that deal in land or erect buildings.

Effective date

The amendment took effect on 24 February 2020.

Background

When a registered person sells land that they have used partly for a taxable use (such as property development) and partly for a private or exempt use (such as a residential tenancy), they are generally required to treat the sale of the land as a taxable supply but can claim a final input tax deduction under section 21F of the GST Act for the percentage of private or exempt use.

However, for property developers, this deduction is limited by section 21F(6) to the GST fraction of the original purchase price. This ensures that GST is collected on the full increase in the land's value because the increase in value is likely to be due to their property development activity (for example, constructing new dwellings on the land), rather than the non-taxable use (for example, continuing a residential tenancy for an old dwelling until the new construction work begins).

Section 21F(6) refers to "developing land or dividing land into lots" to describe a taxable activity of property development. The same wording is also used in certain provisions of the Income Tax Act 2007 (ITA). However, because there are separate provisions in the ITA for "erecting buildings" and for "dealing in land", there is a potential risk that "developing land" could be interpreted narrowly in the GST context. The amendment clarifies that section 21F(6) also applies to property developers that deal in land or erect buildings.

For the purposes of section 21F(6), a property developer is defined as a registered person who disposes of land in the course and furtherance of a taxable activity that is their main activity and involves developing land, dividing land into lots, dealing in land, or erecting buildings.

The amendment takes effect on 24 February 2020, which is the date section 21F(6) was amended to include the reference to "developing land". However, a savings provision preserves a tax position based on the current legislation taken before 26 August 2024.

Associated persons and secondhand goods deductions

Section 3A(3)(a)(i) and (3BB) of the Goods and Services Tax Act 1985

Summary of amendment

The amendment limits input tax deductions on arrangements when secondhand goods have been sold between several associated persons before being sold by an unregistered supplier to an associated registered person. In most cases, it limits the input tax deduction for the registered person to the tax fraction of the purchase price of the goods when they were last supplied by a non-associated person.

Effective date

The amendment is effective for goods acquired by a person on or after 30 March 2022.

Background

The Goods and Services Tax Act 1985 (GST Act) provides secondhand goods deductions for registered persons who acquire goods from an unregistered person. These deductions are limited by section 3A(3)(a) when the registered person acquires the secondhand goods from an associated person.

An amendment that was made to these rules with effect from 30 March 2022 unintentionally allows some taxpayers to claim a higher amount of deductions in a scenario when the same goods are sold multiple times between three or more associated persons (from one unregistered person to another unregistered person) before being acquired by a registered person.

Although this scenario is rare, some taxpayers could exploit this to produce an unintended tax advantage. A remedial amendment was required to address the potential fiscal risk. The amendment takes effect on 30 March 2022. However, a savings provision preserves tax positions taken before 26 August 2024 that applied section 3A(3)(a)(i) of the GST Act.

Key features

New section 3A(3BB) applies when the supplier of the secondhand goods to an associated registered person has themselves acquired the same goods from an associated person.

In most cases, new section 3A(3BB)(a) then limits the input tax deduction for the registered person to the tax fraction of the purchase price of the goods when they were last supplied by a non-associated person.

Example 35: Land acquired by registered person after last owned by series of associated persons

Jacob is an unregistered person who purchased land from a non-associated person for $1.15 million in 2018.

Jacob later sells the land to a company he owns called Landbank for $2.3 million in 2023.

In 2025, Landbank sells the land to an associated GST-registered company that Jacob also owns, called Green Lane Development, for $2.4 million. Green Lane Development will be using the land to make taxable supplies.

Because Landbank is not a registered person, Green Lane Development is entitled to claim a secondhand goods input tax deduction. Under new section 3A(3BB)(a), this input tax deduction is limited to $0.15 million. This is because $0.15 million is the tax fraction of the $1.15 million paid by Jacob in 2018 when the land was last supplied by a person that was not associated with Landbank (the supplier to the associated registered person, Green Land Development).

New section 3A(3BB)(b) may apply in scenarios when the goods have been sold multiple times through a chain of associated persons that includes an associated supply by a registered person who had accounted for output tax on the supply of the goods. In these cases, the input tax deduction is limited to output tax previously accounted for on the associated supply made by the registered person.

Example 36: Land sold by registered person to associated unregistered person and then reacquired by registered person

Build Co is a registered person who purchased land for $1.15 million in 2016.

Build Co constructs three dwellings on the land and sells it for $2.3 million to an associated unregistered person, Rent Co, in 2021, and returns $0.3 million of output tax. In 2025, Rent Co sells the land back to Build Co for $2.6 million because Build Co intends to renovate the existing dwellings before selling them as taxable supplies to some new buyers.

Under new section 3A(3BB)(b), Build Co can claim a secondhand goods input tax deduction for $0.3 million when it acquires the land for $2.6 million in 2025. This $0.3 million input tax deduction corresponds to the amount of output tax that was accounted for by Build Co when it sold the land to Rent Co in 2021.

Timing of GST on accommodation supplied through electronic marketplace

Sections 19DB and 20(4)(e) of the Goods and Services Tax Act 1985

Summary of amendments

Amendments have been made to provide operators of electronic marketplaces, listing intermediaries, and underlying suppliers (as applicable) with the option of accounting for GST on a supply of taxable accommodation[28] made through an electronic marketplace up to seven days after the completion of the performance of the services (in practice, this would be up to seven days after the guest's check-out date).

All legislative references are to the Goods and Services Tax Act 1985 (GST Act).

Effective date

The amendments have effect on and after 1 April 2024.

Background

The GST rules for supplies of listed services, which includes taxable accommodation performed, provided or received in New Zealand, came into effect on 1 April 2024. Under the new rules, operators of electronic marketplaces (and, in some cases, listing intermediaries) are required to account for GST on supplies of listed services made on or after 1 April 2024. In some cases, the provider of the accommodation (referred to as the "underlying supplier") may be able to opt out of the electronic marketplace rules to remain responsible for their own GST obligations.

When these rules were introduced, no corresponding changes were made to the rules determining when GST must be accounted for on supplies of taxable accommodation. This meant if the person treated as the supplier of the accommodation used the invoice basis, they had to account for GST on the supply in accordance with the normal time of supply rules, being the earlier of when:

- a payment was received for the supply, or
- an invoice was issued for the supply.

If the person instead used the payments basis, they had to account for GST to the extent to which payment was received for the supply.

[28] This refers to accommodation other than accommodation that is an exempt supply under the GST Act.

These timing rules created several problems in the taxable accommodation context. For example, in situations when a GST-registered underlying supplier has opted out of the marketplace rules to remain responsible for their own GST obligations, the guest's payment may be received and held by the marketplace operator. Therefore, the marketplace operator may have triggered time of supply for the underlying supplier, with the underlying supplier potentially being unaware of this. Second, even in situations when the underlying supplier was aware that time of supply had occurred, they might not have had sufficient cash available to pay their GST liability.

Key features

To address the issues outlined above, an optional accounting rule provides that operators of electronic marketplaces, listing intermediaries, and underlying suppliers (as applicable) may choose to account for output tax (and deduct input tax for the flat-rate credit, if applicable) on a supply of taxable accommodation through an electronic marketplace up to seven days after the performance of the services is completed (in practice, this would be up to seven days after the guest's check-out date).

If a marketplace operator, listing intermediary, or underlying supplier chooses to use this rule, it does not affect when the time of supply is deemed to occur under section 9.

Detailed analysis

New section 19DB applies when a registered person (which may be an operator of an electronic marketplace, a listing intermediary, or the underlying supplier, depending on the circumstances) is required to account for, as applicable:

- output tax on a supply of taxable accommodation made through an electronic marketplace
- input tax for a flat-rate credit that is required to be passed on to the underlying supplier of the accommodation.

Section 19DB also applies to other services that are closely connected to the supply of taxable accommodation if they are advertised, listed, or otherwise made available through an electronic marketplace.

Under section 19DB, the registered person may choose to account for output tax (and/or input tax for the flat-rate credit) in or before the taxable period that includes the date that is seven days after the performance of the services is completed. In practice, the "date that is seven days after the performance of the services is completed" would be the date that is seven days after guest check-out occurred.

Rule is optional to apply, including on supply-by-supply basis

The accounting rule in section 19DB is optional to apply for any given supply covered by the section, meaning the registered person could choose to apply the rule to some supplies of taxable accommodation made through an electronic marketplace but would not have to apply it to all such supplies.

If a person chooses to apply the rule, it will be applied by accounting for GST on the relevant supplies in the taxable period in which the performance of the services is completed, or in an earlier taxable period (such as the taxable period in which the guest checked in to or checked out of the accommodation, if different to the taxable period that includes the date that is seven days after the check-out date). The person does not need to notify Inland Revenue of their choice to apply the rule, but they must keep evidence of their choice for a minimum period of seven years in accordance with the record-keeping rules in the GST Act.

If the person chooses to apply the optional rule, output tax on the supply is attributed to the taxable period in which the person chooses to account for it (see section 20(4)(e)). This taxable period must not be later than the taxable period that includes the date that is seven days after the performance of the services is completed. If the person is liable for both output tax on a supply and to meet requirements relating to the flat-rate credit for that supply, they must account for output tax and take an input tax deduction for the flat-rate credit on the supply in the same taxable period.

If the person chooses not to apply the optional accounting rule, they would account for GST on the supply according to their normal accounting basis.

Example 37: Electronic marketplace chooses to account for GST on check-in date

Max books accommodation at a holiday home in Queenstown for two nights through Willow's Hideaways Ltd, an electronic marketplace. The underlying supplier has not opted out of the electronic marketplace rules.

Willow's Hideaways Ltd chooses to use the optional rule by accounting for GST on the supply in the taxable period that includes Max's check-in date.

Example 38: Underlying supplier makes supplies through multiple marketplaces

Hotel Co makes supplies of accommodation through two electronic marketplaces: electronic marketplace A (EMA) and electronic marketplace B (EMB). Hotel Co is registered for GST and has elected to account for GST on the invoice basis. Hotel Co has notified the marketplace operators it will remain responsible for its own GST obligations because it makes supplies of more than $500,000 in a 12-month period.

When guests book accommodation with Hotel Co through EMA, the guest pays the marketplace operator directly and not Hotel Co. In this situation, Hotel Co chooses to apply the optional rule, allowing them to account for GST on the supply up to seven days after the performance of the services is completed (that is, seven days after the guest's check-out date). Hotel Co includes these supplies in its GST returns in accordance with the optional rule, based on when EMA remits the customer's payment to Hotel Co (which is never more than seven days after the check-out date).

For accommodation booked with Hotel Co through EMB, the guest pays Hotel Co directly (Hotel Co separately pays EMB's charges). In this situation, Hotel Co chooses to account for GST on the supplies according to the normal rules (that is, it accounts for GST in the taxable period in which time of supply occurred, being the earlier of when a payment was received, or an invoice was issued for the supply).

As part of normal record-keeping requirements, Hotel Co will need to keep sufficient records to show which rule it applied for supplies (the normal timing rules or the optional rule).

Parties involved in supply can account for GST at different times

In situations when more than two parties are involved in a supply of taxable accommodation made through an electronic marketplace (that is, when a listing intermediary is involved), there is no requirement for all parties to apply this optional rule consistently.

The effect of this is that a marketplace operator may choose to account for output tax according to their normal accounting basis, while a listing intermediary could, for example, deduct input tax for the flat-rate credit up to seven days after the completion of the performance of the services (or vice versa – the marketplace operator could account for output tax using the optional rule, and the listing intermediary could deduct input tax for the flat-rate credit according to their normal accounting basis).

Example 39: Listing intermediary involved chooses to use optional rule

Jared provides short-term rental accommodation in a property he owns through an electronic marketplace. Jared is not registered for GST and is therefore eligible for the flat-rate credit. He engages the services of Kylie, a listing intermediary, to manage his property and list it on the electronic marketplace for him.

Kylie is responsible for deducting input tax for the flat-rate credit for Jared. She is not responsible for returning output tax on any of the supplies made through the electronic marketplaces. Guests booking Jared's property always pay the marketplace operator directly, and Kylie receives payments from the marketplace operator a week before the guests check in to the property.

Kylie chooses to take an input tax deduction for the flat-rate credit based on the optional rule. Because the optional rule allows Kylie to deduct input tax for the flat-rate credit seven days after the performance of the services is completed or at an earlier time, she chooses to take the deduction in her GST return for the taxable period that includes the date that is a week before the check-in date (rather than a week after the check-out date). It does not matter whether the marketplace operator has chosen to apply the optional rule or the normal timing rules

Input tax deductions for taxpayers using accommodation in their taxable activities

As outlined above, if a marketplace operator, listing intermediary, or underlying supplier of accommodation chooses to apply the optional accounting rule, this will not affect time of supply.

This means a registered person purchasing taxable accommodation for use in their taxable activity is still entitled to deduct input tax on the supply at the normal time. This also means the usual rules for taxable supply information and supply correction information, including the timing of when this information must be provided to the recipient of the supply, still apply.

When a marketplace operator or a listing intermediary is responsible for providing taxable supply information to the recipient, the operator or listing intermediary must still provide it within 28 days of the time of supply, without the need for a request by the recipient. If the underlying supplier is instead responsible for providing taxable supply information, they must provide it within 28 days of a request for it by the recipient.

Example 40: GST-registered business traveller using taxable accommodation made through electronic marketplace for taxable activity

Todd is travelling to Auckland for a business conference. Todd books accommodation for three nights through Stephen's Stays Ltd, the operator of an electronic marketplace, and pays a 10% deposit on the accommodation at the time of the booking. Todd is registered for GST and is using the accommodation for his taxable activity. He has elected to account for GST on the invoice basis.

Stephen's Stays Ltd chooses to use the optional rule by accounting for GST on the supply when the performance of the services is completed (at Todd's check-out date).

Stephens Stays Ltd is still required to issue taxable supply information to Todd within 28 days of the time of supply, without the need for a request. Stephen's Stays Ltd emails a booking confirmation to Todd, which includes the taxable supply information. Todd takes a full input tax deduction for the accommodation in his GST return for the taxable period in which he paid the deposit.

Example 41: GST-registered business traveller shortens booking

Assume the same facts as in Example 40. A few months later, Todd decides to shorten his stay to two nights because the final day of the business conference is cancelled. Todd contacts Stephen's Stays Ltd to change his booking to two nights.

Stephen's Stays Ltd issues supply correction information to Todd, as per the existing rules. Todd then uses the supply correction information to return the excess input tax deducted (for the extra day of accommodation) as output tax in his next GST return.

Stephen's Stays Ltd has opted to use the optional rule (and has therefore not yet accounted for GST) so they do not need to adjust their GST position.

Flat-rate credit and deductions for income tax purposes

Sections CH 5B, CX 1B, and DB 2(2B) of the Income Tax Act 2007

Summary of amendments

The amendments provide certain underlying suppliers who make supplies of listed services through an electronic marketplace the option to include the flat-rate credit as assessable income in their income tax returns. This allows them to deduct their expenditure for income tax purposes on a GST-inclusive basis without the need for apportionment.

Effective date

The amendments are effective for the 2024–25 and later income years.

Background

GST rules for supplies of "listed services"[29] came into effect on 1 April 2024. Included in these rules is a flat-rate credit scheme to ensure underlying suppliers of listed services who are not registered for GST do not have their supplies over-taxed. The flat-rate credit scheme achieves this by providing a "credit" of 8.5% of GST charged on supplies of listed services to underlying suppliers who are not registered for GST. The credit is a proxy for the input tax that the underlying supplier would be able to recover as a GST deduction if they were registered for GST. For this reason, it is treated as excluded income for income tax purposes.

If an underlying supplier who is not registered for GST incurs expenditure related to sales and income made from both an online marketplace and through another source (for example, sales they make directly through their own website), they will have to deduct their expenditure for income tax purposes:

- on a GST-exclusive basis for expenditure attributable to income derived from sales on an electronic marketplace because the GST component of their expenses will have already been accounted for in the flat-rate credit scheme, and
- on a GST-inclusive basis for expenditure attributable to income derived from other activities, consistent with the normal deduction rules in the Income Tax Act 2007 (ITA) for persons who are not registered for GST.

[29] Listed services are ride-sharing/ride-hailing, short-term rental accommodation, and delivery services for food and beverages.

This requires the underlying supplier to apportion their expenditure to determine their GST-inclusive and GST-exclusive deductions for income tax purposes. It has been suggested that these rules are complex and place high compliance costs on these underlying suppliers.

Detailed analysis

New section CH 5B of the ITA provides underlying suppliers with the ability to treat the flat-rate credit as income for the income year in which the underlying supplier receives the flat-rate credit. If the underlying supplier includes the flat-rate credit as income, they can take GST-inclusive income tax deductions on all their expenditure (including expenditure attributable to sales on an electronic marketplace).

The new section only applies to underlying suppliers who have received a flat-rate credit for an income year and who are not required to make an output tax adjustment for the credit. This means that underlying suppliers who were not registered for GST at the time they received the flat-rate credit are eligible to use this rule.

Corresponding changes to sections CX 1B and DB 2(2B)

Amendments to section CX 1B of the ITA (which treats the flat-rate credit as excluded income) no longer treat the flat-rate credit as excluded income for income tax purposes if the underlying supplier (who is not registered for GST) chose to include it in their assessable income under new section CH 5B.

Section DB 2(2B) of the ITA currently treats unregistered persons as if they are registered for GST when determining income tax deductions for expenditure attributable to supplies of listed services made through an electronic marketplace. The amendments to section DB 2(2B) mean that underlying suppliers who chose to treat the flat-rate credit as assessable income are not treated as registered for GST for their expenditure related to listed services. This effectively allows them to take GST-inclusive income tax deductions on expenditure attributable to supplies of listed services made through an electronic marketplace.

Example 42: Including the flat-rate credit as assessable income to claim GST-inclusive deductions

In the 2024–25 tax year, Warren receives income from sales of short-term rental accommodation he provides through an electronic marketplace and through his own website (which is not an electronic marketplace). He is not registered, or required to be registered, for GST.

Warren receives the flat-rate credit for his sales made through the electronic marketplace. Warren incurs expenses, inclusive of GST, for commissions charged by the electronic marketplace, local council rates, and house and contents insurance. These expenses are attributable to Warren's income derived both through the electronic marketplace and through his own website.

Under current rules, Warren is required to apportion his expenditure between the GST-inclusive and GST-exclusive amounts of his rates and insurance for income tax purposes. Warren is also required to claim the full GST-exclusive amount of commissions charged by the electronic marketplace.

Under the amendments, Warren can choose to include the flat-rate credit he receives as income in his 2024–25 income tax return. If Warren makes this choice, he does not need to apportion his expenditure between GST-inclusive and GST-exclusive amounts. Instead, Warren can claim income tax deductions on the full GST-inclusive amounts of his commissions, rates and insurance.

Technical amendments related to platform economy

Sections 2(1), 11A(1)(jc), 19NB, 20(2)(bb) and (3)(de), 60(1C) and (1D), 60CB(4), (5), (7), and (7B), and 60H(1B) and (3) of the Goods and Services Tax Act 1985

Summary of amendments

Changes have been made to the GST rules for listed services to ensure the rules work as intended.

All legislative references are to the Goods and Services Tax Act 1985 (GST Act).

Effective date

The amendments have effect on and after 1 April 2024, except for:

- the amendment to section 60H(3), which took effect on 30 March 2025, and
- the amendment to section 20(3)(de), and new section 20(2)(bb), which apply for taxable periods starting on or after 1 April 2025.

Background

GST rules applying to supplies of listed services through electronic marketplaces took effect on 1 April 2024. "Listed services" refers to:

- accommodation, other than accommodation that is an exempt supply under the GST Act (referred to as "taxable accommodation")
- ride-sharing and ride-hailing services
- delivery services for food, beverages, or both,

provided that these services are performed, provided, or received in New Zealand.

The rules generally treat the operator of the electronic marketplace through which a supply of listed services is made as having supplied the services to the recipient, meaning the operator is liable to return and pay GST on the supply to Inland Revenue.

The rules were introduced to address concerns about the potential of the platform economy to erode the GST revenue base as more small suppliers shift towards operating on digital platforms. To minimise compliance and administration costs associated with applying GST to services provided by these small suppliers, the rules generally treat the operator of the electronic marketplace through which a supply of listed services is made as having supplied the services to the recipient, meaning the operator is liable to account for and pay GST on the supply to Inland Revenue.

The marketplace operator is also responsible for paying the flat-rate credit to unregistered underlying suppliers. The purpose of the flat-rate credit scheme is to compensate unregistered underlying suppliers for GST they incur on goods and services that they acquire to provide their services, so that they are in a comparable position to GST-registered underlying suppliers.

When an underlying supplier of taxable accommodation uses a "listing intermediary"[30] (such as a property manager) to list accommodation on electronic marketplaces on their behalf, special rules apply to require the listing intermediary to administer the flat-rate credit scheme for unregistered underlying suppliers, instead of the marketplace operator. This is because when a listing intermediary is involved, the marketplace operator might not have any information about the underlying supplier that is necessary for administering the scheme (and it may be difficult for the marketplace operator to obtain and hold this information).

In addition, the marketplace operator and listing intermediary may agree that the listing intermediary (instead of the marketplace operator) is also liable for GST on the supplies of accommodation.

Key features

The main changes that have been made are to:

- Allow marketplace operators (and listing intermediaries, if applicable) to deduct input tax for the flat-rate credit only if the underlying supplier has notified the marketplace operator or the listing intermediary that they are not registered for GST, consistent with the policy intention.
- Require taxable supply information to be provided by a marketplace operator or listing intermediary within 28 days of the time of supply.
- Allow a listing intermediary and an operator of an electronic marketplace to agree that the listing intermediary is responsible for providing taxable supply information and supply correction information to the recipient of the accommodation, if the listing intermediary and marketplace operator have also agreed the listing intermediary is liable to account for and pay GST on the supply of accommodation.
- Clarify that when a listing intermediary is interposed between:
  - an underlying supplier of taxable accommodation, who is eligible to unilaterally opt out of the electronic marketplace rules and wishes to do so, and

[30] A listing intermediary is a registered person who lists taxable accommodation on an electronic marketplace on behalf of an underlying supplier who makes those supplies through the marketplace. The definition of "listing intermediary" requires that the person enters into an agreement with the operator of the electronic marketplace to list or advertise the accommodation provided by the underlying supplier.

- the operator of the electronic marketplace through which the accommodation is supplied,

the underlying supplier must notify the listing intermediary they are opting out of the electronic marketplace rules. Further, if the marketplace operator would have been liable for output tax on the supplies of accommodation had the underlying supplier not opted out, the listing intermediary must notify the marketplace operator that the underlying supplier is opting out of the rules.

Detailed analysis

Claiming input tax deductions for the flat-rate credit

For taxable periods starting on or after 1 April 2025, marketplace operators (and listing intermediaries, when applicable) can only deduct input tax for the flat-rate credit for underlying suppliers who have notified that they are not registered for GST. To be notified, the marketplace operator or listing intermediary needs to be directly alerted to the information. If an underlying supplier has not provided information about their GST registration status to the marketplace operator or listing intermediary, input tax for the flat-rate credit cannot be deducted.

To claim a deduction under section 20(3)(de), section 20(2)(bb) requires the marketplace operator or listing intermediary to have obtained the information referred to in section 60H(1) (being the underlying supplier's name, tax file number, and GST registration status). A deduction for the flat-rate credit would therefore be available if the underlying supplier's GST registration status, at the time of supply of the listed services, has been notified as not registered.

Timeframe for providing taxable supply information

Section 19NB provides that, for a supply of listed services made by an operator of an electronic marketplace, taxable supply information must be provided to the recipient of the supply without the need for a request. This ensures the recipient can deduct input tax, if applicable, for listed services they receive.

Previously, the section did not specify when taxable supply information must be provided. An amendment has been made to require taxable supply information to be provided within 28 days of the time of supply to align with the timeframe for requests for taxable supply information from other GST-registered persons.

Enabling listing intermediaries to issue taxable supply information

As noted above, when a supply of listed services is treated as being made by an operator of an electronic marketplace, taxable supply information must be provided by the marketplace operator to the recipient of the supply without the need for a request. Notably, this rule governing the provision of taxable supply information (and supply correction information, if applicable) also applies when a listing intermediary is instead liable for output tax on a supply of taxable accommodation through an electronic marketplace.

Previously, there was no provision in the law for the listing intermediary and the marketplace operator to agree that the listing intermediary in this situation was also responsible for providing taxable supply information and supply correction information to the recipient of the supply. This meant the marketplace operator was technically responsible for providing the information to the recipient, even when a listing intermediary was treated as the supplier of the services for all other purposes of the GST Act and might have been amenable to providing the information.

New section 60CB(7B) applies when a listing intermediary is liable under section 60CB(7) for output tax on supplies of taxable accommodation that they list on an electronic marketplace. A listing intermediary is liable for output tax on a supply of taxable accommodation under section 60CB(7) when the listing intermediary:

- is a tax resident of New Zealand
- enters into agreements with more than one operator of an electronic marketplace to list or advertise taxable accommodation provided by underlying suppliers on those marketplaces
- enables or facilitates the supply of the accommodation through an electronic system that can automatically facilitate and manage the bookings made by recipients of the accommodation, and
- has agreed in writing with the operator of the electronic marketplace that the listing intermediary is liable for the payment of GST on supplies of taxable accommodation on that electronic marketplace.

When section 60CB(7) applies, new section 60CB(7B) provides that the listing intermediary and the operator of the electronic marketplace may agree that the listing intermediary is responsible for issuing taxable supply information and supply correction information (as applicable) to the recipient of the accommodation. This agreement must be recorded in a document. If the parties agree to this arrangement, the "supplier's details" (such as the supplier's name and GST registration number) included in the information must be those of the listing intermediary, not the marketplace operator.

Notification requirements for unilateral underlying supplier opt-outs

Section 60H sets out the requirements on underlying suppliers of listed services to notify operators of electronic marketplaces of certain information. The notification requirements generally apply for the purposes of administering either the flat-rate credit scheme or "opt-outs" by GST-registered underlying suppliers who are entitled to unilaterally opt out of the electronic marketplace rules.[31]

When a listing intermediary is interposed between an underlying supplier of taxable accommodation and the operator of the electronic marketplace through which the accommodation is supplied, the underlying supplier must treat the listing intermediary as if they are the marketplace operator for the purposes of most of the notification requirements in section 60H. For example, this means the underlying supplier must provide the listing intermediary (not the marketplace operator) with their name, tax file number, and GST registration status, and notify the listing intermediary if their GST registration status changes.

A previously omitted cross-reference in section 60H(1B) could have been read as suggesting that the underlying supplier was not required to notify the listing intermediary when the underlying supplier unilaterally opted out of the electronic marketplace rules to remain liable for GST on supplies they made, and that the underlying supplier was instead still required to notify the marketplace operator they were opting out. This section has now been amended to clarify that when a listing intermediary is interposed between an underlying supplier of taxable accommodation (who is eligible to unilaterally opt out of the electronic marketplace rules and wishes to do so) and the operator of the electronic marketplace through which the accommodation is supplied, the underlying supplier must notify the listing intermediary they are opting out of the marketplace rules.

When an underlying supplier notifies a listing intermediary that they are opting out, the listing intermediary might be required to notify the marketplace operator of the opt-out. This applies if the marketplace operator (not the listing intermediary) would have been liable for output tax on the supplies of taxable accommodation had the underlying supplier not opted out. That is, the listing intermediary is not required to notify the marketplace operator of the opt-out if the listing intermediary would otherwise have been liable for output tax on the supplies of accommodation.

Other minor amendments

The following minor amendments were also made:

- Amending section 60CB(5) and (7) to clarify that the Commissioner may disclose an underlying supplier's GST registration status to a listing intermediary for the purpose of the flat-rate credit scheme.
- Ensuring that section 60(1D), which creates three separate deemed supplies, only applies when a listing intermediary is involved in the supply of accommodation through an electronic

[31] Underlying suppliers that are not eligible for a six-month taxable period because their taxable supplies in a 12-month period exceed the threshold in section 15(2)(a) (currently $500,000) can unilaterally opt out of the electronic marketplace rules by notifying the marketplace operator that they choose to remain liable for GST on supplies they make.

marketplace, but the marketplace operator remains liable for output tax on the supply (as per the default rules for listing intermediaries).

- Amending section 11A(1)(jc) to ensure that a deemed supply by a GST-registered underlying supplier to a listing intermediary under section 60(1C)(a) is zero-rated.
- Amending section 60CB(4) to clarify that a zero-rated supply from an underlying supplier to a listing intermediary described in section 60CB(2)(a) does not create a requirement for the underlying supplier to provide taxable supply information to the listing intermediary.
- Correcting the terminology used in section 60(1C) (replacing the words “a supplier” with “an underlying supplier”).
- Deleting the word “also” in section 60H(1B). This is to clarify that, when a listing intermediary is interposed between an underlying supplier of taxable accommodation and an operator of an electronic marketplace, the underlying supplier only needs to provide the information referred to in section 60H to the listing intermediary (instead of being required to provide the information to the marketplace operator and “also” to the listing intermediary).
- Adding “listing intermediary”, as defined in section 60CB(8), to the defined terms in section 2(1).

Distributions made by GST-registered unit title body corporate to members

Sections 5(13C) and (13D), and 20(3)(j) of the Goods and Services Tax Act 1985

Summary of amendments

The amendments provide that if a GST-registered unit title body corporate distributes funds to its members it can claim an input tax deduction on the GST fraction of the distribution.

If the member who receives the distribution from the GST-registered unit title body corporate is also a GST-registered person, they are required to account for output tax on the distribution to the extent to which they are using the unit to make taxable supplies.

Effective date

The amendments took effect on 30 March 2025.

Background

Unit titles are a common ownership model for apartment complexes. While a unit title body corporate will typically have a taxable activity for GST purposes, it will generally not become liable to register for GST. This is because the value of supplies it makes to its members is not counted towards the $60,000 GST registration threshold. For this reason, only a small number of unit title bodies corporate are registered for GST.

A GST-registered unit title body corporate must account for output tax on levies it receives from its members (refer section 5(8A) of the Goods and Services Tax Act 1985 (GST Act)). However, the GST Act does not specify how a GST-registered unit title body corporate should account for any distributions it may make to its members.

Key features

Section 20(3)(j) of the GST Act allows the GST-registered unit title body corporate to claim an input tax deduction if it makes a monetary distribution to its members to reimburse them. The input tax deduction is equal to an amount of output tax that the unit title body corporate has previously charged or returned on a corresponding monetary amount for which it is reimbursing its members. This will most commonly be output tax that the unit title body corporate charged on a levy or other amount paid by the members due to section 5(8A). It may also include an amount of money for which the unit title body corporate returned output tax because section 5(8AB) applied to its funds on the day it registered for GST.

For example, a GST-registered unit title body corporate may implement an additional levy on its members to pay for repairs to a unit title development while it is awaiting an insurance payout to help fund those repairs. The unit title body corporate is required to return output tax on the initially levied funds and on the subsequent insurance payment. Once the insurance payout is received, the unit title body corporate will use the insurance payout to reimburse the additional levy amounts that it had previously charged its members.

In these circumstances, the amendment allows the unit title body corporate to claim an input tax deduction when it pays the distribution to its members that will offset the output tax it previously charged or returned when it collected the additional levy.

If the member who receives the distribution from the GST-registered unit title body corporate is also a GST-registered person, they are required under section 5(13C) and (13D) to account for output tax on the distribution to the extent to which they are using the unit to make taxable supplies.

Example 43: Unit title body corporate distribution to members

A unit title property comprises a café and 20 apartment units. Due to earthquake damage, the property requires extensive repairs. The unit title body corporate submits an insurance claim but is told by its insurer it will take months to process the claim, so it seeks funding from its members for the cost of the repairs.

The unit title body corporate collects payments totalling $2.3 million and decides to register for GST. It is required to return output tax of $0.3 million on the $2.3 million of funds it holds at the time it registers for GST. When it pays a GST-registered builder to complete the repairs, it can claim input tax deductions for these costs. Six months later, the unit title body corporate receives an insurance payout for the $2.3 million cost of the repairs on which it is required to return output tax of $0.3 million. The unit title body corporate uses the insurance proceeds to reimburse its members for the $2.3 million it had previously collected from them. It can claim an input tax deduction for $0.3 million in respect of the $2.3 million payments it makes to reimburse its members. This offsets the $0.3 million of output tax it returned when it registered for GST.

One of the members is a GST-registered commercial landlord for the café. This member is required to return output tax of $15,000 on the $115,000 distribution that they receive from the unit title body corporate.

Election to zero-rate B2B financial services – removing requirement to notify Commissioner

Section 20F of the Goods and Service Tax Act 1985

Summary of amendment

The amendment removes the requirement for a financial service supplier to notify the Commissioner of Inland Revenue of their election to zero-rate business-to-business supplies of financial services.

Effective date

The amendment is effective for taxable periods starting on or after 1 April 2025.

Background

Section 20F of the Goods and Services Tax Act 1985 (GST Act) previously required the person to notify the Commissioner to zero-rate business-to-business supplies of financial services.

The amendment allows suppliers to elect to zero-rate qualifying supplies of financial services by taking the relevant GST position in a GST return. This is consistent with the general approach to self-assessment, other elections in the GST Act, and other types of zero-rated supplies (when there is no notification process).

Key Features

Section 20F provides that a person may choose to apply the rules in sections 11A(1)(q) and (r) and 20C of the GST Act in relation to certain supplies of financial services. The person makes the election by taking a tax position in a return for the taxable period.

Detailed analysis

In addition to zero-rating the qualifying business-to-business financial services in section 11A(1)(q) and (r), the relevant tax position may involve claiming deductions for a percentage of inputs (the goods and services the financial service supplier has acquired and will use to make the qualifying supplies). This may be relevant when the financial service supplier is a new entity that has not yet begun making zero-rated supplies, or because it is applying section 20C, which allows a special deduction for financial services that are supplied to another supplier of financial services who themselves make taxable (zero-rated) supplies to businesses.

Example 44: New financial services supplier

Building Finance Co is a new entity that will take deposits from GST-registered businesses that will be used to provide loans to GST-registered "build-to-sell" housing developers. These supplies can qualify as zero-rated supplies of business-to-business financial services when the relevant depositor or lender makes at least 75% taxable supplies. Building Finance Co registers for GST and purchases inputs, such as legal services, hires IT contractors, rents an office and pays for advertising. Building Finance Co elects to apply section 20F by claiming input tax deductions based on the extent (estimated percentage) to which the inputs will be used to make taxable (zero-rated) supplies. After the election is made, Building Finance Co begins making the qualifying zero-rated supplies. It will include these supplies in its GST returns and claim input tax deductions to the extent they are used to make these zero-rated supplies.

Registered persons who have previously notified the Commissioner that they are applying section 20F are able to continue to apply section 20F because their election will remain valid.

A registered person should take care to ensure that their GST return correctly reflects their intended position on a section 20F election. If they make a mistake or oversight, they will be able to amend their return or request the Commissioner amend the return, subject to the usual rules for amending GST returns.

Because the effective date of the amendment is taxable periods starting on or after 1 April 2025, for any taxable periods that began before 1 April 2025 the supplier must have notified the Commissioner to make a section 20F election.

Professional board member appointed by Governor-General

Section 6(4) of the Goods and Services Tax Act 1985

Summary of amendment

An amendment has been made to allow GST-registered organisations to deduct input tax on fees paid to a board member who was appointed by the Governor-General and accounts to their employer for those fees.

All legislative references are to the Goods and Services Tax Act 1985.

Effective date

The amendment took effect on 30 March 2025.

Background

Section 6(4) applies when a person, such as a director of a company or a board member, is paid a fee in relation to their engagement or occupation for which they are required to account to their employer (such as their professional services company). The rule treats the fee as consideration for a supply of services by the person's employer to the organisation that paid the fee.

This ensures a GST-registered organisation acquiring the person's services as a director or board member can deduct input tax on the fees payable. This is because the person's employer, if registered for GST for a taxable activity of providing professional services, will be required to account for output tax on the fees even without the rule in section 6(4). However, an omitted cross-reference in section 6(4) previously meant the rule did not apply to appointments made by the Governor-General or the Governor-General in Council (such as, for example, the board members of independent Crown entities).

Key feature

Section 6(4) now includes a cross-reference to section 6(3)(c)(iia), thus ensuring the rule applies to professional board members (operating through a professional services company) who are appointed to that position by the Governor-General or the Governor-General in Council. This means that the organisation acquiring the board member's services can claim an input tax deduction for the GST charged by the board member's professional services company.

Deemed supply of emissions units on deregistration

Section 5(3C) of the Goods and Services Tax Act 1985

Summary of amendment

An amendment has been made to ensure that a deemed supply of an emissions unit when deregistering from GST is zero-rated instead of standard rated.

All legislative references are to the Goods and Services Tax Act 1985 (GST Act) unless otherwise stated.

Effective date

The amendment took effect on 30 March 2025.

Background

An "emissions unit" for the purposes of the GST Act is a "unit" as defined in section 4(1) of the Climate Change Response Act 2002.

The supply of an emissions unit is almost always zero-rated under the GST Act.[32] However, there was previously a minor technical error with the interaction between one of the deregistration provisions in the GST Act and the zero-rating rules, which the amendment addresses.

Key features

Section 5(3C) has been amended to ensure that, when a person holding emissions units for their taxable activity ceases their taxable activity and deregisters from GST, the deemed supply of the units under the deregistration provision in section 5(3) is zero-rated.

Section 5(3) treats all remaining assets of a registered person's taxable activity as having been supplied by the person in the course of their taxable activity immediately before they deregister. This deemed supply is treated as occurring for market value (meaning that GST is paid on the market value of the assets when the person deregisters).

Previously, this rule provided the unintended outcome that a deemed supply of an emissions unit was technically standard rated when a registered person holding the unit for their taxable activity ceased their taxable activity and deregistered from GST. This is because the relevant zero-rating

[32] The only exceptions are two very specific situations when the Crown transfers an emissions unit.

rule (in section 11A(1)(s)) only applies if a supply of an emissions unit is by way of a transfer of that unit. Previously, there was nothing in the law that treated the deemed supply of the unit under section 5(3) as occurring by way of a transfer.

Section 5(3C) now ensures that a person in this situation is treated as making the supply of the unit by way of a transfer of that unit. This ensures the deemed supply is zero-rated under section 11A(1)(s).

Quarterly filing for certain non-resident suppliers

Sections 15(6) and 15C(4B) and (4C) of the Goods and Services Tax Act 1985

Summary of amendments

Amendments have been made to clarify that a non-resident supplier must have a three-month taxable period if its only supplies in New Zealand are of remote services to which section 8(3)(c) of the Goods and Services Tax Act 1985 (GST Act) applies, distantly taxable goods, and/or listed services referred to in section 8C.

All legislative references are to the GST Act.

Effective date

The amendments took effect on 30 March 2025.

Background

Non-resident suppliers of remote services, distantly taxable goods, and/or listed services generally must have taxable periods based on quarters in the year (that is, three-month taxable periods). The policy rationale for this is to align these non-resident suppliers' taxable periods with the typical VAT/GST reporting cycle in many overseas jurisdictions, including in the European Union member states. This is on the basis that providing consistency between these non-resident businesses' taxable periods for New Zealand GST purposes with VAT/GST reporting periods overseas may minimise their costs of complying with New Zealand's GST rules.

Detailed analysis

Section 15(6) has been amended to provide the outcome that a non-resident supplier must have a three-month taxable period if its only supplies **in New Zealand** are of:

- remote services to which section 8(3)(c) applies
- distantly taxable goods, and/or
- listed services referred to in section 8C.

Previously, the section required that these three specific types of supplies were the "only" supplies the non-resident made. Otherwise, the non-resident was required to have a one-month, two-month or six-month taxable period like most other GST-registered businesses.

The problem with the former wording of section 15(6) was that virtually all non-resident suppliers make some supplies that are not included in the three categories referred to above – one example being supplies of goods or services to other non-residents that are not in any way imported into or consumed in New Zealand. Therefore, on a literal reading, it is likely that no non-resident supplier would have qualified for a three-month taxable period under the previous wording, which is contrary to the policy intention of the quarterly filing rule.

Qualifying the "only supplies" wording in section 15(6) so that this specifically refers to supplies in New Zealand will ensure that any supplies outside New Zealand that a non-resident supplier makes do not disqualify them from having a three-month taxable period. This means a non-resident supplier is only disqualified from having a three-month taxable period when they supply:

- goods (that are not distantly taxable goods)[33] that are in New Zealand at the time of supply, if the supply is to an unregistered person
- goods (that are not distantly taxable goods) that are in New Zealand at the time of supply, if the supply is to a GST-registered business that intends to use the goods for making taxable supplies and the non-resident supplier and business recipient have agreed to treat the goods as supplied in New Zealand (meaning that GST applies to the supply)
- services (that are not listed services) that are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed, if the supply is to an unregistered person
- services (that are not listed services) that are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed, if the supply is to a GST-registered business that intends to use the services for making taxable supplies and the non-resident supplier and business recipient have agreed to treat the services as supplied in New Zealand.

Requirement to change taxable period when criteria not met

New section 15C(4B) and (4C) applies when a non-resident supplier has a three-month taxable period, but they make other types of supplies in New Zealand (such that they do not meet the requirements for a three-month taxable period in section 15(6)). The amendment clarifies that a non-resident supplier in this situation must:

- apply to the Commissioner to change their taxable period to either a one-month, two-month, or six-month period, subject to the rules for taxable periods set out in section 15(2) to (5), and

[33] While distantly taxable goods are usually goods that are outside New Zealand at the time of supply that are subsequently imported into New Zealand, and goods that are in New Zealand at the time of supply would not normally meet the definition of "distantly taxable goods", low-value goods that are in New Zealand at the time of supply are distantly taxable goods in one specific circumstance. This is when the goods are supplied by a non-resident underlying supplier through an electronic marketplace and either the underlying supplier or the marketplace operator delivers the goods (or arranges or assists the delivery of the goods) to the recipient at a place in New Zealand.

- make the change at the end of the first taxable period in which their supplies in New Zealand no longer meet the test in section 15(6) for quarterly filing.

Non-residents and definition of "percentage actual use" in adjustment rules

Section 21G(1B) of the Goods and Services Tax Act 1985

Summary of amendment

The Act amends the definition of "percentage actual use" in the adjustment rules so that GST-registered non-residents measure taxable supplies and total supplies by treating all their supplies as if they were made and received in New Zealand.

Effective date

The amendment took effect on 1 April 2020.

Background

Non-resident businesses may be required to register for GST (for example, because they supply remote services or low-value imported goods). In other cases, they may choose to register to claim back the 15% GST charged by Customs New Zealand on imported goods or on services received by their staff in New Zealand.

In most cases, these non-residents will not have purchased any long-lasting New Zealand inputs. In cases when they have acquired New Zealand inputs, they can claim input tax deductions for these inputs by treating all their supplies as though they were made or received in New Zealand – see section 20(3L) of the Goods and Services Tax Act 1985.

If they are still using the New Zealand input at their next balance date, the registered non-resident will be required to make an adjustment based on their "percentage actual use" of the input to make their taxable supplies.

Supplies made outside New Zealand by registered non-residents are not taxable supplies so would not ordinarily count as "actual use", even though they would be taxable supplies if they had been supplied in New Zealand. The definition of "percentage actual use" in section 21G(1)(a) of the adjustment rules is amended to allow supplies made outside New Zealand by non-residents to qualify as actual use. The amendment took effect on 1 April 2020 to align with GST positions previously taken by the affected non-resident businesses.

Adjustments when GST paid twice on imported goods

Section 20(3)(df) of the Goods and Services Tax Act 1985

Summary of amendment

A rule that previously allowed a supplier to reduce their GST liability by an amount they were required to refund to a customer when imported goods were taxed twice has been effectively reinstated.

All legislative references are to the Goods and Services Tax Act 1985.

Effective date

The amendment has effect on and after 30 March 2022, being the date the former credit note and debit note provisions in section 25(1) were replaced in their entirety, which inadvertently repealed the adjustment rule that previously applied.

Background

GST applies to the supply of "distantly taxable goods" (generally low-value[34] imported goods supplied by a non-resident) to consumers. Special rules provide consumers with relief from double taxation on these goods when GST is charged on the supply of the goods under section 8(1) (and the supplier of the goods collects this GST), and GST is collected again by the New Zealand Customs Service when the goods are imported into New Zealand.

Essentially, double taxation on a supply of imported goods may occur in two scenarios:

- When the supplier incorrectly treats the supply as a supply of distantly taxable goods subject to GST at the standard rate of 15% (for example, a non-resident supplier incorrectly charges GST on a supply to a GST-registered business) and GST is collected on the goods again when they are imported into New Zealand.
- When the supplier correctly collects GST on a supply of distantly taxable goods (such as a supply of low-value imported goods to a consumer) and GST is incorrectly collected again when the goods are imported into New Zealand (despite GST already having been collected by the supplier).[35]

[34] "Low-value goods" in this context means goods that are individually valued at or below $1,000.
[35] Suppliers must take reasonable steps to ensure GST information is included on relevant import documents so the New Zealand Customs Service can identify when GST has already been paid on imported goods. However, circumstances outside the supplier's control may mean this information is not included on import documents.

When double taxation occurs on a supply to a consumer, the consumer's only recourse is to obtain a refund of the GST collected at the point of sale from the supplier. If the consumer requests a refund from the supplier and provides a declaration that GST was paid on importation, the supplier must refund the GST they collected.

Prior to 2022, a specific rule allowed a supplier in this situation to make an adjustment by deducting the amount of GST they refunded to the consumer from their output tax in their GST return. However, an unintended consequence of legislative changes made to section 25(1) in 2022 was that, in some situations when double taxation arose, the supplier was technically not entitled to an adjustment of their GST liability for the amount refunded to the consumer.

This was because the post-2022 version of section 25(1) only applies when a registered person makes a GST return for a taxable period containing an "inaccuracy", and at the time the 2022 amendments were made, no deduction or adjustment rule was included elsewhere in the legislation to effectively reinstate the former deduction rule. Essentially, this meant an adjustment was technically not available to the supplier if they correctly collected GST on the supply of the goods and subsequently provided a refund of the GST to the consumer because double taxation occurred.

Key features

New section 20(3)(df) applies when a supply of distantly taxable goods to which section 8(1) applies is taxed twice, first at the point of sale and again when the goods are imported into New Zealand. The new rule does not apply in the scenario when the supplier incorrectly collected GST, resulting in imported goods being taxed twice (because the rules currently in section 25 already deal with that scenario).

If the supplier (correctly) collected GST on the supply of the goods, the new rule provides that the supplier is entitled to a deduction reducing their net GST liability if:

- the supplier receives a declaration from the recipient of the supply, or other confirmation, that the amount of GST charged under section 12 on the importation of the goods into New Zealand was paid when the goods were imported, and
- the supplier reimburses the recipient for the amount of GST included in the consideration for the supply.

If the above conditions are met, the supplier must deduct the amount of GST reimbursed from their output tax for the taxable period in which they reimbursed the recipient of the goods.

Because a supplier in this situation (who correctly collected GST) is still required to account for and pay the output tax on the supply if they have not already done so, it is necessary that they can deduct the amount reimbursed from their output tax in the taxable period in which they reimbursed the recipient, even if they have not yet filed a return including the output tax on the supply. Therefore, for the supplier to be entitled to take the deduction, there is no requirement that they had already accounted for the output tax on the supply in a previous return.

Supply correction information and the time bar

Section 19N(7)(b) of the Goods and Services Tax Act 1985

Summary of amendment

The amendment clarifies that supply correction information cannot be issued to correct supplies in all circumstances when that supply is subject to the time bar.

Effective date

The amendment is effective for taxable periods commencing on or after 1 April 2023.

Background

In a GST setting, supply correction information (previously known as credit or debit notes) is issued to reflect that the payment for a good or service may have been incorrect. When the payment amount is incorrect, supply correction information can be issued to ensure that GST is correctly accounted for on the supply of the good or service. Some examples of when supply correction information may be issued include if an incorrect amount of GST is charged or if some of the goods are returned to the seller. Adjustments to GST positions as a result of supply correction information being issued are reflected in the current GST return period, rather than applying to the previous return period in which the incorrect supply occurred.

Under current law, supply correction information cannot be issued for a supply that is subject to the time bar (which generally applies four years from the end of the taxable period in which the return was filed). For supplies that give rise to an overpayment of tax, recently added section 19N(7)(b) of the Goods and Services Tax Act 1985 (GST Act) provides an additional four-year period to issue supply correction information, provided the Commissioner of Inland Revenue is satisfied that the registered person took due care to avoid errors in the taxable supply information. This additional four-year period is meant to align with the refund provisions that apply to overpayments of tax.

The issue is that when the tax invoicing rules were replaced with the new taxable supply information rules by the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, new section 19N(7)(b) applied the incorrect test to supplies that give rise to an overpayment of tax.

Therefore, section 19N(7)(b) has been amended to align with the test as set out in the refund rules, which provides for an additional four-year period to issue a refund if the overpayment of tax is a result of a clear mistake or simple oversight by the person.

It is important that this language remains consistent to ensure that the refund rules are aligned with the supply correction information provisions. This is because the current wording has generated some confusion as to whether supply correction information could be issued to generate a refund for otherwise time-barred returns in certain circumstances, which would be contrary to the policy intent.

Supply correction information amends the current return period and, therefore, without proper alignment, the time bar provisions alone are not sufficient in preventing the tax position from being changed (this is because the time bar applies to the previous return periods).

The amendment to section 19N(7)(b) makes it clear that supply correction information cannot be issued to correct supplies that would be subject to the time bar in section 45(4) of the GST Act (which applies a time bar to overpayments of tax resulting from a clear mistake or simple oversight by the person). The amendment takes effect on 1 April 2023, the date when section 19N originally took effect.

Pharmac rebates

Section 25(1B) of the Goods and Services Tax Act 1985

Summary of amendment

The amendment clarifies that a Pharmac rebate does not alter the agreed consideration amount for a supply and therefore does not trigger the need for an adjustment.

Effective date

The amendment took effect on 1 April 2023.

Background

Before 1 April 2023, an agreed amount of consideration for the supply of a pharmaceutical was not altered if part of that consideration was rebated to Pharmac. This ensured that when Pharmac refunded part of the price of drugs purchased by medical institutions in a business context neither party had to make a GST adjustment to account for the rebated amount. This helped to minimise compliance costs for these entities.

However, this was inadvertently altered as part of the reforms to modernise the rules for tax invoices (now known as taxable supply information). As part of those reforms, the previous provision in section 25(1B) of the Goods and Services Tax Act 1985 was replaced with new section 19N(4). Although section 19N(4) provides that supply correction information does not need to be issued for a supply when part of the consideration is rebated to Pharmac, it provides for a narrower outcome. This is because it no longer specifically provides that the consideration amount is not altered if part of that consideration is rebated to Pharmac.

The amendment therefore clarifies that a Pharmac rebate does not alter the agreed consideration amount for a supply and therefore does not trigger the need for an adjustment. The amendment takes effect on 1 April 2023, the date the position was inadvertently altered.

Minor amendments to grouping rules

Section 55(1AC) and (1AF) of the Goods and Services Tax Act 1985

Summary of amendments

The amendments to the GST grouping rules ensure the grouping rules reflect the policy intent and rectify minor drafting errors.

Effective date

The amendments took effect on 30 March 2025.

Background

The GST grouping rules allow multiple entities to group together for GST purposes as a compliance cost-saving measure and to reduce distortions that might arise between a single entity, a branch structure and a group structure. Under the grouping rules, the group is treated as a single entity for GST purposes, and a “representative member” files one GST return on behalf of the group. Taxable supplies between group members are also disregarded for GST purposes.

Key features

The amendment to section 55(1AF) of the Goods and Services Tax Act 1985 clarifies that a non-taxable supply by a non-registered GST group member is treated as a supply by the representative member as a registered person.

Section 55(1AC)(b) is also repealed because it is a redundant provision.

Non-taxable government grants and subsidies

Section 5(6E), (6EB), and (6ED), and schedule 2 of the Goods and Services Tax Act 1985

Summary of amendments

The amendments revoked the Goods and Services Tax (Grants and Subsidies) Order 1992 and shifted the list of non-taxable government grants and subsidies into a new schedule of the Goods and Services Tax Act 1985.

Effective date

The amendments took effect on 30 March 2025.

Background

Generally, government grants and subsidies are treated as consideration for a supply of goods or services from the recipient of the grant or the subsidy if it relates to the taxable activity of the recipient. There are several government grants and subsidies that this rule does not apply to. These government grants and subsidies were set out in a schedule to the Goods and Services Tax (Grants and Subsidies) Order 1992 which made it difficult to find.

Detailed analysis

The Goods and Services Tax (Grants and Subsidies) Order 1992 has been revoked. The list of non-taxable government grants and subsidies included in the schedule to the revoked Order in Council has been shifted into the Goods and Services Tax Act 1985 in new schedule 2.

Section 89 of the Goods and Services Tax Act 1985, which was a transitional provision related to certain COVID-19 payments made by the Ministry of Social Development, has also been repealed. The effect of this provision has been incorporated into clause 8 of schedule 2 of the Goods and Services Tax Act 1985.

Consequential amendments have been made to the GST rules for government grants and subsidies in section 5(6E), (6EB), and (6ED). These amendments ensure appropriate cross-referencing of the new schedule and the list of non-taxable government grants and subsidies.

Assets acquired prior to registering for GST

Section 21B(2) of the Goods and Services Tax Act 1985

Summary of amendment

A cross-reference to section 21FB of the Goods and Services Tax Act 1985 has been added to section 21B(2). This clarifies that a person who acquired an asset prior to registering for GST and is therefore subject to section 21B, can apply section 21FB at their next balance date to make an adjustment for that asset.

Section 21FB applies when the person has permanently changed their use of the asset. For example, they had non-taxable use of the asset prior to registering for GST but have used their asset to make taxable supplies since they registered for GST.

Effective date

The amendment took effect on 30 March 2025.

Trustee tax rate remedials

Tax rate for minor and corporate beneficiary rules

Sections HC 35(2)(c), HC 38(3)(c), YA 1, and schedule 1 of the Income Tax Act 2007

Summary of amendments

The amendments clarify that income subject to the minor or corporate beneficiary rules is schedular taxable income and subject to a 39% tax rate, regardless of whether the trust is eligible for an exclusion from the 39% trustee tax rate.

Effective date

The amendments are effective for the 2024–25 and later income years.

Background

The trustee tax rate was aligned with the top personal tax rate of 39% for the 2024–25 and later income years. There are specific rules that tax certain amounts of beneficiary income earned from trusts by minors or certain companies at the 39% tax rate:

- *The minor beneficiary rule* in section HC 35 of the Income Tax Act 2007 limits the tax benefits that could otherwise be achieved by distributing the income of a trust to a minor beneficiary (likely to be on the lowest marginal tax rate).
- *The corporate beneficiary rule* in section HC 38 ensures that trustees cannot shelter income from the 39% trustee tax rate in a company as a beneficiary (which otherwise would be taxed at 28%).

Alongside the increase of the trustee tax rate to 39% for the 2024–25 and later income years, exclusions from the 39% rate were introduced for:

- trusts with no more than $10,000 net income in an income year
- deceased estates (for the first four income years)
- energy consumer trusts
- disabled beneficiary trusts, and
- legacy superannuation funds.

Eligible trusts are instead subject to a 33% tax rate on trustee income (28% for legacy superannuation funds).

Disabled beneficiaries and the minor beneficiary rule

Section HC 35(4) of the Income Tax Act 2007

Summary of amendment

The amendment to section HC 35 of the Income Tax Act 2007 (ITA) ensures that the "minor beneficiary rule" does not apply to beneficiary income derived by a minor who meets the "disabled beneficiary" definition. The trust does not need to be a "disabled beneficiary trust" for the amendment to apply.

Effective date

The amendment is effective for the 2024–25 and later income years.

Background

Disabled beneficiary trusts are excluded from the 39% trustee tax rate under section HC 39 of the ITA and are subject to a 33% tax rate on trustee income. To qualify, all the beneficiaries must derive an eligible government support payment for the relevant income year. A minor can satisfy the disabled beneficiary definition if they derive the child disability allowance or the disability allowance.

The minor beneficiary rule in section HC 35 is an integrity measure that ensures that certain amounts of beneficiary income earned from trusts by minors are taxed at the 39% trustee tax rate. There is an existing exclusion for children that derive the child disability allowance, but not the disability allowance.

Corporate beneficiary rules amendments

Sections CD 44(7)(dc), HC 26(1)(e), and HC 38(2) of the Income Tax Act 2007

Summary of amendments

The amendments clarify the interaction between the corporate beneficiary rule and the formula for calculating a company's available capital distribution amount (ACDA), and how foreign-sourced amounts should be taxed under the corporate beneficiary rule.

Effective dates

The amendments are effective for the 2024–25 and later income years, except for the change to section HC 38 of the Income Tax Act 2007 (ITA), which is effective for the 2025–26 and later income years.

Background

The "corporate beneficiary rule" in section HC 38 provides that certain amounts of beneficiary income derived by a company are subject to a 39% tax rate.

Available capital distribution amounts

Generally, a transfer of value from a company to its shareholders is taxable as a dividend. However, certain amounts can be distributed to shareholders tax free when a company is liquidated. This is the company's ACDA, which is calculated under section CD 44 of the ITA.

Beneficiary income subject to the corporate beneficiary rule is treated as a "capital gain amount" when calculating a company's ACDA. This recognises that it has already been subject to tax at 39% and should be able to be distributed tax free on liquidation.

The legislation is currently unclear whether the capital gain amount included in the company's ACDA is the after-tax, rather than pre-tax, amount of beneficiary income.

Foreign-sourced income derived by resident trustees

A foreign-sourced amount of income derived by a resident is normally assessable income. However, section HC 26 of the ITA provides that if a resident trustee of a trust derives a foreign-sourced amount that is included in trustee income, it is exempt income under section CW 54 of the ITA if no settlor:

- is at any time in the income year a New Zealand resident who is not a transitional resident, or
- exists in the income year and the last surviving settlor was a non-resident when that settlor ceased to exist.

Section HC 26 only applies to trustee income. It does not apply to income that is allocated to a beneficiary of the trust as beneficiary income.

Section HC 26(1)(e) excludes beneficiary income subject to the minor beneficiary rule from this section. In the absence of this exclusion, such income would be exempt from tax even though it is beneficiary income. This is because the minor beneficiary rule treats certain beneficiary income distributions to under 16-year-olds as trustee income. The exclusion in section HC 26(1)(e) ensures that the exemption does not override the minor beneficiary rule.

Non-residents' foreign-sourced income

If a trustee earns foreign-sourced income and it is distributed as beneficiary income to a non-resident corporate beneficiary subject to the corporate beneficiary rule, then that income will not be assessable income of the corporate beneficiary under New Zealand law, but it will be taxed at 39% to the trustee under the corporate beneficiary rule. This is inconsistent with section BD 1(4) and (5) of the ITA, which excludes non-residents' foreign-sourced income from a person's assessable income.

Key features

- The amendment to section CD 44 clarifies that when a company derives income subject to the corporate beneficiary rule, the relevant capital gain amount that is included in the calculation of the company's ACDA is the after-tax amount of beneficiary income they receive. This aligns with the policy intent that the capital gain amount reflects an amount that has already been subject to tax at 39%.
- The amendment to section HC 26 ensures that this section does not apply to amounts of income subject to the corporate beneficiary rule, consistent with the minor beneficiary rule.
- The amendment to section HC 38 ensures the corporate beneficiary rule does not apply to foreign-sourced amounts of income derived by non-resident companies without a New Zealand resident shareholder.

Energy consumer trust exclusion

Section YA 1 of the Income Tax Act 2007

Summary of amendment

The amendment ensures that trusts that no longer hold shares in electricity distribution companies but continue to have the same class of beneficiaries for which the trust was established also qualify as energy consumer trusts. Trusts that meet the current definition are not affected by this amendment.

Effective date

The amendment is effective for the 2024–25 and later income years.

Background

Lines trusts (or energy consumer trusts) are trusts that hold shares in electricity distribution companies. The definition of a "lines trust" in section YA 1 of the Income Tax Act 2007 (ITA) requires that a trust has had specified shares allocated, transferred to, or vested in it. The trust must also continue to hold these shares.

Energy consumer trusts are excluded from the 39% trustee tax rate and are instead subject to a 33% tax rate on their taxable income (see schedule 1, part A, clause 6B(c) of the ITA). This is because they faced an increased risk of over-taxation.

The exclusion is currently too narrow because the lines trust definition does not include trusts that no longer hold the specified shares that were once allocated, transferred to, or vested in it but that continue to have the same class of beneficiaries for which the trusts were established. This means they are subject to the 39% trustee tax rate.

Key features

The amendment to the "lines trust" definition in section YA 1 ensures that it includes a trust that previously held the specified shares and continues to have the same class of beneficiaries for which the trust was established. Such a trust is subject to a 33% tax rate on its taxable income.

Partnership remedials

RWT-exempt status, AIL eligibility and other matters relating to partnerships

Sections DC 3, DC 4, FD 1, GC 5(2), HG 3, HG 4, HG 5, HG 6, HG 7, HG 8, HG 9, HG 10, HG 11, RE 30 RE 31, RF 3, RF 12, RF 12B, and YA 1 of the Income Tax Act 2007

Sections 32IB, 32JB, 32M, and 42(3) of the Tax Administration Act 1994

Section 86G of the Stamp and Cheque Duties Act 1971

Summary of amendments

The amendments address a number of remedial issues raised by the Tax Counsel Office in response to their Public Advice Project on the taxation of partnership income.

Effective date

The amendments have differing effective dates. Some amendments took effect on 1 April 2008 (the date of the introduction of the limited partnership rules) and others apply to income years starting on or after 1 April 2008. This includes a savings provision in the event taxpayers had previously filed on this basis.

Background

Inland Revenue's Tax Counsel Office has identified issues with the legislative provisions concerning partnerships. These are either misalignments between the legislation and current practice or alternatively the provisions produce unnecessary compliance costs for taxpayers.

Key features

The amendments:

- allow limited partnerships to apply for RWT-exempt status under the name of the limited partnership
- allow non-resident partners of limited partnerships to access the approved issuer levy (AIL) when there is a resident partner in the limited partnership, and
- address other minor technical issues relating to non-resident income tax filing, basis calculation errors, balance dates, and other wording issues.

Detailed analysis

RWT-exempt status for limited partnerships

The amendment allows limited partnerships to apply for RWT-exempt status at the partnership level, rather than each partner having to assess their eligibility for exemption.

AIL for limited partnerships

The amendment allows limited partnerships to access the AIL regime when the following requirements are met:

- the borrower/limited partnership is registered for AIL (under section 32M of the Tax Administration Act 1994 (TAA))
- the security is registered for AIL (under section 86H of the Stamp and Cheque Duties Act 1971)
- the requirements of section RF 12(1)(a)(ii) and (iv) of the Income Tax Act 2007 (ITA) are met, and
- the interest is derived by a non-resident limited partner as non-resident passive income.

To enable non-resident partners to access the AIL regime it is, in practice, necessary for the limited partnership to be responsible for the deduction and payment of non-resident withholding tax (NRWT) or AIL on interest payments made to non-resident limited partners. The limited partnership is therefore required to deduct NRWT or pay AIL as agent for the borrower.

The limited partnership has a statutory right of recovery against the relevant non-resident limited partner for NRWT or AIL on interest derived by that non-resident limited partner, replicating the power in sections HD 5(2) and HD 20B of the ITA.

This amendment allows limited partnerships to elect accounting for NRWT or AIL before making a payment. As a result, borrowers entering lending arrangements will know in advance of payment if a partnership plans to make this election.

Other partnership remedial items

Interest derived by two or more persons jointly

The amendment clarifies that "interest derived by two or more persons jointly" in section RF 12B of the ITA includes interest derived by partners of a partnership.

RWT-exempt status eligibility thresholds

The amendment clarifies that the $2 million income amount, deduction, assessable income and credit amounts referred to in the RWT-exempt status eligibility criteria (sections 32E(2) and 32I(1) of the TAA) are determined on an aggregate basis (ie, the partnership is treated as a non-transparent entity for the purposes of this test).

This amendment also clarifies that limited partnerships that are sufficiently related are treated as one limited partnership for assessing the thresholds for RWT-exempt status.

Partnership or partner with non-standard balance date

The amendment allows partners who are part of a partnership with a non-standard balance date to include their share of the partnership income in the same corresponding income year as the partnership when filing their separate returns. An option is included for when the partner wishes to apportion the partnership income to the partner's income year. Such an election can be made by the partner in their tax return.

This requires the Commissioner to treat the partners as having the same non-standard balance date for this source of income so that partners do not have to reallocate the income based on their separate balance dates. However, a partner needs to continue returning their other income to 31 March or another relevant date (if the partner has a non-standard balance date for another business).

This amendment does not allow partners to switch their elections year on year. If a partner elects to return their share of partnership income to the same corresponding tax year as the partnership, this election will remain in place until the partnership changes its balance date, or the partner leaves the partnership.

Note that partners who are claiming research and development tax incentives (RDTI) should carefully consider the interaction between this election and the rules relating to the claiming of an RDTI before they make an election.

Example 45: Returning partnership income from different balance date

Dory has a 31 March balance date and is also a partner in the Nemo partnership, which has a late balance date of 30 June due to the nature of the partnership activities.

When Dory is completing her individual tax return for the 2024–25 income year ending 31 March 2025 she would:

- return her personal income (excluding partnership income) for the year 1 April 2024 to 31 March 2025, and
- either:
  - return her share of partnership income for the period 1 July 2024 to 30 June 2025 (ie, to match the 2024–25 income year), or
  - apportion the partnership income of those two partnership income years that fall within the partner's income year (ie, three months from 1 April 2024 to 30 June 2024 and nine months from 1 July 2024 to 31 March 2025 (to align the balances dates).

Non-resident partner income tax filling

The amendment allows a non-resident partner to forgo filing individual income tax returns if:

- they have no New Zealand-sourced income, or
- they meet **both** of the following criteria:
  - all their income is non-resident passive income, and
  - the NRWT withheld is a final tax (referred to in section RF 2(3) of the ITA).

This amendment stipulates that a limited partnership, which includes a non-resident partner deriving passive income from foreign sources, is not subject to a joint assessment. Additionally, a non-resident limited partner who earns New Zealand-sourced income that is fully exempt from New Zealand tax under a double tax agreement is not required to file a tax return.

Application of transparency rules for partnerships

The amendment clarifies that partnerships are to be treated as opaque, not transparent, for the purposes of sections DC 3(2) and (3), DC 4(2), FD 1(1)(a), and GC 5(2)(d) of the ITA.

RWT liability after retirement

The amendment clarifies that a retired partner of a general partnership is not liable for RWT debt that has arisen after their retirement, but they are liable for RWT debt that arose when they were still a member.

Overrides in safe harbour provisions

The amendment clarifies that, in sections HG 3 to HG 10 and in paragraph (h)(iii) in the definition of "dispose" in section YA 1 of the ITA, the safe harbour provisions apply unless the disposal occurs in the circumstances described in section HG 4(1).

Disposal of partner's interests – basis calculation

The amendments:

- clarify that section HG 5(2) of the ITA refers specifically to the market value of financial arrangements, and
- correct the spelling of "arrangements" in section HG 5(2)(c)(i).

Limitation on deductions by partners in limited partnerships

The Act:

- amends section HG 11 to clarify that multiple instances of amounts should be aggregated
- amends section HG 11 so any repayment of debt would be accounted for in a partner's basis calculation

- amends section HG 11(5)(b) so it includes “the assignment of partnership property” rather than “the assignment of capital contributions”
- amends section HG 11(5)(c) so the term “investments” includes “the secured amounts” only if they are not already accounted for under section HG 11(5)(b) by that partner or another partner in the partnership
- amends section HG 11(7) to clarify that amounts from both the current and previous years should be included
- repeals section HG 11(7)(c) and (8)(c) because these subsections are superfluous
- amends section HG 11(10) to allow partners to exclude the deductions accrued from the selling of their interests when calculating their partner’s basis in section HG 11(3).

Application of associated persons rules to certain structures involving limited partnerships

Sections FH 15, YA 1, YB 12, and YB 16B of the Income Tax Act 2007

Summary of amendments

The amendments provide that, in certain situations, a limited partnership is treated as a company for the purpose of applying relevant associated persons tests in subpart YB of the Income Tax Act 2007 (ITA). This ensures that including a chain of two or more limited partnerships (or a chain of entities including both limited partnerships and companies) in a structure does not result in a break in association between closely connected entities, which is not consistent with the policy intent.

Effective date

The amendments took effect on 26 August 2024 (the introduction date of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill).

The exceptions to this are the amendments to the definition of “company”, “voting interest” and “market value interest” relating to the existing rule in section YB 14(4), which take effect on 1 April 2010, with application from 6 October 2009 for the purposes of the land provisions and the 2010–11 and later income years for all other purposes. This is consistent with the dates that section YB 14(4) applies from.

Background

A person that is not a partner in a limited partnership (a non-partner) may be associated with a limited partnership because of their association with a partner in the limited partnership.

However, under the previous law, including a chain of two or more limited partnerships in a structure could have resulted in a break in association between a non-partner and a limited partnership they are closely connected with. Similar issues could have arisen when a combination of limited partnerships and companies were used.

This could have occurred because:

- The tripartite test in section YB 14(1) will not apply in some situations involving limited partnerships. A limited partnership is treated as a company for the purpose of applying the tripartite test in section YB 14(1) (section YB 14(4)), meaning the tripartite test requirement that persons must be associated with the same third person under different associated persons tests may not be satisfied.

- The limited partnership aggregation rules in section YB 12(3) and (4) would not result in association when an additional limited partnership is interposed between the partner the non-partner is associated with and the limited partnership. This is because, for the purposes of determining the non-partner's associates, the rule in section HG 2 of the ITA that a partnership is transparent does not apply[36] and each layer of limited partnership will be treated as opaque.

The outcome was not consistent with the policy intent of the associated persons rules because it meant association may not occur between closely connected entities.

It also resulted in inconsistent treatment of limited partnerships and companies for the purpose of the associated persons rules. The corporate look-through rule in section YC 4 of the ITA means a company with a voting interest or market value interest in another company can be "looked through". Therefore, if the structure involved companies rather than limited partnerships, association would occur (provided the association thresholds in section YB 2 were satisfied).

From a policy perspective, the outcome should be the same irrespective of whether companies or limited partnerships are used. That is, association between a company and a limited partnership (or two limited partnerships) should be tested in a similar way to association between companies.

Key features

New section YB 16B treats a limited partnership as a company for the purpose of applying sections YB 2, YB 3 and YB 12(2) to (4) in certain circumstances. A key feature of this is that section YB 16B means, in certain circumstances, the two companies associated persons tests in section YB 2, together with the corporate look-through rule in section YC 4, determine whether a company and a limited partnership or two limited partnerships are associated persons (instead of section YB 3 or YB 12(2)).

Detailed analysis

New section YB 16B treats a limited partnership as a company for the purposes of the associated persons tests in sections YB 2, YB 3 and YB 12(2) to (4) and the corporate look-through rule in section YC 4, when:

- a company is a limited partner of the limited partnership
- the limited partnership is a limited partner of another limited partnership

[36] The application of section HG 2 in the context of the associated persons rules was considered by Inland Revenue's Tax Counsel Office in a recent Binding Ruling and as part of its Public Advice Project on the taxation of partnerships.

- another limited partnership is a limited partner of the limited partnership
- the limited partnership has a voting interest in a company or a market value interest in a company for which a market value circumstance exists.

This means new section YB 16B applies when a company is a limited partner in a limited partnership, a limited partnership is a limited partner in another limited partnership, or a limited partnership holds an interest in a company. Section YB 16B is not triggered by a limited partnership having a general partner that is a company.

When new section YB 16B is triggered, the two companies associated persons test (section YB 2) determines whether a company and a limited partnership or two limited partnerships are associated, instead of the company and other person test (section YB 3) or the limited partner and limited partnership test (section YB 12(2)). It also means that, when a limited partnership is treated as a company because of new section YB 16B, association between a limited partner that is not a company and the limited partnership is tested under section YB 3 rather than section YB 12(2) (sections YB 3 and YB 12(2) both contain a 25% association threshold). This is because the effect of section YB 16B is not limited to testing association between the parties that triggered its application. As noted above, when section YB 16B has been triggered, the limited partnership will be treated as a company for the purpose of sections YB 2, YB 3 and YB 12(2) to (4).

When new section YB 16B is triggered, a limited partnership and a company or two limited partnerships are associated under section YB 2(1) if a group of persons existed whose total "voting interest" in each entity is 50% or more. When a market value circumstance existed for a company, the company and limited partnership will be associated under section YB 2(2) if a group of persons existed whose total "market value interest" in each entity is 50% or more.

When new section YB 16B applies, a limited partnership is also treated as a company for the purpose of the corporate look-through rule in section YC 4. This makes it possible to look-through a chain of two or more limited partnerships, or a chain of entities including both limited partnerships and companies, for the purpose of establishing whether a company and a limited partnership or two limited partnerships are associated under section YB 2.

Amendments to definitions of "voting interest", "market value interest" and "company"

Amendments have also been made to the definitions of "voting interest" and "market value interest" in section YA 1 of the ITA so that, when a limited partnership is treated as a company under new section YB 16B or the existing rule in section YB 14(4) (which treats a limited partnership as a company for purpose of the tripartite test in section YB 14(1)), these terms include the partnership share a person had in a right, obligation, or other property, status, or thing of the limited partnership. See new paragraphs (bb) and (bc) of the definition of "voting interest" in section YA 1 (paragraph (bb) applies when a limited partnership is treated as a company under section YB 14(4), and paragraph (bc) applies when a limited partnership is treated as a company under new section YB 16B), and new paragraph (ab) of the definition of "market value interest" in section YA 1.

When a limited partnership is treated as a company under new section YB 16B, "voting interest" includes a partnership share in a limited partnership for the purposes of sections YB 2, YB 3 and YC 4 and "market value interest" includes a partnership share in a limited partnership for the purpose of determining whether a limited partnership is associated with a company for which a market value circumstance exists under section YB 2(2). These amendments apply for the purpose of testing association when a limited partnership is treated as a company under section YB 16B.

Ordinarily, when section YB 16B applies, a person's partnership share in a limited partnership would be treated as a voting interest for the purpose of testing association. A partnership share would only be treated as a "market value interest" when section YB 16B is triggered and association is being tested between a limited partnership and a company, and a market value circumstance exists for this other company. This is why the amendments to the definitions of "voting interest" and "market value interest" use different language.

The amendments use "partnership share" for consistency with the existing limited partnership association test in section YB 12(2), where association is also determined by reference to a person's partnership share in a right, obligation, or other property status, or thing of the limited partnership.

A limited partner's partnership share may be different for different things. For example, a limited partner's partnership share in the partnership income could, in some cases, be different from their partnership share in something else in the limited partnership.

When a limited partner in a limited partnership has differing partnership shares in different things in that limited partnership, the largest partnership share (in percentage terms) should be treated as the person's voting interest or market value interest for the purpose of the amendments.

Example 46: Partnership share when partner has differing rights

Company X is a limited partner of Limited Partnership Y. Under the partnership agreement, Company X has a 20% share of Limited Partnership Y's property and a right to 20% of Limited Partnership Y's income. However, Company X has no voting rights in Limited Partnership Y.

For the purpose of the amendments to the definition of "voting interest" and "market value interest", Company X would be treated as having a 20% partnership share in Limited Partnership Y.

The associated persons tests are applied on a point in time basis (that is, to determine whether parties are associated at the point in time that a particular transaction occurs). Therefore, what needs to be considered is the partnership share the limited partner has in any right, obligation, or other property status, or thing of the limited partnership at the date association is being tested.

Amendments to paragraph (ab) of the definition of "company" in section YA 1 recognise that a limited partnership is a company when section YB 14(4) or new section YB 16B applies.

As discussed under "Effective date" above, the amendments to the definitions of "voting interest", "market value interest" and "company" take effect either on 1 April 2010 for the purpose of the existing rule in section YB 14(4) or 26 August 2024 for those related to new section YB 16B.

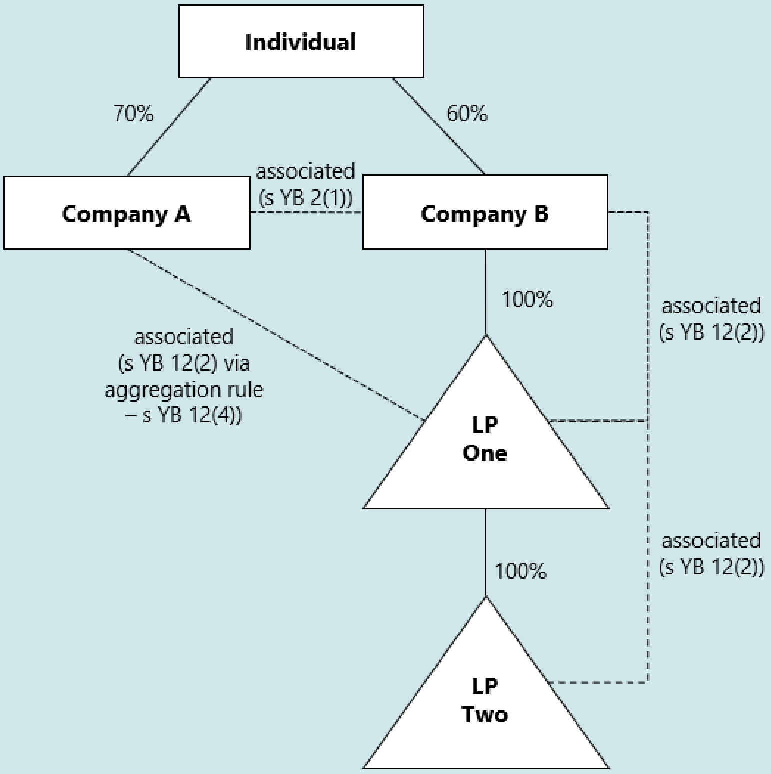
Consequential amendments

Consequential amendments have been made to the definitions of "control group" and "related" in section FH 15 of the ITA, which apply for the purpose of the hybrid and branch mismatch rules. These provisions rely on the associated persons tests in subpart YB. The consequential amendments are to recognise that, because of section YB 16B, a limited partnership may be treated as a company for the purpose of the associated persons tests.

Examples

The following two examples illustrate the effect of the amendments in respect of a two-tier limited partnership structure.

Example 47: Two-tier limited partnership structure – outcome under the previous law



Company A wants to establish whether it is associated with LP Two, which is a land developer.

Although the Individual has a 70% direct interest in Company A and a 60% indirect interest in LP Two, under the previous law, Company A and LP Two were not associated.

Under the previous law, Company A and LP One would be associated under the limited partnership association test in section YB 12(2). This is because Company A and Company B are associated (section YB 2(1)), so Company A was treated as holding Company B's 100% partnership share in LP One under the limited partnership aggregation rule in section YB 12(4).

However, Company A and LP Two were not associated under the tripartite test in section YB 14(1) even though they are associated with the same third person (LP One). This is because LP One and LP Two would be treated as companies for the purpose of applying the tripartite test (section YB 14(4)). As a result, the tripartite test requirement that persons must be associated under different associated persons tests would not be satisfied and the tripartite test would not apply.

Section HG 2 does not apply so the land development activity carried on by LP Two cannot be attributed to LP One (ie, LP Two's limited partner). For Company A to be "tainted" by the land development activity carried on by LP Two, an association must be established between Company A and LP Two. Under the previous law, no such association occurred.

Example 48: Two-tier limited partnership structure – outcome with new section YB 16B

The amendments result in Company A and LP Two in the structure in Example 47 being associated.

Both LP One and LP Two are treated as companies under new section YB 16B. LP One is treated as a company because a 100% partnership share in it is held by a company (Company B) and it holds a 100% partnership share in another limited partnership (LP Two). LP Two is treated as a company because 100% of its partnership share is held by another limited partnership (LP One).

As a result of the amendments, the corporate look-through rule in section YC 4 also applies and the Individual is treated as holding a 60% "voting interest" in LP Two (ie, 60% x 100% x 100%, with the 100% partnership shares in LP One and LP Two treated as voting interests).

The Individual's voting interests in Company A and LP Two are more than 50% so Company A and LP Two are associated under section YB 2(1).

For further guidance on the application of section YB 16B and examples of its effects see interpretation statement IS 25/11 *Income tax – Partnerships (including limited partnerships) – general guidance* (4 April 2025) at [275] to [291].

Clarifying application of limited partnership and LTC aggregation rules

Sections YA 1, YB 12, and YB 13 of the Income Tax Act 2007

Summary of amendments

The amendments clarify that:

- the application of the limited partnership aggregation rules enables association between a person that is associated with a limited partner but is not a limited partner themselves (a non-partner) and a limited partnership under section YB 12(2) of the Income Tax Act 2007 (ITA), and
- the application of the look-through company aggregation rules enables association between a person that is associated with an owner of an effective look-through interest but is not an owner of an effective look-through interest themselves and a look-through company under section YB 13(2) of the ITA.

Effective date

The amendments to section YB 12 and the definition of "partnership share" in section YA 1 took effect on 6 October 2009 for the purpose of the land provisions, and for all other purposes on 1 April 2010 for the 2010–11 and later income years.

The amendments to section YB 13 took effect on 1 April 2011 for income years beginning on or after 1 April 2011.

Background

Limited partnership aggregation rules

Section YB 12(3) and (4) includes aggregation rules applying for the purpose of the limited partnership associated person test in section YB 12(2). Under the aggregation rules, a person is treated as holding anything held by a person they are associated with under certain other associated persons tests.

The aggregation rules mean the interests of limited partners that are associated with one another will be combined for the purpose of determining whether a limited partner's partnership share meets the 25% association threshold in section YB 12(2).

Another intended effect of the aggregation rules is to enable association between a non-partner and a limited partnership when the non-partner is associated with a limited partner in the limited partnership. For example, if Spouse A is a limited partner with a 25% partnership share in a limited partnership, Spouse B (an associate of Spouse A under section YB 4(1)(b) of the ITA) should also be treated as holding this partnership share and associated with the limited partnership.

Under the previous law, section YB 12(2) associated a limited partnership and a "limited partner". While the aggregation rules meant a non-partner could be treated as holding a limited partner's partnership share in a limited partnership, the rules did not result in the non-partner being treated as a limited partner for the purpose of section YB 12(2). Therefore, the meaning of "limited partner" in section YB 12(2) needed to be stretched to achieve the policy intent of the aggregation rules in relation to non-partners.

This could be compared with the company and person other than a company association tests in section YB 3, which associate a company and a "person". The use of "person" makes it clearer that a person that does not hold a voting interest or market value interest in a company may be associated with the company because of the aggregation rules in section YB 3(3) and (4) of the ITA.

Look-through company aggregation rules

A similar issue arose for the look-through company aggregation rules in section YB 13(3) and (4).

Under the previous law, section YB 13(2) associated a look-through company and an "owner" of an effective look-through interest. "Owner" was defined in section YB 13(1) as a person who has a look-through interest for the look-through company.

The use of "owner" created uncertainty about whether the aggregation rules enabled association between a person that is associated with an owner, but is not an owner themselves, and a look-through company under section YB 13(2).

Key features

Limited partnership aggregation rules

To clarify that the aggregation rules enable association between a non-partner and a limited partnership, the references to "limited partner" in section YB 12(2) and the definition of "partnership share" in section YA 1 of the ITA are replaced with "person".

Previously, association between a general partner and a limited partnership occurred under the partnership and partner association test in section YB 12(1). The amendments also result in a separate provision being applied to associate a limited partnership and a general partner (new section YB 12(1B)). In respect of a limited partnership and a general partner, the effect under old section YB 12(1) and new section YB 12(1B) would be the same. Section YB 12(1) would continue to apply to partnerships that are not limited partnerships.

Consequential amendments have also been made to the headings in section YB 12.

The effective date of the amendments, set out above, are consistent with the dates that section YB 12 applies from. There is a savings provision for persons that have taken a tax position that is inconsistent with the amendments before 26 August 2024 (the introduction date of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill).

Look-through company aggregation rules

To clarify that the aggregation rules enable association between a person that does not hold an effective look-through interest and a look-through company, the references to “owner” in section YB 13(2) are replaced with “person”.

Consequential amendments remove the reference to “owner” from section YB 13(1) and from the headings in section YB 13 because the term is no longer used in the section.

The effective date of the amendments, set out above, are consistent with the date and income year section YB 13 applies from. There is a savings provision for persons that have taken a tax position that is inconsistent with the amendments before 26 August 2024 (the introduction date of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill).

Land rules remedials

Bright-line start date when land partitioned or subdivided

Section CW 3C of the Income Tax Act 2007

Summary of amendments

Section CW 3C of the Income Tax Act 2007 (ITA) has been amended to:

- provide that the bright-line period does not restart when land is allocated to each co-owner as part of a partition or subdivision, and
- introduce an apportionment rule to provide that when a co-owner has acquired materially more land than they held originally, that "new portion" of land is treated as being acquired on the date they became entitled to that land, rather than the date they acquired the undivided land. This change applies both to the bright-line test and the acquisition date for the purpose of other land sale rules.

Effective date

The amendments took effect on 27 March 2021.

The changes relating to the bright-line start date took effect on 1 July 2024.

Background

A partitioning transaction is one when a group of people purchase land together as co-owners to pool resources and then subdivide the land and allocate the subdivided parcels to each of the co-owners. Section CW 3C was introduced in 2023 (with effect on 27 March 2021) to ensure that these transactions would not give rise to tax when the amount of land allocated to each co-owner broadly reflects what they held prior to the subdivision.

In a partitioning scenario, each co-owner will have a new registration date for their subdivided parcel of land, which technically restarts the bright-line period for them. It was not intended for the bright-line period to restart when land is partitioned or subdivided in this way.

A co-owner can also end up with proportionately more land following subdivision than they held originally. When this acquisition is more than a material amount, it is appropriate for the bright-line period to restart for this "extra bit" of land.

Detailed analysis

New section CW 3C(3) to (6) and the replacements of section CW 3C(5) and (6) that apply from 1 July 2024 all essentially do the same thing, but for different land sale rules. Essentially, they set the date that the subdivided land is treated as being acquired. This is relevant if the subdivided land is subsequently sold because many taxing provisions in the ITA turn on when land was acquired. The following table of changes to section CW 3C outlines the rules:

Table 1: Changes to section CW 3C

Section	Application date	What it does
CW 3C(3)	27 March 2021	This provision sets the land acquisition date for the purposes of the land provisions (this is a defined term in the ITA and includes sections CB 7 to CB 11, and CB 15), as well as sections CB 12 to CB 14. It provides that the land the person acquires on a partition or subdivision, provided they have not acquired more than an additional 5% over what they held originally, is acquired on the date they acquired their interest in the undivided land, or the date they are treated by section CB 15(2) as acquiring their interest in the undivided land if that is earlier. Whether the co-owner has acquired more than an additional 5% over what they held originally is calculated by determining if their "end value proportion" is more than 105% of their "acquisition proportion". The end value proportion is the value of the land the person receives on subdivision out of the total value of land held by persons who were co-owners. The acquisition proportion is the person's contribution to the cost of the land, including costs to subdivide, develop and build on the land, as a proportion of total cost incurred by all co-owners. This is the same for subsections (4) to (6).
CW 3C(4)	27 March 2021	This provision applies for the same provisions as section CW 3C(3) does, except it provides the rule when the person has acquired more than an additional 5% of the land compared to what they held originally.

Section	Application date	What it does
		It provides that the "extra bit of land" is acquired on the date the person became entitled to it, or the date they are treated as acquiring it by section CB 15(2) if they acquired it from an associated person. When a person becomes entitled to land differs depending on the circumstances, for example it can be when the land is transferred to the person, or if a company owns land and the person became a shareholder of that company, at the point the person became a shareholder. The portion of the land that relates to what they held originally is treated as being acquired on the date they acquired the undivided land.
CW 3C(5)	27 March 2021 and 1 July 2024	Section CW 3C(5) has been replaced from 27 March 2021, and then again from 1 July 2024. Both replacements essentially do the same thing – which is, put simply, to set the land acquisition date following a subdivision of land between co-owners for the purposes of the bright-line test. The first replacement is for the 10-year bright-line test, and the second is for the 2-year bright-line test. The terminology changed from "bright-line acquisition date" to "bright-line start date" with the bright-line test change from 10 to 2 years, hence the need for two amendments. In more detail, the provisions provide that the person's bright-line start date (or bright-line acquisition date in the case of the 10-year bright-line test) for the subdivided land is their bright-line start date/acquisition date for the undivided land, provided they have not acquired more than an additional 5% land over what they held originally. This change ensures the bright-line period does not restart on subdivision or partition between co-owners. Before this change, each co-owner had a new registration date for their subdivided parcel of land, which technically restarted the bright-line period for them.

Section	Application date	What it does
CW 3C(6)	27 March 2021 and 1 July 2024	Similar to subsection (4), this rule provides the bright-line start date/bright-line acquisition date for land subdivided following a partition or subdivision between co-owners for a co-owner that has acquired more than an additional 5% of land compared to what they held prior to the subdivision or partition. The rule provides that the bright-line start date for the "extra bit" of land that the person acquires on subdivision is the date they became entitled to the land, and the bright-line start date for the portion that relates to what they held originally is their bright-line start date for the undivided land. As with subsection (5), subsection (6) has been replaced from 27 March 2021 for the 10-year bright-line test, and then again from 1 July 2024 for the 2-year bright-line test.
CW 3C(6B)	1 July 2024	This provision provides a transitional rule for subsections (5) and (6) to account for the change in terminology from "bright-line acquisition date" to "bright-line start date" when the bright-line test went from 10 years to 2 years. As outlined above, subsections (5) and (6) provide that the bright-line start date for a co-owner's subdivided land (to the extent it relates to what they held originally) is their bright-line start date for the undivided land. If the co-owner acquired the undivided land before 1 July 2024 when the 10-year bright-line test was in force and therefore the term was "bright-line acquisition date", the transitional rule provides that the bright-line acquisition date it treated as a bright-line start date for the purposes of the provision. For example, Amy and Bill purchased land in April 2023. They subdivided the land in October 2024 and built a house each. Their bright-line start date for the subdivided land is treated as being April 2023, when they acquired the undivided land, rather than October 2024 when they acquired the subdivided land.

Example 49: Bright-line start date for partition or subdivision transaction

Rob and Ruth acquire a block of bare land in April 2024 for $600,000 with the intention of building constructing a house each. In November 2024 they bring on Rob's brother Rowan as a co-owner, each owning one-third of the land. They construct three houses and subdivide the property into three lots in December 2025, retaining one each. Rowan's house is bigger than the other two and ends up using more than one-third of the land.

Rowan's total contribution to the costs is $800,000 out of a total cost incurred by all co-owners of $2 million. His acquisition proportion is therefore 0.4%.

Rowan's house is valued at $1.35 million out of a total of $3 million (being the value of all the co-owner's houses). His end value proportion is therefore 45%.

The calculation for Rowan is as follows:

Rowan's end value proportion is more than 105% of his acquisition proportion, as 40% x 105% = 42%. Therefore, his bright-line start date is calculated under section CW 3C(6).

The additional land that Rowan acquires on subdivision is calculated as follows under section CW 3C(6)(b):

(end value proportion – acquisition proportion) / end value proportion

(0.45 -0.4) / 0.45 = 11.11%

Therefore, the bright-line start date for 11.11% of Rowan's land, representing the additional portion of land that he acquired on subdivision, will be December 2025 because he became entitled to the additional land upon completion of the subdivision.

The bright-line start date for the remaining 88.89% of his land will be November 2024 – the date he acquired an interest in the undivided land.

Inherited land and bright-line test

Section CB 6A(5) of the Income Tax Act 2007

Summary of amendment

The amendment reverses a drafting error that removed the exclusion from the bright-line test for disposals of land to a third party by an executor, administrator or beneficiary of an estate.

Effective date

The amendment took effect on 1 July 2024.

Background

Disposals of residential land acquired by an executor, administrator or beneficiary of an estate following the death of a person have been specifically excluded from the bright-line test since it was originally introduced. This was achieved by section CB 6A(2B) of the Income Tax Act 2007 (ITA) for the 10-year and 5-year new build bright-line tests and section CZ 39(7) for the 5-year bright-line test.

When the bright-line test was rewritten to reduce it to two years in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024, the provision excluding the transfer of land to a third party by an executor, administrator or beneficiary of an estate was unintentionally omitted.

Key features

Key features of the amendment:

- Section CB 6A(5) is amended to include an exemption from the bright-line test for transfers of land to a third party by an executor, administrator or beneficiary of an estate.
- The amendment took effect on 1 July 2024, which is the effective date for the new 2-year bright-line test.

Amendments to section FC 9

Section FC 9(2) of the Income Tax Act 2007

Summary of amendments

The amendments remove unnecessary words and amend a cross-reference error in section FC 9 of the Income Tax Act 2007 (ITA).

Effective date

The amendments took effect on 1 July 2024.

Background

Section FC 9 contains specific rules that apply when residential land is transferred on a person's death. The amendments correct two errors that were identified in the section.

Key features

Section FC 9(2) is amended to:

- remove the words "including any intervening transfer to an executor or administrator" because they are unnecessary and repeat words already contained in section FC 9(1), and
- correct the cross-reference to section CB 6A(5) of the ITA.

Rollover relief for those in civil unions and de facto relationships

Section FD 1(1)(b)(i) of the Income Tax Act 2007

Summary of amendment

The amendment ensures that section FD 1 of the Income Tax Act 2007, which provides rollover relief from the bright-line test when land is transferred between associated persons, applies to trusts when the beneficiaries are associated with the transferor as a result of civil union and de facto relationship, as well as marriage.

Effective date

The amendment is effective for a person's disposal of residential land if the bright-line end date for the land is on or after 1 July 2024.

Background

Section FD 1 was inserted by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 on 1 July 2024. The section extended the rollover relief rules, which essentially allow a transfer of land between specified people to be ignored for the purposes of the bright-line test, to all transfers between associated persons. However, the original provision allowing rollover relief for newly established trusts when the transferor is associated with a beneficiary (section FD 1(1)(b)(i)), only referred to marriage and did not include civil unions and de facto relationships. The amendment corrects this oversight.

Rollover relief rules

Subpart FD of the Income Tax Act 2007

Summary of amendments

The amendments ensure that the rollover relief rules operate as intended.

Effective date

The changes took effect on 1 July 2024, the date the rollover relief rules originally applied from.

Background

The rollover relief rules from the bright-line test provide relief in certain circumstances. For example, when land is transferred between associated persons it is treated as being disposed of at the date the first person acquired it and for the price that person acquired it at.

Key features

The amendments:

- remove the requirement for land to be "transferred within the bright-line period" to qualify for rollover relief
- introduce a transitional rule to account for a change in terminology when the bright-line test went from 10 to 2 years, and
- include civil union and de facto relationships in the exception from the two-year association rule to qualify for rollover relief.

Detailed analysis

Remove "transferred within the bright-line period"

The bright-line period is defined as the period beginning on the bright-line start date and ending on the bright-line end date. The bright-line end date is the earliest of several dates, including when the sale and purchase agreement was entered into. This created an issue in situations when land was sold rather than simply transferred (ie, a sale and purchase agreement was entered into first, and the land was transferred upon settlement). In such cases, the rollover rules did not apply because the land was transferred outside the bright-line period. This outcome was unintended.

Sections FD 1(1), FD 2(1), and FD 3(1) of the Income Tax Act 2007 have been amended to delete the requirement that the land be transferred within the bright-line period. Consequential amendments have also been made to change references to “transfer” in other subsections to “disposal”. This resulted in many subsections being amended, so it was easier to just replace the entire subpart.

Introduction of transitional rule

The rollover relief rules provide that the transferee’s bright-line start date for the land is the transferor’s bright-line start date. This created issues when the transferor transferred the land to the transferee before 1 July 2024 because there was no "bright-line start date" at that time, only a "bright-line acquisition date". The term "bright-line acquisition date" was used under the 10-year bright-line test but was replaced with "bright-line start date" when the bright-line test changed to 2 years from 1 July 2024.

New sections FD 1(4), FD 2(5), and FD 3(5) introduce a transitional rule that treats the transferor’s bright-line acquisition date as the bright-line start date if the land was acquired before 1 July 2024.

Example 50: Bright-line acquisition date treated as a bright-line start date

Daniel acquires land on 1 December 2021 and therefore his bright-line acquisition date is 1 December 2021. On 1 November 2023 the land is transferred to his family trust. On 25 March 2025 the land is sold by the family trust.

1 December 2021 is treated as the trust’s bright-line start date. The trust’s bright-line end date of 25 March 2025 is more than two years after this date so the bright-line test does not apply to the sale of the land.

Inclusion of civil union and de facto relationships in exception from two-year association rule

Section FD 1 was inserted by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 on 1 July 2024. The new section extended the rollover relief rules, which essentially allow a transfer of land between specified people to be ignored for the purposes of the bright-line test, to all transfers between associated persons. However, the original provision allowing rollover relief for newly established trusts when the transferor is associated with a beneficiary (section FD 1(1)(b)(i)), only referred to marriage and did not include civil unions and de facto relationships. The amendment corrects this oversight.

Sale of subdivided land acquired from co-owner

Section CB 15E of the Income Tax Act 2007

Summary of amendment

The amendment ensures that the rules that apply when land that was acquired on a subdivision between co-owners is subsequently disposed of operate as intended.

Effective date

The amendment took effect on 27 March 2021.

Background

Individuals can pool resources to purchase land, becoming co-owners. When co-owners subdivide land and keep a parcel each, each co-owner goes from owning a share in the whole of the undivided land to being the sole owner of the part of the land they obtain. While the share of the divided land they get may reflect the share they held as co-owner, they are considered to have disposed of their share in the parcel they did not keep to the other co-owner (or each other co-owner). These disposals by each co-owner may be taxable events because the land sale rules in the Income Tax Act 2007 (ITA) apply in certain situations to tax disposals of land.

The Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 inserted section CW 3C into the ITA to ensure that no income tax is imposed when there is no substantive change of ownership following a subdivision. However, the intent of this provision could be defeated because a subsequent disposal of the land by the co-owner may be taxable under provisions that impose tax on land acquired from developers or associates in certain circumstances (the land sale rules). To remedy this, the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 inserted section CB 15E into the ITA to ensure that any income arising under the land sale rules, when land subdivided between co-owners is subsequently disposed of, is exempt to the extent to which the income on subdivision is exempt under section CW 3C.

Section CB 15E(3) understated the amount of income a person should have when they disposed of land that they acquired from a co-owner on a partition or subdivision and that acquisition was more than minor. Section CB 15E(3) reduced the person's income amount, but because they can still claim a full deduction, the person's net income was lower than it should be.

Key features

Understated income amount

The Act amends section CB 15E(3) to provide that instead of reducing the person's income by the amount given by the formula, the income is exempt to the extent given by the formula. By designating an exempt income amount, the person is only able to claim a deduction to the extent they had assessable income. This ensures the person has the appropriate amount of net income.

Consequential amendment because of changes made to section CW 3C

The amendments to section CW 3C, which altered the date on which land partitioned between co-owners is considered acquired for tax purposes (refer to "Bright-line start date when land partitioned or subdivided"), mean that fewer taxing provisions apply to the subsequent sale of that land. This is because many land taxing rules depend on the date the land was acquired. As a result of this amendment, the references to section CB 10 were repealed from section CB 15E because the subsequent sale of the land would not be taxable under section CB 10 considering the changes to the date of acquisition.

Disposals of land to the Crown – repeal of income spreading rule

Sections EI 8, EX 21(20), and EZ 8B of the Income Tax Act 2007

Summary of amendments

The amendments repeal a concessionary rule that allows a person to spread income derived by them on disposal of land to the Crown over a four-year period. This rule was inconsistent with the Government's broad-base, low-rate tax policy. Such income will generally now be recognised in the year it is derived.

Consequential amendments provide a transitional rule for those persons currently applying the concessionary rule and remove a cross-reference to the repealed rule.

Effective date

The amendments are effective for disposals of land to the Crown on or after 24 August 2024.

Background

Under section EI 8 of the Income Tax Act 2007, a person who derived income from the disposal of their land to the Crown could apply to the Commissioner of Inland Revenue to spread that income (and corresponding deductions) over a four-year period.

This concession was likely enacted to reduce the impact of unexpected tax liabilities arising for taxpayers whose land was compulsorily acquired by the Crown. This was of greater concern when the rule was originally introduced in the mid-1950s because the top income tax rate was over 60%. Income tax rates are now significantly lower, and we do not consider there to be sufficient reason to depart from standard income timing rules. Income is generally allocated to the income year in which it is derived.

International tax remedials

Thin capitalisation changes related to non-debt liabilities

Sections FE 6(1), FE 16B, and YA 1 of the Income Tax Act 2007

Summary of amendments

The amendments to the thin capitalisation rules relate to the calculation of non-debt liabilities and the debt percentage of the group. In broad terms the changes:

- Exclude interest-free loans from a settlor of a trust in calculating the non-debt liabilities of the trust when the settlor has made one or more settlements on the trust totalling 10% or more of the value of the total settlements on the trust.
- Extend the exclusion from non-debt liabilities for interest-free loans provided by, and redeemable shares held by, members of the same wholly-owned group of companies to also include non-corporate persons (such as a settlor of a trust, trustee of a trust, or individual) and to also apply to funding that is not proportional to shareholder voting interests if the group holds at least 10% of the voting interest.
- Extend the non-debt liabilities exclusion to apply in the context of funding from a shareholder directly to an indirect subsidiary that is a member of the New Zealand thin capitalisation group.
- Correct the link between the calculation of group debt percentage and the requirement to adjust an excess debt entity's interest deduction to ensure that entities with non-debt liabilities equal to or greater than the total assets are required to reduce their total interest deductions.

Effective date

The first three amendments are effective for the 2025–26 and later income years.

The fourth amendment is effective for income years beginning on or after 1 July 2018.

Background

Non-debt liabilities – interest-free loans from settlor of trust

The thin capitalisation rules help protect the tax base by preventing the use of excessive debt to reduce the taxable profits in New Zealand for both inbound and outbound investment. In practice, the rules limit interest deductions by setting a maximum allowable debt percentage for the New Zealand group.

The debt percentage of a group was historically calculated based on its debt relative to its gross assets: that is, group debt ÷ group assets. This was amended in 2018 so that non-debt liabilities are now subtracted from group assets in calculating the debt percentage: that is, group debt ÷ (group assets − non-debt liabilities). The amendments strengthened the thin capitalisation rules by more accurately reflecting the group's true debt to asset position.

Interest-free loans from shareholders to companies are excluded from non-debt liabilities when they are proportional to shareholding or when the shareholder holds at least 10% of the voting interests in the company (see section FE 16B(1)(b) of the Income Tax Act 2007 (ITA)). This is because such loans are more akin to equity than debt, and so they should not reduce the group assets for thin capitalisation purposes.

Interest-free loans from a settlor to a trust are analogous in some respects to interest-free loans from a shareholder to a company.

New section FE 16B(1)(ba) has been added so that the non-debt liabilities exclusion also applies to interest-free loans from a settlor that has made one or more settlements totalling at least 10% of the value of total settlements on the trust.

Non-debt liabilities – extension to wholly-owned group exclusion

Section FE 16B(1)(b) and (c) excludes interest-free shareholder loans and some redeemable shares from being non-debt liabilities for thin capitalisation purposes. This exclusion was extended in 2020 by inserting section FE 16B(3) to cover situations when the loans are provided by, or the shares are held by, a member of the same wholly-owned group of companies as the shareholder.

Inclusion of non-corporate persons

The extension under section FE 16B(3) only applied to companies within the same wholly-owned group. However, there were some analogous situations that were not covered, such as when a non-corporate person (for example, a settlor of a trust, trustee of a trust, or individual) that holds 100% of the voting interests in a member of the wholly-owned group is the provider of the interest-free loans or holder of the redeemable shares.

To cater for these non-corporate person scenarios, there are separate amendments to cover whether the shareholder is a company or a trustee of a trust.

When the shareholder is a company, the amendments to section FE 16B(3) replace the "wholly-owned group" wording in that section with a new term "equity group" defined in new section FE 16B(5), which:

- means companies within the same wholly-owned group as the shareholder if the shareholder is a member of a wholly-owned group, or the shareholder company itself (when it is not a member of a wholly-owned group), and
- includes:
    - the group of persons (the natural group) who are relatives (which may consist of a single person) and that holds 100% of the voting interests in a member of the wholly-owned group or in the shareholder company itself, and
    - if a member of the natural group is a trustee of a trust, a settlor of that trust and relatives of the settlor, provided the settlor and relatives have made at least 90% of the settlements made on the trust.

The amendments cover various scenarios, such as when the shareholder is a foreign company wholly owned by a foreign trust when a settlor has made at least 90% of the settlements on the trust, and either the settlor, or the trustee of the trust, provides interest-free loans directly to the company in the New Zealand thin capitalisation group.

It also covers scenarios when the shareholder is a foreign company wholly owned by an individual or a group of relatives, and the individual or the relatives provides interest-free loans directly to the company in the New Zealand thin capitalisation group.

In each of the above scenarios, the interest-free loan made to the company in the New Zealand thin capitalisation group is excluded from non-debt liabilities.

The amended section FE 16(B)(3) does not cover scenarios when the shareholder is a trustee of a trust, but not a company, and the settlor provides interest-free loans directly to the company in the New Zealand thin capitalisation group.

New section FE 16(B)(4) applies when the shareholder is a trustee of a trust. Under this section, if a settlor and relatives of the settlor have made at least 90% of the settlements on the trust, then the trustee is treated both as the shareholder for all the shares held by the settlor and relatives of the settlor, and as the provider of all interest-free loans provided by the settlor and relatives of the settlor for the purposes of section FE 16B(1)(b) and (c).

Group holding at least 10% of the voting interest

Section FE 16B(1)(b) and (c) apply when:

- the amount of an interest-free loan, or the number of redeemable shares issued, is proportional to the voting interest of each shareholder, or
- the shareholder and associated persons hold at least 10% of the voting interests in the company.

This means that non-proportionate funding, or redeemable shares, can be carved out of non-debt liabilities if it comes from a shareholder who holds at least 10% of the voting interest. However, prior to the amendments, section FE 16B(3) only applied in circumstances when the amount of interest-free loan, or the number of redeemable shares issued, was proportional to the voting interest of each shareholder.

The amendments extend the non-debt liabilities exclusion for wholly-owned groups of companies or equity groups so that it also applies to non-proportionate funding, or redeemable shares, when the shareholder and associated persons hold at least 10% of the voting interests in the company.

Non-debt liabilities – interest-free loan to indirect subsidiary

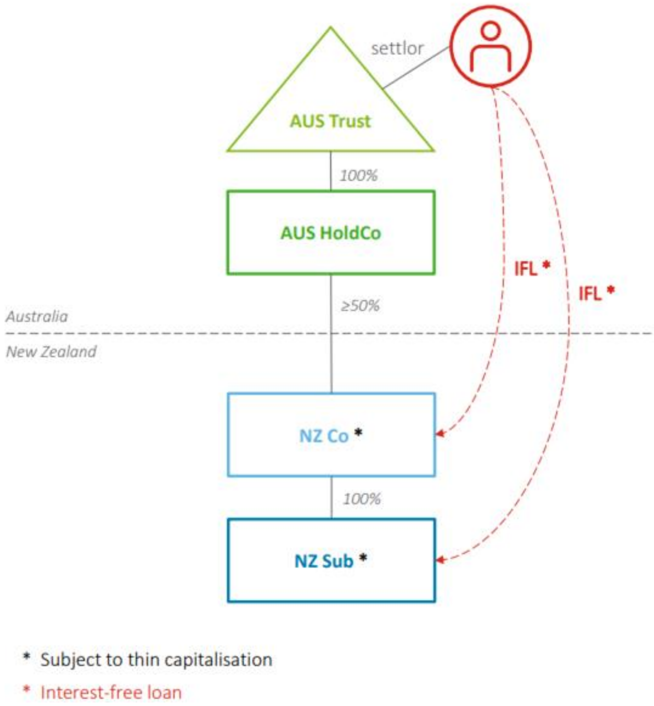
The exclusion from non-debt liabilities has been amended to apply in the context of an interest-free loan from the shareholder/equity group directly to an indirect subsidiary that is a member of the New Zealand thin capitalisation group (ie, the funding can be provided to a subsidiary within the New Zealand group that is not the top company in that group).

Consider Diagram 1 below, when Aus Hold Co holds more than 50% of the shares in NZ Co, which means NZ Co and NZ Sub are subject to the thin capitalisation rules. Aus Hold Co is in turn owned by Aus Trust, which is 100% settled by an Australian settlor who provides interest-free loans to NZ Co and NZ Sub.

Prior to the amendments, section FE 16B(1)(b) could be read as requiring the funding to be provided to the top company in a New Zealand thin capitalisation group (the interest-free loan (IFL) to NZ Co in Diagram 1). However, it is possible for the funding to be provided to another company in the New Zealand thin capitalisation group (the interest-free loan to NZ Sub in Diagram 1) and this is economically the same. This is because the arrangement still involves an economically whole group (the equity group) lending on an interest-free basis to the New Zealand thin capitalisation group.

Section FE 16B(1)(b) has been amended so that it also applies to the scenario when the funding is provided to another company that is not the top company in the New Zealand thin capitalisation group (the interest-free loan to NZ Sub in Diagram 1).

Diagram 1: Interest-free loan from settlor to New Zealand corporate



Legislative link between debt percentage calculation and interest apportionment calculation formula

The debt percentage calculation in section FE 12(3) of the ITA was amended in 2021 so that the debt percentage is deemed to be zero when non-debt liabilities equal or exceed assets. While not common, this can happen when an entity is insolvent.

The intended impact of the 2021 amendment to section FE 12(3) was that when non-debt liabilities equal or exceed assets, it should generally result in the full denial of the interest deductions in New Zealand under section FE 6.

Section FE 6 only applied if section FE 5 requires the entity or person to apportion their interest expenditure. However, section FE 5 does not apply when the New Zealand group debt percentage is zero. Therefore, there was no clear legislative link to require the interest apportionment calculation in section FE 6 to be undertaken when the New Zealand group debt percentage is calculated to be zero under section FE 12(3).

Therefore, section FE 6(1) has been amended to ensure that entities that have a group debt percentage of zero because their non-debt liabilities are equal to or greater than their total assets are also required to reduce their total interest deductions.

This change has retrospective application to the effective date of the previous amendment to section FE 12(3) (ie, income years beginning on or after 1 July 2018). This is consistent with the clear policy intent of the thin capitalisation rules and how the rules are being applied in practice.

FIF cost method eligibility

Section EX 46(9) of the Income Tax Act 2007

Summary of amendment

The amendment clarifies that the eligibility to use the cost method to calculate foreign investment fund (FIF) income depends on whether a market value for the investment at the start of the income year is readily available. Eligibility is not impacted by the valuation skills and experience of the investor. This is consistent with the policy intent and is not intended to change how the FIF cost method is being used in practice.

Effective date

The amendment is effective for income years beginning on or after 1 July 2011.

Background

A FIF is a type of offshore investment subject to special tax rules. There are five methods available to calculate FIF income, with restrictions placed on which method a person can choose. One of the methods is the cost method.

The cost method was designed as a back up to the fair dividend rate (FDR) method. It is intended to cater for situations when verifiable market values for the investments are not readily available, such as investments in foreign unlisted shares.

However, prior to the amendment, section EX 46(9) of the Income Tax Act 2007 may have been interpreted to mean that the cost method cannot be used by investors possessing the skills, experience, and information needed to personally apply a commercially acceptable valuation method to determine the market value. This interpretation goes beyond the policy intent.

Inland Revenue intends to confirm the interpretation of “readily available” through an interpretation statement.

Foreign tax credit rules and trust rules

Section LJ 5(7) of the Income Tax Act 2007

Summary of amendment

This amendment fixes an unintended interaction between the trust rules and the foreign tax credit (FTC) rules that can give taxpayers a larger FTC than they should get.

The amendment requires a trust beneficiary who receives a distribution of foreign-sourced income from a trust to take into account any deductions that relate to that income when calculating their FTC entitlement.

Effective date

The amendment took effect on 1 April 2025.

Background

When a New Zealand trust earns foreign-sourced income and pays foreign tax on it but distributes it to a beneficiary as beneficiary income, the beneficiary has the New Zealand tax liability on that income. To ensure there is no double taxation, the beneficiary is entitled to an FTC to offset against their New Zealand tax liability.

Under sections LJ 2(2) and LJ 5(2) of the Income Tax Act 2007 (ITA), an FTC is capped at the lower of:

- the foreign tax actually paid on the income, or
- the tax that would have been paid in New Zealand if not for the FTC, calculated on a net basis (ie, after subtracting deductions). This is known as the "notional liability" for the person.

However, when a trust incurs expenses, section DV 9 of the ITA requires deductions to be taken at the level of the trustee, even if all the relevant income is distributed to the trust's beneficiaries. Consequently, prior to the amendment outlined in this Commentary, the trust's deductions were not included in the beneficiary's calculation of the notional liability described above, meaning the FTC cap was higher than it should have been when trustees distributed more than the net amount of the income.

Key features

New section LJ 5(7) of the ITA provides that, if a beneficiary of a trust has received a distribution of foreign-sourced income from the trust, they are treated as having the trust's deductions relating to that income for the purpose of section LJ 5. This means that, in the formula in section LJ 5(5) used to calculate the person's notional New Zealand tax liability, the "person's net income" will take into account the trust's deductions.

If the beneficiary does not know the amount of deductions relating to the foreign-sourced income distributed to them, then the trust will need to either:

- inform the beneficiary of the amount of the deductions, or
- calculate the beneficiary's FTC for them.

Example 51: Foreign tax credit when foreign-sourced income distributed to beneficiary of trust

In the 2025–26 income year, Melon Trust has $8,000 of foreign-sourced income from country A, which it incurred $3,000 of expenses in deriving. Its net foreign income is therefore $5,000. It pays country A tax on that income at a rate of 40%, which equals $2,000.

However, Melon Trust has allocated the gross foreign income of $8,000 to Peter Ltd, a widely-held company. The $3,000 of foreign expenses remain with Melon Trust.

The time comes for Peter Ltd to work out its FTC entitlement. When calculating the notional New Zealand tax payable, Peter Ltd is now required to take into account the foreign expenses, despite them remaining with Melon Trust, because it was the net (not gross) income that was subject to foreign tax. Melon Trust informs Peter Ltd that the foreign expenses are $3,000. Peter Ltd therefore calculates the notional New Zealand tax payable as ($8,000 less $3,000) x 28% = $1,400.

Peter Ltd can claim an FTC equal to the lesser of:

- foreign tax paid, and
- the notional New Zealand tax payable on the foreign income.

The notional New Zealand tax payable of $1,400 is less than the foreign tax paid of $2,000, so the FTC allowed is $1,400.

Failure to withhold NRWT amount

Section RF 6 of the Income Tax Act 2007

Summary of amendments

The amendments clarify the available options for rectifying cases when a person is required to withhold non-resident withholding tax (NRWT) for a payment of passive income but fails to do so.

Effective date

The amendments are effective for the 2008–09 and later income years.

Background

A person who makes a payment of non-resident passive income, such as interest or dividends, is required to withhold NRWT. When the payer fails to do so, the Income Tax Act 2004 contained provisions that confirmed the available options to rectify this. During the 2007 rewrite of the Income Tax Act, the references to persons in some of the provisions became unclear as to whether they refer to the payer or the recipient, and one provision was omitted. This creates undesirable uncertainty for taxpayers.

Key features

The amendments:

- confirm that the person referred to in section RF 6(2) of the Income Tax Act 2007 (ITA), who is obliged to pay the Commissioner of Inland Revenue the amount that should have been withheld, is the payer
- clarify that the persons mentioned in section RF 6(4), in relation to whom the Commissioner may take the steps the Commissioner deems fit to recover the amount, refer to the payer and the recipient, and
- provide a signpost to section 165 of the Tax Administration Act 1994 under subpart RF of the ITA to confirm the payer's right to recover from the recipient an amount of NRWT that the payer failed to withhold but must subsequently pay to the Commissioner.

Interaction between transfer pricing rules and dividend rules

Sections GC 11, GC 12, and GC 13(6) of the Income Tax Act 2007

Summary of amendments

The amendments:

- clarify that the transfer pricing and dividend rules apply concurrently regardless of whether the other party applies for a matching transfer pricing treatment under section GC 11 of the Income Tax Act 2007 (ITA), and
- align the four-year time bar that currently applies to *other adjustments* that are related to any adjustments made under the transfer pricing rules in sections GC 6 to GC 14 of the ITA or the interest limitation rules in sections GC 15 to GC 19 of the ITA (such as the withholding requirements and tax loss carry forward or offset against other group members' net income) with the seven-year time bar that applies to the adjustments under sections GC 6 to GC 19, so that these adjustments are subject to the same seven-year time bar.

Effective date

The amendments to confirm the concurrent application of the transfer pricing and dividend rules took effect on 30 March 2025.

The amendment to align the time bar rules applies to cross-border arrangements done on or after 1 April 2025 and tax positions in returns relating to income years beginning on or after 1 April 2025.

Background

The transfer pricing rules set out in sections GC 6 to GC 14 substitute an arm's length consideration if the taxpayer's net income is reduced by non-arm's length pricing in a cross-border arrangement with an associated person.

Under the dividend rules in subpart CD of the ITA, a transfer of value from a company to a person that has been caused by a shareholding will be treated as a dividend and taxed accordingly.

In many cases, the difference between the arm's length amount and the amount actually payable or receivable by the taxpayer under a transfer pricing arrangement constitutes a transfer of value from a company. Therefore, arrangements that require a transfer pricing adjustment also often give rise to a dividend for tax purposes. This dividend should be subject to non-resident withholding tax (NRWT) under Part R of the ITA.

Clarifying application of dividend rules

Both the above rules are intended to apply concurrently. However, section GC 12, which sets out the interaction between these two regimes, could be interpreted to mean that the dividend rules do not apply when there is a transfer pricing adjustment unless the other party applies for a matching treatment under section GC 11. The amendments clarify that dividends can still be deemed to arise when transfer pricing adjustments are made, regardless of whether an application for matching treatment is made.

The amendments also limit the application of section GC 11 to cases when the difference between the arm's length amount and the amount payable or receivable by the taxpayer under the transaction does not constitute a dividend. This is intended to further clarify that a matching treatment application under section GC 11 is not needed for arrangements that already give rise to dividends under subpart CD.

Alignment of time bars

When an adjustment is required under the transfer pricing rules in sections GC 6 to GC 14 or the interest limitation rules in sections GC 15 to GC 19 (which apply to remove features not typically found in third party debt), there are often other related adjustments required to reflect the adjusted income or expenditure. These include:

- income tax offset adjustments if the adjustment reduces the taxpayer's net losses when those net losses have already been offset to an associated company and/or carried forward and utilised in future periods under Part I of the ITA — in this case, the relevant adjustments would be both to reduce the taxpayer's net losses and to increase the net income of the associated company against whom the disallowed net losses were offset
- determination of the amount of the dividend under subpart CD and the taxpayer's ability to retrospectively attach imputation credits (under section OB 62) or repay the dividend (under section CD 42), and
- adjustments to the NRWT amounts under Part R if the arrangements involve payments of passive income.

Section 108 of the Tax Administration Act 1994 specifies a four-year time bar that applies generally to the amendments of assessments.

Section GC 13(6) of the ITA provides for an extension to this general time bar to allow the Commissioner of Inland Revenue to amend an assessment for a tax year to give effect to adjustments under sections GC 6 to GC 19 within seven tax years if the taxpayer is notified about an audit or investigation within four years after the tax year in which the return is assessed.

The amendments ensure that any adjustments that are related to an adjustment under sections GC 6 to GC 19 can still be made, even after the general four-year time bar for adjustments.

In particular, new section GC 13(7) has been added to ensure that the seven-year time bar applies to other related adjustments listed above. In addition, an amendment to section GC 13(6) also confirms that a notification to a taxpayer informing them about a commencement of a transfer pricing audit is sufficient to trigger the seven-year time bar for the other party in the transfer pricing arrangement or the group company against whose net income the notified party's net losses were offset.

Other remedials

R&D Tax Incentive: General approval application due date

Section 68CB of the Tax Administration Act 1994

Summary of amendment

The amendment extends the due date for Research and Development Tax Incentive (RDTI) general approval applications for a given income year to the last day of the third month after the end of that year.

Effective date

The amendment took effect on 1 April 2025.

Background

Approximately 73% of businesses enrolled in the RDTI have an income year ending in March. For these businesses, the general approval application deadline for the year falls on 7 May. This is only a week away from the annual peak for filing supplementary returns for the previous year, which falls on 30 April for taxpayers with an extension of time. The proximity of these two dates causes a peak in RDTI filing, which creates a high compliance and administrative burden for businesses and scheme administrators alike.

Detailed analysis

The general approval due date in section 68CB(2) of the Tax Administration Act 1994 is currently the seventh day of the second month after the end of the income year. This date is extended to the last day of the third month after the end of the income year.

Businesses can also apply to add to or vary an existing general approval. These applications must be also made by the due date for general approval applications for that year. Consequently, the due dates for variation applications are extended to:

- Section 68CB(7) – the last day of the third month after the end of the income year, for variations generally.
- Section 68CB(7B) – the last day of the 15th month after the end of the income year, for variations relating to supporting R&D activities conducted in the year immediately after the year of the corresponding core R&D activity.

R&D Tax Incentive: ICAs and shareholder continuity breaches

Section OB 37(1C) of the Income Tax Act 2007

Summary of amendment

The amendment ensures that when a company's shareholder continuity is breached between the time a company files its income tax return and the time it is refunded a Research and Development Tax Incentive (RDTI) tax credit, the imputation credit account (ICA) incurs only one imputation debit corresponding to the imputation credit.

Effective date

The amendment is effective for the 2019–20 and later income years.

Background

Filing for an RDTI tax credit gives rise to an imputation credit in the ICA. If this tax credit is approved, the ICA then has an equal imputation debit should the tax credit be refunded to the company.

When shareholder continuity is lost, an ICA has an imputation debit equal to a credit balance in the account. If this breach happens after a company has filed its income tax return (the ICA has already been credited), but before the company may be refunded an RDTI tax credit (the ICA has not yet been debited), then the subsequent refund will result in two ICA debits overall, corresponding to one credit for the RDTI amount.

Ordinarily, when a refundable tax credit is paid out, the imputation debit that results from the breach of shareholder continuity is reduced by the amount of the refundable tax credit. This avoids the double debit. However, while RDTI credits are refundable, they are not listed as a defined refundable tax credit under section LA 6(1) of the Income Tax Act 2007 (ITA). Under current law, this means that the imputation debit resulting from a shareholder continuity breach cannot be reduced, which effectively means the business must incur both debits described above.

Key features

The amendment ensures that when an RDTI credit is refunded to a business that has previously incurred an ICA debit for a breach in shareholder continuity, two ICA debits are not incurred in relation to one ICA credit.

Detailed analysis

Section OB 37(1)(b) of the ITA sets out that an ICA company has an imputation debit for the amount of a refundable tax credit that is refunded to the company. Section OB 37(1C) sets out that an imputation debit for a refundable tax credit that arises in a tax year after a debit has been incurred in relation to a breach in shareholder continuity under section OB 41 of the ITA is reduced by the lesser of:

- the debit incurred under section OB 41, or
- the amount by which the refundable tax credit exceeds the total credits to the company's ICA.

Section OB 37(1C) is amended to ensure that it would operate to reduce an imputation debit that arises for an RDTI tax credit by the amount debited to the ICA under section OB 41 at the time of the continuity breach.

FamilyBoost remedials

Sections MH 2, MH 3, MH 4, MH 5, and YA 1 of the Income Tax Act 2007
Sections 3, 41C, 120VE, 139B, and schedule 7, part C, subpart 2, clause 46B(1)(a) of the Tax Administration Act 1994

Summary of amendments

The Act makes a number of remedial amendments to the FamilyBoost provisions to ensure the legislation is aligned with the policy intent and operational practice, and to clarify wording.

Effective date

The amendments apply retrospectively from 1 July 2024, the introduction date of the original FamilyBoost provisions in the Taxation (Budget Measures) Act 2024.

Background

FamilyBoost provisions came into force from 1 July 2024 to provide a new tax credit based on the amount of early childhood education fees paid in a previous tax credit quarter of the year, up to a maximum amount. A quarterly household income test also applies to reduce the maximum amount for those earning over the threshold. The first payments were made from 1 October 2024.
Following the original enactment, a number of remedial amendments were identified. A Tax Administration Act 1994 (TAA) section 6E exemption and two Orders in Councils were approved to provide temporary adjustments while Parliament considered permanent remedial amendments.

Key features

The amendments:

- ensure that the income calculation for FamilyBoost applicants accurately reflects the income of individuals receiving schedular payments
- allow late filers who have subsequently provided their return of income to be eligible for FamilyBoost
- clarify which annual return of income should be used to determine a FamilyBoost applicant's tax credit income
- clarify the application of the “greater of” test for FamilyBoost applicants who derive both reportable income and non-reportable income

- remove the requirement to publish significant overpayment and underpayment thresholds
- ensure that debit interest is applied to FamilyBoost tax credit overpayments if they are not repaid by the due date
- ensure that credit interest is not applied to FamilyBoost tax credit payments
- ensure that late payment penalties are not applied to FamilyBoost tax credit payments
- replace the phrase "early childhood education and care service" with "licensed early childhood service" in schedule 7 of the TAA to ensure consistency and to maintain the scope of administration in an information-sharing provision.

Schedular payments

Prior to this amendment, FamilyBoost applicants earning income through schedular payments may have faced reduced or no entitlement due to the income test inaccurately inflating their income. This is because reportable income includes schedular payments received but does not account for the related allowable expense deductions, which are disclosed in the end-of-year tax return. As a result, the tax credit income of those receiving schedular payments was overstated, leading to a reduction in their FamilyBoost entitlement.

This amendment treats schedular payments as other income for the purpose of FamilyBoost, allowing the use of taxable income in the end-of-year tax return, including the necessary deductions. For applicants earning income through schedular payments this results in a more accurate level of income to be used in assessing FamilyBoost entitlement.

Allowing for late filing of returns of income

The previous FamilyBoost provisions required individuals (and their partners) to have filed their most recent return of income to access FamilyBoost. However, it also mandated that the tax return be filed on time according to the individual's filing obligations. As a result, individuals who filed their most recent annual return of income late were ineligible for FamilyBoost, even after submitting the necessary income information. This issue primarily affected self-employed individuals who must declare their income by filing an annual tax return.

This amendment to section MH 3(5) of the Income Tax Act 2007 allows late filers who have subsequently filed a return to access the FamilyBoost tax credit.

Most recent return of income

It was unclear in the previous FamilyBoost provisions as to which annual return of income should be used to determine “tax credit income”. As it was described, the term “most recent return of income,” could refer to *any* return filed before the start of the period the applicant is applying for. Consequently, a person’s eligibility for the tax credit payment could have been determined based on an outdated return. The policy intention is to use income information, as held by the Commissioner, that best reflects current income levels. This amendment ensures that the tax return used can only be up to two income years preceding the income year that includes the tax credit quarter the person is applying for. If a person has no tax return in that period, for example, because they had not earned any income in that period, their income would be considered to be zero.

Clarifying the "greater of" income test

The FamilyBoost provisions apply an income test based on whether a person derives reportable income (eg, salary and wage income) and/or non-reportable income (eg, self-employed income) in a quarter. However, Inland Revenue does not know if a person has derived non-reportable income until they file a tax return at the end of their income year.

The method for determining a person's tax credit income when they derive both reportable and non-reportable income was ambiguous. An amendment:

- clarifies that the Commissioner may determine whether a person has derived non-reportable income by looking at their most recent tax return, up to two income years preceding the tax credit quarter the person is applying for
- specifically refers to situations when a person has not yet filed a return of income for an income year that includes the tax credit quarter, and
- when a person has both reportable income and other income during an income year, the tax credit income is the greater of the amount of reportable income only, or the amount of other income only.

Publishing significant overpayment and underpayment thresholds

A person's FamilyBoost tax credit is typically considered final based on the information available at the time of processing and payment. Reassessments may occur if the Commissioner identifies a significant overpayment or underpayment, with consideration of the resources available to the Commissioner. The previous legislation mandated the publication of these thresholds, a practice formerly used for student loan repayments. However, it has become evident that publishing these thresholds poses an integrity risk. Therefore, this amendment has removed the requirement to publish the overpayment and underpayment thresholds.

Application of debit interest

In the event of people receiving a significant FamilyBoost tax credit overpayment, it was intended that debit interest apply to that tax credit. This would require people who received the overpayment to pay debit interest on this amount if they had not repaid the overpayment by the given due date (30 days after receiving notice of the overpayment). This amendment ensures debit interest is applied to FamilyBoost tax credit overpayments.

Application of credit interest

Credit interest was not intended to apply to the FamilyBoost tax credit. However, the previous FamilyBoost provisions did not prevent Inland Revenue being required to pay credit interest to taxpayers on the amount of a FamilyBoost tax credit underpayment or when a payment is backdated and paid (for example, an application for payment some months or years after the first date an application could have been made). This amendment in section 120VE of the TAA clarifies that credit interest does not apply to the FamilyBoost tax credit.

Late payment penalties

Late payment penalties were not intended to apply to the FamilyBoost tax credit. However, the previous FamilyBoost provisions required people who receive overpayments on their FamilyBoost tax credit to pay late payment penalties and incremental late payment penalties if they do not repay the overpayment by the due date. This amendment in section 139B of the TAA clarifies that late and incremental late payment penalties do not apply to the FamilyBoost tax credit.

Inconsistent use of terminology

The FamilyBoost provisions had an inconsistency in terminology that required an amendment to align the terminology used when referring to licensed early childhood services. This amendment was made in the information-sharing provisions in the TAA, schedule 7.

Portfolio investment entity eligibility requirements

Sections HM 7(1), HM 10B, HM 12, HM 71, and YA 1 of the Income Tax Act 2007

Summary of amendments

The amendments improve clarity around an important portfolio investment entity (PIE) eligibility requirement – a PIE must have the majority of its assets employed in deriving eligible income, which is typically known as passive income (the income-type requirement).

The amendments clarify that:

- a person in the business of borrowing and lending money cannot be a PIE, and
- income cannot generally be channelled into a PIE by way of interest payments from an associated person that is not eligible to be a PIE or a foreign PIE equivalent.

Effective date

The amendments took effect on 1 April 2025.

Background

A PIE is a collective investment vehicle that must have, as its principal activity, the provision of investment and savings services (as defined by the proportion of its underlying assets that are used to derive specified investment income).[37] The intention of the PIE regime is to encourage investors to invest through collective investment vehicles by providing the same tax outcomes that would have occurred if they had invested directly.

The PIE rules contain certain beneficial tax settings for savings and investment. Therefore, the PIE rules contain strict eligibility requirements. The PIE eligibility criteria are designed to distinguish genuine savings and investment vehicles from other entities, and they are broadly designed to replicate the situation of the vast majority of individuals who invest directly (the alternative to investing via a managed fund). The officials' report on the Bill, when the income-type requirement was originally introduced, is clear that an important eligibility requirement is that a PIE must have the majority of its assets employed in deriving what is typically known as passive income (such as income from trading shares, dividends, land and rents).[38]

[37] Commentary on the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill (May 2006), page 4.
[38] Officials' Report to the Finance and Expenditure Committee on Submissions on the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill (8 November 2006), Volume 4, page 14.

It became apparent that there was some uncertainty around the scope of the income-type requirement. Therefore, amendments have been made to provide more certainty.

Key features

- New section HM 10B of the Income Tax Act 2007 (ITA) excludes a "licenced deposit taker", as defined in the Deposit Takers Act 2023 (DT Act), from the PIE rules. Until the relevant parts of the DT Act come into force, new section HM 10B excludes a "registered bank" as defined in the Banking (Prudential Supervision) Act 1989 and a "licensed NBDT" (non-bank deposit taker) as defined in the Non-bank Deposit Takers Act 2013.
- An amendment to section HM 12(1)(b)(iii) clarifies that eligible PIE income does not include "excluded interest". Excluded interest is defined in new section HM 12(1B) as interest derived from a person associated with the PIE, unless:
  - the interest is received from a licenced deposit taker (or registered bank or licensed NBDT until the "licenced deposit taker" definition comes into force)
  - the interest is received from an entity that is a PIE, is eligible to be a PIE or is a foreign PIE equivalent, or
  - the interest received is for funds that were originally borrowed by the entity from third parties and on-lent at the same interest rate or the weighted average of the interest rates charged on all active loans the entity has from third parties.

Detailed analysis

The requirements that must be satisfied for an entity to be a PIE are set out in section HM 7 of the ITA. In particular, section HM 7 requires that the entity meet, and continue to meet, the PIE eligibility requirements (contained in sections HM 8 to HM 20, as applicable).

Relevant to the amendments, section HM 11 requires that at least 90% of a PIE's investments must be in listed types of investments (being land, financial arrangements or excepted financial arrangements). Section HM 12 requires that at least 90% of the PIE's income be listed types of income (the income-type requirement).

Deposit takers

It was not intended that a deposit taker (such as a bank or finance company) could become a PIE. This is because, while the income derived by a deposit taker is technically interest income similar to a passive investment (for example by a managed fund), the income is, in substance, profit derived from carrying on an active business of borrowing and lending.

To provide clarity on this issue, new section HM 10B excludes a "licenced deposit taker", as defined in the DT Act, from the PIE rules. The DT Act defines a "licenced deposit taker" as a person that holds a licence.[39] Every person who carries on business as a deposit taker must hold a licence.[40] The term "deposit taker" is defined as, essentially, a person carrying on a business in New Zealand of borrowing and lending money.[41] As part of implementing the DT Act, the Reserve Bank of New Zealand will provide further guidance on the deposit taker definition in due course.

The relevant provisions in the DT Act are not expected to come into effect until approximately 2028. Therefore, during the transitional period until the relevant parts of the DT Act come into force, an interim new section HM 10B excludes a "registered bank" as defined in the Banking (Prudential Supervision) Act 1989 and a "licensed NBDT" as defined in the Non-bank Deposit Takers Act 2013 from being a PIE. These are both existing definitions within section YA 1 of the ITA used for other purposes. Upon the relevant sections of the DT Act coming into force by Order in Council under section 2(2) of that Act, the interim new section HM 10B of the ITA will be replaced to reflect the new definition.

This amendment is not intended to prevent cash PIEs, KiwiSaver schemes, or other managed funds offered by registered banks from being PIEs. These PIEs will not meet the definition of "deposit taker" in the DT Act.

This amendment will also not prevent mortgage lending by a KiwiSaver scheme or other fund that was funded by shares or other equity because such an entity has a business of lending but not borrowing and lending, which would be required to meet the definition under the DT Act.

This amendment took effect on 1 April 2025.

Interest from associated persons

In 2009, section HM 12(1)(b)(iv) was amended to ensure that income received from leasing land to an associated person would not be eligible PIE income. The intention was to ensure that active business income could not be channelled into a PIE by an associated person because this was inconsistent with the policy for the PIE rules.

The same result can be achieved by a PIE lending to an associated person carrying on an active business and receiving interest income from that associated person that is essentially a transfer of active income into the PIE. The Commissioner's view is that this type of arrangement would not be within Parliament's contemplation given the express amendment made for associated rental income. The Commissioner's view is consistent with the policy intent. However, to provide greater

[39] Section 6 of the DT Act.
[40] Section 10 of the DT Act.
[41] Schedule 2, clause 2 of the DT Act.

clarity on this point, a similar amendment has been made to section HM 12(1)(b)(iii) to confirm that interest income derived from an associated person would not be eligible PIE income.

Some PIEs have arrangements with associated parties that are not for the purpose of transferring active income into a PIE. Therefore, interest income derived by a PIE from an associated party will continue to be eligible income in the following circumstances:

- When the PIE and the entity paying the interest are associated but only because a group of persons exists who control both companies by any other means (section YB 2(3)). This is intended to reduce the compliance costs of entities that do not have the same owners but may be controlled by the same people, for example, potentially a cash PIE operated by a bank.
- When the interest is received from a licenced deposit taker (and, during the transitional period until the relevant parts of the DT Act come into force, a registered bank or licenced NBDT). This ensures that a PIE, for example a cash PIE, can continue to derive passive interest income from a related bank in the same way as from an unrelated bank.
- When the interest is received from an entity that is also a PIE, is eligible to be a PIE or is a foreign PIE equivalent (essentially, an entity that would meet the PIE requirements except for being non-resident). In these circumstances no active income can been transferred into a PIE because neither entity is able to derive more than 10% non-eligible income.
- When the interest is for funds that were originally borrowed by the entity from third parties and on-lent at the same interest rate or the weighted average of the interest rates charged on all active loans the entity has from third parties. This allows a PIE to continue to act as a financing intermediary rather than associated entities having to borrow separately. The amended legislation does not cover lending at different maturities or when there is a different interest rate, for example, because the two entities have a different credit risk. This was an intentional decision that reduces the complexity of the new legislation. On-lending at different interest rates and maturities requires more active management than on-lending under the same terms.

This amendment takes effect on 1 April 2025. However, a transitional provision allows existing PIEs to continue to apply the current law (should they wish to dispute the Commissioner's current position) until 31 March 2030 in relation to interest income from a loan that was most recently entered into, renewed, extended or renegotiated before 1 April 2025. Inland Revenue officials' view is that the amended law is consistent with the existing law, so the later effective date does not widen the scope of the eligibility criteria during the transitional period. However, it provides certainty that no existing PIEs will be removed from the regime as a result of outstanding borrowing under the changes during the transitional period.

Example 52: Transfer of active income

Company A and Listed PIE A are stapled together so a person owning a share in Company A must also own a share in Listed PIE A. Company A is a retailer that has earnings before tax and interest of $1 million per year. However, Company A has borrowed $10 million from Listed PIE A at an interest rate of 10%. Therefore, Company A has nil taxable income. Listed PIE A has no debt and no other activities, so has $1 million of taxable income. Company A has effectively transferred its income from a normal company into a PIE.

The Commissioner considers that Listed PIE A would have been ineligible to be a PIE under the previous law. The new provision confirms that Listed PIE A derives 100% non-eligible income so does not qualify for PIE status.

Portfolio investment entity association rule

Section YB 2(8) of the Income Tax Act 2007

Summary of amendment

The amendment extends a special associated person rule that applies to portfolio investment entities (PIEs) so it also applies to "foreign PIE equivalents" (essentially, an entity that would meet the PIE requirements except for being non-resident).

Effective date

The amendment took effect on 30 March 2025.

Background

A PIE is a collective investment vehicle that must have, as its principal activity, the provision of investment and savings services. Section YB 2(8) of the Income Tax Act 2007 contains a specific rule excluding PIEs and entities that are eligible to be PIEs from the rule that associates two companies, on the basis that PIEs are widely held.

Key features

The amendment extends section YB 2(8) so that it also applies to "foreign PIE equivalents" (as defined in section YA 1).

Securitisation entities and Pillar 2

Sections HP 1(1) and (2), and YA 1 of the Income Tax Act 2007
Section 78J(1B) of the Tax Administration Act 1994

Summary of amendments

The amendments exclude securitisation entities from liability to top-up taxes under New Zealand's Global Anti-Base Erosion (GloBE) rules, and from being required to file a multinational top-up tax return when there is another group entity in New Zealand that is not a securitisation entity.

Effective date

The changes came into force on 1 January 2025.

Background

Securitisation

Securitisation is a funding arrangement involving the transfer of loans from an originator to a special purpose vehicle (securitisation entity) that then issues debt securities backed by the expected cash flows from those loans.

Securitisation provides an important source of funding for a range of businesses by allowing them access to wholesale debt markets for their funding needs on competitive terms, thereby serving as an alternative to the provision of funding from the major banks. Tax or other impediments to securitisation transactions may reduce competition in the financial sector, to the detriment of New Zealand businesses and consumers.

For investors to be prepared to provide debt financing to a securitisation entity, the securitisation entity must have no unanticipated liabilities, including tax liabilities (ie, the entity must be "bankruptcy remote" and "tax neutral"). A confirmation of tax neutrality is always required for the draw down of funding by the securitisation entity, illustrating the commercial importance of the tax treatment.

Global Anti-Base Erosion (GloBE) rules

The GloBE rules impose a 15% "global minimum tax" on large multinational groups. In some cases, they could require New Zealand to collect "top-up tax" from a New Zealand entity as a result of a group member having a less than 15% effective tax rate in a jurisdiction.

Securitisation entities and GloBE rules – OECD Administrative Guidance

In its June 2024 Administrative Guidance on the GloBE rules, the OECD addressed a problem that had been identified with the application of the GloBE rules to securitisation entities. The problem was that, if a securitisation entity could become liable for top-up tax in respect of the undertaxed profits of other entities in the multinational group, it would not be bankruptcy remote or tax neutral. The entity's potential exposure to unexpected tax liabilities would negatively affect its own credit rating. This would undermine the viability of securitisation arrangements.

The OECD addressed the issue by clarifying that jurisdictions could choose to exclude securitisation entities from liability to top-up taxes. Other entities in the multinational group would then incur the top-up tax instead.

Key features

- Amended section HP 1(1) of the Income Tax Act 2007 (ITA) provides that a securitisation entity is not required to pay top-up tax.
- Amended section HP 1(2) provides that a securitisation entity is not jointly and severally liable with other entities in the same multinational group for top-up tax.
- Amended section 78J of the Tax Administration Act 1994 (TAA) provides that a securitisation entity is not required to file a multinational top-up tax return when there is another group entity in New Zealand that is not a securitisation entity.
- "Securitisation entity" is defined in section YA 1 of the ITA as:
    - a securitisation entity as defined for or in the OECD's publication *Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules* or any replacement
    - a securitisation trust
    - a debt funding special purpose vehicle.

Detailed analysis

Securitisation entities not liable to top-up tax

When securitisation entities are excluded from liability to top-up tax under section HP 1 of the ITA, the tax will most likely be payable by the originator or another New Zealand entity in the multinational group instead.

In the very unlikely scenario when the only New Zealand entities in the multinational group are securitisation entities, no top-up tax will be payable by the group in New Zealand; it will be allocated to other countries where group entities are located.

Securitisation entities not required to file top-up tax return if other New Zealand entity in group

Amended section 78J of the TAA excludes securitisation entities from the requirement to file a multinational top-up tax return, provided there is at least one other New Zealand entity in the group that is not a securitisation entity. Another entity will need to file the top-up tax return for the group.

As previously noted, it is very unlikely that the only New Zealand entities in a group are securitisation entities. However, in such a case, a securitisation entity will need to file the top-up tax return. A return is required so that Inland Revenue can determine whether Article 2.6.3 of the model GloBE rules applies. This article provides that, if a jurisdiction has not collected top-up tax despite such tax being allocated to entities in that jurisdiction, that jurisdiction is excluded from the allocation mechanism in subsequent fiscal years.

Definition of securitisation entity

The new definition of “securitisation entity” in section YA 1 of the ITA includes the OECD’s definition of “securitisation entity” (introduced in the June 2024 Administrative Guidance), as well as two existing domestic definitions for these entities: “securitisation trust” and “debt funding special purpose vehicle”. These additional definitions are important to ensure that the particular nature of securitisation vehicles in the New Zealand market is appropriately recognised. An entity will qualify for the exclusions in section HP 1 of the ITA and section 78J of the TAA if it meets any of the three definitions.

Value of emissions units surrendered following deregistration of forest

Section CB 36(4) and (6) of the Income Tax Act 2007

Summary of amendment

The amendment clarifies that emissions units surrendered to meet a forestry deregistration obligation are deemed to be disposed of for nil value.

Effective date

The amendment is backdated with effect from 1 January 2009, because the technical omission has existed from that date.

Background

Just as emissions units are received when post-1989 forests registered in the emissions trading scheme sequester carbon, emissions units need to be surrendered if a registered forest or part of a registered forest is removed from the scheme. Conceptually, such surrenders should be for nil value, comparable to units surrendered because of an emissions liability. The amendment clarifies the tax legislation to avoid any confusion for taxpayers that the units are surrendered for market value.

Deductions for forestry releasing expenditure

Section DP 1(1)(e) of the Income Tax Act 2004
Section DP 1(1)(e) of the Income Tax Act 2007

Summary of amendments

The changes clarify that forestry releasing costs are immediately deductible.

Effective date

The amendments took effect on the commencement date of the Income Tax Act 2004, 1 April 2005, when the relevant provisions were combined into new section DP 1 and the problem arose.

Background

Releasing involves the clearing of weeds and other undergrowth from around young trees to encourage their growth. It is a cost of maintaining the forest. Since the early 1990s it has been intended that the costs of planting and maintaining a forest be immediately deductible in the year that they are incurred. Various legislative amendments were made at that time to achieve that outcome. However, the legislation has since been rewritten and, as a result, it was not clear that the immediate deductibility treatment extended to expenditure on releasing.

Key features

The amendments ensure that releasing costs are immediately deductible by removing the words “excluding releasing” from section DP 1(1)(e) of both the Income Tax Act 2004 and Income Tax Act 2007. Associated amendments to both Acts ensure that past contrary tax positions cannot be reopened as a result of the changes.

Value of forestry land emissions units transferred for zero value

Section ED 1(7B) of the Income Tax Act 2007

Summary of amendment

The change clarifies the value at which forest land emissions units are received by foresters.

Effective date

The amendment is backdated to 1 July 2010, the date from which the uncertainty first arose.

Background

Emissions units are received by foresters when post-1989 forests registered in the emissions trading scheme sequester carbon. Although the legislation correctly specifies the value of the units at the end of the income year, the acquisition value of these emissions units is not stated in the legislation. This technical oversight makes the value of such units unclear for tax purposes. The units should be received for nil value and taxpayers have been valuing them on that basis. The oversight stems from various consequential tax changes made following changes to the Climate Change Response Act 2002 in 2009.

Key features

The amendment clarifies that forest land emissions units transferred under section 64 of the Climate Change Response Act (that is, from the Crown to a forester in relation to carbon sequestration activities) have an acquisition value of zero for the period beginning with their transfer and ending before the end of the income year in which they are received.

Clarifying IETC eligibility

Section LC 13(1) of the Income Tax Act 2007

Summary of amendment

This amendment clarifies the eligibility criteria to receive the independent earner tax credit (IETC) to align with the original policy intent, which was to exclude those receiving any Working for Families (WFF) tax credit payments.

Effective date

The amendment applies from 30 March 2025.

Background

The current IETC eligibility criteria exclude a person who is **entitled** to a WFF tax credit from receiving IETC payments. This ineligibility is also extended to spouses, civil union partners or de facto partners of a person who is entitled to a WFF tax credit.

This means the legislation can be interpreted to exclude a person who meets the criteria for a WFF tax credit even if no WFF tax credit payment is actually received, that is, they have not applied to receive WFF tax credits but would receive a WFF tax credit if they did.

The commentary at the time the eligibility criteria was introduced is clear that those actually **receiving** a WFF tax credit should be excluded. This remedial clarifies the legislation to better reflect that policy intent.

Key features

The amendments to the eligibility criteria for receiving IETC clarify that those who are entitled to and **receive** WFF tax credit payments are excluded.

Share-lending arrangements

Section EA 5 of the Income Tax Act 2007

Summary of amendment

The amendment allocates income from a sale of shares as part of a share-lending arrangement to the year the replacement shares are purchased if that occurs in the following income year.

Effective date

The amendment is effective for share sales under a share-lending arrangement entered into on or after 30 March 2025.

Background

The share-lending rules were introduced by the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 and explained in *Tax Information Bulletin* Vol 18, No 5 (June 2006) (the TIB).[42]

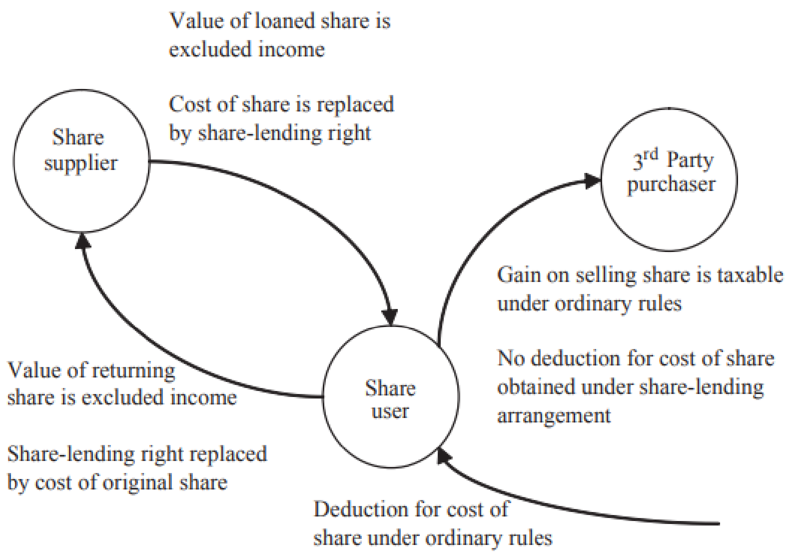
Legally, a share-lending transaction is a sale of shares from the share supplier to the share user that is unwound through a further sale from the share user back to the share supplier. However, for tax purposes the share-lending rules effectively ignore these sales. The treatment under the share-lending rules includes:

- Lending the shares to the share user is excluded income.
- The share user has taxable income under ordinary concepts from selling the shares to a third party – no deductions are available, so the entire sale proceeds are taxable income.
- The share user has a deduction under ordinary concepts from purchasing identical shares from a third party – there is no income at this stage, so the entire purchase cost is deductible.
- Returning the identical shares to the share supplier is excluded income.

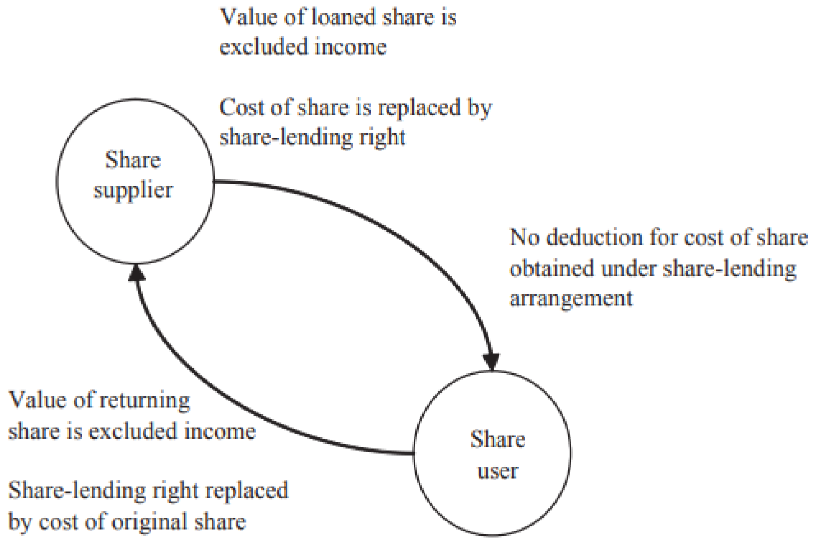
[42] https://www.taxtechnical.ird.govt.nz/new-legislation/act-articles/taxation-depreciation-payment-dates-alignment-fbt-and-miscellaneous-provisions-act-2006-2006-no-3-/taxation-of-share-lending-transactions

These were explained in the following diagrams in the TIB.

Structure: borrowed shares are on-sold to a third party



Structure: borrowed shares are returned to supplier



While a share-lending arrangement must have a term of one year or less,[43] there is no legislative requirement that the arrangement must end within the same income year. However, when the arrangement crosses the share user's balance date, the income from selling the original share will be derived one year before the deduction from acquiring the identical share is incurred. This can incur the high cash cost of paying tax in the first year and providing a deduction in the second year

[43] Section YA 1 definition of a "share-lending arrangement", paragraph (a).

when there may be insufficient income to offset the deduction. Officials understand this generally prevents a share user from entering into a share-lending arrangement that crosses a balance date.

Key features

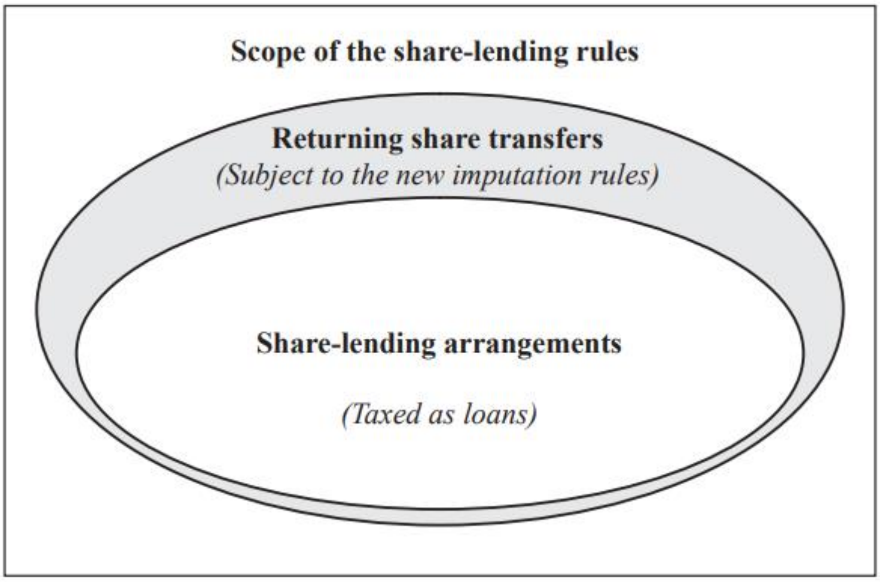
New section EA 5 of the Income Tax Act 2007 allocates income from disposal of an original share under a share-lending arrangement to the following income year if the identical share is acquired during that later income year.

Income from the sale of an original share when the identical share is acquired within the same income year will continue to be taxable under ordinary concepts in the year it was sold.

Detailed analysis

Ceasing to qualify

A share-lending arrangement is a subset of a returning share transfer as shown in the following diagram from the TIB:



The amendment applies only to share-lending arrangements and not to returning share transfers that are not share-lending arrangements.

Taxpayers are required to determine whether a transaction qualifies as a share-lending arrangement at the start of the transaction.

If an arrangement fails to qualify at some point during its term (for example, because an identical share is no longer available) then it fails to qualify from the start of the transaction and the normal tax rules must be applied.

Taxpayers entering share-lending transactions are subject to the normal self-assessment rules. Therefore, if a taxpayer mistakenly treats a transaction as qualifying for the share-lending rules when they should not have done so, they will need to restate the tax treatment of the transaction. Use of money interest and penalties could apply depending on the circumstances that gave rise to an incorrect treatment being adopted.

Debt-funding special purpose vehicle eligibility

Sections HR 9, HR 9BAA, HR 9BA, HR 10, HR 10B, HZ 9, HZ 10, YA 1, and YB 16 of the Income Tax Act 2007

Summary of amendments

The amendments expand the eligibility of the securitisation regime in the Income Tax Act 2007 (ITA) to allow debt funding special purpose vehicles (SPVs) to elect into the regime if they have received assets from a third party or if they have "self-originated" assets in certain situations.

Effective date

The amendments took effect on 30 March 2025.

Background

A securitisation is a funding mechanism that involves issuing marketable securities that are backed by the expected cash flows from specific assets. Securitisations can have some commercial benefits when compared with other funding mechanisms, such as risk management and lower cost of funding.

New Zealand businesses with assets, such as large books of trade credits or other receivables, may wish to raise funds through a securitisation. To undertake a securitisation, a company (referred to as the "originator") that owns income-producing assets transfers those assets to a debt funding SPV. The debt funding SPV (typically a trust in New Zealand) is usually structured to be bankruptcy remote from the originator, which means that the SPV's assets cannot be accessed by the originator's creditors. The debt funding SPV then borrows from third parties on the strength of the assets that have been transferred to it and remits the borrowed funds to the originator as the purchase price for those assets.

The ITA contains an elective securitisation regime (sections HR 9 to HR 10A) that makes the debt funding SPV transparent, so that its assets and liabilities are treated as held by the originator for tax purposes. This means that the transfer of assets to the debt funding SPV by the originator is ignored, and the debt funding SPV itself is not subject to tax (with any tax on its activities being payable by the originator instead).

Previously, an originator was required to be a person that "is a member of the same wholly-owned group of companies as all other persons who have transferred some or all of their assets to the debt funding SPV". This meant that an originator needed to be a company because a trust cannot be a member of a wholly-owned group. Therefore, if a debt funding SPV held assets that were received from a trust or a company outside of the wholly-owned group, or if the assets were "self-originated", the debt funding SPV was not eligible to elect into the securitisation regime in the ITA.

Key features

The amendments expand the eligibility of the securitisation regime. Debt funding SPVs are now eligible to elect into the regime in relation to assets transferred from a company or "attributed assets", provided that a beneficiary or shareholder of the debt funding SPV is either:

- treated as holding those assets for financial reporting purposes, or
- a member of a wholly-owned group of companies that includes a person who prepares consolidated financial statements that include those assets.

An amendment to section YB 16 of the ITA introduces an exclusion from the associated persons rules for securitisation trusts in certain situations.

Detailed analysis

Definition of "originator"

New section HR 9BAA of the ITA replaces the definition of "originator" in section YA 1.

When assets transferred to SPV by company

The amendments reproduce the previous definition of "originator" in new section HR 9BAA(1)(a) and (2) of the ITA.

Other assets

New section HR 9BAA(1)(b) and (3) introduces new criteria for debt funding SPVs that hold assets that were not transferred from a company. In these situations, a person is an originator of the debt funding SPV if they are a beneficiary or shareholder of the debt funding SPV (or a member of the same wholly-owned group as a beneficiary or shareholder) and they are either:

- treated as holding those assets for financial reporting purposes (new section HR 9BAA(3)(a)), or
- a member of a wholly-owned group of companies that includes a person who prepares consolidated financial statements that include those assets (new section HR 9BAA(3)(b)).

The effect of these new rules is that a debt funding SPV is eligible to elect into the securitisation regime in the ITA if it holds assets that were transferred from a trust or assets that were "self-originated". New section HR 9BAA(3)(b) ensures that a beneficiary or shareholder of the debt funding SPV (or a member of the same wholly-owned group as a beneficiary or shareholder) can be the originator, despite not being the person that transferred the assets to the debt funding SPV, provided that they are either treated as holding the assets for financial reporting purposes or are a member of a wholly-owned group that includes a person that is treated as holding those assets.

Throughout the amendments, the assets described in the above situations are referred to as "attributed assets".

Group members

New section HR 9BAA(4) clarifies that for the purposes of transferred assets or attributed assets, a beneficiary or shareholder includes a member of the same wholly-owned group of companies as a beneficiary or shareholder.

Associated persons rules

New section YB 16(3) provides that a person is not associated with a securitisation trust if:

- the person is party to a financial arrangement with the securitisation trust,
- the person is a beneficiary of a "security trust" that is established for the main purpose of securing the security trust's beneficiaries' rights and obligations in relation to the securitisation trust, and
- the person and the securitisation trust are associated due to one or more of the following reasons:
  - the person is a settlor of the securitisation trust or the security trust, because the person is a party to the financial arrangement
  - the person has a power of appointment or removal for trustees of the securitisation trust or the security trust, because the person is a party to the financial arrangement.

Consequential amendments

The amendments include the following consequential changes to the securitisation regime in the ITA.

Elections to treat debt funding SPVs as transparent

The amendment to section HR 9BA(2)(b) ensures that an election to treat a debt funding SPV as transparent has effect from either the date on which the originator first transferred an asset to the debt funding SPV or the date on which an asset first becomes an attributed asset for the originator.

New section HR 9BA(2B) clarifies that there cannot be two originators in relation to the same asset. If an originator makes an election in relation to an attributed asset, no other originator may make an election in relation to that asset.

Ceasing to be originator

New section HR 10B provides rules for when a person ceases to be an originator of a debt funding SPV at a particular date (the breach date). This section overrides the rule in new section HR 9BA(2B) that there cannot be two originators in relation to the same asset.

This section applies if another person is (or becomes) a beneficiary or shareholder of the debt funding SPV, they are a member of the same wholly-owned group of companies immediately before the breach date, and immediately after the breach date they hold the assets of the first originator as attributed assets.

Section HR 10B(2) provides that the second originator is treated as if:

- they acquired and held the same assets on the same basis as the first originator (and the first originator would be treated as not having acquired or held the assets), and
- they paid (or received) the amount of consideration originally paid (or received) by the first originator for, or under, an asset that is a financial arrangement or excepted financial arrangement of the first originator.

Section HR 10B(2B) provides that the first originator is treated as if they were not an originator for the assets and arrangements referred to above for the income year and later income years. Section HR 10B(4) provides that the first originator is treated as a party that is not required to calculate a base price adjustment despite section EW 29.

New section HR 10B(6) clarifies that for the purposes of transferred assets or attributed assets, a beneficiary or shareholder includes a member of the same wholly-owned group of companies as a beneficiary or shareholder.

New section HR 10B overrides the limitation in section HR 9BA(2B) that provides that only one originator can make an election in relation to an asset.

Existing debt funding SPVs

The amendments replace section HZ 9(1) to ensure that debt funding SPVs that exist before 30 March 2025 are able to elect into the look-through regime in section HR 9.

No supply of goods or services

New sections HR 10(6), HR 10B(7) and HZ 10(4) of the ITA ensure that a supply of goods or services does not arise under the Goods and Services Act 1985 when an entity stops being a debt funding SPV or when a person replaces another person as an originator for a debt funding SPV.

Restrictive covenant payments – sale of business exclusion

Section CE 9 of the Income Tax Act 2007

Summary of amendment

The amendment ensures that the sale of business exclusion for restrictive covenant payments applies when a person sells all their shares in a company carrying on a business, despite the other shareholders not selling their shares.

Effective date

The amendment is effective for amounts derived on or after 30 March 2025.

Background

A restrictive covenant payment is the consideration (or payment) given for a restriction on a person's ability to perform services. Broadly, a restrictive covenant payment is subject to income tax under section CE 9 of the Income Tax Act 2007 to ensure that these payments are not used as a substitute for taxable personal services income (such as salary or wages).

However, under section CE 9(3) a restrictive covenant payment is not subject to taxation when the payment is received by a person when they sell a business. This recognises that payments received on the sale of a business are part of a larger capital receipt (that is, the purchase price of a business) and are less likely to be substituted for taxable income from services.

The sale of business exclusion currently only applies when all the shares in a company carrying on the business are sold. It does not apply when a person sells all their shares in a company despite other shareholders not selling their shares. This is inconsistent with the intent of the existing exclusion.

The amendment to section CE 9 ensures that the sale of business exclusion applies when a person sells all their shares in a company carrying on a business despite the other shareholders not selling their shares.

Revised introductory wording for livestock valuation

Section EC 1(1) of the Income Tax Act 2007

Summary of amendment

The amendment clarifies what livestock needs to be valued under subpart EC of the Income Tax Act 2007 (ITA) for tax purposes. These are land and sea animals that are farmed commercially.

A savings provision has also been included to ensure the revised wording does not impact on past tax positions taken, in the unlikely event that some taxpayers have not previously valued their livestock correctly due to any current uncertainty.

Effective date

The amendment took effect on 1 April 2008, the commencement date of the ITA.

Background

Trading stock (ie, items held for sale or exchange) that is on hand at the end of each income year is valued and included as income for tax purposes to ensure that the cost of sales for the year is not overstated. That value is deducted at the beginning of the following income year. This approach also applies to livestock, even though not all livestock is held as trading stock. For example, livestock can be held to produce products such as milk and wool, and/or to breed replacement livestock.

The previous wording of section EC 1(1) (the introductory section of the ITA's livestock valuation provisions) was problematic because in using the phrase "…holds livestock for the purposes of sale or exchange in the ordinary course of carrying on a business", it seemingly excluded livestock held for other income-generating purposes. Such an exclusion was clearly not the intent, and taxpayers and their tax advisers generally understood this. Nevertheless, there was concern that this inaccurate wording could create confusion and could potentially result in some businesses valuing their livestock incorrectly or simply not valuing them, leading to an inaccurate assessment of income.

Detailed analysis

The amendment to the wording in section EC 1(1) ensures that the valuation provisions in subpart EC apply to a person when they:

- own or carry on a farming business, other than a livestock dealing business, and hold the livestock for the purposes of farming that livestock in the ordinary course of carrying on the farming business, or
- provide their livestock to another person under a bailment, lease or other agreement.

This is intended to include both land and sea animals that are farmed.

The wording "hold(s) the livestock for the purposes of farming that livestock in the ordinary course of carrying on the farming business" excludes animals on the farm that are not farmed, such as working dogs and horses that are simply used in a farming business, as well as feral animals that are not farmed.

The Commissioner of Inland Revenue has published an operational statement on livestock valuation that, among other things, includes a more detailed explanation of the impact of the reworded section EC 1.

Challenging civil penalties unrelated to tax

Section 138L of the Tax Administration Act 1994

Summary of amendments

The amendments clarify the process a person must follow to initiate challenge proceedings for a penalty that has been assessed by the Commissioner of Inland Revenue that does not relate to an assessment of tax.

Effective date

The amendments took effect on 30 March 2025.

Background

The Commissioner is empowered to impose numerous civil penalties under the Tax Administration Act 1994 (TAA). Many of these civil penalties relate to tax (such as income tax and goods and services tax) and are challengeable in the same way that the tax to which the penalty relates is challengeable. This process is set out in the TAA.

In addition to penalties that relate to assessments of tax, the Commissioner also has the power to assess penalties that do not relate to an assessment of tax. These penalties usually relate to an information reporting requirement, such as:

- information required to be provided to Inland Revenue by a financial institution who has obligations under the Common Reporting Standard
- information required to be provided to Inland Revenue by the operator of a digital platform who has obligations under the model reporting standard (or the extended model reporting standard) for operators of digital platforms, and
- information required to be provided by trustees of foreign exemption trusts.

These types of penalties should be subject to the dispute and challenge processes set out in the TAA. However, it was unclear the process for initiating challenge proceedings for these types of penalties before the amendments made to the TAA.

Detailed analysis

New section 138L(1B) of the TAA sets out that the process for challenging a civil penalty that is unrelated to an assessment of tax is the same as the process for challenging an assessment of tax. A challenge can proceed only if all the following apply:

- The assessment of the penalty was the subject of an adjustment proposed by the person, and the Commissioner rejected, by notice, the adjustment proposed by the person within the applicable "response period".
- The Commissioner issued a challenge notice to the person.
- The person files the proceedings in accordance with the Taxation Review Authorities Regulations 1998 or the High Court Rules 2016 within two months of the challenge notice being issued.

Section 138L(2) of the TAA sets out the civil penalties that are not challengeable. New section 138L(2)(a) clarifies that civil penalties that are "late filing penalties" are not challengeable even though there are some other civil penalties that relate to the non-provision of information that are.

Taxation treatment of Veterans' Affairs backdated lump sum payments

Sections RD 20B, YA 1, and schedule 1, part A, clause 13 of the Income Tax Act 2007

Summary of amendment

The amendment applies an alternative tax treatment for backdated Veterans' Affairs lump sum payments, when the backdated lump sum payment will be taxed at the recipient's average tax rate for the four years prior to the year they receive the payment.

Effective date

The amendment took effect on 30 March 2025.

Background

Backdated lump sum payments are a category of payments made by government departments to affected taxpayers. These payments are often compensatory in nature and can relate to more than one prior tax year. However, when made as a single payment, the taxation of these amounts can occur at a higher rate than if the components of the payment had been spread over the years to which they relate.

The taxation of Veterans' Affairs backdated lump sum payments presents a similar issue to Accident Compensation Corporation (ACC) and Ministry of Social Development (MSD) backdated lump sum payments. When a taxpayer receives a large lump sum payment amount, it can "artificially" push the taxpayer into a higher income tax bracket. By contrast, if delays or disputes did not take place, the backdated lump sum payment would have been spread over the tax years to which it applied, and the taxpayer would have had a lower tax liability.

The amendment to section RD 20B(1) of the Income Tax Act 2007 includes Veterans' Affairs lump sum support payments made over multiple years under the current treatment of payments of accident compensation for periods of more than one year.

Note, the amendment does not apply to the payments listed in section RD 20B(1)(c)(i) and (ii) because these are exempt income.

Note also, two minor consequential amendments are made to reflect the change to the title of section RD 20B.

Commissioner fails to respond to taxpayer statement of position

Section 89M(6BAB) of the Tax Administration Act 1994

Summary of amendment

The amendment makes "deemed acceptance" the consequence of the Commissioner of Inland Revenue failing to respond to a taxpayer's statement of position within the required two-month response period.

Effective date

The amendment took effect on 1 April 2025.

Background

During the disputes process, a taxpayer can issue the following forms to Inland Revenue:

- A notice of proposed adjustment (NOPA), which allows the taxpayer to formally dispute one or more tax assessments.
- A statement of position (SOP), which allows a taxpayer to finalise their argument in a dispute after they receive a disclosure notice from Inland Revenue.

There are specific timeframes that govern when the taxpayer is required to send the relevant form and similarly when the Commissioner is required to respond to the taxpayer.

When the Commissioner fails to respond to a NOPA issued by a taxpayer within two months or issue a challenge notice within four years, the Commissioner is deemed to have accepted the taxpayer's position.

However, when a taxpayer issues an SOP and the Commissioner fails to respond within the required two-month response period, there is no consequence for the Commissioner.

Including an additional consequence within the dispute process that includes "deemed acceptance" for the Commissioner failing to respond to an SOP ensures the taxpayer's dispute is resolved. Additionally, it provides an incentive for the Commissioner to engage with the taxpayer's issue.

Additional criterion for Commissioner to make assessment

Section 89C of the Tax Administration Act 1994

Summary of amendment

The amendment inserts an additional criterion to allow the Commissioner of Inland Revenue to make a new assessment without the need to issue a notice of proposed adjustment (NOPA). The criterion is a required response period of two months for the taxpayer to respond to the Commissioner's queries.

Effective date

The amendment took effect on 1 April 2025.

Background

During the disputes process, the Commissioner must issue a NOPA prior to issuing an assessment when they disagree with a tax position taken by a taxpayer.

There are exceptions to this rule that allow an assessment to be issued without first issuing a NOPA. For example, in cases when there is flight risk, a simple error, or fraudulent activity.

When a taxpayer has entered information into an individual tax return, such as claiming expenses, Inland Revenue will query these with the taxpayer. In many cases the taxpayer fails to respond to this request for additional information. This leaves the Commissioner with no ability to issue an assessment and resolve the case without issuing a NOPA, which can be problematic due to the lack of information.

Allowing the Commissioner to issue an assessment without the need for a NOPA when the taxpayer fails to respond to a request for information will help resolve these cases.

The change does not alter a taxpayer's right of appeal. If they disagree with the assessment, they can issue a NOPA in response to dispute it.

Motor vehicle used wholly and exclusively for business purposes

Section YA 1 of the Income Tax Act 2007
Section OB 1 of the Income Tax Act 2004

Summary of amendments

The amendments clarify that the business use of a vehicle must involve travel wholly and exclusively for business purposes.

Effective date

The amendment took effect on 1 April 2005.

Background

Motor vehicle expenses are generally deductible for income tax purposes if the vehicle is used to help earn income for the business. A person can claim a deduction for expenditure that they incur for business use of a vehicle.[44] Business use is currently defined as travel undertaken by the vehicle wholly in deriving the person's income.[45]

The definition of "business use" was amended during the rewrite of the Income Tax Act in 2004. Previously, the Income Tax Act defined business use (and business purposes) to be travel undertaken "wholly and exclusively" in deriving the person's income.

Removal of the word "exclusively" was not intended to change the definition, but it has led to an arguable widening of the business use deduction. The amendment reinserts the term "exclusively" in line with the original definition to correct the unintended change. The amendment took effect on 1 April 2005, the date the Income Tax Act 2004 came into force.

[44] Section DE 2 of the Income Tax Act 2007
[45] Section YA 1 of the Income Tax Act 2007

Payments related to health or safety

Sections CE 5(3)(b)(vb), CW 17(5), CW 17D, CX 19(1)(c), EA 3(7), and YA 1 of the Income Tax Act 2007

Summary of amendments

New section CW 17D of the Income Tax Act 2007 (ITA) ensures that employers are not worse off if they reimburse an employee for a benefit relating to a specific workplace health and safety risk, rather than providing it on their premises or by voucher.

Consequential amendments have also been made to ensure that new section CW 17D applies as intended.

Effective date

The amendments took effect on 1 April 2025.

Background

Certain health and safety benefits, such as flu vaccinations, will generally not be subject to fringe benefit tax (FBT) when an employer:

- arranges them to be provided on their premises, or
- provides a voucher to employees to receive them off-premises (for example, at their doctor or a clinic).

These benefits are exempt because they fall under the health and safety FBT exemption under section CX 24 of the ITA, in that they are targeting a specific health and safety risk in the workplace.

If an employee instead pays for the health and safety benefit and is later reimbursed by their employer, the cash payment was previously subject to PAYE. The reimbursement would not have been exempt income of the employee under section CW 17 of the ITA due to the private limitation under section DA 2 because health-related expenditure is generally seen as private in nature.

New section CW 17D provides that an amount an employer pays to or on behalf of an employee for a benefit that would qualify for the health and safety FBT exemption if it was non-cash is exempt income of the employee.

Taxation of extra pay when employment ends

Section RD 17 of the Income Tax Act 2007

Summary of amendment

The amendment clarifies that employers can apply the same tax treatment to amounts of extra pay that are paid together when one of the amounts of extra pay arises from the ending of an employee's employment.

Effective date

The amendment took effect on 1 April 2025.

Background

Section RD 17 of the Income Tax Act 2007 was recently amended by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024. This recent amendment changed the way employers determine the taxation of extra pay when the extra pay arises from the ending of an employee's employment.

Previously, the taxation of extra pay was, in all cases, determined with reference to the amount of the extra pay and the annualised value of all PAYE income payments made to the employee over the four-week period beginning before the date of the payment of the extra pay.

The recent amendment created an exception to this rule and provides that, in the specific case when the extra pay arises from the ending of employment, employers must determine the taxation of that extra pay with reference to the amount of the extra pay and the annualised amount of PAYE income payments received over the last two pay periods. This amendment is designed to promote greater accuracy in the taxation of extra pay by increasing the likelihood the marginal rate applied to the employee's extra pay reflects the employee's actual marginal rate. The new rule took effect from 1 April 2025.

However, discussions with stakeholders have since identified that an unintended consequence of this recent change is to require employers to apply differing tax treatments to amounts of extra pay when one amount arises from the ending of employment and another amount does not, despite the amounts being paid together.

This was not an intended outcome of the recent change and presents compliance costs for employers, so the Act makes an amendment whereby employers are permitted to apply the same tax treatment to amounts of extra pay when they are paid together.

In practice, this means that an amount of extra pay can be taxed in the same way as an amount of extra pay arising from the ending of employment if it is paid together with an amount of extra pay arising from the ending of an employee's employment. This simplifies the application of the new rule in force from 1 April 2025.

Filing obligations of charities and non-profits

Section 33(1) of the Tax Administration Act 1994

Summary of amendment

The amendment ensures that entities that only derive exempt income, such as charities, do not need to file a return of income.

Effective date

The amendment took effect on 1 April 2025.

Background

Section 33(1) of the Tax Administration Act 1994 provides that a person must file a return of income for a tax year. This has been interpreted as requiring charities and other entities that only derive exempt income to file a return of income because a charity or other exempt entity is a person for tax purposes and "return of income" is not defined, so could include a return of "no income".

Section 33(1) is amended so that the requirement to file a return of income does not apply to a person who derives only exempt income. This means that a charity or other exempt entity is not required to file a return of income but can still choose to file one.

Record-keeping requirements for gift-exempt bodies

Schedule 32 of the Tax Administration Act 1994

Summary of amendments

The amendments clarify that gift-exempt bodies must keep relevant records for at least seven years after the income year to which they relate. The amendments also allow records to be kept in te reo Māori.

Effective date

The amendments took effect on 30 March 2025.

Background

Gift-exempt bodies are required to keep certain records. This allows the Commissioner of Inland Revenue to determine the source of donations received by these bodies and how they apply those donations.

Other record-keeping provisions in the Tax Administration Act 1994 have minimum retention times and allow records to be kept in English or te reo Māori. The record-keeping requirements for gift-exempt bodies did not include a minimum length of time for the retention of these records. The requirements also stated that records must be kept exclusively in English unless authorised by the Commissioner.

The amendments correct this.

Deemed source of income rule

Section YD 4(17D)(b) of the Income Tax Act 2007

Summary of amendment

The amendment clarifies that the double tax agreement (DTA) source rule does not extend to technical service fees under the New Zealand and India DTA.

Effective date

The amendment applies retrospectively to income years starting on or after 1 July 2018. A retrospective application date is necessary to ensure the original amendment operates as intended. This retrospective application date is taxpayer favourable.

Background

Income earned by a non-resident is only taxable under New Zealand's domestic law if it has a "source" under our domestic rules. The DTA source rule was introduced in the 2019 income year and deems income to have a source in New Zealand, under our domestic rules, if there is a right to tax that income under a DTA.

This rule resulted in an overreach because three of our DTAs (those with India, Malaysia and Fiji) give New Zealand the right to tax a non-resident on payments made from New Zealand for technical services, even if the non-resident performs the services outside New Zealand and has no presence here.

This was not intended and is outside our normal tax settings (which require a non-resident to have some presence or activity in New Zealand before personal services income has a source here). Prior to the DTA source rule, New Zealand did not tax these amounts.

An amendment was made in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 to ensure these payments would not be taxed in New Zealand unless they had a source under one of our other domestic source rules.

However, the way the amendment was drafted arguably results in New Zealand still being able to tax technical services fees provided from Indian residents.

Key features

The amendment ensures that the DTA source rule does not apply to technical services feels paid to Indian residents, as originally intended. This is achieved by clarifying that the DTA source rule does not extend to technical service fees under the New Zealand and India DTA.

Interaction between cash-settled employee share schemes and ACC

Sections 11(1)(cb) and 15(7) of the Accident Compensation Act 2001

Summary of amendment

The amendment broadens the exemption in the Accident Compensation Act 2001 so that it applies to all employee share scheme (ESS) benefits, not only those when the employer has elected to pay PAYE.

Effective date

The amendment applies from the 2024–25 tax year.

Background

ESS benefits are not counted as income under the Accident Compensation Act. This means that the ACC earners' levy does not apply to ESS benefits in these instances.

This exclusion does not currently apply to cash-settled ESS benefits. Because it is considered an extra pay, there is no option to not withhold tax on a cash-settled ESS benefit. Cash-settled ESS benefits are also not excluded for the purposes of calculating what is considered earnings as a shareholder–employee, for the same reason that there is no option to not withhold tax on cash-settled ESS benefits.

There is no material difference between cash-settled and share-settled ESS benefits, and its omission from the exclusion was likely unintended.

The amendment clarifies that cash-settled ESS benefits are not considered earnings as an employee or earnings as a shareholder–employee to align the ACC earner levy treatment of share-settled ESS benefits and cash-settled benefits.

Clarifying use of power to extend time under Inland Revenue legislation

Section 226 of the Tax Administration Act 1994

Summary of amendment

The amendment clarifies that the Governor-General can, by Order in Council, extend a timeframe to do something (for example, file tax information) under the Inland Revenue Acts in advance of that timeframe expiring.

Effective date

The amendment took effect on 30 March 2025.

Background

The power to extend a timeframe via Order in Council provides taxpayers with certainty in situations when that timeframe has not been met. However, a recent interpretation had suggested that the power could only be applied in two scenarios. Firstly, before the time for doing something has expired in circumstances when that thing **cannot** be done. Second, after the time for doing something has expired in circumstances when that thing **has not** been done. This meant, for example, the due date for filing a GST return could not be extended until after the original due date had passed unless the reason for the extension was because taxpayers “could not” file the return (due to, say, a natural disaster).

This increased taxpayer uncertainty because those impacted would not have received an advance notice of a timeframe being extended until after they had failed to meet that timeframe.

The amendment to the power was required to align the law with current practice and intent of the power’s use. The amendment was included in an amendment paper because the power is used for unusual and unexpected situations that cannot be foreseen and delaying this change to a future tax Bill may have resulted in uncertainty for taxpayers in one of those situations when certainty is paramount.

Key features

The amendment allows the Governor-General to, by Order in Council, extend a timeframe to do something in advance of that timeframe expiring. The amendment also limits the power to only extend the timeframes that apply to taxpayers, and not those that apply to the Commissioner.

Extend date to allow repeal of schedule 7, part C, clause 36 of Tax Administration Act 1994

Section 231(3) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022

Summary of amendment

This amendment ensures that the current authorising provision for an information share between Inland Revenue and the Companies Office can be repealed on the same date the proposed approved information-sharing agreement may come into force.

Effective date

The changes come into force on 31 March 2025.

Background

The proposed approved information-sharing agreement (AISA) between Inland Revenue and the Ministry of Business, Innovation and Employment would replace an existing information-sharing provision in the Tax Administration Act 1994. To avoid a situation where there are two authorising provisions for the same information share, clause 36 of part C, subpart 1, schedule 7 to the Tax Administration Act 1994 must be repealed when the AISA takes effect.

The Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 includes a provision to repeal the current authorising provision for information sharing with the Companies Office by a date set by Order in Council. This provision was set to repeal itself on 1 April 2025, which is before the proposed AISA may take effect. The date the repeal provision is set to repeal has been extended by two years to 1 April 2027 to ensure the repeal of the current authorising provision for the information share can align with the commencement of the proposed AISA.

Key features

The amendment extends the date of 1 April 2025 in section 231(3) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 by two years to 1 April 2027.

Trust disclosure rules amendments

Sections 3(1) and 59BA(2)(b), (2)(d), (2B), and (2C) of the Tax Administration Act 1994

Summary of amendments

The amendments remove the requirement for trustees to disclose nil value distributions and settlements and replace the "minor and incidental" test for non-cash distributions and settlements with a $100,000 bright-line for each beneficiary or settlor.

Effective date

The amendments apply retrospectively for the 2024–25 and later income years, so that they can apply for the 2025 trust tax returns.

Background

In late 2020, increased disclosure requirements were introduced in section 59BA of the Tax Administration Act 1994 (TAA) for domestic trusts for the 2021–22 and later income years.

Trustees subject to the disclosure requirements were previously required to disclose all distributions and settlements, including nil-value distributions or settlements.

Trustees were not required to disclose non-cash distributions or settlements if they were "minor and incidental" to the activities of the trust. This was a subjective test that required trustees subject to the disclosure rules to value non-cash transactions and consider whether the distribution or settlement was incidental to the activities of the trust, which could be a compliance-heavy exercise.

Key features

Nil value distributions and settlements no longer need to be disclosed by trustees subject to the disclosure rules in section 59BA of the TAA.

A bright-line of $100,000 per beneficiary and settlor has been introduced for the disclosure of non-cash distributions and settlements. If the total market value of non-cash distributions made by the trustees of a trust to a beneficiary is less than $100,000 in an income year, then those distributions do not need to be disclosed. The same applies for non-cash settlements.

All cash distributions and settlements are still required to be disclosed by trustees subject to the disclosure rules in section 59BA of the TAA.

Example 53: Disclosure of non-cash distributions

The Zeus Trust is a trust that was settled for the benefit of three beneficiaries, Gerard, Mark and Jeff. The Zeus Trust earns income from investments and owns a bach that the beneficiaries can stay in.

In the 2024–25 income year, the trustees earn $25,000 assessable income and distribute the full amount to Gerard as beneficiary income. No beneficiary income is distributed to Mark or Jeff.

Throughout the year, Mark stays at the bach for a weekend each month and does not pay any rent to the trustees.

The trustees distribute a car with a market value of $80,000 to Gerard and two paintings to Jeff with a market value of $60,000 each.

The trustees are required to comply with the trust disclosure obligations in section 59BA of the TAA because they earned assessable income and do not qualify for one of the exclusions from the disclosure rules.

Disclosure obligations for distributions made to Gerard

The $25,000 of beneficiary income must be disclosed by the trustees – all cash distributions must be disclosed, regardless of their value.

Although Gerard has received more than $100,000 in distributions from the trust, the distribution of the $80,000 car does not need to be disclosed. This is because the $100,000 bright-line only applies to non-cash distributions.

Although the total non-cash distributions paid to all three beneficiaries is valued at more than $100,000, the car does not need to be disclosed because the bright-line applies per beneficiary.

Disclosure obligations for distributions made to Mark

Mark received non-cash distributions of the use of trust property (staying in the bach for a weekend each month during the year). Since the market value of the use of this trust property (the rent not paid) is less than $100,000, it does not need to be disclosed.

Disclosure obligations for distributions made to Jeff

The $120,000 market value for the two paintings distributed to Jeff must be disclosed. Although each painting is less than the $100,000 threshold, the bright-line applies to the aggregate value of non-cash distributions received by Jeff.

Non-deductibility of GST flat-rate credit

Section DB 2(1)(ab) of the Income Tax Act 2007

Summary of amendment

The amendment prevents operators of electronic marketplaces and listing intermediaries from being able to deduct payments of the flat-rate credit to underlying suppliers as expenditure for income tax purposes.

Effective date

The amendment took effect on 1 April 2024.

Background

The GST rules for the platform economy require operators of electronic marketplaces and, in some circumstances listing intermediaries,[46] to pay a flat-rate credit to hosts, drivers, and deliverers (underlying suppliers) who are not registered for GST and who provide accommodation and transportation services through an electronic marketplace. The purpose of the flat-rate credit is to ensure services provided through electronic marketplaces by underlying suppliers who are not registered for GST are not over-taxed.

Operators of electronic marketplaces and listing intermediaries are required to deduct the flat-rate credit as input tax if underlying suppliers are not registered for GST at the time of supply of the relevant services made through the electronic marketplace. Because the flat-rate credit is deducted from output tax that would be payable by marketplace operators (or listing intermediaries, if applicable) it is funded through the GST system. It would therefore be inappropriate for operators of electronic marketplaces and listing intermediaries to get an income tax deduction for payments of the flat-rate credit they make to underlying suppliers because it is not an economic cost borne by them.

Detailed analysis

New section DB 2(1)(ab) of the Income Tax Act 2007 denies a deduction for a flat-rate credit, as defined in section 2(1) of the Goods and Services Tax Act 1985. The effect of this is that the

[46] A listing intermediary is essentially a property manager or other similar person interposed between an accommodation host and an electronic marketplace.

payment of a flat-rate credit by the operator of an electronic marketplace or listing intermediary to an underlying supplier does not give rise to a deduction for income tax purposes.

Maintenance amendments

Summary of amendments

The amendments in Table 2 are minor technical maintenance items and correct any of the following:

- ambiguities
- compilation issues
- cross-references
- drafting consistency, including readers' aids – for example, the defined terms lists
- grammar
- consequential amendments arising from substantive rewrite amendments, and
- inconsistent use of terminology and definitions.

Effective date

The amendments take effect on the dates outlined in the table.

Table 2: Maintenance amendments

Section	Act	Amendment	Effective Date
CB 23B	ITA 07[47]	Inserting cross heading	30 March 2025
CD 43(2)(c)	ITA 07	Correcting cross-references	1 April 2008
CQ 5(1)(c)(viib)	ITA 07	Inserting cross-reference	1 April 2008
CQ 5(1)(c)(ix), (x)	ITA 07	Removing redundant references	30 March 2025
CQ 5(1)(c)(xiva)	ITA 07	Inserting cross-reference	1 April 2014
CQ 5 (list of defined terms)	ITA 07	Adding defined term	1 April 2014
CW 52B	ITA 07	Updating name of Ministry	1 December 2024
CW 55BAB(2)	ITA 07	Inserting subsection heading	30 March 2025

[47] Income Tax Act 2007

Section	Act	Amendment	Effective Date
CX 63B	ITA 07	Including reference within subpart CX	1 April 2011
CX 65	ITA 07	Including reference within subpart CX	1 April 2008
CZ 25D(1)(d)(ii)	ITA 07	Correcting cross-reference	1 April 2022
CZ 29B(7)	ITA 07	Including secondary legislation reference	8 January 2023
DN 6(1)(c)(viib)	ITA 07	Inserting cross-reference	1 April 2008
DN 6(1)(c)(ix), (x)	ITA 07	Removing redundant references	30 March 2025
DN 6(1)(c)(xiva)	ITA 07	Inserting cross-reference	1 April 2014
DN 6 (list of defined terms)	ITA 07	Adding defined term	1 April 2014
EX 20B(3)(a)(vi)	ITA 07	Removing redundant provision	30 March 2025
EX 48(1)(b)	ITA 07	Inserting cross-reference	1 July 2018
EX 63(1) (heading)	ITA 07	Correcting terminology	30 March 2025
EX 63(1)(b)	ITA 07	Removing redundant terminology	30 March 2025
EX 63 (list of defined terms)	ITA 07	Removing defined term	30 March 2025
EX 72(1)(b)	ITA 07	Correcting cross-reference	18 March 2019
FB 3A(3)	ITA 07	Correcting terminology	30 March 2025
FD 1(1)(a)	ITA 07	Ensuring drafting consistency	30 March 2025
HC 8B	ITA 07	Correcting terminology	1 April 2024
HC 14(2B)	ITA 07	Correcting cross heading	30 March 2025
HC 33(1B)(c)(ii)	ITA 07	Correcting terminology	1 April 2023
HR 12(3)(a)(ii)	ITA 07	Correcting terminology	1 April 2024
IA 7(6)	ITA 07	Removing redundant provision	30 March 2025
IE 4(1)(c)	ITA 07	Removing redundant provision	30 March 2025

Section	Act	Amendment	Effective Date
IE 5(b), (c)	ITA 07	Removing redundant provision	30 March 2025
IQ 6(5)(b)	ITA 07	Removing redundant provision	30 March 2025
IQ 7(2)(b)	ITA 07	Removing redundant provision	30 March 2025
LE 4B(1)	ITA 07	Correcting terminology	30 March 2025
LY 9	ITA 07	Correcting terminology	27 November 2023
LY 10	ITA 07	Correcting terminology	27 November 2023
RA 15(3)(b)	ITA 07	Correcting cross-reference	1 April 2008
RF 15(2)	ITA 07	Correcting cross-reference	1 April 2008
YA 1 (ancillary tax)	ITA 07	Correcting cross-reference	1 April 2008
YA 1 (building)	ITA 07	Ensuring drafting consistency	30 March 2025
YA 1 (business premises)	ITA 07	Ensuring drafting consistency	30 March 2025
YA 1 (employer)	ITA 07	Correcting cross-references	1 April 2015
YA 1 (non-listed horticultural plant)	ITA 07	Correcting cross-reference	1 April 2008
YA 1 (qualifying resident foreign trustee)	ITA 07	Removing redundant terminology	30 March 2025
YB 1(3)(jb)	ITA 07	Inserting cross-reference	1 April 2011
YB 1 (list of defined terms)	ITA 07	Adding and removing defined terms	30 March 2025
YB 2(4), (5)	ITA 07	Correcting cross-references	30 March 2025
YB 3(3), (4)	ITA 07	Correcting cross-references	30 March 2025
YB 12(3), (4)	ITA 07	Correcting cross-references	30 March 2025
YB 12 (list of defined terms)	ITA 07	Adding defined terms	30 March 2025
YB 13(3), (4)	ITA 07	Correcting cross-references	30 March 2025
YB 13 (list of defined terms)	ITA 07	Adding a defined term	30 March 2025

Section	Act	Amendment	Effective Date
YB 14(4)	ITA 07	Correcting cross-reference	1 April 2010
YC 4(4)	ITA 07	Correcting a minor fault of expression	1 April 2008
sch 1, part A, cl 6B	ITA 07	Correcting terminology	1 April 2024
sch 25	ITA 07	Correcting shoulder references	30 March 2025
22C(3)(d)	TAA[48]	Correcting cross-reference	30 March 2025
41(6)	TAA	Correcting terminology	30 March 2025
46C(3B)	TAA	Removing redundant provision	30 March 2025
139AB(1)(a)	TAA	Correcting cross-reference	18 March 2019
157(10) (amount payable)	TAA	Removing redundant provision	30 March 2025
185S	TAA	Correcting fault of expression	1 January 2024
2(1)	GSTA[49]	Removing redundant terminology	1 April 2023
5(11GA)	GSTA	Correcting cross-reference	1 December 2019
5(15)	GSTA	Correcting terminology	30 March 2025
8(4G)	GSTA	Reinstating rule inadvertently repealed	1 April 2023
11A(7)	GSTA	Correcting cross-reference	1 April 2023
19K(9)(b)	GSTA	Correcting faults of expression	1 April 2023
20(4C)	GSTA	Correcting cross-reference	1 April 2023
25(1)	GSTA	Correcting terminology	1 April 2023
25AA(1)(a)(v)	GSTA	Correcting cross-reference	1 April 2023
43(1) (amount payable)	GSTA	Removing redundant provisions	30 March 2025
55(1AK)	GSTA	Updating cross-reference	30 March 2022

[48] Tax Administration Act 1994
[49] Goods and Services Tax Act 1985

Section	Act	Amendment	Effective Date
55(1AO)(b)(i)	GSTA	Correcting cross-reference	1 April 2023
75(8)	GSTA	Removing redundant provision	1 April 2023
12B (gaming machine operator)	GDA[50]	Removing redundant reference	30 March 2025
12FA(b)	GDA	Removing redundant provision	30 March 2025
12G(1)	GDA	Removing redundant reference	30 March 2025
12R (heading)	GDA	Correcting terminology	30 March 2025
12R(bb)	GDA	Correcting terminology cross-reference	20 December 1991
12R(e)	GDA	Removing redundant provision	30 March 2025
276(2)	CSA[51]	Updating references	30 March 2025
sch 9, cl 6	LGA[52]	Updating cross-references	30 March 2025

[50] Gaming Duties Act 1971
[51] Child Support Act 1991
[52] Local Government Act 2002

About this document

Act commentary is published shortly after new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes. For reference purposes, each commentary item has a unique identifier above the title, which includes the Act year, Act number and item number.