Inland Revenue
Te Tari Taake

BILL COMMENTARY

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

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Minster of Revenue

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Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill – commentary on the Bill

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Summary of proposed amendment

The Bill sets the annual income tax rates that would apply for the 2025–26 tax year. These would be set at the same rates currently specified in schedule 1 of the Income Tax Act 2007.

Effective date

The proposed amendment would be effective for the 2025–26 tax year.

Tax treatment of New Zealand visitors

Overview

The majority of visitors to New Zealand, including New Zealand citizens or permanent residents who have made a long-term home in another country, visit New Zealand as a tourist or for other personal reasons, such as visiting family and friends.

In January 2025, the Government announced immigration changes to allow visitor visa holders to work remotely while visiting New Zealand.[1] Most non-resident persons visiting New Zealand for a short period of time for tourism-related activities would enter New Zealand, for immigration purposes, on a visitor visa.

While in New Zealand, some visitors may undertake work activities for their employer or clients in their country of tax residence. The level of work can vary from occasional or incidental work, such as checking emails, through to working a full day. When a person pursues a lifestyle involving remote working[2] from different countries, they may be described as a "digital nomad".

Depending on the level of activity, New Zealand tax obligations may be imposed on the visitor, or on their associated entities established overseas, clients, or foreign employer. The particular New Zealand tax obligations are dependent on the circumstances of the visitor and the work undertaken. Existing reliefs, including those under a double taxation agreement (DTA), may not be sufficient to fully mitigate New Zealand tax obligations or liabilities. As such, it is likely that existing New Zealand tax settings are discouraging some remote-working visitors from staying in New Zealand as long as they would like.

The proposed changes to New Zealand's tax rules are aimed at visitors who engage in remote work while in New Zealand and would otherwise be subject to New Zealand tax obligations, such as withholding taxes on income or the requirement to file a New Zealand tax return.[3] A key feature of the proposed exemptions from these obligations is that the visitor, and their associated entities, client or foreign employer, is tax resident in another jurisdiction. This requirement is intended to reduce the risk of double non-taxation of income.

[1] These changes applied to all visitor visas, including tourists and those visiting family, as well as partners and guardians on longer-term visas.

[2] Also known as teleworking, when a person performs their work duties from another location (such as a home office, café or co-working space) outside the traditional office environment, typically using digital communication tools.

[3] Visitors are unlikely to be entitled to most health and social services in New Zealand.

Tax residence of visitors to New Zealand

Clauses 95(5), (11), (15), (17) and (25), 97, and 98

Summary of proposed amendments

The proposed amendments would deem eligible visitors to New Zealand to be non-resident in New Zealand for up to 275 days in any 18-month period.

All legislative references are to the Income Tax Act 2007 (ITA) unless otherwise stated.

Effective date

The proposed amendments would take effect on 1 April 2026.

Background

Most visitors to New Zealand will be non-resident for tax purposes in New Zealand on arrival and will most likely depart New Zealand for their home country or another country within a relatively short period. However, they will become tax resident if they have a permanent place of abode in New Zealand or if they are physically present in New Zealand for more than 183 days in a 12-month period (the 183-day rule). If the 183-day rule applies, they will become a New Zealand resident from the first day of their arrival (section YD 1(3) and (4)).

New Zealand tax residents are taxed on their worldwide income. Visitors may view this situation as having a disproportionate impact given their length of stay in New Zealand, tax residence in another jurisdiction, and that they only receive foreign-sourced income or work for a non-resident while in New Zealand. In some circumstances, such as when the visitor is a dual tax resident in New Zealand and in another jurisdiction for a short overlapping period, the cost of compliance can be disproportionately high.

When the visitor does not benefit from an existing exemption under domestic law or a double tax agreement (DTA), their tax affairs (and potentially those of other affected entities, such as their non-resident employer) can be unduly complicated relative to their connections to New Zealand.

Key features

The proposed amendments would provide for a "non-resident visitor" to be a non-resident for New Zealand tax purposes. They would include:

- a definition of a "non-resident visitor" (proposed new section YD 1B)

- an exemption from the 183-day rule for non-resident visitors (proposed section YD 1(13)), and
- provision for the treatment of non-resident visitors if they remain in New Zealand for longer than 275 days (proposed section YD 1(13) and (14)) or remain unlawfully in New Zealand (section YD 1(14)).

The proposed amendments would take effect from 1 April 2026 and would apply to persons who arrive in New Zealand on or after that date. If a person was physically present in New Zealand before 1 April 2026, they would not be a non-resident visitor.

Detailed analysis

Definition of "non-resident visitor"

Proposed new section YD 1B would define a "non-resident visitor" as a natural person who is:

- in New Zealand for 275 or fewer days in total in an 18-month period, counting the arrival and departure days as a whole day
- immediately before becoming a non-resident visitor, not New Zealand resident or a transitional resident
- not undertaking work in New Zealand that:
    - is for a New Zealand resident or a New Zealand branch of a non-resident, or
    - is offering goods and services in New Zealand for income from persons or businesses in New Zealand, or
    - requires the person to be physically present in New Zealand
- not receiving a family scheme entitlement (and neither is their spouse, civil union partner or de facto partner)
- lawfully present in New Zealand under the Immigration Act 2009, and
- tax resident in a jurisdiction that imposes a tax that is substantially the same as income tax imposed under the ITA.

275-day count test

The 275-day period represents nine months. The "nine months in an 18-month" period reflects the maximum presence in New Zealand typically granted under a general visitor visa.[4]

Immediately prior to becoming a non-resident visitor, the person must be both not physically present in New Zealand and non-resident for tax purposes.

If a person is present for more than 275 days in any 18-month period, they would no longer meet the criteria to be a non-resident visitor and would automatically transition into the existing residence and tax rules (discussed below).

Limitations on type of work undertaken by non-resident visitor

The work limitations would reflect the work conditions imposed on a visitor visa holder under New Zealand's immigration rules.[5] This means that the person must not undertake work for a New Zealand employer (or New Zealand branch of a foreign employer), the work must not require the sale of goods or services for income (including money's worth) from New Zealand businesses or persons, and the work must not require the person to be physically present in New Zealand (including work in a New Zealand office or workplace, or when the person is hired to be a non-resident's New Zealand representative).

If a person is intending to undertake work in New Zealand outside these conditions, they will require an appropriate visa (such as the business visitor visa for up to three months) and would not be included in the proposed non-resident visitor exemption. Existing rules, such as the income exemption under section CW 19, already provide an exemption for income earned during short-term business visits in some circumstances.

Work involving promotion of good, service or experience

Certain forms of work involve a person promoting a product, service, experience or lifestyle to a targeted audience, often in exchange for gain or reward. A common example is work undertaken by social media influencers, or content creators, using their reputation and profile on social media to market and influence the purchasing decisions of their audience.

[4] V2.5.1 Length of permitted stay, New Zealand Immigration Operational Manual.

[5] E3.15.1 Remote work for visitor visa holders, New Zealand Immigration Operational Manual.

Under the immigration rules,[6] a person may enter New Zealand and be legally entitled to undertake promotional activities with businesses and persons in New Zealand. However, under proposed section YD 1B(2)(e)(ii), a non-resident visitor would not be able to undertake promotional work when they earned income from a New Zealand business or persons in New Zealand.

If the promotional activity required the influencer's presence in New Zealand (perhaps the activity required the inclusion of a certain geographical feature in New Zealand), then the work would require the person to be physically present in New Zealand and, consequently, the person would be ineligible to be a non-resident visitor.

Example 1: Influencer paid by New Zealand agency to showcase New Zealand

Josh is a New Zealand citizen who resides in Australia. Josh is a world-renowned travel influencer with a strong following on social media, mainly from the art deco community. His knowledge of 1920s and 1930s architecture has made Josh a sought-after social media influencer.

A New Zealand tourism agency is keen to promote New Zealand's art deco heritage, and they contact Josh to come to New Zealand to produce several engaging short videos on New Zealand's architectural buildings.

Because Josh is being paid for promotional services by a New Zealand business, he would not meet the definition of a non-resident visitor.

Example 2: Influencer paid by overseas client to promote their brand

Ben is a New Zealand citizen residing in Milan, Italy. In recent years, Ben has become a well-known lifestyle fashion influencer with a significant following on social media, providing visually engaging storytelling experiences to his social media audience.

While in Queenstown, New Zealand, Ben arranges promotional services for an Italian boutique trousers brand, Fanci-fejoia, and uploads several engaging short videos promoting the brand's casualwear to his social media accounts.

Because Fanci-fejoia is not a New Zealand business, the promotional services are provided to an overseas client. Therefore, Ben meets the definition of a non-resident visitor.

[6] Ordinarily, influencers engaged in an income-earning activity are not entitled to be a visitor visa holder.

Lawfully in New Zealand for New Zealand immigration purposes

A person would be required to be lawfully in New Zealand continuously for their period as a non-resident visitor. Should their immigration status change, such that they became unlawfully present in New Zealand, they would immediately cease to be a non-resident visitor.

On ceasing to be a non-resident visitor because their presence was unlawful, the existing residence tests in section YD 1 would apply as if the person were never a non-resident visitor. If the person breached the 183-day rule by exceeding 183 days of presence in a 12-month period, they would be treated as resident retrospectively, that is from the first day of their arrival in New Zealand.

To avoid this outcome, a non-resident visitor must depart New Zealand before becoming unlawfully present in New Zealand.

A person who is unlawfully in New Zealand has an obligation to leave New Zealand (section 18 of the Immigration Act 2009).

Tax resident in another jurisdiction

The person would have to be tax resident in another country or territory to be a non-resident visitor. This is an integrity rule to ensure the income earned while visiting Zealand is subject to income tax in a jurisdiction.

If, part way through the person's visit to New Zealand, they became no longer tax resident in another country (perhaps due to their absence), they would immediately cease to be a non-resident visitor in New Zealand and the existing tax residence rules would apply on a prospective basis.

Example 3: Non-resident visitor for up to nine months in an 18-month period

Andrew arrived in New Zealand on 1 July 2026 and departed New Zealand on 10 March 2027. While Andrew was travelling around New Zealand, he continued to answer emails and send invoices for work he completed for his foreign clients.

Andrew was not resident in New Zealand before 1 July 2026 and had not been present in New Zealand before that date.

Andrew was present in New Zealand for 253 days from 1 July 2026. Because Andrew was in New Zealand for less than 275 days, Andrew would be deemed to be a non-resident visitor for the duration of his stay in New Zealand.

Exclude other persons subject to existing rules

Under the ITA, certain persons visiting New Zealand for a short period are subject to their own rules for tax residence and income.

Similar to the existing income tax exemption for income earned by short-term visitors in section CW 19, income earned by a public entertainer would be excluded from the proposed income tax exemption.

For other persons deriving income from services, such as visiting entertainers and sportspersons (section CW 20), visiting crew of pleasure craft (section CW 21), and non-resident seasonal workers (foreign fishing crews and recognised seasonal workers (section YD 1(11)), the nature of the work typically requires the work to be physically performed in New Zealand. This means they would be ineligible to be a non-resident visitor, and as a result, the existing tax rules would apply to these groups.

183-day rule does not apply to non-resident visitors

Proposed section YD 1(13) means a non-resident visitor is a non-resident for tax purposes so a non-resident visitor would not subject to the 183-day rule when determining the person's New Zealand tax residence under section YD 1(3).

The proposed residence exemption would only apply to section YD 1(3) and does not override other residence tests of a natural person in section YD 1, including the permanent place of abode rule in section YD 1(2). This rule is the overriding tax residence rule for a natural person.

Person ceases to be non-resident visitor

A non-resident visitor may stay in New Zealand for longer than 275 days in an 18-month period. Alternatively, they may cease to be a non-resident visitor because they no longer meet one of the other criteria in proposed section YD 1B.

When a person stops being a non-resident visitor, they would be subject to the existing rules, including residence and income source rules. Their tax treatment would depend on whether they continued to be lawfully in New Zealand for immigration purposes.

New Zealand residence on prospective basis

Proposed section YD 1(14) would mean that when a person ceases to be a non-resident visitor, while remaining lawfully in New Zealand,[7] the person would be subject to the existing tax residence rules on the date the cessation occurs, on a prospective basis.

If the person has acquired a permanent place of abode, the person would be New Zealand resident from that day. However, the residence test most likely to apply would be the 183-day rule, with the time already spent physically present in New Zealand as a non-resident visitor counting towards the 183 days.

If a person ceased to qualify as a non-resident visitor because they were present in New Zealand for more than 275 days, they would become New Zealand resident from day 276 of being physically present in New Zealand, that is, on a prospective basis, because they would have already satisfied the 183-day rule.

If a person ceased to qualify as a non-resident visitor because they stopped satisfying one of the other criteria for a non-resident visitor under proposed new section YD 1B(4), and they have not yet satisfied the 183-day rule in section YD 1(3), or other applicable tax residence rules they would continue to be a non-resident under existing rules. Consequently, they would become New Zealand resident if their physical presence in New Zealand exceeded 183 days in a 12-month period.

Applying New Zealand tax residence prospectively for a person who ceases to be a non-resident visitor avoids complexity and adds certainty for the visitor and non-resident employer or others. This is because the tax risk associated with retrospective application of the existing rules is significant and could have the effect of undermining the policy intent.

When a person has ceased to be a non-resident visitor, the prospective basis to tax residence of the person would flow through to any associated entities of the person, such as a foreign company or trust established overseas (see Non-resident visitors and offshore entities).

The prospective treatment would only apply under the ITA and would not apply to existing residence rules that are included in other Acts, such as the Student Loan Scheme Act 2011. This is because these rules serve different purposes and can have a wider impact on the person's obligations.

[7] Including when the person has transferred to another immigration visa, such as a work visa.

Example 4: Non-resident visitor status ceases and 183-day rule applied

Kaitlyn is a UK citizen and entered New Zealand on a visitor visa on 1 October 2026.

Kaitlyn was not resident in New Zealand before 1 October and had not been present in New Zealand before that date.

On 18 June 2027, Kaitlyn has already spent 260 days in New Zealand and remains in New Zealand. However, Kaitlyn has successfully obtained a three-year work visa and begins working for a New Zealand employer. Kaitlyn no longer meets the criteria to be a non-resident visitor.

Because Kaitlyn lawfully remains in New Zealand, she will transition to the existing tax residence rules. The 260 days will be applied against the 183-day rule.

Kaitlyn has been present in New Zealand for 260 days (so more than the 183 days required). Therefore, from 18 June 2027, she would be New Zealand resident. However, she will not be deemed to be retrospectively resident in New Zealand for any of the period before she lost her non-resident visitor status on 18 June 2027.

Example 5: Non-resident visitor for up to nine months in an 18-month period

Matteo arrived in New Zealand on 1 July 2026 and departed New Zealand on 31 August 2026, a total of 62 days of presence in New Zealand. Matteo was then absent from New Zealand for 87 days. He returned to New Zealand on 27 November 2026 and remained here for a further 218 days, departing on 2 July 2027.

Matteo was not resident in New Zealand before 1 July 2026 and had not been present in New Zealand before that date.

Matteo was present in New Zealand for 280 days, from 1 July 2026. Because Matteo was in New Zealand for more than 275 days, he ceased being a non-resident visitor on 28 June 2027. Matteo also spent more than 183 days in New Zealand during the preceding 12-month period, meaning he would be a New Zealand resident from 28 June 2027, but not for any prior period while he was still a non-resident visitor.

New Zealand residence on retrospective basis

Under proposed new section YD 1B(2)(g), a non-resident visitor would be required to be lawfully in New Zealand under the Immigration Act 2009. If the non-resident visitor became unlawfully in New Zealand (including when the person has over-stayed their immigration visa), they would immediately cease to be a non-resident visitor and would be treated as if they were never a non-resident visitor, under proposed new section YD 1B(3). Retrospective residence in this case is intended to maintain the integrity of New Zealand's tax and immigration rules.

Similar to the treatment above, time present in New Zealand as a non-resident visitor would be counted towards the existing residence rules. However, if the time present means the person satisfies the 183-day rule, the existing rule in section YD 1(4) would apply and the person would be treated as New Zealand resident from the first of the 183 days of personal presence. This is the same retrospective treatment applied to a person who is not a non-resident visitor under the existing 183-day rule.

Example 6: Cessation of non-resident visitor status and 183-day rule

Shelby is a visitor who entered New Zealand on 1 August 2026.

Shelby was not resident in New Zealand before 1 August and had not been present in New Zealand before that date.

On 3 May 2027, Shelby has spent 276 days in New Zealand and is loving his time in New Zealand. Despite no longer having a valid immigration visa, Shelby intends to remain in New Zealand after that date.

Because Shelby does not have a valid immigration visa and is unlawfully in New Zealand from 3 May 2027, Shelby will be treated as never having been a non-resident visitor for the purposes of the residence tests. Because he has been present in New Zealand for more than 183 days, he will be tax resident in New Zealand from the first of the 183 days, which would be the day he arrived in New Zealand, 1 August 2026. Shelby will have to comply with his New Zealand tax obligations on that basis.

Existing tax rules would apply to person ceasing to be non-resident visitor

Upon ceasing to qualify as a non-resident visitor, the existing tax rules would apply. The resulting outcomes may vary depending on the person's specific circumstances.

One outcome is that the person may be subject to the transitional residence rules. This would be when the person has ceased to be a non-resident visitor and becomes a New Zealand resident who

meets the transitional residence requirements (which exempt the person from taxation on non-New Zealand-sourced passive income). The commencement of the existing four-year transitional residence rule would occur the day they become New Zealand resident.

Another outcome is that the person may be entitled to the income tax exemption in section CW 19. This relief would be available when, upon ceasing to be a non-resident visitor, the person's presence in New Zealand is less than 92 days (so they are a non-resident under existing rules) and they met the additional conditions in section CW 19. The time spent as a non-resident visitor would be counted towards the 92-day period in section CW 19.

Additionally, the person may be entitled to relief under a relevant DTA.

Example 7: Non-resident visitor status ceases at five months and treaty residence rule applies

Stewart, a Canadian tax resident physicist, came to New Zealand on 1 June 2026 as a tourist. Stewart qualified as a non-resident visitor. Stewart has family and investments in Canada.

While visiting New Zealand, Stewart attended a few physics seminars and events intending to grow his network. As a result of his new connections, Stewart obtains a nine-month employment contract from a New Zealand resident business (Zappy Electric). On 1 November 2026 he begins to work for Zappy Electric. Because he is undertaking work for a New Zealand business, Stewart no longer qualifies as a non-resident visitor. New Zealand's tax residence rules will apply on a prospective basis. Assuming only the 183-day test applies, and he remains in New Zealand for the nine-month period, he will ultimately exceed 183 days and be resident from 1 December 2026.

To determine the tax treatment of Stewart's employment and passive income, the New Zealand-Canada DTA could be applied. If he remained tax resident in Canada under Canadian domestic law, the treaty residence tie-breaker test would be applied first to resolve where he is resident for treaty purposes. The relevant articles would then be applied to determine the treatment of his income under the treaty.

Exclusion from family assistance

Under proposed new section YD 1B(2)(f), a non-resident visitor, or their spouse, civil union partner, or de facto partner, could not receive an entitlement to Working for Families tax credits (including Best Start).

The proposed amendments would ensure a non-resident visitor does not claim an income tax exemption at the same time they, or their spouse, civil union partner or de facto partner, receive family assistance payments. The inclusion of the non-resident visitor's spouse, civil union partner or

de facto partner is because family assistance entitlement is based on a family's total income (known as family scheme income). The proposed rule would have a similar effect to the existing exclusion for the transitional residence rule (section HR 8(5)).

The definitions of "civil union partner" and "spouse" in section YA 1 would be updated to ensure they do not include a separated person for non-resident visitors.

Employment and professional services income earned by non-resident visitor

Clauses 14, 15, 22, 84, 91, 95(17), and 101

Summary of proposed amendments

The proposed amendments would amend the tax treatment of certain services income earned by a non-resident visitor while physically present in New Zealand.

All legislative references are to the Income Tax Act 2007 (ITA).

Effective date

The proposed amendments would take effect on 1 April 2026.

Background

Currently, income earned by a non-resident (such as employee or self-employed contractor income) physically present in New Zealand providing services to a non-resident is subject to New Zealand income tax. However, when the visit is for 92 days or fewer, this income may be exempt from New Zealand income tax under domestic law (subject to certain conditions). Alternatively, a double tax agreement (DTA) may mitigate double taxation.

A non-resident visitor can remain in New Zealand on a visitor visa for much longer than 92 days (generally up to nine months). Accordingly, depending on their particular circumstances, services income earned by the visitor may be subject to New Zealand income tax before the end of their visitor visa period. This means that they must decide whether to remain in New Zealand and consequently be subject to New Zealand tax obligations and tax compliance requirements or depart New Zealand earlier than they otherwise would have.

When the non-resident visitor is providing services to a non-resident employer or client, then there is a risk of New Zealand tax consequences for that other person, such as the creation of a permanent establishment. This is discussed below for employers and in "Non-resident visitors and offshore entities".

Key features

The proposed amendments would mean certain services income earned by a non-resident visitor would be deemed to be exempt from New Zealand income tax. In addition, when a non-resident

business was held to have income sourced in New Zealand because of a non-resident visitor's presence in New Zealand, that income would be deemed to be exempt from New Zealand income tax. The proposed amendments would:

- deem personal or professional services income earned by a non-resident visitor to be exempt from New Zealand income tax (proposed new section CW 22B)
- deem an amount of income earned by a non-resident business or self-employed person to be exempt from New Zealand income tax when the income has a New Zealand source because of the presence of a non-resident visitor (proposed new section CW 22C), and
- exclude income earned by a public entertainer from the proposed income tax exemptions (proposed new sections CW 22B(2) and CW 22C(2)).

The exempt income of a non-resident visitor would also be excluded from several regimes to ensure the income earned by the non-resident visitor does not result in New Zealand tax obligations for other persons. The proposed amendments would:

- exclude a payment to a non-resident visitor that is exempt income from the schedular payment rules under proposed sections CW 22B and CW 22C (proposed section RD 8(1)(b)(vii) and (viii))
- exclude a benefit received by a non-resident visitor employee from fringe benefit tax (proposed section CX 26(3))
- ensure employer superannuation contribution tax (ESCT) does not apply when an employer or another person makes an employer's superannuation cash contribution for the benefit of a non-resident visitor (proposed section RD 64(3)).

The activities of a non-resident visitor are disregarded when determining whether a foreign entity has established a permanent establishment in New Zealand (proposed section YD 4B(5)).

The tax treatment of other New Zealand-sourced income earned by a non-resident visitor is unaffected by the proposed amendments and remains subject to existing rules. For example, interest income paid to a non-resident visitor would remain liable for non-resident withholding tax.

Detailed analysis

Some visitors to New Zealand may continue to work for their non-resident employer or non-resident clients while in New Zealand. This may range from incidental work, such as answering emails, through to engaging in full-time work. Under the existing rules, while in New Zealand the

income earned by the visitor from work undertaken for their non-resident employer or client is New Zealand-sourced and subject to New Zealand tax (subject to existing concessions and DTAs).[8]

The proposed amendments seek to ensure a non-resident visitor can continue to work as an employee for a foreign employer or as a self-employed person (regardless of whether the self-employed person carries on their business as a sole trader or via a company, partnership or other arrangement) without giving rise to New Zealand tax obligations.

Income tax exemption for certain services income derived by non-resident visitor

Proposed new section CW 22B would deem income derived by a non-resident visitor from performing personal or professional services in New Zealand to be exempt income, when:

- the services are performed for or on behalf of a non-resident, and
- the amount derived from these services is chargeable in a country or territory in which the person is resident with a tax that is similar to income tax imposed under the ITA.

The proposed new exemption is intended to apply to both employee and/or contractor income.

Tax resident and income chargeable with substantially same tax

The proposed income tax exemption for services income would include an integrity rule to ensure the income is subject to tax in at least one other jurisdiction that is substantially the same as the income tax that would be imposed in New Zealand. This rule would ensure that although the services income will be exempt from New Zealand income tax, it may still be subject to income tax in the person's country of residence.

Tax may not be paid on the services income in the other jurisdiction, because, for example, the income may fall within a tax-free threshold or personal allowance. However, the income must at least be chargeable to tax in that other jurisdiction.

The tax in that other jurisdiction must be substantially the same as the income tax that would be imposed in New Zealand. There is no specific or technical meaning for "substantially the same as income tax imposed under this Act" for non-resident visitor purposes. The interpretation for proposed new sections CW 22B(1)(b) and CW 22C(1)(b) (explained below) should reflect the

[8] In certain situations, the person may be eligible for a foreign income tax credit for the income tax paid in New Zealand.

interpretation applied to existing section CW 19(1)(d) and other related Inland Revenue guidance on *substantially the same as income tax.*[9]

"Substantially the same" should be in substance and effect, rather than just form. This means the tax effect is the same, although the form or method of taxing the income may be different. The qualities or characteristics of the income tax imposed in the other jurisdiction must be significantly or essentially like income tax imposed in New Zealand.

Income tax exemption for business income

Proposed new section CW 22C would deem income derived by a non-resident business or self-employed person to be exempt from New Zealand income tax when the income would otherwise be subject to New Zealand income tax because of a non-resident visitor's physical presence in New Zealand.

Like proposed new section CW 22B for services income, the proposed income tax exemption would require the amount derived to be chargeable in a country or jurisdiction in which the person is tax resident with a tax that is similar to the income tax imposed under the ITA. The interpretation discussed above for proposed section CW 22B(1)(b) would also apply to this income tax exemption.

Exclusion of a public entertainer

Proposed new sections CW 22B(2) and CW 22C(2) provide that the proposed income tax exemptions for services income and business income derived by a non-resident business would not apply to the income earned by a public entertainer. This would align with the treatment in section CW 19(2).

Exclusion from employment-related tax rules

The definition of a non-resident visitor would mean the person is prevented from engaging in work in exchange for income from a New Zealand employer or to sell goods or services to New Zealanders. However, remote work would be permitted under the new rules.

Depending on the nature of the services performed for a non-resident payer or employer, the income earned may be subject to other tax regimes in New Zealand. As a result, the following new exemptions are proposed for non-resident payers and employers of non-resident visitors:

- an exclusion from the definition of schedular payments for payments that are exempt income under proposed new sections CW 22B and CW 22C (proposed section RD 8(1)(b)(vii) and (viii))

[9] See IS 14/02: Income tax – foreign tax credits – What is a tax of substantially the same nature as income tax imposed under s BB 1?

- an exclusion from fringe benefits for a benefit received by a non-resident visitor employee (proposed section CX 26(3))
- an exception from the ESCT rules for an employer of, or other person who makes an employer's superannuation cash contribution for the benefit of, a non-resident visitor (proposed section RD 64(3)).

Once the person ceases to meet the criteria of a non-resident visitor, the person, the payer, or the employer would be subject to the usual employment-related tax rules on subsequent payments received by the person.

Exclusion from schedular payment rules

Proposed section RD 8(1)(b)(vii) means an amount that is exempt income to a non-resident visitor (who would otherwise by a "non-resident contractor") under proposed section CW 22B would not be within the meaning of a "schedular payment". Therefore, the amount would not be subject to the schedular payments rules and withholding at rates specified in schedule 4. The same applies to an amount that is exempt income of a non-resident under proposed section CW 22C under proposed section RD 8(1)(b)(viii).

Exclusion from PAYE and other obligations

Ordinarily, employment income is subject to pay-as-you-earn (PAYE) and other deductions and contributions, such as KiwiSaver and Accident Compensation Corporation (ACC) levies.

Exempt income under proposed new sections CW 22B and CW 22C would not be subject to the PAYE rules, because the PAYE rules apply to a "PAYE income payment" (defined in section RD 3), which excludes exempt income.

As exempt income, the income is also not subject to ACC levies.[10]

[10] Employer and employee levies are based on salary or wages, and extra pay. Exempt income is excluded from both these definitions.

Further, deeming qualifying personal or professional services income to be exempt when earned by a non-resident visitor means that income would not generally be expected to be subject to contributions such as child support payments,[11] KiwiSaver, and student loan repayments.[12]

[11] Exempt income is not included in the child support income assessment. If the income is reported in another jurisdiction, this information may be reported by the relevant agency or the liable parent. If no information is provided, an administrative view can be undertaken to estimate the income earned by the liable parent.

[12] Repayments for New Zealand-based borrowers are based on either salary or wages (employee) or net income, which excludes exempt income (self-employed).

Non-resident visitors and offshore entities

Clauses 95(11), 97, 99, 100, and 101

Summary of proposed amendments

The proposed amendments would ensure that entities associated with a non-resident visitor would not be considered when determining whether the entity is New Zealand tax resident or the entity's income is subject to New Zealand tax obligations.

All legislative references are to the Income Tax Act 2007 (ITA).

Effective date

The proposed amendments would take effect on 1 April 2026.

Background

The Income Tax Act 2007 includes tax residence rules for entities that include consideration of the physical presence or actions of a natural person in New Zealand.

The strict nature of these rules means a non-resident visitor's presence, actions or decisions in New Zealand may result in New Zealand tax obligations being imposed on the entities. Many non-resident visitors may not be fully aware their presence or decisions undertaken by them while in New Zealand could result in New Zealand tax consequences and compliance costs for their associated entities.

Key features

Proposed section YD 2(1C) would disregard the activity of a non-resident visitor physically present in New Zealand when determining whether a company is tax resident in New Zealand. The amendments propose that:

- the decisions undertaken by a non-resident visitor would be disregarded in the application of the centre of management rule
- the decisions undertaken by a non-resident visitor would be disregarded under the director control rule, and
- to access these concessions, the foreign company would be required to be tax resident in a jurisdiction that imposes a tax that is substantially the same as income tax imposed in New Zealand.

Detailed analysis

Exemption from centre of management test

When a company is incorporated in another jurisdiction, but its centre of management is in New Zealand, the company would be New Zealand tax resident under existing domestic rules. This could particularly impact smaller, potentially family-run companies when most, or all, of the company's management are in New Zealand as non-resident visitors.

Proposed section YD 2(1C) would mean a non-resident visitor's activity in New Zealand is disregarded when determining whether the centre of management test has been satisfied.

The proposed exemption to the centre of management test would be limited to a foreign company that is tax resident in another jurisdiction that imposes a tax that is substantially the same as income tax imposed in New Zealand. This rule is intended as an integrity measure to limit opportunities that would result in income tax not being paid in any jurisdiction.

Exemption from director control test

Under existing rules, when a person in New Zealand, acting in their capacity as a director, exercises control of a company, the company would be New Zealand tax resident, even if directors' decision-making also happens outside New Zealand.

Proposed section YD 2(1C) would disregard the activity of a non-resident visitor in New Zealand when determining whether the director control test is satisfied. A corresponding amendment to section YD 3(4) would be required to ensure consistency between sections YD 2 and YD 3.

As discussed in "Exemption from centre of management test" above, the proposed exemption would be limited to a foreign company that is tax resident in another jurisdiction that imposes a tax that is substantially the same as income tax imposed in New Zealand.

Settlors or trustees of trust established outside New Zealand

Trusts are not treated as separate entities, and so the tax residence of the persons connected to a trust (settlors, trustees and beneficiaries) determine whether the trust's income is subject to New Zealand tax.

Proposed section YD 1(13) would ensure that the presence of a non-resident visitor in New Zealand who is a settlor, trustee or beneficiary of a trust should not result in any change to the tax treatment of the trust or its income. This is because the non-resident visitor is deemed to be non-resident during their qualifying stay in New Zealand.

PE of non-resident enterprise

When an enterprise resident in one jurisdiction conducts its economic activities in another jurisdiction (the source jurisdiction), there is the potential for the enterprise to establish a permanent establishment (PE) in the source jurisdiction. Under current rules, a PE could arise from the activities of a non-resident visitor under a double tax agreement (DTA) between New Zealand and another jurisdiction or under section YD 4B and schedule 23 (when there is no DTA).

A PE can be established in a number of ways, such as:

- when the business of the enterprise is carried on through a fixed place of business and no exclusion applies
- services are provided for periods exceeding in the aggregate 183 days in a 12-month period and certain additional conditions are met, or
- when there is a dependent agent of the enterprise who acts on behalf of the enterprise and certain additional conditions are met.

The creation of a PE means that a portion of the enterprise's income is attributable to that PE and taxable in the source jurisdiction.

A non-resident visitor who works in New Zealand for a non-resident business will most likely use several telecommunication technologies to perform their work. Depending on their activities and circumstances, including whether they work in different places, this may not create a PE under existing rules. Despite this, the potential tax risk and implications of a PE being created through the activities of a non-resident visitor could be a significant concern for non-resident businesses (including non-resident employers discussed in "Permanent establishment of non-resident employer" below).

Proposed section YD 4B(5) would provide that the activities of a non-resident visitor are disregarded when determining whether a non-resident enterprise has a PE in New Zealand. In addition, the definition of a "fixed establishment" in section YA 1 would be amended to exclude a fixed place of business of a non-resident visitor.

It is expected the proposed exemption would benefit persons who are in New Zealand predominantly for personal reasons and undertake work for a non-resident business. If the non-resident visitor ceases to qualify for the proposed exemptions, existing tax rules would apply as described in "Tax residence of visitors to New Zealand".

PE of non-resident employer

When a non-resident visitor is undertaking work as an employee while in New Zealand, there is a potential risk the activity of the non-resident visitor could create a PE for the non-resident employer. (Further analysis of the PE rules is included in "PE of non-resident enterprise" above.) This concern means that non-resident employers may not permit their employees to work remotely from another jurisdiction.

To ameliorate concerns for businesses and employers, proposed section YD 4B(5) provides that the activities of a non-resident visitor would be disregarded when determining whether a non-resident enterprise has a PE in New Zealand. If the non-resident visitor ceases to qualify for the proposed exemptions, existing tax rules would apply, as described in "Tax residence of visitors to New Zealand".

Making GST registration optional

Clauses 108(7) and 124(1)

Summary of proposed amendment

The proposed amendment would provide non-resident visitors who only make certain zero-rated supplies of services to non-residents the ability to choose not to register for GST.

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

Effective date

The proposed amendment would take effect on 1 April 2026.

Background

Under current law, non-resident visitors who make or expect to make more than NZ$60,000 of taxable supplies in any 12-month period are required to register for GST. Taxable supplies include services provided to non-residents that would be subject to GST at the rate of 0%. This means some visitors undertaking remote work while in New Zealand might be required to register for GST in New Zealand despite there being no tax revenue benefit for the Crown.

The Government recognises there is an opportunity to remove compliance costs associated with GST registration for non-resident visitors who do not want to be registered for GST. The Bill proposes amendments that would allow non-resident visitors who only make zero-rated supplies of services to non-residents to ignore the value of those supplies for the purpose of determining whether they need to register for GST. The GST Act already includes a similar exception to the general registration requirement for unit title bodies corporate, which can choose to not count body corporate levies towards the $60,000 registration threshold. The proposed exception for non-resident visitors is modelled on this.

To preserve GST neutrality for non-resident visitors who are not employees, GST registration would still be available for non-resident visitors who choose to register if they meet the usual criteria for GST registration. This ensures they are still able to deduct input tax on any goods and services they acquire in New Zealand and use to provide their services to their non-resident clients.

Detailed analysis

Proposed new section 51(1D) would allow non-resident visitors[13] to choose to ignore the value of supplies of services they make to their non-resident clients for the purpose of determining whether they have exceeded or will exceed the GST registration threshold. The value of supplies made to non-resident clients can only be ignored for this purpose if the supplies are of services that are:

- unrelated to land or moveable personal property in New Zealand, and
- supplied to a person who is a non-resident and who is outside of New Zealand at the time the services are performed.[14]

Non-resident visitors could still choose to register for GST even if their only supplies are made to non-residents. They would need to meet the usual criteria for GST registration (including not being an employee) and would register in the ordinary way.

Example 8: Non-resident visitor with supplies over the NZ$60,000 registration threshold

Rebecca is a non-resident visitor in New Zealand for eight months. While she is visiting, she expects to provide more than NZ$60,000 of taxable supplies to a non-resident client. Her client will not be in New Zealand at the time the services are performed, and the services do not relate to land or moveable personal property situated in New Zealand.

Under current law, Rebecca would be required to register for GST in New Zealand. However, the proposal in the Bill would allow Rebecca the choice between:

- ignoring the value of the services of more than NZ$60,000 she provides to her non-resident client for the purpose of determining if she will exceed the GST registration threshold, or
- not ignoring the services and choosing to register for GST in New Zealand voluntarily.

Rebecca wants to register for GST so she can deduct input tax on her New Zealand expenditure related to making taxable supplies to her non-resident client. She registers in the usual way. If she decided not to register for GST, she would not need to do anything.

[13] See Definition of "non-resident visitor" for the proposed definition.

[14] If these criteria are met, the services would be zero-rated under section 11A(1)(k).

FIF – revenue account method

Foreign investment fund – revenue account method

Clauses 6, 12(2), 13, 24, 36, 37(2), 38, 46, 49, 50(1)(b), (2), and (3), 51, 52, 56 to 63, 64(2), (4), and (5), 65, 66, 71, 76, 78, 79, 92, and 95(4), (9), (10), (19), (20), (21), (22), and (23)

Summary of proposed amendment

The proposed amendment would add a new calculation method for calculating foreign investment fund (FIF) income or loss from attributing interests in a FIF. The new revenue account method (RAM) would allow certain FIF interests to be taxed on a realisation basis – that is, on dividends derived and gains or losses on disposal.

Effective date

The proposed amendments would take effect retrospectively from 1 April 2025.

Background

The FIF rules address the tax-driven incentive to invest in offshore rather than domestic companies. Generally, they do so by taxing foreign shares at 5% of the value of those shares at the beginning of the year or (if the shares are held by an individual or a family trust) the change in value of the shares during the year plus any dividends derived. If the shares are unable to easily be valued, the 5% can be based on adjusted cost value.

Because the FIF rules deem income to arise independent of any cash receipt, the resulting tax liability can be difficult to finance, particularly if the shares are unable to be sold. This is particularly an issue for migrants who come to New Zealand with pre-existing unlisted share investments made at a time when they had no knowledge of the FIF rules or expectation that they might be subject to them.

In addition, for a migrant, the FIF rules require valuation of foreign shares at the beginning of the year the FIF rules first apply. Valuations can be expensive and difficult, particularly for start-up companies.

Lastly, double taxation can occur as a result of the FIF rules taxing unrealised income. If a person is subject to tax in another country on gains from the sale of their shares, it is possible that neither the foreign tax on sale nor the tax calculated under the FIF rules are creditable against each other. This is particularly an issue for United States (US) citizens and Green Card holders who remain subject to US tax on worldwide income even when they are tax residents elsewhere.

Key features

The Government has agreed to targeted relief to lower the tax barriers for migrants who are considering moving to New Zealand and returning New Zealanders who hold shares in foreign companies.

The proposed amendment would add the RAM as a new FIF calculation method. The RAM would tax dividends derived and gains on disposal from qualifying FIF interests on a realisation basis. The RAM would only be applicable to certain direct income interests in foreign companies.

Key features of the RAM would include:

- Gains and losses on disposal are discounted by 30% before being taxed at the person's marginal tax rate.
- Losses on disposal may only be used against gains on disposal of FIF interests to which the RAM is applied. Excess losses may be carried forward into future years.
- A natural person needs to have been a non-resident for five years before they become a New Zealand tax resident to be eligible to use the RAM.
- When a person elects to apply the RAM to their FIF interests, and they subsequently become a non-resident, they remain taxable on those FIF interests if sold within three years of becoming a non-resident.

Detailed analysis

The Bill would introduce the new RAM to section EX 44 of the Income Tax Act 2007 (ITA) as an additional method to calculate a person's FIF income or loss from an attributing interest in a FIF. To give effect to the establishment of the new RAM calculation method, the Bill would also define RAM interests (certain shares in foreign companies) and RAM taxpayers, who are eligible for the RAM.

The Bill would also introduce an extension of the RAM rules for extended RAM taxpayers, with its own set of eligibility criteria.

Amendments to existing legislation are also proposed to integrate the mechanics of the RAM into the FIF regime.

Proposed revenue account method

The proposed RAM would tax certain FIF interests on a realisation basis. This means any dividends derived from those interests and any gains or losses on disposal of those interests would be taxable.

Any dividends derived from a RAM share would be taxed at the taxpayer's marginal rate in the year they are derived.

Any gains or losses arising from a disposal of a RAM interest would be discounted at 30% before being taxed at the taxpayer's marginal rate in the year of its disposal.

Example 9: Calculating taxable FIF income

Jenny has an eligible FIF interest to which she has elected to apply the RAM. In the 2025–26 income year, she derived a dividend of $100 and sold the interest for a net gain of $5,000. Her marginal tax rate is 33%.

The taxable FIF income arising from this interest for the 2025–26 income year is:

dividend ($100) + (gain on sale ($5,000) x 70%) = $3,600.

Her tax liability is:

$3,600 x marginal tax rate (33%) = $1,188.

What FIF interests are eligible?

The RAM would only apply to certain FIF interests. The types of FIF interests that would be eligible for the RAM are shares in a foreign company that were acquired before the person becomes a New Zealand tax resident (including before they become a transitional resident) and have the following characteristics:

a. the share is not listed on any stock exchange

b. there is no redemption facility for market value in relation to the share, and

c. the share is not in an entity that derives 80% or more of its value from shares that are not eligible under (a) or (b) above.

Example 10: FIF interests that are not eligible

Serah is an eligible person who has interests in the following FIFs:

- Shares in companies that are listed on a stock exchange.
- Shares acquired as part of her salary package from her time working for a start-up firm. The firm has not been listed on a stock exchange anywhere and does not offer a redemption facility.
- Interests in an index fund that tracks the S&P 500. The index fund is a product offered by a fund manager and is not an exchange-traded fund.
- Shares in a foreign private company that she acquired after becoming a New Zealand resident.
- An interest as a beneficiary of a foreign superannuation scheme.

The shares in listed companies would not meet the eligibility criteria.

The shares acquired from Serah's involvement in a start-up firm would be eligible for the RAM. This is because it is not listed on any stock exchange and the firm does not offer a redemption facility for market value for those shares.

Her interest in the index fund would not be eligible because the fund tracks and invests in accordance with a stock exchange (and therefore derives more than 80% of its value from interests in companies listed on the stock exchange).

Her shares in the foreign private company would not be eligible because they were obtained after she became a New Zealand tax resident.

Finally, Serah's interest in a foreign superannuation scheme is not eligible because the RAM is only applicable to shares in foreign companies.

While shares that are obtained after becoming a New Zealand tax resident would not be eligible for the RAM, it is proposed that shares that meet the requisite characteristics would be eligible if they are obtained as a result of arrangements entered into before the person became a New Zealand tax resident.

One scenario under which this could occur is follow-on investments. This is when the person makes additional investments into an existing company after the initial investment. However, the RAM would only be applicable to follow-on investments that the person is required to make (for instance, due to a contractual obligation).

Another scenario when this proposal would potentially apply is to shares obtained from employment. For instance, if the person enters into an employee share scheme (for shares in an unlisted company) before becoming a New Zealand tax resident and continues to receive foreign shares (with all the above characteristics) after becoming a New Zealand tax resident under that scheme.

The RAM would not be applicable to attributing interests in foreign superannuation schemes and life insurance policies.

Proposed definition of RAM taxpayers

Only eligible taxpayers, defined as RAM taxpayers, could elect to apply the RAM on their qualifying FIF interests. These are intended to be recent migrants and returning New Zealanders who have been away for a relatively long period. RAM taxpayers are defined as:

- A natural person who:
    - became a "New Zealand resident" (as defined under the ITA), and is not a transitional resident, on or after 1 April 2024, and
    - was a "non-resident" (as defined under the ITA) for at least five years before becoming a "New Zealand resident".
- A family trust whose principal settlor meets the criteria outlined above.

For a natural person, the general rule proposed is for the person to have been a non-resident for five or more years under the ITA. This means a person who is only treated as a non-resident under a tax treaty would not be eligible.

The proposed amendment is aimed at new migrants. This means a person would not be eligible if they became a New Zealand resident before 1 April 2024 and is not a transitional resident. However, a person who was a transitional resident on 1 April 2024 and whose transitional residency ends after 1 April 2024 would be eligible.

Example 11: Natural persons

Anya moved to New Zealand on 1 July 2022 and became a transitional resident. She had not been a resident of New Zealand before this. Her transitional resident status expires on 31 July 2026. While Anya would have been a New Zealand resident before 1 April 2024, she remains eligible for the RAM because she was a transitional resident on that date.

On 1 August 2026, following the expiry of her transitional resident status, Anya would be eligible for the RAM because she had been a non-resident for at least five years before becoming a New Zealand resident on 1 July 2022.

Family trusts

A family trust whose principal settlor is eligible to apply the RAM would also be eligible to apply the RAM. This is a one-time test applied at the time the trust chooses to use the RAM, so the family trust would remain eligible even if the principal settlor's eligibility changes in the future.

Example 12: Family trusts

Amy left New Zealand on 1 April 2010 and returns to New Zealand on 1 May 2023, becoming a New Zealand resident with transitional resident status. On 30 June 2025, she settled a trust in New Zealand with her children as the beneficiaries.

Despite being a transitional resident at the time of settling the trust, Amy would qualify for the RAM because she had been a non-resident for at least five years before moving to New Zealand on 1 May 2023 and became a New Zealand resident who was not a transitional resident after 1 April 2024. On this basis, the trustees would be eligible to use the RAM from the date the trust is settled.

Amy later leaves New Zealand and becomes non-resident. However, if the trustees had already elected to use the RAM, they could continue to do so.

Proposed "extended" RAM rules

In addition to the rules proposed above, the Bill also proposes that an eligible person may apply the RAM to all foreign shares if they are generally liable to tax in another country on the disposal of those shares on the basis of their citizenship or a right to work and live in that country. This proposal (called "extended RAM") would only apply if the person was subject to concurrent taxation in another country with which New Zealand has a tax treaty.

Being liable to tax is intended to mean that a person would generally expect to be liable for tax in the other jurisdiction on gains on sale of their shares. This means that a person subject to concurrent taxation in another country that has a capital gains tax would remain eligible for the extended RAM even if they benefit from a special exemption regime in that other country for a particular sale of their shares. In contrast, a person who is subject to concurrent taxation in another

country on the basis of citizenship would not be eligible for the extended RAM if that other country does not tax the sale of shares (for instance, because they do not have a capital gains tax regime).

Example 13: Generally liable for tax

Guy is a New Zealand tax resident having recently migrated from the US. Guy is a US citizen and is subject to US taxation on his worldwide income, regardless of his residence in New Zealand, because of his US citizenship.

Guy owns shares that qualify for a 100% exclusion of tax on capital gains on certain shares in the US. Despite the exemption, taxpayers are generally required to pay tax on gains arising from the disposal of shares in the US, so Guy remains eligible for the extended RAM in respect of those shares despite also qualifying for an exemption in the US.

Family trusts

The Bill proposes that a family trust would be eligible for the extended RAM if the principal settlor is also eligible for the extended RAM. However, if the principal settlor subsequently loses their eligibility for the extended RAM, then it is proposed that the family trust would transition out of the extended RAM regime to the ordinary RAM regime (see "Deemed disposal" below).

For the purposes of determining the eligibility of a family trust for the extended RAM, the principal settlor may lose their eligibility for the extended RAM due to them not being subject to concurrent taxation or because of death. However, the family trust would not lose its eligibility for the extended RAM just because the principal settlor leaves New Zealand (see "Multiple entries and departures" below).

Multiple entries and departures

A person who is eligible for the RAM may subsequently leave and return to New Zealand.

The Bill proposes that RAM interests remain eligible for the RAM if a person leaves then subsequently returns to New Zealand. The cost base of those shares would remain the same.

The eligibility of any FIF interests obtained while a person is non-resident would depend on whether the person newly qualifies for the RAM (that is, whether they have been non-resident for five years or more) upon their return to New Zealand.

Example 14: Returning to New Zealand

Hemi grew up in New Zealand but moves abroad in 2015 and later starts working for Company A. Hemi receives shares in Company A, an unlisted company, as part of his salary package. In 2025, Hemi decides to come back to New Zealand.

Hemi has been a non-resident for over five years, so he is eligible to apply the RAM to his shares in Company A. He elects to do so.

In 2030, Hemi leaves New Zealand again. This time to work for Company B. Hemi moves back to New Zealand in 2033.

As Hemi was a non-resident for less than five years this second time, Hemi would not be eligible for the RAM with respect to any foreign shares he obtained between 2030 and 2033 However, his shares in Company A remain eligible for the RAM.

This would not apply to people who apply the extended RAM. The person's eligibility for the extended RAM would be retained regardless of the length of time away from New Zealand as long as they continue to remain subject to concurrent taxation.

Example 15: Returning to New Zealand – extended RAM

Juan is a US citizen whose family moved to New Zealand when he was young. Juan left New Zealand and became a non-resident in March 2018. He later returned to New Zealand and became a New Zealand resident in May 2024. Before he left New Zealand, he obtained a number of interests (Interests A). During his time overseas, he acquired several new interests (Interests B).

Upon his return in May 2024, Juan is eligible for the extended RAM. This is because he had been a non-resident for over five years and is generally liable to tax on the disposal of shares in another country on the basis of his citizenship.

Juan's interests from before he became a non-resident (Interests A) would not be eligible for the extended RAM. The interests he acquired while he was a non-resident (Interests B) would be eligible for the extended RAM.

Shortly after his return, Juan had to leave again and became a non-resident in July 2025. This second departure was short-term, and he came back to New Zealand in February 2028. During this second period of absence, Juan obtained further interests in foreign companies (Interests C).

The RAM treatment of his interests from before his second departure is preserved. This means Interests A would remain ineligible for the extended RAM, while Interests B would be eligible for the extended RAM on his return in 2028. Juan's newly acquired interests (Interests C) would also be eligible for the extended RAM because once he has qualified for the extended RAM, Juan does not lose his eligibility because of a brief subsequent period of non-residence.

If a person who is eligible for the extended RAM leaves New Zealand, loses their eligibility for the extended RAM (because they are no longer subject to concurrent taxation), and subsequently returns to New Zealand, they would need to qualify for the RAM to be able to apply the RAM on any shares obtained during their period of non-residence.

The RAM treatment of shares obtained before their departure may not be preserved in this instance (see "Deemed disposal" below).

Mechanics of RAM proposal

Election

It is proposed that the RAM is elective. An eligible person would elect to apply the RAM in the first year they have FIF income as defined under section CQ 5 of the ITA. This would generally be the later of the expiry of their transitional resident status and when they exceed the $50,000 de minimis threshold. If the person elects to apply the RAM, the method would apply on a portfolio basis to all eligible shares. This means that the person who has elected to apply the RAM must choose a different calculation method for any other FIF interests that are not eligible for the RAM.

If the person does not make an election, the fair dividend rate method will apply to the shares as the default method under existing rules.

The Bill proposes that a person who chooses to apply the RAM may later elect out of the method and use one of the existing FIF income calculation methods. This would trigger a deemed disposal of all shares to which the RAM applied (see "Deemed disposal" below). However, it is proposed that once one of the existing methods is applied, whether by election or by default, the person cannot subsequently choose to apply the RAM.

Cost base

For calculating the amount of gain or loss on disposal, the Bill proposes that the default method for determining the cost base be market valuation as at the date on which the RAM is first applied to the share and that the valuation must be obtained by the later of:

- 12 months from the date of acquisition or when the FIF rules start to apply to the person (whichever is later), or
- the due date of the person's first return in which they apply the RAM.

Example 16: Obtaining market valuation

Lenna moved to New Zealand on 22 January 2022 and became a transitional resident. Her transitional resident status expires on 31 January 2026. After her transitional resident status expires, Lenna determines that the FIF rules apply and elects to apply the RAM. Because she has elected to apply the RAM, she would need to obtain the market value of all eligible shares as at 1 February 2026 (unless she decides to use the time-based apportionment method discussed after this example).

Lenna's income tax return for the 2026 tax year is due by 7 July 2026. Twelve months from the date the FIF rules started applying to her would be 1 February 2027. Therefore, Lenna needs to obtain a market valuation for all relevant shares by 31 January 2027.

If Lenna's income tax return is due by 31 March 2027, because she has engaged a tax agent to file her return for her, then that is the date by which Lenna needs to obtain a market valuation for all relevant shares.

In either case, it is the market value of all eligible shares as at 1 February 2026 that Lenna needs to obtain.

If the market value cannot be determined except by independent valuation, and the person chooses not to get one, the Bill proposes that the person be allowed to use a time-based apportionment method. This method spreads the actual gain or loss across the period of ownership and only the gain or loss apportioned to the period that the person is a New Zealand resident (not including any period of transitional residence) is taxable.

Example 17: Time-based apportionment method

Clive acquires some shares on 15 June 2015 for NZ$100,000. He moves to New Zealand on 23 August 2023 and becomes a transitional resident, which expires on 31 August 2027. Once

his transitional resident status expires, the FIF rules start to apply. Clive chooses to apply the RAM. The value of the shares is not readily available, and Clive chooses not to obtain an independent valuation. On 29 October 2029, he sells those shares for NZ$200,000.

Clive's total gain on the sale of the shares is NZ$100,000. The total number of days he has owned the shares is 5,250 (15 June 2015 to 29 October 2029). The total number of days Clive was a resident in New Zealand, not including days spent as a transitional resident, is 789 (1 September 2027 to 29 October 2029). The total amount of the gain attributable to New Zealand is therefore:

> net gain ($100,000) x period of ownership while New Zealand resident (789) ÷ total period of ownership (5,250) = $15,028.

Adjusted cost base

As discussed above, when a person who has elected to apply the RAM leaves and returns to New Zealand, the treatment and cost base of the shares they held before they left is generally preserved (see "Multiple entries and departures" above).

It is proposed that a person may adjust their cost base so that only gains that have accrued while they are a New Zealand tax resident are taxed, provided they obtain the market value of the shares when they leave and return.

Example 18: Adjusted cost base

Using the same facts as those in Example 15:

- Hemi had 1,000 shares in Company A that were worth $1 when he acquired them through his employment.
- In 2025, when Hemi moved back to New Zealand and became a tax resident, those shares had a market value of $3 a share.
- When Hemi left again in 2030, those shares had a market value of $4 a share.
- When Hemi returned to New Zealand in 2033, those shares had a market value of $5.

Hemi sells his shares in Company A in 2035 for $7 a share. Hemi's taxable gain from the sale of his 100 shares in Company A is $300, comprised of $100 gain accrued from 2025 to 2030 (100 x ($4 – $3)) and $200 gain accrued from 2033 to 2035 (100 x ($7 – $5)).

If Hemi had not obtained the market value of his shares in Company A when he left in 2030 and when he returned in 2033, Hemi's gain would have been $400 (100 x ($7 – $3)).

If Hemi's shares in Company A were eligible for the time-based apportionment method, he could choose to calculate his gain under that method instead.

Losses

Any loss on disposal of a RAM interest would only be available to set off against the gains on disposal of other RAM interests. Losses on disposal could not be set off against dividend income from RAM interests.

In an income year when the losses are greater than the gains, those excess losses would be available to be carried forward into future years to be set off against any gains on disposal of other RAM interests.

Example 19: Losses

Kiri has FIF interests in three overseas companies – A, B and C – to which she elects to apply the RAM.

In the 2025–26 income year, she decides to sell her interests in A and B for a net loss of $100 and derives a dividend of $100 from C. Her only taxable FIF income for the year is the dividend derived ($100). This is because losses can only be set off against gains on disposal. The $100 loss from the sale of her interests in A and B is discounted by 30%. The resulting $70 loss is then carried forward.

In the 2026–27 income year, she decides to sell her interest in C for a net gain of $200. Her taxable FIF income for the year is calculated after deducting her carried-forward loss from selling her interests in A and B, as follows:

70% of net gain ($200 x 70%) – carried forward loss ($70) = $70.

Deemed disposal

There are three scenarios in which the proposed amendments deem a disposal at market value.

Electing out of RAM

Whenever a person applying the RAM subsequently elects to apply a different method, the proposed amendment deems a disposal at market value of all shares that the RAM has been

applied to. The disposal is deemed to take place on the last day of the income year for which the election is made. The new method will then begin applying from the first day of the following income year.

Example 20: Electing out of RAM

Vincent has been applying the RAM on all eligible foreign shares. In August 2027, he decides to stop applying the RAM and decides to use the cost method going forward. Vincent has a standard balance date and is deemed to have disposed of his shares at market value on 31 March 2028 and accounts for this in his 2027–28 income tax return. For his 2028–29 income tax return, Vincent will apply the cost method in accordance with the current rules.

Share loses its eligibility

When a foreign share loses its eligibility for the RAM, for example, when an unlisted share becomes listed, the proposal deems the share to be disposed on the date it loses eligibility.

Example 21: Share loses eligibility

Lisa owns some shares in a start-up company. The shares in the company are listed on 30 September 2027 and are therefore no longer eligible to be a RAM interest. At the close of the first day's trading, the market value is $10 per share. Lisa is deemed to have sold her shares for $10 a share on 30 September 2027. From 1 October 2027, Lisa would apply the fair dividend rate method or the comparative value method.

Moving out of extended RAM

When a person applying the extended RAM is no longer eligible to apply that method, but chooses to continue applying the RAM, the proposed amendments deem the person to have disposed of all shares that have one or more of the following characteristics:

- The share is listed on a stock exchange.
- There is a redemption facility for market value in relation to the share.
- The share is in an entity that derives 80% or more of its value from shares that meet one or more of the above (listed on stock exchanges or have facilities for redemption for market value).

Any other shares to which the extended RAM applied, including shares acquired while the taxpayer was a New Zealand resident, would continue to be subject to the RAM.

The extended RAM would cease to apply if the person is no longer generally liable to tax in another country on the disposal of their shares on the basis of their citizenship or right to work and live in that country. For example, if the person renounces their citizenship in the other country.

The disposal is deemed to occur on the day before the person becomes ineligible for the extended RAM. For example, if the person renounces their citizenship in the other country, a disposal is deemed to occur on the day before they renounce their citizenship.

Example 22: Transitioning from extended RAM to RAM

Rosa moves to New Zealand in June 2022. Her transitional resident status expires in June 2026 and the FIF rules apply following this expiry. Rosa is a citizen of a country that taxes its citizens on their worldwide income regardless of their residence, which includes a capital gains tax on the disposal of shares. As such, Rosa is eligible for the extended RAM, which she chooses to apply. On 16 February 2028, Rosa completes the formalities necessary for her to give up her citizenship in the other country. The renunciation of her citizenship takes effect on this date.

At the time of the deemed disposal, Rosa held the following foreign shares:

- Units in an index fund that she has been routinely investing in since before her migration to New Zealand. She has continued her routine investment in this fund since becoming a New Zealand tax resident.
- Shares in a foreign business venture, which she got involved in after her migration to New Zealand. The company is not listed.

The disposal is deemed to occur on 15 February 2028. The treatment of each type of share is:

- Rosa's investment in the index fund derives more than 80% of its value from listed shares and so does not meet the eligibility rule for the RAM. There would be a deemed disposal of these shares.
- Her shares in the unlisted company would remain eligible for the RAM despite the shares being acquired after Rosa became a New Zealand tax resident. There would be no deemed disposal of these shares.

Multiple entries and departures

For a person who loses their eligibility for the extended RAM while they are non-resident and subsequently returns to New Zealand, any shares obtained before their departure that meet one or more of the following characteristics would no longer be eligible for the RAM:

- The share is listed on a stock exchange.
- There is a redemption facility for market value in relation to the share.
- The share is in an entity that derives 80% or more of its value from shares that meet one or more of the above (listed on stock exchanges or have facilities for redemption for market value).

Any shares obtained before the person's departure that do not meet any of the characteristics above remain eligible for the RAM upon the person's return.

As discussed above (see "Moving out of extended RAM"), a person who is no longer subject to concurrent taxation in another jurisdiction would no longer be eligible for the extended RAM and a deemed disposal occurs. The relevant shares are deemed to have been disposed of on the day before the renunciation takes effect. If the person is non-resident on that date, then no New Zealand tax would be payable on this deemed disposal. Those shares are then deemed to have been reacquired on the day the FIF rules apply to them again.

Example 23: Returning to New Zealand – extended RAM to RAM

Kain is a US citizen who grew up in New Zealand. Kain left New Zealand and became a non-resident in March 2018. At the time of his departure, Kain owned a number of foreign interests (Interests A).

He later returned to New Zealand and became a New Zealand resident in May 2024. During his time overseas, he acquired several new interests (Interests B).

Shortly after his return, Kain decided to leave again and became a non-resident in July 2025. In August 2026, Kain decided to renounce his US citizenship while still overseas. Kain returns to New Zealand in February 2028. During this second period of absence, Kain obtained further interests in foreign companies (Interests C).

Kain's Interests A have never been eligible for the RAM and remain ineligible for the RAM because they were acquired while he was a New Zealand resident before he was eligible for the RAM.

Kain's Interests B would be eligible for the RAM if the shares are in unlisted foreign companies, no redemption facilities for market value are available, and they are not in an entity that derives 80% or more of its value from shares that are listed or have a redemption facility for market value. All other shares would be ineligible for the RAM and Kain would need to apply one of the existing FIF income calculation methods upon his return.

Kain's Interests C would not be eligible for the RAM because Kain is no longer eligible for the extended RAM and does not meet the five-year non-resident test for the RAM.

Deferred realisation tax

When a person who is applying the RAM leaves New Zealand, they are deemed to have disposed of all RAM interests for market value immediately before they become non-resident.

The deemed disposal would be disregarded for RAM interests not sold within three years of them leaving New Zealand, or by the time the person becomes a New Zealand resident again if they return within three years.

Non-market transfers

The ITA currently provides rollover relief if assets are transferred pursuant to a relationship property agreement or on death to a spouse or life partner. In those cases, the transfer does not trigger a tax liability and the transferee steps into the shoes of the transferor for tax purposes (for example, the cost of the shares for the transferee is deemed to be the cost of the shares for the transferor). In the event a person receives foreign shares under circumstances when rollover relief is provided, the proposed amendment allows the recipient to apply the RAM if the transferor applied the RAM, even if the recipient would not otherwise be eligible (for instance because they have never left New Zealand). If the recipient does choose to apply the RAM, then there would be no deemed disposal triggered by the transfer.

If the person receiving those shares chooses to account for them under one of the currently existing methods, then a deemed disposal occurs in line with "Deemed disposal" above.

If the person is eligible for the RAM in their own right, and they have previously chosen not to apply the RAM on their shares, they cannot then choose to apply the RAM on interests they receive via non-market transfer. A deemed disposal occurs in this instance.

Other non-market transfers of shares when rollover relief does not apply should be treated as a deemed disposal for market value.

Corporate re-organisation

The general rules continue to apply in corporate re-organisations. This means that a person subject to the ordinary RAM would be treated as disposing of their RAM interests even if the disposal occurs as part of a corporate re-organisation.

However, for a person who is subject to concurrent taxation in another country (and is applying the extended RAM), the proposed amendments would apply the tax law of that country to determine whether the re-organisation gives rise to a disposal, a dividend, both, or neither. However, this would only be the case when the shareholder does not have any significant influence on the outcome.

GST and unincorporated joint ventures

GST and unincorporated joint ventures

Clauses 108(2), (3), (4), (5), (8), (9), (10), and (12), 109, 110, 111(3), (4), and (5), 112(2), 113, 114, 119, 120, 123, 124(2), 125, 127, 128, 129, 130, and 133

Summary of proposed amendments

Amendments are proposed to the Goods and Services Tax Act 1985 (GST Act) to resolve problems with the unincorporated body rules as they apply to joint ventures.

The rules would be amended to allow the members of a joint venture to choose to individually account for GST on supplies made or received in the course of the venture under their own GST registrations (referred to as "flow-through treatment") rather than registering the joint venture separately, consistent with common practices in some industries.

All legislative references are to the GST Act.

Effective date

The proposed amendments would take effect on 1 April 2026.

Background

A common practice in some industries where joint ventures are used is for the members to individually account for supplies made or received in the course of the venture in their own GST returns. This often reflects the commercial reality that the joint venture is undertaken as part of each member's wider business.

Draft guidance published by Inland Revenue considers that these practices are not correct under the current GST rules for unincorporated bodies. These rules treat an unincorporated body, such as a partnership, joint venture, trust, club, or any other type of unincorporated association, as a separate person for GST purposes. Unincorporated bodies are required to register for GST if they supply or expect to supply goods or services worth more than $60,000 in a 12-month period.

Inland Revenue's draft guidance outlines that when an unincorporated body is not registered for GST (which may be because it is not carrying on a taxable activity, or because its supplies are under the $60,000 registration threshold), the current law does not allow members to register individually for the body's activities and claim input tax deductions for goods and services acquired by the body. While this tax setting provides the correct policy outcome for unincorporated bodies such as trusts or partnerships, it can give rise to problems for certain types of joint ventures.

When a joint venture is not carrying on a taxable activity, this conclusion means that GST on goods and services acquired by the joint venture cannot be claimed back as an input tax deduction by any person under the current law. This applies even when the goods or services are directly used for making taxable supplies by GST-registered members of the joint venture in their separate taxable activities. For instance, this issue may arise when the members share in the output or product of the joint venture and each sell their share of the output or product separately (which may be a common practice in the resources industry, for example).

Even when a joint venture is carrying on a taxable activity, requiring the joint venture to register instead of the members may in some instances increase overall compliance costs. This may be the case if the joint venture members are individually registered for taxable activities that they each carry on separately, especially if some of them are also participants in many joint ventures.

Key features

The proposed amendments would introduce "flow-through" treatment for joint ventures for GST purposes:

- Flow-through treatment would apply to "output-sharing" joint ventures (being joint ventures where the members individually supply the outputs from the venture rather than making joint supplies) by default, and to other joint ventures by election.
- Under flow-through treatment, the members of a "flow-through" joint venture would be able to individually account for taxable supplies made or received in the course of the venture in their own GST returns, rather than having to register the joint venture separately.
- A flow-through joint venture would not be an unincorporated body for GST purposes (and therefore not a "person" under the GST Act). When the members of a joint venture that does not meet the proposed definition of an "output-sharing joint venture" wish to elect for flow-through treatment, the members would be required to agree to this in writing and notify Inland Revenue in a prescribed form.
- The effective date of a flow-through election made during the first year of the rules (that is, before 1 April 2027) would be 1 April 2026 or a later date notified by the joint venture. Elections made on or after 1 April 2027 would take effect on the date of the agreement between the members.
- When the members of a flow-through joint venture jointly make, or are expected to jointly make, supplies over the $60,000 GST registration threshold within a 12-month period in the course or furtherance of a joint taxable activity the members carry on, the members would all be required to register for GST.

- When a joint venture elects flow-through treatment, goods and services acquired by the joint venture before the effective date of the election and subsequently used by a member of the joint venture for making taxable supplies would be treated for the purposes of the adjustment rules as if the member had acquired their share of the goods and services.
- A taxable supply of an interest in "joint venture property" to a new or existing member of a flow-through joint venture would be zero-rated if the recipient is a registered person and intends to use the interest to make taxable supplies.

Transitional rules

A transitional provision would validate tax positions taken by a joint venture member for taxable periods starting before 1 April 2026, provided that:

- those tax positions were taken consistently with the amendments in the Bill providing for flow-through treatment, and
- the joint venture (if not an output-sharing joint venture) elects to be a flow-through joint venture before 1 April 2027.

Another transitional provision would allow a joint venture that was registered for GST before 1 April 2026 to apply to cancel its registration and elect for flow-through treatment. This "transitional deregistration rule" would be available for the period of 12 months beginning on 1 April 2026.

Other technical amendments

Other proposed changes to the GST rules relating to unincorporated bodies include:

- When any unincorporated body deregisters, it would be treated as making a taxable supply at market value to its members of any assets of its taxable activity that it has retained, immediately before the cancellation of its registration.
- The above deemed supply on deregistration would be zero-rated if the recipient of the supply is a registered person and intends to use the goods and services for making taxable supplies.
- The tripartite test of association would be limited so that it does not interact with the association test for a joint venture and a member of the joint venture. Instead, a new association test would apply when two members of a joint venture transact with one another in their capacity as members of the joint venture (regardless of whether the joint venture is a flow-through joint venture or a joint venture that is an unincorporated body).

Detailed analysis

Proposed changes to definitions

To give effect to the proposed changes, the Bill proposes to insert new definitions of "flow-through joint venture", "output-sharing joint venture", "elective flow-through joint venture" and "ordinary joint venture" in section 2(1). The Bill also proposes amendments to the existing definitions of "person" and "unincorporated body".

Definition of "flow-through joint venture"

A "flow-through joint venture" would be defined as:

- an output-sharing joint venture or an elective flow-through joint venture
- not a partnership or an ordinary joint venture.

It is proposed that an "output-sharing joint venture" would be defined as a joint venture:

- that is entered into to obtain discrete benefits for each party in the form of a share of the output of the arrangement, and
- in which there is no general purpose or intention by the members to make:
    - joint or collective supplies (for example, by collectively selling their shares of the output of the arrangement)
    - supplies that are made by an agent, or by one of the members, on behalf of other members.

The proposed definition of "output-sharing joint venture" would not require that the members of the joint venture never make joint or collective supplies, but rather that, based on the contractual terms of the arrangement, there is no general intention or purpose of making such supplies. On occasion, the members might collectively sell something (whether that is an output from the venture, or an asset that they own jointly for the purpose of the venture). However, in the ordinary course of events, the members of an output-sharing joint venture intend to each take their share of output from the venture (being a physical output) to either hold or sell as part of their own separate business or activity, as opposed to engaging in a joint activity of supplying the output from the venture (whether by sale, or by lease or hire) with the other members.

Examples 24, 25 and 26 illustrate the distinction between an output-sharing joint venture and a joint venture that does not meet this proposed definition.

Example 24: Petroleum joint venture is an output-sharing joint venture

Smitty Ltd, Wedmonds Co and Sherriff Petroleum are members of a joint venture that has commenced exploring for petroleum at a new site in Taranaki.

Under the joint venture agreement, when the extraction activity commences, each party is entitled to a share of the extracted petroleum. The intention at the outset is that each party will individually market and sell their share of the petroleum. Therefore, the joint venture is an output-sharing joint venture.

The conclusion that the joint venture is an output-sharing joint venture does not change if the parties on occasion end up making a joint supply, such as when they collectively sell a joint asset. This is because there is no general intention or purpose of making collective or joint supplies. Any joint supplies tend to be occasional or one-off in nature or merely incidental and are not the purpose or aim of the venture.

Example 25: Construction joint venture is an output-sharing joint venture

Gordon and Kaitlyn both want to build apartments – Gordon, to sell his units at a profit, and Kaitlyn, to sell at least some of her units at a profit and rent out any remaining units to residential tenants. Both are interested in the same piece of bare land. They decide to buy the land together (half share each) and to build a six-storey block with 20 apartments in total on that land. Gordon and Kaitlyn each want a separate share of the output of the project and agree which units are for Gordon and which ones are for Kaitlyn.

Gordon and Kaitlyn's intention at the outset is that they will each separately market and sell their apartments (by separately contracting with real estate agents to market and sell their own share), rather than marketing and selling all the apartments together and dividing the profits between the two of them. Therefore, Gordon and Kaitlyn have entered into an output-sharing joint venture.

Example 26: Broodmare joint venture is not an output-sharing joint venture

Geoff, Paul and Svenja are members of a bloodstock joint venture for a broodmare that they co-own together. When the mare gives birth to a foal, each member takes a share of the foal in proportion to their interest in the mare. This means that when foals are sold, each member is entitled to receive a share of the gross proceeds from the sale in proportion to their share of the foal.

The purpose of the joint venture is to produce and sell entire foals at a profit to buyers. This means that the members generally intend to make supplies collectively or jointly, because to sell an entire foal, the members must be selling their respective interests in the foal to the buyer together as a group. Therefore, the joint venture is not an output-sharing joint venture.

The proposed flow-through joint venture definition also refers to an "elective flow-through joint venture", which is proposed to be defined as a joint venture for which an election for flow-through treatment has been made under section 57B(1). This is a joint venture that does not meet the definition of "output-sharing joint venture" and must elect for flow-through treatment if the members wish to apply it (in the absence of such an election, the joint venture would be an unincorporated body that itself may be required to register for GST).

The proposed flow-through joint venture definition expressly excludes a partnership. This is to clarify, for the avoidance of any doubt, that the changes proposed in the Bill to allow flow-through treatment for joint ventures would not apply to partnerships (which would remain as unincorporated bodies under the GST Act in all cases).

Definition of "ordinary joint venture"

An "ordinary joint venture" would be defined as a joint venture that is not a partnership or a flow-through joint venture. Therefore, a joint venture that is not an output-sharing joint venture and does not elect to be a flow-through joint venture under proposed section 57B(1) would be an ordinary joint venture.

Meaning of "joint venture" in proposed definitions

In the proposed definitions of "flow-through joint venture", "output-sharing joint venture", "elective flow-through joint venture" and "ordinary joint venture", "joint venture" would have its common law meaning, which is a contractual association under which parties come together for a particular common commercial goal. According to case law, an essential feature of a joint venture is that there must be a joint undertaking, where plans are worked through for the benefit of and with

input from each party.[15] A contract between the parties does not need to be in writing for a joint venture to exist.

Joint ventures are usually distinguishable from partnerships in that they tend to have a finite and confined purpose, such as a particular project or development. The parties involved often carry on a business of their own separately from the other participants, in some cases as competitors. In contrast, partnerships are usually formed to conduct a general and ongoing business. In addition, partnerships must be carried on "in common", which requires that the parties are acting jointly, rather than independently, and that each person's actions bind the others.

While co-ownership is a common feature of a joint venture, simply co-owning property while undertaking individual ventures, or passive co-ownership of assets as an investment (for example, a passive investment in a syndicate), will not give rise to a joint venture. These scenarios lack the necessary joint undertaking and active decision-making features of a joint venture.

The examples included in this Commentary are merely illustrative of the proposed changes to the law and should not be taken as indicative of whether a particular arrangement would factually be a joint venture.

Changes to other definitions

To align existing definitions in the GST Act with the proposed changes, the following changes to existing definitions are also proposed:

- "Person" would be defined as including a company, an unincorporated body, a public authority, and a local authority; but not including a flow-through joint venture.
- "Unincorporated body" would be defined as an unincorporated body of persons, including a partnership, the trustees of a trust, and an ordinary joint venture; but not including a flow-through joint venture.

Output-sharing joint ventures

It is proposed that an output-sharing joint venture would automatically be a flow-through joint venture. This means that members of output-sharing joint ventures would be required to individually claim their share of input tax deductions on supplies of goods and services acquired as inputs for the joint venture in their own GST returns (in addition to accounting for output tax on taxable supplies they make), to the extent that those inputs are used by the members to make taxable supplies.

[15] *Commerce Commission v Fletcher Challenge Ltd* [1989] 2 NZLR 554 (HC).

Example 27: Flow-through treatment – output-sharing joint venture

Gordon and Kaitlyn from Example 25 agree to share any costs from the construction of the apartments (including from the initial preparatory stages of the project) on a 50:50 basis.

Under flow-through treatment, Gordon and Kaitlyn receive supplies of goods and services that they acquire as inputs for the project in proportion to their agreed cost sharing ratio (in this case, 50% each). This means that when invoices are issued to Gordon and Kaitlyn (or they make payment) for such supplies, Gordon and Kaitlyn will each claim an input tax deduction calculated on 50% of the consideration for the supply.

When Gordon sells one of his apartments, he accounts for output tax on the entire amount of consideration for the supply. Likewise, when Kaitlyn sells one of her apartments, she does the same.

Default rules for non-output-sharing joint ventures

As noted above, joint ventures that do not meet the definition of "output-sharing joint venture" would remain unincorporated bodies under the GST Act by default and would continue to apply the current unincorporated body rules.

If such a joint venture actively chooses unincorporated body treatment by applying for GST registration as an ordinary joint venture (instead of electing for flow-through treatment), or the Commissioner chooses this by forcing the joint venture's registration, this choice would not be able to be subsequently cancelled or revoked. The sole exception to this would be if the transitional deregistration rule in proposed new section 92, discussed at "Deregistration rule for joint ventures registered before 1 April 2026", applies.

Example 28: Treatment of ordinary joint venture

Two GST-registered companies, Works Co and Roading Co, are in a joint venture for an infrastructure project, Infrastructure JV. Infrastructure JV is not an output-sharing joint venture. Therefore, by default, Infrastructure JV is an ordinary joint venture under the GST Act, meaning that it is an unincorporated body (and therefore a person) for GST purposes.

Because Infrastructure JV is carrying on a taxable activity and making supplies in New Zealand in the course or furtherance of that taxable activity above the threshold for registration, Infrastructure JV is by default liable to register for GST. Infrastructure JV registers for GST with an effective date for its registration of 1 July 2026.

Infrastructure JV will account for all taxable supplies and purchases made on or after 1 July 2026 in its GST returns. Works Co and Roading Co should not account for these supplies and purchases in their own GST returns, because those supplies are treated as being made and received by Infrastructure JV.

Elective flow-through joint ventures

If the members of a joint venture that is not an output-sharing joint venture wish to individually account for supplies made or received in the course of the venture in their own GST returns, the joint venture must elect to be an "elective flow-through joint venture" under proposed new section 57B(1).

To make the election under proposed new section 57B(1), the members would need to unanimously agree in writing that they are electing flow-through treatment and notify Inland Revenue in the prescribed form. The members would be jointly and severally liable for making this notification under existing section 57(5). Under that provision, any one of the members could satisfy the requirement to notify the Commissioner on behalf of all the members.

Under a proposed transitional provision (new section 94), an election made before 1 April 2027 would be backdated to 1 April 2026, or a later date notified by the joint venture. Starting on 1 April 2027, elections for flow-through treatment would need to be notified within 21 days of the date of the written agreement between the members, with the election taking effect on the date of the agreement.

Once a joint venture becomes an elective flow-through joint venture under proposed new section 57B(1), the election for flow-through treatment would not be able to be cancelled or revoked.

If a valid election under proposed section 57B(1) is made, the members of the joint venture that are registered persons would separately:

- account for output tax on taxable supplies made, and
- claim input tax deductions for supplies received, if the relevant goods and services are used for, or intended for use in, making taxable supplies.

Under this approach, the members would generally make supplies according to the proportions the members have agreed to for sharing the gross proceeds or consideration received for supplies they make together, and receive supplies according to the proportions they have agreed for sharing costs.

Example 29: Treatment of elective flow-through joint venture

Consider Works Co and Roading Co from Example 28. Assume this time that, instead of registering the joint venture for GST as an ordinary joint venture, Works Co and Roading Co agree in writing that they will elect the joint venture as a flow-through joint venture. They notify this election to Inland Revenue in the prescribed form before 1 April 2027 and request that the election take effect on 1 July 2026 (being the date the joint venture commenced).

Works Co and Roading Co co-own some of the assets used for the joint venture on a 50:50 basis as tenants in common. They also agree that they will each contribute 50% to the costs of the project and are each entitled to 50% of the gross proceeds.

Under flow-through treatment, Works Co and Roading Co are treated as making and receiving supplies in proportion to their interests in the joint venture property (in this case, 50% each), being the proportions in which they have agreed to share both gross proceeds and costs.

Therefore, when invoices are issued to the relevant government agency for each stage of the project, Works Co and Roading Co (as the vendors of the infrastructure under development) will each account for 50% of the output tax on the supplies of infrastructure in their own GST returns. In compliance with the taxable supply information requirements, Works Co and Roading Co issue shared invoices as members of a supplier group to the government agency (because it is more convenient for them than issuing separate invoices).

Works Co and Roading Co will also each separately claim input tax deductions on 50% of the goods and services they jointly acquire for the purposes of the project.

Total supplies rule

Under proposed new section 51(5C), when the members of an elective flow-through joint venture are jointly carrying on a taxable activity, and make supplies in New Zealand in the course or furtherance of that taxable activity that exceed the threshold for registration under section 51(1), all the members would be required to be registered for GST in respect of the joint taxable activity. This means that any members that are not already registered for GST would be required to register.

The rule would apply:

- at the end of any month where the members' supplies made in New Zealand in that month and the 11 months immediately preceding, in the course or furtherance of the members' joint taxable activity, exceed $60,000, or

- at the commencement of any month where there are reasonable grounds for believing that such supplies that will be made in that month and the 11 months immediately after will exceed $60,000.

The reference to the members "jointly carrying on a taxable activity" is intended to mean that the joint venture activity is of a continuous or regular nature and is intended to involve the making of joint or collective supplies (not being exempt supplies) by the members for consideration. In other words, if the joint venture had not elected to be a flow-through joint venture, it would be a "person" (being an ordinary joint venture) that is carrying on a taxable activity.

Example 30: Application of total supplies rule

Bertha and Bevin have entered into a joint venture (not a partnership) to build a boat. Bertha and Bevin have agreed to share revenue and costs from the venture on a 60:40 basis. Neither Bertha nor Bevin are GST registered or are carrying on any other taxable activity.

As of 1 April 2026, Bertha and Bevin expect to complete the construction of the boat and sell it for more than $60,000 within the next 12 months (meaning that the joint venture's total supplies in the coming 12 months will likely exceed $60,000). Rather than register the joint venture for GST, Bertha and Bevin agree in writing that they will elect the joint venture as a flow-through joint venture. They notify this election to Inland Revenue in the prescribed form before 1 April 2027. The election takes effect on 1 April 2026.

Even though on an individual basis, neither Bertha nor Bevin's supplies in the 12 months starting 1 April 2026 are likely to exceed the $60,000 registration threshold, because the supplies made by the joint venture itself are above the registration threshold, the "total supplies" rule in section 51(5C) applies to require both Bertha and Bevin to register when they elect flow-through treatment.

Outcome under flow-through treatment when joint venture below registration threshold

Example 31 below illustrates how the proposed flow-through treatment could apply in circumstances when proposed section 51(5C) would not apply to an elective flow-through joint venture, specifically because the joint venture activity (despite being a taxable activity) is below the threshold for individual registration under section 51(5C).

Example 31: Flow-through joint venture below registration threshold

John, a standardbred trainer and breeder, is in an elective flow-through joint venture with three racing enthusiasts, Jerry, Grace and Helen, for a standardbred mare they are using for breeding after being retired from racing.

John is registered for GST in respect of his breeding and training activities, and Jerry is a GST-registered accountant. Grace and Helen are not registered for GST and do not carry on any taxable activity outside their participation in the joint venture.

John, Jerry, Grace and Helen have agreed to share gross revenue and costs related to the mare in proportion to their respective ownership interests in the mare. John has a one-third interest, while Jerry and Grace respectively have a one-quarter interest, with Helen holding the remaining one-sixth interest.

During February 2027, a yearling that was birthed by the mare is sold to a buyer for $25,000 plus GST, if any. In relation to the sale, John accounts for output tax of $1,250 in his GST return for the taxable period that includes the month of February 2027 ($25,000 ÷ 3 × 15% = $1,250).

Because the members are jointly carrying on a taxable activity of breeding and selling foals, under flow-through treatment, each member is treated as carrying on part of this joint taxable activity, even if outside the joint venture they have no other taxable activity. This means that for each member, their participation in the joint venture is a taxable activity (or, in John's case, part of a larger taxable activity related to bloodstock).

Because Jerry is already registered for GST in relation to his accountancy business that he carries on as a sole trader, he must account for output tax on his share of the joint venture supplies as well as on his supplies of accountancy services. Therefore, when the foal is sold in February 2027, Jerry accounts for output tax of $937.50 in his GST return for the relevant taxable period ($25,000 ÷ 4 × 15% = $937.50).

Grace and Helen are both relieved from having to register and account for GST in relation to the mare, because they are each below the $60,000 registration threshold. Section 51(5C) does not apply to require them to register because the total joint venture supplies the members make as a group are less than $60,000 annually.

When joint venture activity not standalone taxable activity

The election for flow-through treatment could be made regardless of whether the joint venture is carrying on a taxable activity, provided that at least one of the members can individually register for their "part" of the joint venture activity.

In most cases, a member of a joint venture would not be able to register for their part of the joint venture activity if the joint venture activity on its own is not a taxable activity. The exception to this would be if the activity is an integral part of a wider taxable activity that the member carries on separately, and flow-through treatment is elected under section 57B(1). When this applies, the member should account for GST on their share of joint venture supplies made in their own GST returns (because this would be treated as a taxable supply the member makes). Input tax on the member's share of goods and services acquired would only be deductible if there is a nexus between the expenditure and a taxable supply the member makes, as per ordinary GST principles.

Example 32 illustrates how the proposals would apply to a joint venture that is merely carrying on a hobby (instead of a taxable activity), in the specific situation where flow-through treatment is elected due to the activity being an integral part of a taxable activity carried on by one of the members.

Example 32: Joint venture carrying on a hobby

Catherine is a GST-registered bloodstock breeder. She forms a joint venture with two racing enthusiasts she knows, Martin and Ben, to acquire and race a promising colt that Catherine has seen at the Karaka yearling sales. Martin is not registered for GST, but Ben is registered for GST in relation to a dentistry practice he owns.

Catherine, Martin and Ben agree to share in the gross revenue earned by the colt and in the gross expenditure on the colt in proportion to their respective interests in the colt.

Catherine's intention in relation to the colt is to use it for breeding once its racing career is over. However, deciding when the colt will retire from racing, and if and when it will commence breeding, is subject to the agreement of all three parties to the venture.

Assuming the joint venture is only carrying on a hobby, the joint venture cannot be registered for GST. However, Catherine, Martin and Ben can each assess whether their part ownership of the colt is part of a taxable activity they are carrying on separately.

Since Catherine is separately carrying on a taxable activity of breeding and intends to use the colt for breeding purposes (meaning she intends to use the colt to make her separate taxable supplies), if flow-through treatment is elected under section 57B, Catherine should account for output tax on her share of any prize money received, as well as her share of any gross revenue from stud fees when the breeding phase commences. Catherine is also entitled to claim input tax deductions for her share of expenditure on the colt in her own GST returns.

Martin and Ben cannot claim input tax deductions for their share of expenditure on the colt. This is because, for both Martin and Ben, their participation in the joint venture is a hobby. In Ben's case, although he is registered for GST, there is no nexus between Ben's share of the expenditure on the colt and a taxable supply he will make (since his separate taxable activity has nothing to do with horse racing).

Change of use adjustment when taxable use of joint venture property changes

Proposed new section 57B(3) would provide that if an unregistered joint venture elects to be a flow-through joint venture, any goods and services acquired by the joint venture and subsequently used by a member for making taxable supplies are treated as if the member acquired the goods and services for the purposes of the adjustment provisions (sections 21 to 21H).

Notably, the proposed amendment would allow a previously unregistered member of an elective flow-through joint venture to claim an input tax deduction under section 21B for the goods and services comprising their interest in the "joint venture property" (being any property co-owned by

the members for the purpose of the joint venture) when the member becomes a registered person. This would ensure that a member of the joint venture can still make an input tax adjustment for those goods and services, even if the joint venture was the "person" who originally acquired the goods and services, rather than the member individually.

If there is a subsequent change of use of the goods and services after making the initial adjustment under section 21B, the other adjustment rules would also apply.

Example 33: Change in use adjustment for previously unregistered member

Kelvin and Graeme are in a joint venture (not a partnership) for a commercial building in Waimate (purchased in March 2018) that they co-own on a 50:50 basis. The joint venture is not registered for GST.

The building (which is currently tenanted) includes a retail shop on the ground level and storage space upstairs. The annual rental income from the building is $58,000 including GST (if any).

Shortly after the new rules come in, Kelvin and Graeme agree with the tenant that there will be an increase in the annual rental to $65,000 plus GST (if any). This means that the joint venture is liable to register as an unincorporated body, unless it is elected as a flow-through joint venture. Kelvin and Graeme agree in writing that they will elect for flow-through treatment and notify Inland Revenue of their election in the prescribed form. Because their combined supplies in the course of the joint venture exceed the $60,000 registration threshold, Kelvin and Graeme each register and account for GST on their share of the supplies made and received.

Upon registering, Kelvin and Graeme are each entitled to an input tax deduction for their interest in the commercial building under the change of use rule in section 21B. Kelvin and Graeme are each treated as having acquired their respective interests in the commercial building in March 2018 for the purposes of section 21B and the other adjustment provisions (instead of the joint venture having acquired the commercial building as a separate person).

Notification requirement when membership changes

When there is a change in the membership of an elective flow-through joint venture, proposed new section 57B(4) would require the members of the joint venture to notify the Commissioner of any member that is no longer a member of the joint venture and the date they ceased to be a member, as well as the name and IRD number of any new member and the date they joined the

venture. This notification must be made within 21 days of the member leaving or joining. Any one of the members would be able to make this notification on behalf of all the members.

Split supplies rule for flow-through joint ventures (both output-sharing and elective)

When the members of a flow-through joint venture make a single supply of goods and services together as a group, proposed new section 5(30) would split the supply into multiple separate supplies, being one supply by each member. In the absence of this proposed rule, when the members of a flow-through joint venture make a single supply of goods and services together, section 8(1) might not always clearly allow a registered member, making their part of the supply in the course or furtherance of a taxable activity that they carry on, to separately account for GST on their share or part of the supply. The purpose of the "split supply rule" in proposed section 5(30) is therefore to enable the provisions of the GST Act, including section 8(1), to appropriately determine the GST treatment of each member's supply.

Supplies of interests in property of flow-through joint venture

The proposal to allow flow-through treatment for joint ventures means flow-through joint ventures would no longer be treated as a separate "person" for GST purposes. Therefore, the rules would reflect the legal reality that any property used for the purpose of the joint venture is owned individually by one of the members, or co-owned by the members, either directly or indirectly through a nominee company.

Consistent with this, the Bill proposes to amend the definition of "participatory security" in section 3(2) to exclude an interest in a flow-through joint venture. The current rules treat some interests in unincorporated bodies as an exempt security, similar to a share, because the members are effectively treated as having an interest in a separate entity, in the same way that a shareholder has an interest in a company. However, that treatment is inappropriate for a flow-through joint venture where no separate entity is deemed to exist.

The proposed amendment to the definition of "participatory security" is not intended to be read as suggesting that an interest in a joint venture would otherwise always be a participatory security. Given the definitions of "participatory security" and "contributory scheme" in section 3(2), an interest in a joint venture may not be a participatory security.

When a registered person, being a member of a flow-through joint venture, supplies their interest in any "joint venture property" as a taxable supply to a new or existing member of the joint venture, proposed new section 11(1)(md) may apply to zero-rate the supply. New section 11(1)(md) would apply if:

- the joint venture property does not include land, and

- the recipient of the supply is also a registered person and intends to use the interest to make taxable supplies.

For the purposes of section 11(1)(md), "joint venture property" would be defined as assets jointly owned and rights jointly held by the members of a joint venture for the purposes of the venture. This is intended to capture all property that is co-owned by the members for the purposes of the joint venture, as well as any rights the members have under the joint venture contracts. For example, this would not include a mining license that is held by only one of the members but is used for the joint venture, or any other asset contributed to the joint venture by one of the members if that member retains full ownership of the asset.

If the joint venture property includes land, the supply would be zero-rated under the existing compulsory zero-rating rule for business-to-business supplies of land in section 11(1)(mb), provided the recipient of the supply is a registered person and intends to use the interest in the property to make taxable supplies.[16]

To be a zero-rated supply under proposed section 11(1)(md), the conditions for zero-rating must be satisfied at the time of supply.

Provided the conditions of section 11(1)(md) are met, a supply of an interest in joint venture property would be zero-rated in its entirety even if the recipient intends to use the goods and services partly for non-taxable use. In these circumstances, the purchaser would be liable to account for output tax on the non-taxable use of the goods and services under section 20(3J).

Disclosure requirements

Similar disclosure requirements to those currently applying to supplies wholly or partly consisting of land would apply to a supply of an interest in joint venture property by a member of a flow-through joint venture to another member. Proposed new section 78FB would require the recipient to notify the supplier whether, at the time of supply:

- they are, or expect to be, a registered person, and
- they are acquiring the interest in the joint venture property with the intention of using it for making taxable supplies.

[16] For the purposes of the compulsory land zero-rating rules, "land" is defined in section 2(1) to include an estate or interest in land; a right that gives rise to an interest in land; an option to acquire land or an estate or interest in land; and a share in the share capital of a flat or office owning company to which Part 3, subpart 6 of the Land Transfer Act 2017 applies. A mortgage and a lease of a dwelling are both specifically excluded from the definition.

A recipient who is a registered person would be required to provide their registration number to the supplier at or before the time of supply. The supplier would be entitled to rely on the information provided by the recipient in determining the GST treatment of the supply.

Example 34: Business-to-business supply of joint venture property of flow-through joint venture

Explore Co, Pipeline Co and Gas Co are members of a joint venture that has commenced exploring for natural gas and condensate that was recently discovered. The members are all individually registered for GST. The joint venture is a flow-through joint venture, meaning the members individually account for supplies and purchases in their own GST returns.

Several of the assets used for the joint venture are co-owned by the members as tenants in common. None of the co-owned assets meet the definition of "land" that applies for the purpose of the compulsory land zero-rating rules.

Explore Co owns a one-third interest in the joint venture property. After two years, Explore Co decides to exit the venture and divest its interest in the joint venture property. It sells its interest to a new member, Energy Co, who is also a registered person. Energy Co advises Explore Co in writing that Energy Co is a registered person and is acquiring the interest in the joint venture property with the intention of using it to make taxable supplies.

The supply of Explore Co's interest in the joint venture property to Energy Co meets the requirements for zero-rating in section 11(1)(md). Accordingly, it is treated as a zero-rated supply.

Record-keeping requirements

If a supply is zero-rated under section 11(1)(md), proposed new section 75(3BB) would require the supplier to maintain sufficient records to enable the following particulars in relation to the supply to be ascertained:

- the name and contact details of the recipient
- the registration number of the recipient
- a description of the goods and services, and
- the consideration for the supply.

Reverse charge when supply incorrectly treated as zero-rated

When it is subsequently discovered that a supply of an interest in the property of a flow-through joint venture should have been treated as standard rated rather than zero-rated under section 11(1)(md), proposed new section 5(23F) would apply to treat the recipient as making a standard-rated supply of the goods and services in question on the date the error is found. Section 5(23F) would apply in this situation if the recipient did not provide the supplier with correct or sufficient information under proposed new section 78FB to enable the supplier to determine whether the supply should be zero-rated.

This means the recipient would only be required to account for output tax under proposed new section 5(23F) if the incorrect treatment of the supply arose from the recipient providing incorrect or incomplete information to the supplier. If the error instead arose due to the actions of the supplier (for instance, the supplier ignored the information provided by the recipient and unilaterally treated the supply as zero-rated), the supplier would be required to correct their treatment of the supply and account for and pay the output tax on the supply to Inland Revenue.

If proposed new section 5(23F) applies and the recipient is not registered for GST, the recipient would be treated as registered on the date of the supply under section 5(23F) and be required to apply for registration (see the proposed amendment to section 51B(4)). If they fail to apply to register, the Commissioner would be able to force their registration. Registration of the recipient would generally only be a temporary measure, assuming the person is not carrying on a taxable activity or is only carrying on a taxable activity below the registration threshold and proposed section 51(5C) would not apply to require them to be registered.

Transitional rules

Pre-1 April 2026 tax positions taken consistently with flow-through treatment

Proposed new section 93 would validate a tax position taken by a member of a joint venture for a taxable period starting before 1 April 2026, provided certain requirements are met.

Proposed new section 93 would apply when, before 1 April 2026:

- the members of a joint venture consistently adopted a tax position treating the supply and acquisition of goods and services by the joint venture as separate supplies and acquisitions made by the members
- the joint venture was not registered for GST, and

- if the total value of supplies made in New Zealand by the joint venture in the course or furtherance of all taxable activities it was carrying on exceeded the $60,000 registration threshold, each member of the joint venture was registered for GST.

If the joint venture does not meet the definition of "output-sharing joint venture" proposed in the Bill, section 93 would only apply if the joint venture elects before 1 April 2027 to become an elective flow-through joint venture under section 57B(1).

Under proposed new section 93(3), the joint venture would be treated as not being a person under section 2(1), and section 57 would not apply to the joint venture. This would have the effect of validating past tax positions taken by a member of the joint venture that were consistent with the proposed flow-through treatment under the new rules.

Deregistration rule for joint ventures registered before 1 April 2026

Some GST-registered joint ventures already existing before 1 April 2026 might prefer to have flow-through treatment for GST purposes (rather than retain the joint venture's pre-existing registration and status as an unincorporated body) once the proposed changes come into effect.

Proposed new section 92 would allow a joint venture that was registered before 1 April 2026 to apply for its registration to be cancelled and elect to become an elective flow-through joint venture under section 57B(1). This "transitional deregistration rule" would be available for the period of 12 months beginning on 1 April 2026 and would override the usual requirements for deregistration in section 52(1). This means the joint venture would have until 1 April 2027 to apply to have its registration cancelled and make the election.

If the Commissioner cancels the joint venture's registration under proposed new section 92, each member would be liable to be individually registered (in accordance with proposed new section 51(5C)) with effect on the date that cancellation takes effect.

Example 35: Joint venture deregisters under transitional rule

Explore Co, Energy Co, Pipeline Co and Petroleum Co are the members of a joint venture, Petroleum JV, that has been in operation for several decades and is separately registered for GST.

Following the enactment of the new rules, the members agree they will seek to cancel Petroleum JV's registration and elect to be a flow-through joint venture, so that they can individually account for GST on any supplies made or received in their own GST returns.

Petroleum JV applies under section 92 to Inland Revenue to cancel its registration, and elects for flow-through treatment under section 57B, in April 2026. The cancellation of Petroleum JV's registration takes effect on 1 May 2026.

As of 1 May 2026, the members are treated as individually carrying on the joint venture activity on a prospective basis, and as individually making and receiving any supplies made or received on or after 1 May 2026.

The members also remain jointly and severally liable for any outstanding tax payable by Petroleum JV for taxable periods ending before the date of deregistration.

Other technical amendments

Deemed supply on deregistration of unincorporated body

Under the current law, when a registered person (including an unincorporated body) applies to cancel its registration, sections 5(3) and 10(7A) treat the person as making a taxable supply of any goods and services that form the assets of its taxable activity at market value immediately before the cancellation of its registration. In the context of an unincorporated body, this means the body will be liable for output tax on the market value of the assets that formed part of its taxable activity when its registration is cancelled, even though those assets are retained by the members (assuming those assets were not sold to the members before deregistration). However, because the supply on deregistration is not treated as being made to the members of the body, the members would not be entitled to a corresponding input tax deduction if they continued to use those assets in their separate taxable activities.

To prevent this outcome, the Bill proposes an amendment to the unincorporated body rules to ensure there is a deemed supply of the assets from the unincorporated body to its members in this scenario.

Proposed new section 57(2)(dd) would provide that any goods or services forming part of the assets of a taxable activity carried on by the body are treated as being supplied by the body, in the course of that taxable activity, to its members immediately before it ceases to be registered. An amendment to existing section 10(7A) (inserting a cross-reference to proposed new section 57(2)(dd)) would ensure that this supply is treated as being made for market value, consistent with the existing rule in section 5(3) (which proposed new section 57(2)(dd) would override).

Proposed new section 11(1)(mc) would apply to zero-rate the supply if the recipient of the deemed supply of the unincorporated body's assets is a registered person who is acquiring the assets with the intention of using them for making taxable supplies.

If section 11(1)(mc) is incorrectly applied to treat a standard-rated supply as zero-rated, proposed new section 5(23D) would require the recipient of the supply to account for and pay output tax on the supply to Inland Revenue, similar to the existing reverse charge in section 5(23B) in the land zero-rating rules. However, unlike existing section 5(23B), proposed new section 5(23D) would apply whenever a standard rated supply under section 57(2)(dd) is incorrectly treated as zero-rated, regardless of the reason why the supply was incorrectly treated as zero-rated.

A proposed amendment to section 20(3J) would require a member of an unincorporated body that is a registered person and acquired goods or services that were (correctly) zero-rated under proposed new section 11(1)(mc) to account for output tax on non-taxable use of the goods or services.

Example 36: Deemed supply on deregistration of joint venture

Consider the facts outlined in Example 35.

Immediately before Petroleum JV's registration is cancelled, Petroleum JV is treated as making a supply of the goods and services forming part of the assets of its taxable activity to the members in the course or furtherance of its taxable activity. The members are therefore treated for GST purposes as each acquiring an interest in the assets, in proportion to their existing ownership interest in the assets.

The value of the supply is deemed to be the market value of the assets (currently $1.5 billion). However, since all the members are registered persons and intend to use their respective shares of the joint venture assets to make taxable supplies, the supply is zero-rated under section 11(1)(mc). This means Petroleum JV will not account for output tax on the supply (and the members will not claim input tax deductions).

Definition of "associated persons"

Existing section 2A(1)(db) associates a joint venture with a member of that joint venture for GST purposes. Currently, this association test is expanded by the application of the tripartite test of association in section 2A(1)(i), meaning that the members of a joint venture are all associated with each other for GST purposes. In some situations, this may result in an overreach.

As a consequential amendment, the Bill proposes to amend the definition of "associated persons" in section 2A so that, as of 1 April 2026:

- section 2A(1)(db) would only apply to an ordinary joint venture, to associate the joint venture with its members
- section 2A(8) would provide that the tripartite test does not apply if persons A and B are both associated with an ordinary joint venture (person C) under section 2A(1)(db), so that the members of the ordinary joint venture would not generally be associated with each other.

However, when members of a joint venture transact with one another specifically in their capacity as members of the joint venture, it is considered more appropriate from a policy perspective to treat them as associates, given their aligned economic interests in relation to the joint venture. Therefore, the Bill also proposes a new association test that would provide this outcome.

Proposed new section 2A(1)(dc) would apply when two members of a joint venture transact with each other in their capacity as members of the joint venture, to ensure they are associated persons for those specific transactions. This new association test would apply to both flow-through joint ventures and ordinary joint ventures.

Example 37: Application of "associated persons" definition – flow-through joint venture

Land Co and Construction Co are members of a joint venture for a property development project, Development A. The joint venture is a flow-through joint venture.

Land Co is undertaking another property development, Development B, as part of its separate business, and engages Construction Co as a general contractor for Development B. Land Co and Construction Co are not in a joint venture for Development B.

In its capacity as a member of the joint venture, Construction Co acquires goods and services that will be used as inputs for Development A. Under flow-through treatment, Construction Co acquires 50% of those inputs as a principal and the remaining 50% as an agent on behalf of Land Co (meaning that Land Co instead of Construction Co is treated as acquiring 50% of those inputs under the agency rules).

Construction Co also acquired inputs that it originally intended to use in its own separate business that it has now decided to contribute to Development A. Construction Co on-charges 50% of the cost of those inputs to Land Co, meaning that Construction Co has sold 50% of those inputs to Land Co. This means that Construction Co has made a supply to Land Co in its capacity as a member of the joint venture. Therefore, Land Co and Construction Co are associated persons for this supply.

As a contractor for Development B, Construction Co also makes supplies to Land Co in relation to Development B. These supplies are not made by Construction Co in its capacity as

a member of the joint venture. For these supplies, Land Co and Construction Co are not associated persons.

Example 38: Application of "associated persons" definition – ordinary joint venture

This example is a variation on Example 37. Instead of the joint venture being a flow-through joint venture, assume the joint venture is an ordinary joint venture and is registered for GST.

When Construction Co acquires goods and services that will be used as inputs of the joint venture in its capacity as a member of the joint venture, the joint venture (as a separate person) is treated as acquiring the goods and services instead of Construction Co. Therefore, there is no supply between Construction Co and the joint venture.

If the goods and services were instead acquired by Construction Co other than in its capacity as a member of the joint venture (such as when Construction Co contributes inputs to Development A that Construction Co originally acquired for use in its own separate business), the joint venture would not be treated as having acquired the goods and services instead of Construction Co. This means the supply from Construction Co to the joint venture is recognised as a supply for GST purposes. Since Construction Co and the joint venture are associated persons, this supply is an associated supply.

The conclusion regarding supplies by Construction Co to Land Co (in relation to Development B) is unchanged from Example 37. That is, Land Co and Construction Co are not associated persons for the supplies Construction Co makes as a contractor for Development B.

Employee share schemes

Employee share scheme tax deferral regime

Clause 10(3) and (4), 40, 95(7) and (14)

Summary of proposed amendments

The proposed changes would allow unlisted companies to elect into a regime where the tax liability for employees who receive shares or share options as part of an employee share scheme (ESS) can generally be deferred until the shares can be more easily valued and sold.

Effective date

The proposed amendments would take effect for share benefits provided from 1 April 2026.

Background

The objective of the ESS tax deferral regime is to address the valuation and liquidity issues that can arise for employees of unlisted companies who receive ESS tax benefits.

An ESS is when a company remunerates its employees with shares or share options in the company. This is common in (but by no means restricted to) the start-up sector, where cash constraints may make it difficult to offer talent competitive cash salaries. Because these shares are taxed the same way as cash remuneration, a tax liability will generally arise once employees own the shares without employment-related terms or conditions (or exercise the option if it is an option scheme). The amount of income is the value of the shares at that time.

However, the shares may be difficult to value if they are unlisted. This makes it difficult to calculate the tax liability on the shares. The employee may also have difficulty funding the tax liability because they may be unable to sell any of their shares.

The proposed amendment addresses the issue of valuation and liquidity by deferring the share scheme taxing date for the shares, and therefore deferring the date on which the value of the benefit must be calculated and the tax liability arises. The share scheme taxing date will arise at the time of a "liquidity event". At the point of a liquidity event, the shares will more easily be able to be valued, and the employee will generally have the ability to raise the funds to cover their tax liability.

Key features

The key features of the proposed amendment are:

- The ESS tax deferral regime would not be mandatory. It would be at the discretion of the employer to offer shares under this regime to their employees by notifying the Commissioner and the employee at the time of issuing or transferring the shares. Employees who do not want the taxing point to be deferred would need to ensure that the shares are not referred to as "employee deferred shares".
- Any unlisted company would be eligible to elect into the employee share scheme tax deferral regime for shares issued or transferred to any employee on or after 1 April 2026.
- If the employer elects to designate shares as employee deferred shares, the share scheme taxing date for those shares is deferred to the date of the earliest "liquidity event". This means the amount of the employee's benefit (usually the market value of the shares less any cost to the employee) must be calculated on the date of the liquidity event. The resulting income for the employee, and corresponding expenditure or loss for the employer, in respect of the benefit is therefore also deferred.
- The following actions will trigger a liquidity event:
    - listing of the company
    - sale or cancellation of the shares
    - payment of a dividend in respect of the shares.
- The liquidity event (and therefore the share scheme taxing date) for employee deferred shares will be earliest of the date on which the company is listed, the date on which the shares are sold or cancelled and, if a dividend is paid, the date before the ex-dividend date.
- Employers would be required to report any ESS benefit when it arises (taking into account the deferred taxing date) under the usual reporting provisions. In most cases an employer could choose whether to withhold tax. If no tax is withheld, the employee would have to pay tax through the end of the year tax return process.

Detailed analysis

Eligibility and accessing the deferral regime

Any unlisted company would be eligible to offer shares under the ESS tax deferral regime to their employees after 1 April 2026. It would do so by designating the offered shares as "employee deferred shares" at the time of issue or transfer by notifying the Commissioner and the employee. The employer should ensure that the employee understands that the shares are tax deferred shares.

Reporting

As part of reporting requirements, employers would need to identify when shares are employee deferred shares. This is because the Commissioner needs to be notified when shares are designated as "employee deferred shares", and the employee's benefit would need to be reported when it arises taking into account the deferred share scheme taxing date. It would be the unlisted company's responsibility to ensure that they are correctly designating shares as employee deferred shares and that any employment income reporting accurately reflects this.

Derived income

The ESS tax deferral regime would operate by deferring the share scheme taxing date – being the date on which the benefit from the share scheme is calculated. The benefit would be calculated when triggered by a liquidity event, and the tax liability follows. Often the resulting income will be derived by the employee on the ESS deferral date, being 20 days after the share scheme taxing date. In most cases an employer could choose whether to withhold tax, meaning the employee will not need to pay tax through the end of year return process. If no tax is withheld, the employee would have to pay tax through the end of the year tax return process.

Listing of company

The listing of the company would be a liquidity event and would trigger the share scheme taxing date and therefore calculation of the employee's benefit. The tax liability would follow, with the employee's income usually arising on the ESS deferral date 20 days later. Once the company makes an initial public offering (IPO), the complications with valuation are reduced – the value of the share is the market price. At this point, the employee would generally be able to sell at least a portion of their shares so would have the funds to cover their tax liability.

Example 39: Listing of NewTech Company as a liquidity event

Bryn holds 1,000 employee deferred shares in NewTech Company, a successful start-up that is preparing for an IPO. NewTech Company is listed on NZX on 16 July 2026. This is a liquidity event for Bryn's deferred shares. On 16 July 2026, Bryn's benefit will need to be calculated, equal to the value of 1,000 shares in NewTech Company. Bryn's employment income will arise 20 days later, on the ESS deferral date, and the tax liability will follow. Because NewTech Company is now publicly trading, Bryn will generally be able to sell some or all of her shares on the NZX to fund her upcoming tax liability.

Sale or cancellation of shares

The sale or cancellation of shares would be a liquidity event. The sales price (less cost) would be income to the employee, who would have access to the sale price to cover their tax liability.

Example 40: Sale of shares in XYZ Company as a liquidity event

On 1 April 2026, Piper starts working at unlisted start up XYZ Company. The company is fast-growing, developing new and exciting products. Until those products can be taken to market, it has restricted cash available for salaries and is unable to pay dividends. Piper receives 1,000 shares as part of her salary package to incentivise her performance. XYZ Company designates the shares as employee deferred shares, notifying the Commissioner and Piper of this at the time of transferring the shares to Piper.

XYZ Company attracts interest from ABC Co that sees value in the products it is developing. On 31 July 2031, ABC Co purchases all the shares in XYZ Company, including Piper's shares.

The share scheme taxing date arises on the earliest liquidity event, being the date Piper sells her shares under the transaction. The benefit therefore needs to be calculated on 31 July 2031. Piper's income will arise 20 days later, on the ESS deferral date.

XYZ Company would need to report Piper's benefit when it arises under the usual reporting provisions. If XYZ Company opts to withhold tax, Piper will not be required to pay tax through the end of the year tax return process. However, if XYZ Company does not withhold tax, Piper will be required to pay tax through the end of the year tax return process.

Payment of dividends

The payment of dividends would trigger a liquidity event. This would only apply if the dividend payment is made on the employee deferred shares. Payment on other shares, even in the same class, would not trigger a liquidity event. Dividends are problematic because they reduce the taxable value of the shares. In addition, this test would help to distinguish between start-up companies and more well-established companies, which are providing liquidity to their shareholders through regular dividends.

The liquidity event would be the date before the day on which the employee deferred shares, if traded, would not carry the right to receive the dividend. This means the shares would need to be valued on that date (that is, taking into account that a dividend is to be paid on the shares).

Example 41: Payment of dividends as a liquidity event

Devon holds 1,000 employee deferred shares in K&S Industries, an aviation company that has been around for 10 years and is starting to make a more reliable profit. In May 2027, the directors decide that the company can afford to pay its maiden dividend. They decide on a dividend of $2 per share fully imputed, including the employee deferred shares, with a record date of 5 June and a payment date of 10 June. This is a liquidity event for Devon's deferred shares and Devon's ESS benefit will need to be calculated, equal to the value of 1,000 shares in K&S Industries on 4 June.

Because the record date is 5 June, this value will include the value of the dividend. Devon's employment income will arise 20 days later, on the ESS deferral date, and the tax liability will follow. Like the other shareholders, Devon will be taxable on the dividend, and able to claim a credit for the imputation credit attached. Devon will be able to use the dividend payment to cover all or part of his tax liability on the employee deferred shares.

Clarify taxing date for shares when employee has unconditional right to presently receive the shares

Clause 10(1) and (2)

Summary of proposed amendment

The proposed amendment would clarify that the share scheme taxing date can arise before shares are held by or for the benefit of an employee share scheme (ESS) beneficiary.

Effective date

The proposed amendment would be effective from 1 April 2026.

Background

Currently under section CE 7B of the Income Tax Act 2007, the share scheme taxing date for benefits provided under an ESS (usually in the form of shares) is the earlier of the date when:

- the benefits are either transferred or cancelled for consideration, and
- the ESS beneficiary owns the shares in the same way as any other shareholder. This requires that shares are held by or for the benefit of the ESS beneficiary. They will not own the shares in the same way as any other shareholder if (for example) the employee is required to forfeit the shares if they choose to leave the company, or the employee is entitled to be compensated for a decline in the value of the shares.

An issue has arisen when the employee meets all the criteria to receive shares under an ESS (often referred to as the vesting date in ESS documentation), but the employer has not yet transferred the shares to the employee. This may be, for instance, because the employer needs to issue new shares, or acquire shares on market to transfer, to the employee. This can lead to arbitrary differences in taxing dates between employees, depending on how an employer chooses to fulfil its obligation to provide shares.

While no shares are held by or for the benefit of the employee on the vesting date in these circumstances, the policy intent is for the share scheme taxing date to occur when the employee is entitled to presently receive the shares provided the other legislative criteria are still met, for instance:

- there is no real risk the employee will forfeit their entitlement

- the employee is not compensated for a fall in the value of the shares, and
- there is no real risk that there will be a change in the terms of the shares affecting their value.

Key features

The proposed amendment would introduce wording to specify that, unless an employee first transfers their share scheme benefits to a non-associate or the company cancels them, the share scheme taxing date is when the shares are held by or for the benefit of an ESS beneficiary (beneficial ownership) "or the beneficiary has an unconditional right to presently receive the shares", provided the legislative criteria regarding there being no relevant conditions or protections applying under the ESS have been met.

A further proposed amendment would ensure that the requirement there is no material risk that beneficial ownership may change, or that a right or requirement in relation to the transfer or cancellation of the shares may operate, can apply appropriately in the context of the ESS beneficiary only having an unconditional right to presently receive the shares and not beneficial or legal ownership of the shares.

Example 42: Employer takes one week to issue shares

On 5 April 2026, Jackson is employed by Lumberjacks Limited. As part of his remuneration package, Jackson can participate in Lumberjacks Limited's ESS. Under the ESS, Jackson is entitled to receive shares in Lumberjacks Limited so long as he stays with the company for five years. Lumberjacks Limited can fulfil its obligation by issuing shares, purchasing shares on market, or by way of a trust established to facilitate its ESS.

On his five-year work anniversary Jackson becomes entitled to receive the shares under the ESS. Lumberjacks Limited decides to satisfy its obligations under the ESS this year by issuing shares. It takes one week for the appropriate documentation to be finalised and for the shares to be issued in Jackson's name. Once Jackson is issued the shares, he is entitled to do with them as he wishes and there are no rights or requirements set out in the ESS that would result in him having to transfer those shares.

In this situation, Jackson has an unconditional right to presently receive the shares on his five-year work anniversary. Once the shares are issued to Jackson, there is no material risk he will forfeit them under the ESS. Therefore, the share scheme taxing date for these shares

arises on Jackson's five-year work anniversary, even though Jackson does not receive the shares until one week later.

Example 43: Employee leaves employment as a good leaver

The facts are as for Example 42, except that if Jackson ceases employment before being employed for five years with Lumberjacks Limited because of death, illness, redundancy or retirement (often referred to as a "good leaver" in ESS documentation), Jackson will still be entitled to the shares in accordance with the original vesting schedule.

Jackson becomes seriously ill in the winter of 2029 and is no longer able to perform his employment duties. He leaves Lumberjacks Limited due to his illness. However, as a good leaver, Jackson is still entitled to shares under the ESS on his five-year work anniversary of 5 April 2031.

On 5 April 2031 Jackson has the unconditional right to presently receive the shares under the ESS. He does not have an unconditional right to presently receive the shares when he leaves employment due to illness in 2029, as Lumberjacks Limited does not have any obligation to transfer the shares to him until 5 April 2031.

Therefore, the share scheme taxing date for these shares arises on Jackson's five-year work anniversary, even though he ceases employment years earlier. He does not have an unconditional right to presently receive the shares until his five-year work anniversary.

Example 44: Employee has unconditional right to shares and also risk of forfeiture

On 10 April 2026, Shirley is employed by Scientists Limited. As part of her remuneration package, Shirley can participate in Scientists Limited's ESS. Under the ESS, Shirley is entitled to receive shares in Scientists Limited on her one-year anniversary of employment with Scientists Limited. However, if Shirley leaves employment before her four-year anniversary, Scientists Limited has the right to buy Shirley's shares back for nil consideration.

On her one-year work anniversary Shirley is entitled to receive the shares under the ESS. Scientists Limited takes two weeks to perform the tasks necessary to issue shares in Shirley's name. However, until Shirley's four-year anniversary there is a material risk the shares may need to be transferred should Shirley leave employment and Scientists Limited exercises its right to purchase the shares back.

In this situation, Shirley has the unconditional right to presently receive the shares on her one-year work anniversary. However, the share scheme taxing date will still not arise until Shirley's four-year work anniversary.

Clarify timing of employers' deductions

Clause 39

Summary of proposed amendment

The proposed amendment would clarify the timing of an employer's expenditure or loss under section DV 27(6) of the Income Tax Act 2007 that is equal in amount to the income derived by the employee under the employee share scheme rules.

Effective date

This amendment would be effective from 1 April 2026.

Background

Generally, employers providing employee share scheme (ESS) benefits have expenditure or loss under section DV 27(6) that matches the amount of income to employees under the employee share scheme rules. However, there is a problem with identifying the timing of this expenditure because there is no specific rule.

Key features

The proposed amendment would define when an employer's expenditure or loss under section DV 27(6) is deemed to arise. This change specifies that expenditure arises on the share scheme taxing date. This is regardless of the employee's income under the employee share scheme rules generally arising 20 days later on the ESS deferral date (see section CE 2(7) to (9)).

Income from residential supply of excess electricity

Income from residential supply of excess electricity

Clauses 19 and 95(8)

Summary of proposed amendment

The Bill proposes to introduce a tax exemption for income derived by an individual from the residential supply of excess electricity. Amounts subject to the exemption would be treated as exempt income of the individual, meaning individuals would not be subject to tax or reporting requirements on that income. However, these individuals would no longer be entitled to deductions for expenses relating to the supply of excess electricity.

Effective date

The proposed amendment would be effective for the 2026–27 and later income years.

Background

An individual can generate electricity from their residential property for their own use and sell any excess to their electricity retailer. The retailer either pays or provides a credit or discount to the individual for the electricity supplied.

Inland Revenue's technical interpretation is that, although dependent on the particular facts and legal arrangements, in many instances these amounts are likely to be assessable income under current law. Individuals will be subject to tax and reporting requirements on that income, and will be allowed deductions for expenditure incurred (for example, interest on a loan to install solar panels) and depreciation loss to the extent it relates to supplying excess electricity.

In many residential cases, high compliance costs are likely to arise from these tax obligations. In the absence of income derived from selling excess electricity, the majority of these individuals are not expected to be filing tax returns because their only other income would be salary, wages, and investment income subject to withholding tax. Due to the private limitation on deductions, individuals would also need to apportion expenditure based on how much electricity is used privately or sold to the retailer.[17]

[17] Section DA 2(2) of the ITA.

Key features

Proposed new section CW 61B of the Income Tax Act 2007 (ITA) would provide that income derived by a natural person from the supply of excess electricity generated at a dwelling is exempt income.[18] Proposed section CW 61B would apply to the gross income an individual derives from excess electricity supplied (that is, without taking into account payments for electricity supplied by the retailer).

For the purposes of proposed section CW 61B, "excess electricity" would mean electricity that is generated but not consumed at a dwelling and is supplied to an electricity retailer. Under the ITA, "dwelling" refers to a residence or an abode, including appurtenances (with certain exclusions, for example, commercial accommodation such as hotels). This means that income derived from the supply of excess electricity generated at a commercial property would not be exempt under proposed section CW 61B.

Individuals would not be subject to tax or reporting requirements on income that is exempt under proposed section CW 61B. However, due to the exempt income limitation on deductions, they would no longer be entitled to deductions for expenditure relating to the sale of excess electricity.[19]

Proposed section CW 61B may apply in cases such as where the dwelling is a rental property, is on a farm, or where it is held on a trust. This will depend on the circumstances, and the following examples set out how proposed section CW 61B may apply in these situations.

Example 45: Sale of excess electricity from rental property

Samantha is a tenant in a residential rental property with solar panels installed, which supply any excess electricity she does not consume to her electricity retailer. Samantha is the account holder, and each month she receives a bill for electricity supplied by the retailer. This is offset by a credit for any excess electricity supplied to the retailer from the solar panels on the property.

The following table sets out the electricity the solar panels generated in 2025, the amount supplied, and the income Samantha derived from the sale of excess electricity (assuming the retailer paid $0.20 per kilowatt-hour supplied):

[18] "Amount", "dwelling", and "natural person" as defined under section YA 1 and "exempt income" as defined under section BD 1(2) of the ITA.

[19] Section DA 2(3) of the ITA.

Electricity generated (kilowatt-hours)	Electricity supplied to retailer (kilowatt-hours)	Income ($)
6,000	4,000	800

The $800 derived from the sale of excess electricity would be Samantha's exempt income under proposed new section CW 61B. Although her landlord owns the solar panels, she receives the credit for excess electricity supplied against her electricity bill.

Proposed section CW 61B provides that Samantha does not need to file a tax return for, or pay income tax on, the $800 she derived from the sale of excess electricity. Samantha's landlord can continue to deduct expenses (eg, depreciation of the solar generation asset) against their rental income.

Example 46: Sale of excess electricity from a residential property held on trust

David is a beneficiary of ABC trust, which holds a residential property with solar panels installed. David lives in the property and is the account holder with the retailer supplying electricity.

The solar panels are set up to supply any excess electricity David does not consume to his electricity retailer. He receives a payment from the electricity retailer for excess electricity supplied each month. Under proposed new section CW 61B, the income he derives would be exempt from tax and reporting requirements.

However, in 2027, David is planning to move out of the property. The power account will be transferred to one of the trustees of ABC trust. Because natural persons acting in the capacity of trustee are specifically excluded from the definition of "natural person" in section YA 1, the income would no longer be exempt under proposed section CW 61B.

This means that the trustee is required to pay tax on and file a tax return for any income they derive from the sale of excess electricity. However, they are also entitled to claim deductions for expenses related to this activity.

Example 47: Sale of excess electricity from a residence on a farm

Carl lives in a residence on his farm. He has installed solar panels on the roof of his residence, the garage, the barn, and on a bank in the paddock. The solar panels supply any excess electricity to his electricity retailer, which Carl receives a credit for against his monthly electricity bill.

Carl installed 20% of his solar panels on his residence and garage, and 80% on the barn and in the paddock. The income he derives from the supply of excess electricity generated by the solar panels on his residence and garage would be exempt under proposed new section CW 61B. This is because they are installed on a dwelling as defined in the ITA (which includes appurtenances, such as Carl's garage).

However, the income Carl derives from the supply of excess electricity generated by the solar panels on the barn and in the paddock would not be exempt under proposed section CW 61B because they are part of his farm business and are not an appurtenance to his residence. Carl is required to pay tax on and file a tax return for this income (that is, 80% of his total income from the supply of excess electricity).

Information sharing by way of Ministerial agreement

Information sharing by way of Ministerial agreement

Clauses 136(2) and 143

Summary of proposed amendment

The proposed amendment would enable the Commissioner of Inland Revenue to disclose certain information to another government agency for a defined purpose pursuant to a Ministerial agreement signed by both Ministers.

Effective date

The proposed amendment would apply from 1 April 2026.

Background

Inland Revenue has broad information collection powers when the information is necessary and relevant to the collection of tax or the administration of the tax system. These powers are balanced by a strict confidentiality rule, which requires "sensitive revenue information" to be kept confidential. The disclosure of information to other agencies to enable them to undertake their functions and duties requires a legislative exception to override the confidentiality rule.

Inland Revenue has information that other agencies could use and sharing it could lead to greater administrative efficiency, especially for law enforcement. The current tax confidentiality provisions limit Inland Revenue's ability to disclose information in a timely manner when the Government considers that disclosure is within the social licence and warranted for the benefit of New Zealanders. Examples include to combat organised crime or verifying entitlement to a government subsidy. The existing disclosure methods, Approved Information Sharing Agreements (AISA) under the Privacy Act 2020 or changes to legislation, take 18 months or more to conclude and do not enable the Government to act quickly when required.

Key features

The proposal would introduce a new provision in tax legislation to allow the Commissioner of Inland Revenue to disclose information to another government agency pursuant to a Ministerial agreement to enable another agency to undertake certain functions.

Prior to concluding a Ministerial agreement, Ministers would be required to consult with the Office of the Privacy Commissioner and have regard to any comments received from the Privacy Commissioner.

Information would be disclosed to assist the other agency to undertake certain functions and duties, namely:

- to determine entitlement to or eligibility for government assistance, or
- the detection, investigation, prosecution, or punishment of suspected, or actual crimes punishable by terms of imprisonment of two years or more, or
- removing the financial benefit of crime.

Ministerial agreements would set out:

- the type or class of information to be disclosed
- the purposes for which the information is accessed
- the uses to which the information is put to fulfil the other agency's functions, and
- the safeguards for the protection of personal information or commercially sensitive information that is disclosed.

The agreement would also set out the storage and disposal arrangements for the disclosed information, and who in the other agency can access the information. Restrictions would also be placed on the on-sharing of information by the other agency.

Another safeguard would be that although the Commissioner may disclose information, they would not be required to if disclosure would undermine the integrity of the tax system. This would protect Inland Revenue's ability to continue to collect information and tax in the future.

To increase the transparency of these Ministerial agreements, the name of the agreement, the parties to the agreement, the classes of the information disclosed, the purpose for disclosure, and the use the information will be put to, would be disclosed on Inland Revenue's website. Inland Revenue will also report on the operation of each agreement in its annual report.

This proposed amendment would only enable Inland Revenue to disclose information to other agencies. If Inland Revenue requires information from another agency, then the use of Inland Revenue's information collection powers or an AISA would be a more appropriate mechanism.

Other policy items

Repeal section 17GB of TAA

Clauses 139, 140, 141, 142, 144, 145, 146, and 147

Summary of proposed amendment

The proposed amendment would repeal section 17GB of the Tax Administration Act 1994 (TAA). Section 17GB allows the Commissioner of Inland Revenue to collect information for a purpose relating to the development of policy for the improvement or reform of the tax system.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal Assent.

Background

Section 17GB of the TAA was inserted by the Taxation (Income Tax Rate and Other Amendments) Act 2020 in December 2020. The section clarified that the Commissioner's information-gathering powers included being able to require persons to provide information solely for purposes relating to tax policy development.

The proposed amendment aims to increase taxpayer privacy by repealing section 17GB.

Inland Revenue will continue to be able to use administrative data from other sources to support policy development.

Repeal of legislative provisions for trust disclosures

Clauses 95(27), 136(3), 152, 153, 156, 157, 167, 188, 189, 190, and 191

Summary of proposed amendment

The proposed amendment would repeal the specific legislative provisions for trust disclosures. The Commissioner of Inland Revenue is currently considering what information he will continue to collect from trustees under his general powers.

Effective date

The proposed amendment would be effective for the 2026–27 and later income years.

Background

The additional disclosure requirements for trustees were introduced for the 2021–22 and later income years. In March 2022, the Tax Administration (Financial Statements—Domestic Trusts) Order 2022 (the Order) was made to set the minimum requirements for financial statements prepared by trusts that are subject to the disclosure rules.

The specific disclosure provisions require trustees of trusts that derive assessable income for a tax year to prepare financial statements and disclose details of settlements, settlors, distributions, beneficiaries, persons with powers of appointment, and other information required by the Commissioner.

Certain classes of trusts and trustees are excluded from the disclosure regime, including trustees of non-active trusts, foreign trusts, charitable trusts, and trusts eligible to become Māori authorities.

Detailed analysis

The legislative provisions for the trust disclosure provisions are not necessary for the Commissioner to be able to collect information from trustees because the Commissioner has broad powers to do this under sections 33 and 35 of the Tax Administration Act 1994 (TAA). The proposal would repeal the specific legislative provisions for trust disclosures in sections 59BA and 59BAB of the TAA. Consequential amendments would be made to remove references to these sections.

Amendments would also be made to the Order setting minimum requirements for preparing financial statements. This would ensure that the Order continues to apply to trustees currently filing returns under the specific disclosure provisions when those provisions are repealed.

The Commissioner is currently considering what information would continue to be collected from trustees under the Commissioner powers in sections 33 and 35. Therefore, the Commissioner may continue to collect substantially the same information on trusts under these general powers. This would be communicated to taxpayers when the returns are finalised for the 2026–27 tax year.

Updated information sharing for proceeds of crime

Clauses 136(4) and (7), 169(1), and 182

Summary of proposed amendments

The proposed amendments would enable Inland Revenue to disclose updated information about a person to the New Zealand Police to maintain the accuracy of Inland Revenue information already held by the Police.

Effective date

The proposed amendment would take effect on 1 April 2026.

Background

The purpose of the proceeds of crime regime, under the Criminal Proceeds (Recovery) Act 2009 (CPRA), is to prevent a person from profiting from crime by forfeiting property or value of income derived from significant criminal activity.[20] Assets forfeited to the Crown are used to fund targeted programmes that reduce violent crime and address crime-related harm.

An Inland Revenue officer may disclose sensitive revenue information when the disclosure to a person or entity is specified in the Tax Administration Act 1994 (TAA), including information disclosed for the purposes of taking civil recovery action under the proceeds of crime regime. Currently, on request, the Commissioner of Inland Revenue can disclose information held about a person for the purpose of establishing whether a prima facie case exists[21] for the Commissioner of Police to take civil recovery action under the CPRA.

In some situations, where a prima facie case is being established and the proceeds of crime proceedings have been initiated against a person, the legal process may continue for an extended period of time, during which previously disclosed information may become outdated or inaccurate. This could have serious implications when the Inland Revenue information is being relied on by the Police or the Courts when deciding whether to advance a civil forfeiture order against the person.

To address this issue, previously disclosed information should be updated with the latest information held by Inland Revenue to ensure the information held by the Police is accurate and up

[20] Offending liable to a maximum term of five years imprisonment (or higher) or offending that has resulted in proceeds of $30,000 or more (section 6 of the CPRA).

[21] The prima facie case can be established at several stages of a proceeds of crime case, when the Police are seeking a restraining order, extension of restraining, or forfeiture order.

to date. The updated information disclosed would ensure the Police and the courts have accurate Inland Revenue information, leading to good decision making.

Accuracy of information is one of the 13 privacy principles that govern how agencies can collect, store, use and share personal information.

Key features

The Bill would amend schedule 7, part A, clause 6 of the TAA to enable Inland Revenue to disclose updated information to the Police, ensuring the information previously disclosed under the existing rules remains accurate and up to date.

The Bill would also amend section 98 of the CPRA to enable a Police authorised person to request, receive and use the updated information disclosed to them under the CPRA.

Updated information means information that:

- relates to information previously disclosed under the existing information disclosure rules
- that is readily available to the Commissioner of Inland Revenue, and
- does not include information about another person that was not referred to in the earlier disclosure, unless the updated information about another person relates to the name of a new employer or new financial services provider.

Personal information means information that identifies a person, date of birth (if relevant), and their contact details.

The version of "updated information" is the most up-to-date version of the information held by the Commissioner of Inland Revenue at the time the disclosure is made to the Police.

Detailed analysis

Currently, under section 98(1) of the CPRA, the Commissioner of Police (or their authorised officer) can make a request to the Commissioner of Inland Revenue (or their authorised officer) for information held by Inland Revenue about a person when that information is required for the purposes of establishing whether a prima facie case exists for taking civil recovery action. Schedule 7 of the TAA allows the Commissioner of Inland Revenue to disclose information held by Inland Revenue in accordance with section 98(2)(b) of the CPRA.

Proposed amendments to schedule 7, clause 6 would also allow the Commissioner of Inland Revenue to disclose updated information about a person for the purposes of ensuring previously disclosed information remains accurate and up to date.

The reference to the Commissioner in proposed new clause 6(1) of schedule 7 is to the Commissioner of Inland Revenue.

The ordinary meaning of "accurate" and "up to date" would apply. The information disclosed must be correct and precise, reflecting the latest version of the information available to the Commissioner of Inland Revenue at the time it is disclosed to the Police.

Consequential amendment to CPRA

A proposed consequential amendment to section 98(2)(b) of the CPRA would reflect the changes in the TAA. This would allow the Police, operating under the proceeds of crime regime, to formally request and obtain updates from Inland Revenue to the information Police already hold so it remains accurate and up to date.

As a result of the proposed amendments above, a proposed drafting amendment to section 98(2), would align it with the relevant disclosure rule in schedule 7, clause 6 of the TAA. This drafting amendment would not alter the interpretation of section 98, nor would it affect the nature of the information that may be requested from Inland Revenue for the purposes of determining whether a prima facie case exists.

Updated information

The definition of updated information means information that relates to information previously disclosed under the existing information disclosure rules. The connection to the information previously disclosed can include personal information, financial information or tax and social policy information, and may include personal information about another person, such as an employer or bank (that is, their bank account) held by the Commissioner of Inland Revenue. The information would enable the Police to provide up-to-date information to the courts in relation to civil recovery action initiated under the CPRA.

The updated information would have to be readily available to the Commissioner of Inland Revenue. Also, the Commissioner of Inland Revenue would not be expected to use their specialised information collection powers solely for the purposes of fulfilling a Police request for updated information. However, as under the existing rules, information previously obtained by the Commissioner of Inland Revenue using their information collection powers for tax purposes (such as maintain the integrity of the tax system), could be included in information that is subsequently disclosed to the Police.

There may be circumstances where a situation has led to the information previously disclosed becoming inaccurate, however the Commissioner of Inland Revenue cannot disclose the precise

information that evidences this because there is insufficient connection to the information previously disclosed. In these situations, it could be appropriate for the Commissioner of Inland Revenue to disclose a summary of the situation and information (where possible) about the actions that lead to the original information held by the Police now becoming inaccurate.

Personal information about other persons

The updated information could not include information about another person, if that person was not referred to in the information disclosed under schedule 7, clause 6(1)(a) – unless they have a relationship for employment (that is, the person's employer) or an enterprise that is carrying on a business of providing a financial service (such as a bank or financial advisor). The ordinary meaning of "financial services" would apply, which would encompass other forms of digital financial services and cryptocurrency services.

When the person does have a relationship with another person by way of an employment or financial services provider, then this other person's personal information could be disclosed to the Police. Personal information is defined as information that identifies a person (which could include an entity),[22] their date of birth (if applicable), and their contact details.

Operational requirements

The updated information disclosed to the Police would be governed by the existing operational procedures and requirements that currently apply to the existing information disclosure in the CPRA and would be further outlined in the operational memorandum of understanding.

Similarly, the information disclosure process (and the records pertaining to the information disclosed) would be administered by authorised persons within a specialised and compartmentalised unit within Inland Revenue.

[22] Definition of "person" in section 13 of the Legislation Act 2019.

Example 48: Personal information such as name, location, contact number

On 1 July 2025, a request is made by a Police authorised person for Inland Revenue information held about Mary, required for the purpose of establishing whether a prima facie case exists for taking civil action. This information incudes Mary's full name, address and contact information. This information was disclosed on 5 July 2025, with a prima facie case being established against Mary. On 15 August 2025, Mary relocated to another address. On 30 April 2026, a Police authorised person requests updated information from Inland Revenue about Mary. This includes her address.

Inland Revenue discloses the updated information about Mary, including her new address to the Police authorised person. This updated information is correct and precise. The address relates to information that was previously disclosed. The new address is readily available to the Commissioner of Inland Revenue. The new address is disclosed to maintain the accuracy of information already held by the Police for the proceeds of crime regime.

Example 49: Change in employer to a new employer

On 15 August 2026, a request is made by a Police authorised person for Inland Revenue information held about James, including the name of James' employer. This information was disclosed on 30 August 2026, with the information being used to establish a prima facie case against James. On 1 October 2026, James resigned from this job and immediately began work with another employer. On 1 December 2026, a Police authorised person requests updated information from Inland Revenue about James, including the name of his employer.

Inland Revenue discloses the updated information, including the name of James' new employer to the Police authorised person. This updated information is correct and precise. The employer's name relates to information previously disclosed. The new employer's name is readily available to the Commissioner of Inland Revenue.

The new employer's name was not included in information contained in the earlier information disclosure, however James has an employment relationship with this other person. The information disclosed is the new employer's name and contact information.

Alternative

On 30 August 2026, James was not employed as an employee (ie, unemployed), so the Inland Revenue information disclosed was that no active employer information was available. On

1 October 2026, James began working for ABC Limited. On 1 December 2026, the name and contact details of ABC Limited (as his active employer) were disclosed as updated information about James.

This is because although no active employer information was included on 30 August 2026 due to the absence of an employer relationship, the information nonetheless pertained to James' employment status at the time. This means the updated information about James' new employer, ABC Limited, relates to information previously disclosed. If James was instead receiving a benefit payment (where income tax was deducted) on 30 August 2026, then this information would have been disclosed and, correspondingly, the name and contact details of his new employer ABC Limited would be disclosed.

Example 50: Change of bank and new bank account number (includes joint bank account)

On 1 August 2026, a request is made by the Police for Inland Revenue information held about Tim, including any bank account information. This information was disclosed on 5 September 2026, with the information being used to establish a prima facie case against Tim. On 30 September 2026, Tim closed his bank account and moved his personal banking services to another bank. On 1 November 2026, the Police requested updated information about Tim, including his bank account information.

Inland Revenue disclosed the updated information about Tim, including his new bank account number. This updated information is correct and precise. The bank account information relates to information that was previously disclosed and is information that is readily available to the Commissioner of Inland Revenue.

The updated information does include information about a new person or entity (being the new bank) not referred to in the earlier information disclosure. However, Tim has a formal relationship with this other person who is carrying on a business of providing financial services. The information disclosed is the new bank's name. The new bank account number is disclosed to maintain the accuracy of information already held by the Police for the proceeds of crime regime.

Alternative

Prior to 1 August 2026, Tim bank account was instead a joint account with Sarah. On request, the joint bank account information was disclosed on 5 July 2026. On 30 September 2026, Tim closed the bank account and moved his banking services to another bank, which included

opening a new joint bank account with Olivia. On 1 November 2026, the Police requested updated information about Tim, including his bank account information.

Inland Revenue disclosed the updated information, including Tim's new bank and account number to the Police. This updated information is correct and precise, and the bank and account information relates to information that was previously disclosed. The new bank and account number is readily available to the Commissioner of Inland Revenue.

The updated information does include information about both the new bank and the new joint owner on the bank account not referred to in the earlier information disclosure. Tim has a formal relationship with this new bank, so the information disclosed is the new bank's name. The new bank account number is disclosed to maintain the accuracy of information already held by the Police for the proceeds of crime regime.

However, Inland Revenue is aware the new bank account is a joint bank account with a new person who was not referred to in the earlier information disclosure. Tim does not have a relationship for employment or for financial services with Olivia, so her personal information cannot be disclosed as part of the updated information.

Example 51: Change in tax period information due to filed tax return

On 30 August 2026, the Police request Inland Revenue information held about Mike, including tax period information for the 2024 income tax period (including tax period balance). The 2024 tax return was yet to be filed so the tax period information is blank. This information about Mike was disclosed on 15 September 2026, with the information being used to establish a prima facie case against Mike. On 1 February 2027, Mike filed his 2024 income tax return, resulting in a $5,000 tax liability. On 1 July 2027, the Police request updated information about Mike, including tax period information.

Inland Revenue disclosed the tax period information (including tax return), for the 2024 tax period. This updated information is accurate because it is based on a completed and filed tax return and is the latest tax period information. The tax return information relates to a tax period that was disclosed as part of the earlier information disclosure and is readily available to the Commissioner of Inland Revenue.

Example 52: Change in tax period balance and tax liability due to payment received by Inland Revenue

On 1 October 2025, the Police request information about Robert, including prior tax period balances. The 2023 income tax period balance was a tax debt of $50,000. This information about Robert was disclosed on 15 October 2025, with the information being used to establish a prima facie case against him. On 1 February 2026, Robert paid $45,000 towards his tax debt, resulting in a balance of $5,100 (including use of money interest) to pay. On 1 July 2026, the Police request updated information about Robert, including tax period balance information.

Inland Revenue disclosed the tax period balance information. This updated information is accurate and is based on latest tax period balance information. The tax return information relates to a tax period that was disclosed as part of the earlier information disclosure and is information that is readily available to the Commissioner of Inland Revenue.

The change in tax period balance was due to a payment received, so while the payment details may not be provided, an explanation for why the tax period liability has changed could be disclosed as part of the updated information.

Example 53: Request for person's cryptocurrency information

On 1 March 2027, the Police request information about Mark, including any cryptocurrency information held by Inland Revenue. Inland Revenue holds cryptocurrency transaction information about Mark from a cryptocurrency exchange platform, Round-Coin. This information about Mark was disclosed on 20 March 2027. On 1 July 2027, the Police request updated information about Mark, including any cryptocurrency information, which now includes cryptocurrency transaction information from another exchange platform Square-Coin.

Inland Revenue disclosed Mark's updated cryptocurrency transaction information from Round-Coin and Square-Coin to the Police. This updated information is correct and precise. The cryptocurrency information relates to information that was previously disclosed, and the cryptocurrency information is readily available to the Commissioner of Inland Revenue.

The updated information does include information about a person (the cryptocurrency exchange Square-Coin) not referred to in the earlier information disclosure. However, Mark

has a formal relationship with this other person who is carrying on the business of a cryptocurrency exchange. The information disclosed is the new trading platform's name and contact details.

The cryptocurrency information is disclosed to maintain the accuracy of cryptocurrency information already held by the Police.

Example 54: Audit file includes future tax periods and associated tax period information

On 1 September 2027, the Police request information about Luke, including information about prior tax periods, including any audit files. The 2025 income tax period is currently subject to a tax audit being conducted by Inland Revenue, and on 20 September 2027, the Commissioner of Inland Revenue disclosed the 2025 income tax period information (including the latest version of the audit file) to the Police.

Since 20 September 2027, the audit expanded into several GST periods, including monthly GST periods for October 2027 and December 2027. This resulted in an October 2027 GST liability of $5,000 (which was paid in full), and the December 2027 GST liability of $20,000 (including a 20% shortfall penalty), which was included under an 18-month instalment arrangement commencing 1 May 2028.

On 1 July 2028, the Police request updated information about Luke, including the latest version of the audit file and changes to any prior tax periods.

Inland Revenue disclosed the updated information, including the tax period balance information for the tax periods included in the tax audit, and the now finalised audit file. This updated information is accurate because it is based on the latest tax period balance information and the latest version of the audit file held by Inland Revenue and is readily available. Inland Revenue also disclosed information explaining that the audit resulted in a shortfall penalty being imposed on the December 2027 GST period and the tax debt is being paid under an instalment arrangement.

Alternative

After the information disclosure on 20 September 2027, the tax audit was expanded to GST periods of October and December 2027 in a related business of Luke and Scott called DEF Limited. This information was included in the tax audit file.

On 1 July 2028, the Police request updated information about Luke, including the latest version of the audit file and changes to any prior tax periods.

The updated information (being the audit file) contains information about future GST periods under audit, however the information relates to an associate of the person that has neither a relationship for employment nor carrying on a business of providing a financial service. Because of this, information about Scott and DEF Limited cannot be disclosed as updated information and must be removed from the audit file before the information is disclosed to the Police as updated information.

Example 55: Disclosure of incomplete tax audit file

On 1 November 2027, the Police request information held about Brian, including information about prior tax periods. Brian's March 2027 GST period is currently subject to a tax audit. On 10 November 2027, the Commissioner of Inland Revenue discloses the March 2027 GST period (including the latest version of the audit file) to the Police. On 1 February 2028, the Police request updated information about Brian, including the latest version of the audit file and changes to prior tax periods that were disclosed on 10 November 2027. At this point of time, the tax audit remains ongoing.

Inland Revenue disclosed the updated information, including the tax period balance information for the tax period under audit, including the incomplete audit file. This updated information is accurate because it is based on the latest tax period balance information and the latest version of the audit file held by the Commissioner of Inland Revenue. The tax return information relates to a tax period that was previously disclosed and the updated information is readily available to the Commissioner of Inland Revenue. A summary is included with the updated information explaining that the tax audit is ongoing.

Power to change FamilyBoost settings by Order in Council

Clause 80

Summary of proposed amendment

The proposed amendment would introduce a provision to allow specific FamilyBoost policy settings to be adjusted by Order in Council.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal Assent.

Background

FamilyBoost is a childcare tax credit that provides parents or caregivers with a rebate based on a percentage of their early childhood education fees, up to a maximum fees cap. An income test also applies.

FamilyBoost policy settings are set in the Income Tax Act 2007 and can only be changed through amending legislation. Adjustments to FamilyBoost settings will be required to ensure the policy remains effective over time. This may require changes to be made quickly to respond to changes in prices or income levels, subject to overall fiscal objectives.

Other social policy products in the Income Tax Act 2007, including certain settings of the Working for Families tax credits, can be adjusted by Order in Council. Other early childhood education subsidies, including childcare assistance in the Social Security Act 2018, can also be adjusted by Order in Council.

Key features

There would be limitations to the use of this Order in Council power.

- Policy settings could only be changed in a way that expands eligibility or increases the payment amount, so providing more support to FamilyBoost recipients. This could include changes to the rebate rate, maximum payment amount, upper income threshold, or the abatement rate.

- A change to restrict eligibility or reduce payments would still require an amendment to primary legislation and would not be done through this Order in Council provision.
- An Order in Council made under this provision would come into effect at the start of a FamilyBoost quarter – either 1 January, 1 April, 1 July or 1 October.

Powers for Commissioner to set certain rates

Clauses 55, 82(2), 83, 94, 95(16), 158, 159, 160, 162, 163, 164, 168, and 192

Summary of proposed amendments

This proposal aims to streamline the process of setting interest rates and other taxable amounts including use of money interest (UOMI), fringe benefit tax (FBT) prescribed rate, and deemed rate of return (DRR) for foreign investment funds (FIF) under the Tax Administration Act 1994 (TAA) and the Income Tax Act 2007 (ITA).

The proposed amendments would also introduce the formulae for setting each of the UOMI, FBT and DRR rates into legislation. Transitional provisions to ensure continuation of existing Orders in Council until the effective date of any determinations would also be introduced for each of these rates.

Effective date

The proposed amendments would take effect on the day after the date the Bill receives the Royal assent.

Background

The ITA and TAA contain several provisions allowing the periodic setting of interest or other rates by Order in Council. These include:

- rules in the TAA setting UOMI for underpayments or overpayments of tax
- rules in the ITA that impose FBT when employment-related loans are made at less than a prescribed rate of interest, and
- rules in the ITA setting a DRR for certain interests in foreign investment funds.

UOMI

The UOMI rates encourage taxpayers to pay the correct amount of tax on time. They apply to all revenue and duties. The two UOMI rates currently set by Order in Council are:

- the taxpayer's paying rate (UOMI underpayment rate) – charged on underpayments of tax to Inland Revenue, and
- the Commissioner's paying rate (UOMI overpayment rate) – paid by the Commissioner on overpayments of tax to Inland Revenue.

FBT

The FBT rules tax non-cash benefits provided to employees, including any employment-related loans on which the employer is charging a rate of interest that is below the market rate. The difference in interest is taxable. A prescribed rate, set by Order in Council, is a proxy for the market rate of interest an employee might otherwise have to pay on a loan.

DRR

The FIF rules tax New Zealand residents on certain non-controlling investments in foreign companies, foreign superannuation schemes, and life insurance policies. The DRR method is one method for calculating FIF income. The DRR under the FIF rules is set annually by Order in Council.

Although each of these three rate-setting mechanisms are well established, and mechanical in nature, the requirement that they be set by Order in Council places considerable resourcing requirements on Ministers and Cabinet. It is considered that using determination-making processes that the Commissioner is very familiar with would be more effective and streamlined.

Key features

Relevant existing powers and Order in Council mechanisms would be repealed. Instead, the power to set each of these three rates would be statutorily vested in the Commissioner as secondary legislation. The powers would follow the same processes that are currently used for setting these rates. The formula used to set these rates would be included in the legislation when they are not already stated**.**

UOMI

Commissioner's determination powers

Section 120H of the TAA would be amended to allow the Commissioner to set and vary UOMI rates by determination, rather than by Order in Council.

Legislatively incorporating formula for setting UOMI

Section 120H of the TAA would incorporate the formula used for setting the UOMI rate for overpayments and underpayments into the legislation.

Consistent with the formula in existing regulations, the taxpayer's paying rate would be required to be set at the Reserve Bank of New Zealand's floating first mortgage new customer housing interest rate plus 250 basis points.

The Commissioner's paying rate would be required to be set at the higher of:

- the Reserve Bank of New Zealand 90-day bank bill rate less 100 basis points, and
- 0%.

Revocation of regulations

The Taxation (Use of Money Interest Rates Setting Process) Regulations 1997 and the Taxation (Use of Money Interest Rates) Regulations 1998 would be revoked.

Transitional provision

Proposed new section 227I of the TAA is a transitional provision that would cover the period between the Bill being enacted and the Commissioner setting the rates by determination. It would ensure that in that period the UOMI rates would continue to be those set under the Taxation (Use of Money Interest Rates) Regulations 1998.

FBT prescribed rate

Commissioner's determination powers

Proposed new section 90B of the TAA would empower the Commissioner to determine the FBT prescribed rate of interest for employment-related loans.

Legislatively incorporating formula for setting FBT

Proposed new section 90B would incorporate the formula for setting the FBT prescribed rate.

Consistent with long-standing administrative practice, the rate of interest would be required to be set at the Reserve Bank of New Zealand's floating first mortgage new customer housing interest rate.

Revocation of regulations

The Income Tax (Fringe Benefit Tax, Interest on Loans) Regulations 1995 would be revoked.

Transitional provision

Proposed new section RZ 17 of the ITA is a transitional provision that would cover the period between the Bill being enacted and the Commissioner setting the rates by determination. It

ensures that in that period the FBT prescribed rate would continue to be that set under the 1995 Regulations.

DRR

Commissioner's determination powers

Proposed new section 91AAP of the TAA would require the Commissioner to determine the deemed rate of return for each income year.

Legislatively incorporating formula for setting DRR

Proposed new section 91AAP would incorporate the formula for setting the DRR.

Consistent with long-standing administrative practice, the rate would be required to be set at the five-year government stock rate for the income year plus 400 basis points. The five-year government stock rate is calculated as the average of the rates on 30 June, 30 September, 31 December, and 31 March in the income year. If a rate is not available on one of those dates, the rate on the first day a rate is available after that date is to be used in the calculation for that date.

Integration with existing formulae

The new DRR would apply to both the standard formula and part-year formula in section EX 55 of the ITA.

The definition of "deemed rate" in section EX 55(4)(b) and (6)(c) of the ITA would be amended to refer to the Commissioner's determination made under section 91AAP of the TAA.

Publication and presentation requirements for Commissioner's determinations

The Legislation Act 2019 requires that the Commissioner's determinations must be:

- published on Inland Revenue's website and notified in the *Gazette*, and
- presented by the Minister of Revenue to the House of Representatives.

Overseas donee status

Clause 104

Summary of proposed amendments

The proposed amendments would:

- add three charities to the list of donee organisations in schedule 32 of the Income Tax Act 2007
- remove two charities from schedule 32, and
- support the restructure of three other existing charities on the list.

Effective date

The proposed additions to schedule 32 would take effect on 1 April 2025.

The proposed removals from schedule 32 would take effect on the day after the Bill receives the Royal assent.

The proposed amendment to change "Engineers Without Borders New Zealand Incorporated" to "Engineers Without Borders New Zealand" would be inserted with effect on and from 5 March 2025, and the name of the old entity would be repealed from 1 April 2026.

The proposed amendment to change "UN Women Aotearoa New Zealand Incorporated" to "UN Women Aotearoa New Zealand" would be inserted with effect on and after 1 April 2025, and the old name of the entity would be repealed from 1 April 2026.

The proposed amendment to update the name of "New Zealand for UNHCR" to "Aotearoa New Zealand for UNHCR" would apply from 7 December 2022, the date of the name change.

Background

Donors to organisations listed in schedule 32 are entitled as individual taxpayers to a tax credit of 33.33% 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

The proposed amendments would add three charitable organisations to schedule 32. Donors to these charities would be eligible for tax benefits on their donations.

Days for Girls NZ

Days for Girls NZ provides reuseable feminine hygiene products to women in impoverished nations. Days for Girls NZ is a chapter of Days for Girls International. The Trust currently provides products to Pacific Island countries exclusively. All countries the Trust sends products to are developing countries. The Trust has been active since 2012 and has established connections with organisations in the Pacific Islands.

EduTech Nepal Foundation

EduTech Nepal Foundation builds and resources modern computer labs in Nepal with the purpose and intent of raising educational outcomes in poor communities using the latest version of teaching materials and learning tools.

Revive Afghanistan NZ

Revive Afghanistan NZ works in Afghanistan and New Zealand. Its overseas activities include working with Afghan charitable organisations for the betterment of the Afghan people and to help the community. This aid is delivered through partnerships with charities that distribute emergency aid, water relief infrastructure, and create micro-businesses to improve the economy.

Removals from schedule 32

The proposed amendments would also remove Help a Child Foundation and SpinningTop Trust from schedule 32 because these two charities have ceased activities and been wound up.

Amendments to schedule 32

Three proposed amendments ensure that the list of overseas donee organisations remains up to date.

Engineers Without Borders New Zealand Incorporated was added to schedule 32 on 1 April 2022. It has restructured and changed its legal form from an incorporated society to a charitable trust. It is now operating as “Engineers Without Borders New Zealand”. The governance, purposes and

activities have not changed, with existing projects being taken over by the new charitable trust. The proposed amendments would ensure that fundraising arrangements are not disturbed.

UN Women Aotearoa New Zealand Incorporated was added to schedule 32 on 1 April 2019 (previously named UN Women National Committee Aotearoa New Zealand Incorporated). It has restructured and changed its legal form from an incorporated society to a charitable trust. It is now operating as "UN Women Aotearoa New Zealand". The governance, purposes and activities have not changed, with existing projects being taken over by the new charitable trust. The proposed amendments would ensure that fundraising arrangements are not disturbed.

New Zealand for UNHCR, was added to schedule 32 on 15 February 2022. It is a new entity that replaced the activities of an earlier entity "UNHCR" that had been given overseas donee status from the 2008–09 income year. The Trust has since changed its name to "Aotearoa New Zealand for UNHCR". The proposed amendment would ensure the name is kept up to date.

GST remedials

Supplier groups clarification

Clause 126

Summary of proposed amendments

The proposed amendments would clarify that an issuing member of a supplier group is only responsible for issuing taxable supply information and supply correction information on behalf of the other members for taxable supplies that are covered by an agreement between the members, consistent with the policy intention.

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

Effective date

The proposed amendments would apply for taxable periods starting on or after 1 April 2023.

Background

As part of changes made in 2022 to modernise GST information requirements, the rules for "shared tax invoices", which allowed a registered person to issue a single tax invoice on behalf of multiple suppliers in certain circumstances, were replaced with the rules applying to "supplier groups".

A supplier group is typically a group of unrelated registered persons without common ownership or control. Under the supplier group rules, the "issuing member" of the group is responsible for issuing taxable supply information (formerly known as a tax invoice) for any member of the group when that other member makes a taxable supply.

The intention behind the supplier group rules was to allow groups of suppliers making taxable supplies to a common recipient to use shared invoices in a wider range of circumstances than was allowed under the former rules for shared tax invoices.[23] For example, an electricity retailer (Retailer Co) and a lines company may form a supplier group so that invoices provided by Retailer Co (the issuing member) to its customers, which include the supply made by the lines company (being the lines charge included on electricity bills), comply with the GST Act requirements for taxable supply information.

[23] The rules for shared tax invoices in former section 24BA only allowed the use of a shared tax invoice if the suppliers used a single invoice because they had statutory obligations that made it practical to use a single invoice, or because they were all members of the same GST group.

The issue is that the scope of supplies covered by the supplier group rules (for which the issuing member is required to provide taxable supply information and supply correction information) may be unintentionally broad. On a literal reading of the rules, it appears the issuing member of a supplier group is responsible for providing taxable supply information for every supply by a member of the supplier group other than a supply made under section 5(2).

In the above example of Retailer Co and the lines company, this would mean Retailer Co (as the issuing member) is technically required to provide taxable supply information for every single supply made by the lines company, potentially including supplies made by the lines company to persons who are not customers of Retailer Co but are instead customers of a different electricity retailer that is unrelated to Retailer Co.

Detailed analysis

Proposed amendments to section 55B would provide that members of a supplier group may enter an agreement under which the issuing member issues the taxable supply information and supply correction information for agreed taxable supplies of goods and services made by a member of the supplier group (the supplying member). Consistent with the current rules, this would not apply to supplies made under section 5(2) (meaning the issuing member would not provide taxable supply information and supply correction information for a supply made under section 5(2) by another member of the supplier group).

Provided that the existing requirements for a supplier group listed in paragraphs (b), (c) and (d) of current section 55B(2) are satisfied, the proposed requirements for a supplier group would be met if the members also agree that:

- the issuing member must issue taxable supply information and supply correction information for agreed taxable supplies by a supplying member, and
- each member, other than the issuing member, must not issue taxable supply information and supply correction information for a supply when the members have agreed that the information will be provided by the issuing member.

Example 56: Electricity retailer and lines company form supplier group

Retailer Co, an electricity retailer, and Lines Co, an electricity lines company, are both registered for GST. For billing purposes, Retailer Co and Lines Co would prefer to use a single invoice that includes both their taxable supplies to Retailer Co's customers because this is more practical than issuing separate invoices.

Retailer Co and Lines Co agree to form a supplier group so that the shared invoices provided by Retailer Co (being the issuing member of the group) to its customers will satisfy the GST Act requirements for taxable supply information. Retailer Co and Lines Co agree that Retailer Co, not Lines Co, will issue taxable supply information and supply correction information for certain taxable supplies made by Lines Co to Retailer Co's customers, being the lines charge included in the shared invoices issued by Retailer Co.

Secondhand goods clarification

Clause 122

Summary of proposed amendment

The amendment would clarify that, for the purposes of determining the amount of input tax under section 3A of the Goods and Services Tax Act 1985 (GST Act) for a supply of secondhand goods, the person would be treated as if they had been a registered person at the time the goods were acquired.

All legislative references are to the GST Act.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

The GST Act allows registered persons who acquire secondhand goods from unregistered persons to claim back the GST (as an input tax deduction) that has been embedded in the cost of those goods. The GST adjustment rules also allow input tax deduction in situations when a person registers for GST after acquiring the goods, so long as the goods are now used to make the registered person's taxable supplies.

The definition of input tax in respect of secondhand goods in section 3A(2) refers to goods "sold to a registered person". It is unclear if this requirement is met if the person registered for GST after they acquired the goods. The specific adjustment rule in section 21B for making adjustments for goods acquired prior to registering for GST refers to secondhand goods and the policy intent and accepted practice is that this adjustment rule can be applied to secondhand goods.

Secondhand goods interaction with adjustment rule

Clause 186

Summary of proposed amendment

The application date for some recent amendments to the input tax rules for secondhand goods acquired from associated persons would be changed to "taxable periods starting on or after 30 March 2022".

Effective date

The proposed amendment would take effect on 30 March 2022.

Background

Section 3A(3)(a) of the Goods and Services Tax Act 1985 (GST Act) limits secondhand goods deductions for registered persons who acquire goods (typically land) from an associated unregistered person. Amendments were recently made to sections 3A(3)(a)(i) and (3BB) to allow the correct GST deduction when the associated unregistered person had purchased the land from another unregistered person.

The application date for these amendments in section 205(3) of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 refers to "goods acquired by a person on and after 30 March 2022".

An unintended consequence of this application date occurs in some cases when a person purchased secondhand goods prior to 30 March 2022 from an associated unregistered person. If the person began using the goods to make taxable supplies after 30 March 2022, they may be unable to claim a deduction under the GST adjustment rules.

Key features

The proposed amendment would change the application date in section 205(3) of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 to "taxable periods starting on or after 30 March 2022". This would allow persons who make an adjustment for secondhand goods to use the current input tax definition for adjustments made on or after 30 March 2022.

Effective date for change from filing frequency selected in error

Clause 117

Summary of proposed amendment

The proposed amendment would provide that a change in a newly registered person's filing frequency will take effect on the start date of their registration, provided they apply for the change within a specified timeframe.

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

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Sometimes, when businesses and organisations register for GST using the online registration process, they may accidentally select a filing frequency that they did not intend (for example, monthly instead of two-monthly). When this occurs, the current GST legislation does not permit the Commissioner of Inland Revenue (the Commissioner) to backdate a change in the person's filing frequency to the start date of their registration so that the change is effective for their very first taxable period. This is because there is no specific rule for when a registered person applies to change their GST filing frequency during their very first taxable period. Instead, the default timing rules for changes in taxable periods apply.

Under the current rules, a change in the basis on which a registered person's taxable period is set (that is, their GST filing frequency) takes effect at the end of the taxable period in which the person applies or is required to change the basis on which their taxable period is set. This means that the change will take effect for the person's next taxable period and subsequent taxable periods, and not for the person's current taxable period at the time they apply for the change.

Detailed analysis

Proposed new section 15D(2BA) would provide that a change in filing frequency for a registered person takes effect on the start date of their registration if they apply to the Commissioner for the change before the earlier of:

- seven days after the due date of the GST return that corresponds with their first taxable period (being their current taxable period that they are applying to change from), or
- the due date of the first GST return that corresponds with their intended taxable period (being the taxable period they are applying to change to).

The suggested "earlier of" deadline for making the application is intended to provide newly registered persons with sufficient time to apply for the change, while at the same time ensuring that they make the application in a sufficiently timely manner so that they do not miss filing deadlines that could have been met if reasonable efforts were made.

The examples below illustrate how proposed new section 15D(2BA) would apply.

Example 57: Change from two-monthly filing on even months to filing on odd months

Bill, a sole trader, registers for GST on 1 January 2027. At the time of registering, Bill accidentally (and without realising his mistake) selected two-monthly filing on even months when he meant to file GST returns two-monthly on odd months.

The filing and payment due date for Bill's first GST return (covering the period 1 January 2027 to 31 January 2027) is 28 February. Had Bill instead selected two-monthly filing on odd months as he had intended, the filing and payment due date for his first GST return (being the taxable period covering January and February 2027) would have instead been 28 March.

Bill is alerted to his error in February 2027 when he receives a reminder from Inland Revenue to file his GST return due on 28 February. If Bill wants to change to filing on odd months and have that change apply from the start date of his registration (meaning that his very first taxable period will be the period covering January and February 2027, rather than just January 2027), he must apply to the Commissioner for the change before 7 March 2027 (being seven days after the due date of the GST return that corresponds with his current taxable period of 1 January 2027 to 31 January 2027 that he is applying to change from).

Example 58: Change from two-monthly filing on odd months to filing monthly

Jess registers for GST during March 2027. At the time of registering, Jess accidentally selected a two-month taxable period filing on odd months when she meant to file GST returns monthly.

The filing and payment due date for Jess's first GST return (being the period covering March and April 2027) is 28 May. Had Jess instead selected a one-month taxable period as she had intended, the filing and payment due date for her first GST return would have instead been 7 May.

If Jess wants to change to filing monthly and have that change apply from the start date of her registration (meaning that her very first taxable period will be the March 2027 period), she must apply to the Commissioner for the change before 7 May 2027.

Business-to-business zero-rating of financial services election process

Clause 121

Summary of proposed amendment

The election to zero-rate qualifying financial services in section 20F of the Goods and Services Tax Act 1985 would be able to be exercised by either taking the relevant position in a GST return, or by notifying the Commissioner of Inland Revenue before the end of the taxable period in which they first choose to use the election.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

GST registered suppliers can elect under section 20F to zero-rate qualifying financial services they provide to other GST registered businesses. This election allows them to claim GST deductions for the inputs used to make these supplies.

The election was previously made by notifying the Commissioner, but this was recently changed so that the election is made by taking a tax position in the supplier's GST return. However, there can be some circumstances when it would be easier to elect by notifying the Commissioner. For example, a new business may acquire inputs that it will use to begin supplying financial services in a future period and wishes to use the election to register for GST now to ensure it can claim deductions for the inputs in a later GST return (once it has more information about the value of its qualifying zero-rated financial services compared to its exempt supplies).

Clarify rules for certain goods sold as non-taxable supplies

Clauses 108(5) and (12), 111(2), 112(1) and (3), and 132(1)

Summary of proposed amendments

Some references to deductions in sections 5(16)(a)(i), 6(3)(e) and 91 of the Goods and Services Tax Act 1985 (GST Act) would be amended to clarify that they exclude subsequent non-integral deductions.

Non-integral deductions will be defined in section 2 of the GST Act as deductions for other goods and services that did not make a substantial improvement to the main goods and did not make an integral part of the main goods. Integral part means the main goods would be considered incomplete or unable to function without the goods or services.

Effective date

The proposed amendment to section 6(3)(e) would apply to supplies made on or after 1 April 2011. However, there should be a savings provision for supplies for which an assessment has been made prior to 30 August 2022. This is the same application date as when section 6(3)(e) was originally inserted.

The proposed amendment to section 91(4) would take effect on 1 April 2023, the date section 91(4) was first inserted.

The proposed amendment to section 5(16) would take effect on 1 April 2023, the date the current section 5(16) was originally inserted.

Background

Special rules in the GST Act deem a supply of goods, such as a house, to be not subject to GST when sold, so long as the registered person has not treated the house as being part of their taxable (business) activity. One of the qualifying requirements is the person cannot have previously claimed an input tax deduction for the goods.

The policy intention of these rules is that the relevant input tax deductions should be for the goods themselves, or for subsequent expenditure on other goods and services that made a substantial improvement to the goods and became an integral part of the goods. This policy intention was

outlined in the policy guidance materials and examples prepared at the time these rules were introduced. However, the current legislation simply refers to a deduction for "the goods".

Requirement for principal purpose of asset

Clause 132(2)

Summary of proposed amendment

Section 91(4) of the Goods and Services Tax Act 1985 (GST Act) would be amended so that a person must have not used the asset for a principal purpose of making taxable supplies. This would make it consistent with the requirement in section 91(1)(d) and with the similar rule in section 6(3)(e)(iii) of the GST Act.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Section 91 provides an election whereby registered persons could pay back the input tax deductions they had previously claimed on certain goods (typically land) before 1 April 2025 so that those goods could become non-taxable supplies if they were later sold. The requirements to make this election include not claiming input tax deductions for the goods and not using the asset for a principal purpose of making taxable supplies before the date of the election.

Section 91(4) applies after making the election and currently only requires the person to have not claimed an input tax deduction under section 20(3) of the GST Act, but it should also require the person to have not used the asset for a principal purpose of making taxable supplies.

Sale of land separate supply

Clause 111(1)

Summary of proposed amendment

The proposed amendment would expand the scope of an existing rule in the Goods and Services Tax Act 1985 (GST Act), so it also applies to make a sale of land a separate supply to the extent to which the land has been used to make exempt supplies.

Effective date

The proposed amendment would apply to supplies made on or after 1 April 2026.

Background

In most cases when a person uses goods to make exempt supplies, the sale of those goods will not be a taxable supply. This is because the definition of taxable activity excludes an activity to the extent to which the activity involves the making of exempt supplies.

However, there may be cases when a registered person sells real property (land) that they have used to make both taxable and exempt supplies and are required to treat that sale as a single taxable supply. This would then require the registered person to make a GST "wash-up" adjustment under section 21F of the GST Act to account for their non-taxable use of the land.

In other cases when the land includes a principal place of residence, section 5(15) of the GST Act applies to treat the principal place of residence as a separate supply to the other real property. For example, a farmhouse can be a separate supply to the surrounding farmland.

Compared to making a GST "wash-up" adjustment for non-taxable use, applying section 5(15) to split the sale of land into a taxable supply and a separate non-taxable supply would appear to be a simpler and more intuitive method to achieve the same net GST result.

Record-keeping requirements for supplies to unregistered persons

Clause 118

Summary of proposed amendment

The amendment would clarify that suppliers are not required to retain "recipient details" for unregistered purchasers when the value of the supply exceeds $1,000.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal Assent.

Background

A GST registered person that makes or receives a supply of goods or services must keep a record of taxable supply information (formally known as a tax invoice) for that supply under section 19F(1) of the Goods and Services Tax Act 1985 (GST Act). For supplies over $1,000, taxable supply information is defined in section 19E(2)(a) to include "recipient details" for the recipient. "Recipient details" is defined in the GST Act and includes identifying information of the recipient (the name of the recipient and one or more items of information such as address, telephone number, or email address).

The policy rationale behind this requirement is that it supports the integrity of the GST system by ensuring that GST input tax deductions claimed on high-value items can be cross-referenced against a legitimate transaction. However, this is only necessary if the recipient of the supply is also GST registered because an unregistered purchaser is unable to claim GST.

Detailed analysis

The proposed amendment to section 19E(2)(a)(ii) would provide that taxable supply information for a supply that exceeds $1,000 only includes recipient details for the recipient if the recipient is a registered person.

This would ensure that if a supply that exceeds $1,000 is made to an unregistered purchaser, there would be no requirement for the seller to obtain additional personal identifying information from the purchaser (recipient details).

Example 59: Laura the supermarket shopper

Laura lives on a farm in a remote area of the Waikato and makes the three-hour round trip to her local supermarket once a month to stock up on food for her family. This shop often exceeds $1,000.

Prior to the proposed amendment, the supermarket is obliged to hold recipient details for Laura, such as her name and address, on the basis that the supply exceeds $1,000.

Laura is not registered for GST so following the proposed amendment, there would be no requirement for the supermarket to hold recipient details for Laura.

Customs concessions

Clause 116

Summary of proposed amendment

The proposed amendment would introduce a GST-free concession for inherited goods and would repeal a redundant concession.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

The New Zealand Customs Service collects GST, as well as other duties and cost recovery charges, on imports with a value over $1,000. Cabinet has agreed to implement a new concession to be used for duty-free entry of inherited goods, and to remove a redundant concession.

Detailed analysis

The proposed amendment to section 12(4)(e) of the Goods and Services Tax Act 1985 would align GST exemptions with updated tariff concessions by ensuring that inherited goods are able to enter New Zealand GST-free. This would be achieved by inserting a reference to concession 71.

A reference to concession 75 would be removed from section 12(4)(e). This concession provides limited duty-free entry on gifts up to $110 but is redundant because the low-value goods regime offers more comprehensive duty relief for gifts up to $1,000.

Investment Boost remedials

Low-value asset threshold

Clause 42

Summary of proposed amendment

The proposed amendment would restore the $1,000 threshold under which taxpayers are able to deduct the full cost of a low-value asset, rather than depreciate it over time. This threshold had inadvertently been raised to $1,250 for assets eligible for a new investment asset deduction (Investment Boost).

Effective date

The proposed amendment would take effect on 22 May 2025 (the date the Investment Boost policy came into effect and the threshold was inadvertently raised).

Background

The Investment Boost policy allows a 20% deduction for the cost of new investment assets. To tie the new investment asset deduction into the existing depreciation regime, the legislation included a rule reducing the "cost" of the asset by the amount of the new investment asset deduction. This rule is working as intended for most of the depreciation regime.

As part of the depreciation regime, taxpayers are allowed to deduct the full cost of an item that would otherwise be depreciable property if that item's cost is equal to or less than $1,000. By lowering the "cost" of assets that have taken a new investment asset deduction, new investment assets with a total cost of up to $1,250 are now immediately fully deductible.

The proposed amendment would revert this change and ensure that the low-value asset threshold uses the asset's original cost and not the asset's cost after the new investment asset deduction.

Example 60: Low-value asset deduction for new investment asset

Kita and Ky's Kite-Flyers buy a new work phone to help them organise their performances and events. The phone costs them $1,250. They take a new investment asset deduction of $250, 20% of the original $1,250 cost. The phone now has a cost of $1,000 for the purpose of determining depreciation deductions. Kita and Ky's Kite-Flyers must depreciate the asset from $1,000. They cannot deduct the full cost of the asset.

Asset transfers in certain circumstances

Clauses 34 and 35

Summary of proposed amendment

The proposed amendment would limit the provision dealing with the transfer of new investment assets to ensure it only applies when the person receiving the new investment asset is deemed to have claimed the transferor's depreciation loss under other provisions of the Income Tax Act 2007 (ITA).

The proposed amendment would ensure that the transferee only inherits the new investment asset deduction in cases when depreciation loss is transferred, that is, when the transferee is deemed to be taking over the asset as if they were the original owner.

Effective date

The proposed amendment would take effect on 22 May 2025 (the date subpart DI of the ITA came into effect).

Background

In the context of depreciable property, subpart DI of the ITA allows a new investment asset deduction of 20% in the year of acquisition, reducing the cost by an equivalent amount with the remainder of the value being available for deduction in the form of annual depreciation deductions.

When the asset is disposed of above its tax book value, the deduction may be recovered (in whole or in part, up to the asset's original cost) in the form of depreciation recovery income.

In certain circumstances, assets can be transferred between taxpayers with the transferee stepping in to the shoes of the transferor. The transferee is deemed to have claimed all depreciation losses claimed by the transferor. The new investment asset deduction is effectively an acceleration of depreciation so the transferee should be deemed to have claimed any new investment asset deduction of the transferor as well.

As drafted, these rules apply more broadly than intended. Instead of being limited to the specific circumstances where the existing legislation deems the transferee to have stepped into the shoes of the transferor, the current drafting applies to all asset transfers between associates and on any amalgamation. The proposed amendment would limit the scope to the relevant specific circumstances.

Key features

The proposed amendment would clarify that a new asset transferee only inherits the new asset investment deduction when they otherwise are treated as having taken the pre-transfer amounts of depreciation loss under another provision of the ITA. The section has an inclusive but not necessarily exhaustive list that identifies the specific provisions that may be relevant. The list ensures that the specific provisions contemplated are easily identified. Any provisions not specifically identified that treat the transferee as having claimed the pre-transfer depreciation loss would also be captured.

Asset transfers between associates

Clause 43

Summary of proposed amendment

The proposed amendment would confirm that, when depreciable assets are sold between associated persons, the purchaser's depreciation loss is limited to the vendor's original cost and that cost is calculated before any new investment asset deduction claimed by the vendor.

Effective date

The proposed amendment would take effect on 22 May 2025 (the date subpart DI of the Income Tax Act 2007 (ITA) came into effect).

Background

In the context of depreciable property, subpart DI allows a new investment asset deduction of 20% in the year of acquisition, reducing the cost by an equivalent amount with the remainder of the value being available for deduction in the form of annual depreciation deductions.

When the asset is disposed of above its tax book value, the deduction may be recovered (in whole or in part, up to the asset's original cost) in the form of depreciation recovery income.

When depreciable assets are disposed of between associated persons there are special provisions that operate to ensure that the depreciable cost cannot be uplifted for the purchaser. Without the provisions it would be possible for an associated person to sell a depreciable asset above original cost (and realise a capital gain) with the purchaser claiming a deduction for a depreciation loss on the uplifted amount. The ITA provides that the cost for the purchaser in these circumstances should be restricted to the vendor's cost.

Separately, section DI 6 provides that when a new investment asset deduction has been claimed, cost should be correspondingly reduced for the purposes of calculating the depreciation loss of the person who has (or is otherwise deemed to have) claimed the new investment asset deduction.

While section DI 6 should not operate to reduce the cost for the purposes of restricting the purchaser to the vendor's original cost in the context of the associated person limitation, the proposed amendment confirms that point by stating so.

Secondhand exclusion

Clauses 33 and 95(26)

Summary of proposed amendment

The proposed amendment would clarify when an asset has never previously been used or available for use in New Zealand for the purposes of the Investment Boost policy (that is, the scope of the secondhand exclusion).

Effective date

The proposed amendment would take effect on 22 May 2025 (the date subpart DI of the ITA came into effect).

Background

An asset is eligible for a new investment asset deduction of 20% if it has never been used or available for use in New Zealand. This functions to exclude secondhand assets from eligibility, unless the asset has only been used overseas. The secondhand exclusion is intended to exclude assets previously used as depreciable property by another business in New Zealand as well as assets that have been used for private purposes or by a non-business entity in New Zealand.

Key features

The proposed amendment would clarify when an asset is considered to have been previously used or available for use.

Secondhand mining and petroleum assets

The policy intent is that secondhand assets are not eligible for the Investment Boost deduction. As currently drafted, the secondhand exclusion only applies to depreciable property and does not apply to non-depreciable assets that can also be acquired secondhand, such as certain assets acquired through petroleum development expenditure or mining development expenditure.

The proposed amendment would restore the policy intent by ensuring the secondhand exclusion, restricting eligibility for the new investment asset deduction to new assets, applies to all assets including those acquired through petroleum development expenditure or mining development expenditure.

Trading stock and land

The current definition of trading stock excludes land and therefore excludes buildings and other fixtures on the land. Buildings and other fixtures on land may still be new investment assets and are intended to be eligible for Investment Boost if they have only been held for sale and exchange in the ordinary course of business. The definition of trading stock as it applies to Investment Boost would be amended to include land.

Held as trading stock

The policy intent is that assets that have previously only been held as trading stock will remain eligible for Investment Boost if they are later acquired as a new investment asset. The proposed amendment would clarify that trading stock is, from a legal perspective, held rather than used. An asset is held as trading stock if the dominant purpose is to sell or exchange the asset as trading stock. A small amount of use while an asset is being held as trading stock would not necessarily result in the asset being used by that person.

Example 61: Land held as trading stock

Greg is a property developer and constructs a commercial building on a piece of land. The building takes several months to sell. The building is trading stock for Greg because it is primarily being held for sale and Greg is not treating the building as depreciable property. The building may be a new investment asset in the hands of the next owner of the building.

Use is necessary for sale

Some new investment assets may require a level of use, such as testing or trialling, before the asset can be sold. The level of use required for some assets may exceed the level that would usually be permitted for an asset held as trading stock.

The policy intent is that those assets would still be eligible for Investment Boost if the asset has not previously been used as depreciable property and is being sold to a final user. The proposed amendment would clarify that an asset may be eligible for Investment Boost if any previous use was necessary to prepare the asset for sale to its final user.

Example 62: Trialling that is necessary for sale

Sydney operates a car dealership specialising in imported cars. She allows potential customers to take the cars out on test drives as part of her efforts to sell the cars. She frequently rotates the cars used for test drives to stop any car accumulating a high level of

prior road use. Sydney does not use the cars as depreciable property. The cars may be new investment assets in the hands of the next owner.

Example 63: Testing that is necessary for sale

Elmo's Engineering Ltd designs and builds custom trailers. As part of ensuring the trailer is roadworthy, Elmo's Engineering Ltd uses the trailer to deliver a welding machine to another site. The use was part of ensuring the trailer was ready for sale and any income derived for Elmo's Engineering Ltd was merely incidental. The trailer may be a new investment asset in the hands of the person for whom the trailer was built.

Example 64: Using asset to derive income

Sydney (from Example 62) uses one of her vehicles for six months to travel between different car yards and run errands for the business. The car would no longer be eligible for Investment Boost because it has been used in a way that is more than necessary to prepare the asset for sale.

Example 65: Using asset for private purposes

One of Sydney's cars is sold to Bill who uses the car for private purposes for several months before returning the car to Sydney. The car would no longer be eligible for Investment Boost because it has been used by someone in New Zealand for private purposes.

Fringe benefit tax remedials

Replace FBT threshold reference

Clause 89

Summary of proposed amendment

The proposed amendment would replace a reference to a previous fringe benefit tax (FBT) threshold with the new threshold to ensure the consistency of legislation and prevent affected taxpayers having to apply two different FBT thresholds in an income year.

Effective date

The proposed amendment would apply retrospectively from 1 April 2025 and be effective for the 2025–26 and later income years.

Background

Following changes to the personal income tax (PIT) thresholds in 2024, consequential changes were made to FBT thresholds. This is because FBT thresholds are calculated using the PIT thresholds.

Changes to the FBT thresholds came into effect 1 April 2025, and most references to the previous thresholds were replaced with corresponding new thresholds simultaneously.

However, one reference to a previous threshold remains in the Income Tax Act 2007.

Gift cards

Clauses 8, 21, 23, 85, and 95(3) and (12)

Summary of proposed amendment

The proposed amendment would allow employers to treat gift cards (sometimes referred to as "open loop cards") provided to employees as subject to fringe benefit tax (FBT) rather than PAYE.

Effective date

The proposed amendment would take effect for benefits provided on or after 16 April 2025.

Background

The Commissioner of Inland Revenue recently released a question we've been asked relating to gift cards. The Commissioner concluded that an open loop card (which is a gift card that can be redeemed at most retailers) is "money" because it can be spent widely in the same way that e-money can. This means that it is a PAYE income payment.

However, paying tax on an open loop card through the PAYE regime is compliance-heavy and not necessarily appropriate given the origin of the "money". If the voucher was a closed loop card instead (being a retailer specific card), FBT would apply.

In addition, employers have generally been applying FBT to the provision of these types of cards. Applying FBT to open loop cards may be a preferable approach and the proposed amendment would allow employers the option to treat those cards as FBT.

Example 66: Gift cards (open loop stored value cards)

No Doubt Developers Limited (NDD) purchases gift cards to give to employees when they do something above and beyond their duties. Gwen recently provided some assistance to a neighbour of one of NDD's developments when she had a fall. NDD gives Gwen a $50 gift card to spend on anything she likes.

Under current law that gift card would need to be included in Gwen's wages and have the appropriate PAYE paid on it.

Under the proposed amendment, NDD could include the provision of that card as a benefit, and it would be subject to FBT (unless one of the exemptions apply).

Accounting for Investment Boost on motor vehicles

Clause 102

Summary of proposed amendment

The proposed amendment would alter the calculation of the value of a motor vehicle for fringe benefit tax (FBT) purposes when the employer has claimed an Investment Boost deduction.

Effective date

The proposed amendment would take effect for benefits provided in quarters on or after 1 April 2026.

Background

The recently introduced Investment Boost provides for an immediate 20% deduction from the purchase of new assets.

Investment Boost should not alter the value of a motor vehicle provided to employees that is subject to FBT because FBT captures the private benefit of having a motor vehicle available.

Key features

This amendment would only affect taxpayers who have claimed Investment Boost in relation to that motor vehicle.

For those taxpayers, the value of the benefit would be calculated based on the cost/adjusted tax value of the vehicle ignoring the Investment Boost deduction and retaining the FBT values that currently apply.

These changes would ensure that the FBT value for the first five years is roughly equivalent, and the Investment Boost deduction is ignored for FBT purposes.

Equalisation of FBT and PAYE

Clause 9

Summary of proposed amendment

The proposed amendment would ensure that if an employer accounts for either fringe benefit tax (FBT) or PAYE on a benefit, they are not liable for the other.

Effective date

The proposed amendment would take effect for benefits provided on or after 1 April 2026.

Background

One of the areas of most confusion to taxpayers is which regime may apply to specific expenditure. For example, when an employer provides an employee with a meal there are potentially three different treatments:

- If the meal is provided by the employer at a certain time and place, it will generally be subject to the entertainment deduction limitation.
- If the meal is provided in the form of a voucher that the employee can use whenever they want, it will generally be subject to FBT.
- If the employee goes out for dinner and the employer reimburses the cost of the dinner to the employee, this will generally be remuneration and subject to PAYE.

Each of these treatments will have slightly different tax outcomes but are essentially trying to tax the same thing.

A change made in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 equalises the treatment of the provision of a benefit in respect of benefits provided (or reimbursed) to employees under the health and safety exemption from FBT.

The proposed amendment would provide that when a fringe benefit was accounted for in respect of unclassified benefits provided to employees, there would be no PAYE liability. In addition, when an employer chose to provide a non-cash unclassified benefit to an employee by way of reimbursing that employee for the cost of the benefit, that should also be treated as a fringe benefit and subject to FBT.

Example 67: FBT treatment of reimbursements

Spiderwebs Comix Limited is a comic shop specialising in everything spider related. Unfortunately, a water pipe in the business that occupies the second floor of the building bursts and Spiderwebs' premises is flooded. Stefani is one of Spiderwebs employees and worked through the weekend on her own time to salvage the stock from Spiderwebs. Adrian, the owner of Spiderwebs tells Stefani to take her partner out for a nice dinner up to $400 to thank her for helping out. Stefani takes her partner out to Dumont restaurant (one of the best in the area) and the bill is $380.00, which she pays herself. Adrian reimburses Stefani for the amount.

Spiderwebs treats this amount as a fringe benefit and accounts for FBT on the amount as an unclassified benefit. Technically this amount should be subject to PAYE, however, because Spiderwebs has paid FBT on the amount there would be no PAYE obligation.

Global insurance policies

Clause 88

Summary of proposed amendment

The proposed amendment would provide options for accounting for fringe benefit tax (FBT) on global insurance policies.

Effective date

The proposed amendment would take effect for benefits provided on or after 1 April 2026.

Background

In a number of cases, employers provide certain types of insurance schemes based on global policies with one premium rate, no matter how many employees are covered by the policy.

An issue arises as to how this global cost should be apportioned across employees for FBT purposes. The issues paper *FBT – Options for change* suggested two options for the treatment of such a global policy:

- divide the total contribution by the number of employees, or
- treat the payment of the global policy as a pooled benefit and pay FBT based on the applicable pooling rate.

Submissions on which option should be proceeded with were split with a number suggesting both options be offered in legislation.

Key features

The proposed amendment would allow employers to elect to treat global insurance policies under one of two options:

- divide the total contribution by the number of employees, or
- treat the payment of the global policy as a pooled benefit and pay FBT based on the applicable pooling rate.

Election would be made by filing the employer's FBT return on the respective basis.

Unclassified benefits provided to employees of associates

Clause 86

Summary of proposed amendment

The proposed amendment would clarify the wording in section RD 45 of the Income Tax Act 2007 (ITA) to ensure that unclassified fringe benefits provided to employees of associates are correctly accounted for in the calculation of de minimis thresholds for unclassified benefits.

Effective date

The proposed amendment would take effect on 1 April 2022 (the original date the provision was amended), with a savings provision for those taxpayers who have filed returns on the literal wording.

Background

Section RD 45 has value of benefit thresholds that limit an employer's liability for fringe benefit tax (FBT) on unclassified benefits provided to an employee. An employer is only liable when the value of unclassified benefits provided to the employee by the employer (or an associate of an employer) exceeds a certain amount or when the value of four categories of benefits provided to all employees exceeds a certain amount. The four categories are:

a. unclassified benefits provided by the employer to their employees

b. unclassified benefits provided by persons associated, at any time in the relevant period, with the employer to employees of the employer

c. unclassified benefits provided by the employer to employees of persons associated, at any time in the relevant period, with the employer, and

d. if the employer is a company, unclassified benefits provided by other companies that are part of the same group of companies as the employer, at any time in the relevant period, to employees of those other companies.

However, under a strict reading of section RD 45 the thresholds only apply to "unclassified benefits" as defined in section CX 37 of the ITA. This means they must be benefits provided to the employees of the employer either by the employer or someone who has arrangements with the

employer to provide the benefit. However, benefits referred to in categories (c) and (d) above may not be "fringe benefits" under section CX 2 of the ITA because they are not provided to employees of the employer.

Other remedials

KiwiSaver remedials

Clauses 103 and 187(2)

Summary of proposed amendments

The proposed amendments would ensure that the scheduled increases to employee contribution rates and the ability to take a rate reduction enacted as part of Budget 2025 would also apply to members of complying superannuation funds (CSF). The amendments would also allow employers to contribute to employees' CSF accounts at the reduced rate when the employees choose to take a rate reduction.

Effective date

The proposed amendments would be effective from:

- 1 April 2026 – increasing the rate of employee contributions from 3% to 3.5%, providing for the rate reduction, and allowing employer contributions to match reduced employee contributions.
- 1 April 2028 – increasing the rate of employee contributions from 3.5% to 4%.

Background

Application of Budget 2025 rate increases to employee contributions to complying superannuation funds

The Taxation (Budget Measures) Act 2025 introduced changes to KiwiSaver settings, including increasing employer and employee contribution rates to 3.5% from 1 April 2026, followed by a further increase to 4% from 1 April 2028.

These amendments to employee contribution rates currently do not extend to complying superannuation funds (CSF). These funds are registered superannuation schemes whose membership rules broadly align with the KiwiSaver rules.

The requirements for CSF are contained within schedule 28 of the Income Tax Act 2007 and require the deduction of employee contributions at the rate of 3% of an employee's gross salary or wages.

The Bill would amend schedule 28 to ensure that the scheduled rate increases enacted as part of Budget 2025 also apply to CSF members.

Extension of temporary rate reduction to complying superannuation funds

Budget 2025 also provided KiwiSaver members with the ability to take a temporary rate reduction and continue contributing to their KiwiSaver accounts at a rate of 3% of their income. This recognises that some members may not be able to immediately increase their KiwiSaver contributions or may wish to save in other ways outside of KiwiSaver.

The Bill would amend schedule 28 to ensure that a rate reduction facility is also available to CSF members.

Allowing employer contributions to match reduced employee contributions

The Bill would also amend the Taxation (Budget Measures) Act 2025 to ensure that employers are able to choose to contribute to their employees' CSF accounts at the reduced rate of 3% when their employees take a rate reduction and contribute to their CSF account at the rate of 3%.

Defined benefit schemes

Clause 67

Summary of proposed amendments

The Bill proposes two remedial amendments to the rules for the taxation of defined benefit superannuation schemes providing life insurance:

- The first would facilitate the consolidation of defined benefit schemes under a master trust by allowing the master trust to qualify to be exempt from the life-insurer tax regime.
- The second would repeal the requirement for annual approval from the Financial Markets Authority to qualify for the exemption.

Effective date

The proposed amendments would be effective for the 2025–26 and later income years.

Background

Defined benefit schemes and other superannuation schemes that self-insure death, disability and/or serious illness benefits can apply to be taxed as a registered superannuation scheme as opposed to being taxed under the life-insurer tax regime. The policy intent of this exemption recognises that defined benefit schemes can provide benefits that are technically contingent on human life but would in practice be thought of as superannuation.

Facilitating consolidation of schemes

The remaining defined benefit schemes are small and uneconomic to run. Many such schemes would likely be closed if it were possible. However, there is no workable alternative to leaving them in operation. Consolidation of defined benefit schemes under a ring-fenced consolidation model has been proposed as a workable solution to this problem.

However, consolidation cannot be done under the current law. The barrier to consolidation is that the exemption currently applies only to schemes established for a single employer (or group of associated employers) that provide benefits only to current and former staff (and their relatives or dependents).

Reducing compliance burden of notification requirement

Under the Income Tax Act 2007 (ITA), schemes are required to apply annually to the Financial Markets Authority to be exempt from the life-insurer tax regime. This process imposes unnecessary compliance and administrative cost.

Key features

Facilitating consolidation of schemes

The proposed amendment would amend the ITA to allow a scheme that provides benefits to members who, absent a transfer under section 179 of the Financial Markets Conduct Act 2013, would be members or beneficiaries of a scheme that would qualify as exempt from the life-insurer tax regime under section EY 11(5)(a) of the ITA.

Reducing compliance burden of notification requirement

The proposed amendment would repeal section EY 11(9) and (12), which set out the requirement for defined benefit schemes to apply annually to be exempt from the life-insurer tax regime.

Schemes would still be required to meet the eligibility criteria set out in section EY 11(3) to (8) to qualify as exempt.

RDTI: Partnerships with non-standard balance dates

Clause 151

Summary of proposed amendment

This amendment would align how partnerships with non-standard balance dates return income with the method for applying for the Research and Development Tax Incentive (RDTI). Partnerships with an RDTI credit for a given income year would be required to apportion income according to the partners' balance date when returning partnership income for that year.

Effective date

The proposed amendment would be effective for the 2019–20 (the start of the RDTI regime) and later income years.

Background

The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 introduced a provision allowing partners who are part of a partnership with a non-standard balance date, when filing their separate returns, to return partnership income in the corresponding income year as the partnership (the non-apportionment method). This change was done to align the law with current practice.

This change raises potential issues when interacting with the timeframes of the RDTI regime and, further, around visibility and consistency in ensuring that the RDTI credit has been correctly claimed by partners if the non-apportionment method is used.

Partnerships and RDTI

The RDTI is applied for individually by each partner in the partnership. The corresponding activity approval and expenditure claim is tied to the balance date of the partner.

Before the 2025 change, when a partner and a partnership had non-aligned balance dates, an apportionment of the partnership's eligible R&D expenditure was required to match the partner's balance date. The apportionment approach is consistent across all partners in the partnership, irrespective of their individual balance dates, so Inland Revenue would match the claims made by each individual partner in relation to a particular R&D activity and claim.

Problem

There is a risk of confusion by each partner as to when each must file an RDTI general approval application to ensure they receive approval of the relevant activities. Eligible expenditure for the RDTI must be apportioned according to the individual partners' balance date. This means that if the non-apportionment method were erroneously used, the application would be incorrect. If this is not picked up in time, the partner could miss out on their RDTI credit because RDTI deadlines cannot be extended.

Data matching is also an issue. It will be difficult for Inland Revenue to match approved activities under a general approval to the expenditure claimed, and in matching expenditure claimed by individual partners to the approved R&D activities performed by the partnership. This lack of visibility compounds the risk of errors in RDTI filings not being picked up on time.

Key features

A partner would be prevented from electing to return partnership income as though the partner had the same non-standard balance date as the partnership if the partnership has an RDTI credit for the corresponding tax year.

RDTI: General approval application due date extension for September balance dates

Clause 154

Summary of proposed amendment

This amendment would extend the Research and Development Tax Incentive (RDTI) general approval due date for businesses with a September balance date. The extension would change the due date from the last day of the third month after the end of the income year (31 December) to 15 January following the end of the income year.

Effective date

The proposed amendment would take effect for RDTI general approval due dates after 1 April 2026.

Background

To participate in the RDTI regime, businesses must first apply for the RDTI by submitting an application for approval, either a general approval application or a criteria and methodologies (CAM) application.[24] Subsequently, they must file a supplementary return alongside their income tax return.

The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 extended the due date for RDTI general approvals to the last day of the third month after the end of the income year. This means that the due date for applicants with a September balance date now falls on 31 December, during Inland Revenue's shutdown period. This will leave these businesses unsupported at their due date.

Key features

The general approval application due date for businesses with a September balance date would be extended to 15 January following the end of the income year.

[24]A CAM application is used by businesses that intend to spend more than $2 million per income year on eligible R&D.

The due date for variation applications in relation to businesses with a September balance date would be correspondingly adjusted to:

- 15 January following the end of the relevant income year, and
- 15 January of the second income year following the relevant income year in relation to variations requests applying solely to supporting activities.

Exclude payments to trustee of deceased estate from definition of pension

Clause 11

Summary of proposed amendment

Th proposed amendment would specify that a gratuitous payment made to the trustee of the estate of an individual who has died is excluded from the definition of pension under section CF 1 of the Income Tax Act 2007.

Effective date

The proposed amendment would take effect from 1 April 2026.

Background

Under section CF 1, a pension is defined as a gratuitous payment made to a person in return for services that the person provided to the payer. Such payments made to the person's family because of, and within one year after, their death, are excluded from the definition of pension, and therefore, are not income.

Key features

To align with the policy intent and the current exclusions, this amendment would specify that a gratuitous payment made to the trustee of the estate of an individual who has died is excluded from the definition of pension under section CF 1, and therefore, are not income.

To ensure this amendment would apply as intended, the contradiction in the definition that specifies that a pension is a "gratuitous payment made to a person in return for services" would be replaced with wording that emphasises that a pension is a gratuitous payment made to a person that provided services to the payer.

Available capital distribution amount

Clause 7

Summary of proposed amendment

The proposed amendment would confirm that the amount of capital gains that a company can distribute tax-free on liquidation is a net amount (capital gains *less* capital losses) and that an amalgamated company inherits capital losses as well as capital gains.

Effective date

The proposed amendment would take effect from 1 April 2008, the commencement date of the Income Tax Act 2007 (ITA).

Background

When a company is liquidated, the amount received by a shareholder is only a dividend to the extent that it is more than the available subscribed capital (ASC) and available capital distribution amount (ACDA) of the company. The ACDA of a company is the amount of capital gains that can be distributed tax free when a company is liquidated.

The ACDA is intended to be a net amount (capital gains *less* capital losses). The Tax Counsel Office recently concluded that as a consequence of the 2007 rewrite of the Income Tax Act, this intent is not reflected in the current legislation.

Detailed analysis

When calculating ACDA on liquidation under section CD 44(1) of the ITA, the current formula requires that "capital losses" (being aggregate "capital loss amounts") are deducted from "capital gains" (being aggregate capital gain amounts available for distribution to shareholders on liquidation). This means that the "capital gains" in the formula are limited to the amounts available for distribution, **then** capital losses are deducted. This can lead to an artificial reduction in ACDA that was not intended.

Example 68: Calculation of ACDA

Company A has surplus assets of $100,000 to distribute on liquidation. Its aggregate capital gain amounts total $150,000, and its aggregate capital loss amounts total $50,000, resulting in net capital gain amounts of $100,000.

Under the current formula in section CD 44(1), the "capital gain" is $100,000 (the amount available for distribution – section CD 44(2)(c)), and then "capital losses" of $50,000 are deducted, leaving Company A with only $50,000 ACDA.

The proposed amendment confirms that Company A will have $100,000 ACDA.

Similarly, on amalgamation, in accordance with section CD 44(8), only "capital gain amounts" that are available for distribution at the time of the amalgamation are inherited by the amalgamated company. In other words, the amalgamated company only inherits capital gain amounts, not capital losses.

Cryptoasset staking income and PIE eligibility

Clauses 73 and 74

Summary of proposed amendments

The proposed amendments would clarify that a portfolio investment entity (PIE) fund that holds cryptoassets is able to generate staking income and retain its status as a PIE.

Effective date

The proposed amendments would apply retrospectively from 1 January 2009, the date that the first cryptoasset, Bitcoin, was created. This would clarify that any staking income that a PIE may have generated in prior years is a permissible income source.

Background

Cryptoassets were excluded from the financial arrangements (FA) rules in the Taxation (Annual Rates for 2021–22, GST and Remedial Matters) Act 2022 (the 2022 Act). The policy rationale for this change was to ensure that cryptoassets were not subject to accrual-based taxation on large unrealised gains and losses, for what are largely volatile asset positions. Prior to this change it was unclear whether cryptoassets would be subject to the FA rules or not. As part of the 2022 Act changes, cryptoassets that are economically equivalent to debt arrangements (that provide a fixed return known to the holder in advance) remain subject to the FA rules.

As a consequence of these changes, PIEs can now hold cryptoassets as an eligible investment type. Prior to these amendments, section HM 11 of the Income Tax Act 2007 (ITA) required a PIE to have 90% of the value of its assets in land interests, FA, excepted financial arrangements (EFA), or a right or option for any of these interests. The inclusion of cryptoassets in both the EFA and FA (for debt arrangements) provisions provides an unfettered ability for PIEs to invest in cryptoassets.

This outcome is desirable from a policy perspective because it provides a neutral tax treatment between asset classes. This is because it ensures that the law does not bias investment decisions away from cryptoassets when compared to other investment products, such as shares (which are eligible income types for PIEs).

Although cryptoasset PIEs are now permitted under the law, it is noted that section HM 12 requires PIE income to be derived from the correct income type specified in that section (eg, interest, dividend, rent, etc). The failure to satisfy the income type requirement for a PIE may result in ineligibility to be a PIE. The purpose of this rule is to ensure PIEs remain a genuine investment vehicle that targets "passive" returns.

Without legislative clarification, it is unclear whether staking income would fall within section HM 12.

Detailed analysis

Proposed new section HM 12(1)(b)(xi) of the ITA would provide that an amount derived from validating cryptoasset transactions through a proof-of-stake consensus mechanism, or otherwise using cryptoassets to generate a reward in the form of new or additional cryptoassets, is a valid income type for a PIE to generate. Section HL 10(2) (which is the section HM 12 equivalent that applied before 1 April 2010) would be similarly amended, with the insertion of proposed section HL 10(2)(b)(viib) providing for the same outcome.

This change would ensure that a PIE that holds cryptoassets is able to generate income through staking by way of proof-of-stake and also by any mechanism that involves utilising the cryptoasset to generate a return, such as by locking up its asset or lending it out for a reward. This ensures that PIEs that hold cryptoassets can operate efficiently and maximise their returns to investors, as would be possible if an individual invested in cryptoassets directly.

Example 69: Staking cryptoassets held by a PIE

Smittie Funds is a PIE fund that holds 40% of its assets in Gains, which is a cryptoasset that features on the decentralised open-source blockchain known as Gain Chain. Gain Chain utilises a proof-of-stake consensus mechanism. Under proof-of-stake, users responsible for validating transactions lock up or "stake" their cryptoassets to validate other transactions on the network. Validators who act honestly and validate transactions correctly are rewarded in newly minted Gains, and those who do not act honestly risk losing their staked Gains.

Smittie Funds holds enough Gains to be eligible to be a validator node on the network. This means that it is able to verify and validate new transactions on the blockchain. Smittie Funds locks up its Gains as collateral in a Gain Chain staking contract so that it can become a validator. By validating transactions on Gain Chain, Smittie Funds generates a reward of approximately 20 Gains per week.

The proposed amendment to section HM 12 provides that an amount derived from validating cryptoasset transactions through a proof-of-stake consensus mechanism is a valid income type for a PIE to generate, Smittie Funds is able to generate this income and maintain its PIE status.

Example 70: Generating a return

$Pilko is a cryptoasset that utilises a proof-of-work consensus mechanism and operates on a blockchain known as the Pilkington Protocol. The Stewart Speculation Income Fund (SSIF) is a PIE fund that holds $Pilko. SSIF lends out its $Pilko by way of a smart contract and is paid an annual return in the form of additional $Pilko. This practice does not involve validating any transactions on the blockchain but is instead providing liquidity for a return.

Because SSIF is using cryptoassets to generate a reward in the form of new or additional cryptoassets, this is a valid income type for the PIE fund to generate under proposed new section HM 12(1)(b)(xi).

Crypto-Asset Reporting Framework – "partner jurisdiction"

Clause 185

Summary of proposed amendment

The amendment would provide that any reference to "partner jurisdiction" in the Crypto-Asset Reporting Framework (CARF) is to be read as not including New Zealand (even though New Zealand will be included on the list it is required to hold of reportable jurisdictions).

Effective date

The proposed amendment would take effect on 1 April 2026, to align with the application date for the CARF in New Zealand.

Background

The CARF is an OECD developed initiative that requires cryptoasset service providers to collect and report information on users' cryptoasset transactions to tax authorities. The CARF has been given legislative effect in New Zealand and will apply from 1 April 2026.

As a default position, the CARF establishes a reporting obligation on New Zealand-based reporting cryptoasset service providers (RCASPs) in respect of non-residents only. This means that a New Zealand-based exchange is required to report to Inland Revenue information in respect of the transactions of its non-resident users (to the extent they are resident in a jurisdiction that has implemented the CARF), and not New Zealand resident users. This information is then exchanged with those jurisdictions.

All Jurisdictions that have implemented the CARF are required to maintain a list of reportable jurisdictions they exchange information with. To enable domestic reporting by RCASPs in respect of New Zealand residents, "New Zealand" will be added to the list that it maintains of reportable jurisdictions.

For this approach to work smoothly, the definition of "partner jurisdiction" (which is defined to include any jurisdiction that is included on the list maintained by said jurisdiction) would need to be amended to not include New Zealand.

Detailed analysis

Proposed new section 185U(4)(h) of the Tax Administration Act 1994 would provide that the term "partner jurisdiction" in the CARF means any jurisdiction other than New Zealand that has put in place equivalent legal requirements and that is included in a public list issued by New Zealand.

This would ensure that all references to "partner jurisdiction" in the CARF work as intended and do not also capture New Zealand.

This amendment is necessary to ensure that domestic reporting works smoothly.

Non-resident contractors' tax: Shipping and aircraft operators

Clause 95(6)

Summary of proposed amendment

The proposed amendment would codify an exclusion for non-resident aircraft operators and shipping operators carrying international cargo from non-resident contractors' tax (NRCT).

Effective date

The proposed amendment would take effect on 1 April 2026.

Background

NRCT must be withheld on payments made to non-resident contractors for services performed in New Zealand unless the payment is excluded from the definition of a "schedular payment" or an exemption is obtained. The non-resident contractor can apply this interim tax payment to their final end-of-year tax liability. If the non-resident contractor has no end-of-year tax liability they may be entitled to a refund of the NRCT withheld on the payments they receive.

NRCT originally only applied to construction activities or the hire of personnel or equipment. The scope of NRCT was broadened in 1990 to apply to all work that is undertaken by non-residents in New Zealand. As a result of this expansion, payments made to non-resident aircraft and shipping operators for their activities carried out in New Zealand became subject to NRCT.

Most non-resident aircraft and shipping operators would not be subject to income tax in New Zealand because of both our domestic law and international agreements. Despite the application of the NRCT rules to these operators as a matter of law, the Commissioner of Inland Revenue took the practical position (set out in a *Tax Information Bulletin* Vol 2, No 2, August 1990) of not seeking to apply the NRCT rules to non-resident aircraft and shipping operators.

In 1995, the Commissioner further clarified (in *Tax Information Bulletin* Vol 6, No 14, June 1995) that NRCT would be applied to non-resident shipping operators when they were transporting New Zealand goods or domestic passengers between two New Zealand ports.

Key features

The proposed amendment would codify the positions taken by the Commissioner in these two *Tax Information Bulletins*. Contract payments to non-resident aircraft operators and shipping operators would not be subject to NRCT withholding obligations, except when the contracts were for the transportation of New Zealand goods or domestic passengers between two New Zealand ports.

Non-resident contractors' tax: Software as a service

Clause 95(6)

Summary of proposed amendment

The proposed amendment would clarify that contracts for software as a service (SaaS) and similar business models are not subject to non-resident contractors' tax (NRCT).

Effective date

The proposed amendment would take effect on 1 April 2026.

Background

NRCT must be withheld on payments made to non-resident contractors for services performed in New Zealand, unless an exemption is available.

When the NRCT rules were expanded in 1990, SaaS (and related business models – platform as a service and infrastructure as a service – collectively "SaaS contracts") did not yet exist. SaaS involves the use of software without a physical representation, such as a subscription delivered via cloud services. These models were not considered when the NRCT rules were enacted or reviewed resulting in the language and concepts of the NRCT rules in legislation not mapping well onto SaaS contracts.

Due to this ambiguity, questions have emerged about whether NRCT should be withheld on SaaS contracts. For many SaaS contract cases, we have concluded that NRCT should not apply. However, questions are continually emerging about whether marginally different business practices would change this treatment.

Key features

To resolve uncertainty, the proposed amendment would clarify that SaaS contracts are not subject to NRCT except to the extent to which the service involves infrastructure or personnel located in New Zealand.

Short selling and foreign shares

Clauses 12, 37, 41, 47, 48, 53, 64, and 95(2)

Summary of proposed amendments

The proposed amendments would clarify that short selling foreign shares is treated in a similar way to short selling New Zealand shares. This means that the gain/loss from the short selling arrangement would generally be fully taxable/deductible under ordinary revenue account property rules rather than being subject to the foreign investment fund (FIF) rules.

Effective date

The proposed amendments would be effective for returning share transfers entered into on or after 1 April 2026.

Background

People sometimes acquire shares so that they can short sell. Short selling involves "borrowing" a share when you think the price is going to fall and selling it on the open market. You then buy a replacement or identical share back on the open market later and return it to your broker with the difference being your gain or loss.

There are special rules in tax legislation that govern returning share transfers and share-lending arrangements, which can involve short selling. Returning share transfers (and share-lending arrangements, which are a subset of returning share transfers) are arrangements involving the borrowing and return of shares. The person who borrows the share is the "share user". The person who lends the share is the "share supplier". The borrowed share is "the original share". The returned share can be the "original share", but in a short selling arrangement the original share has been sold, so the share that is returned is the "identical share".

When short selling New Zealand shares:

- the share user has taxable income under ordinary revenue account property rules from selling the original shares to a third party, and
- the share user has a deduction under ordinary revenue account property rules from purchasing identical shares from a third party.

This means that the gain/loss for the share user from the short selling arrangement is fully taxable/deductible.

When short selling foreign shares, the tax position is less clear because of the potential application of the foreign investment fund (FIF) rules. The current law could be interpreted to require taxpayers to pay tax on the gross proceeds from a short sell with no deduction for the purchase of the identical shares. For example, if the gross proceeds from the short sell were $100,000 and the cost of the identical shares was $80,000, this interpretation would mean that the taxpayer may be subject to tax on the gross proceeds or $100,000, rather than the net gain of $20,000. This is not an appropriate tax result.

Key features

The proposed amendment would clarify that a share user is not generally taxed under the FIF rules in relation to:

- short selling of an attributing interest in a FIF that is an original share subject to a returning share transfer, and
- the identical share that the share user buys to return to the share supplier.

By excluding these transactions from the FIF rules for a share user, these transactions would be taxed under ordinary revenue account property rules.

A consequential amendment would allocate income from a sale of shares as part of a returning share transfer to the year the identical shares are purchased if that occurs in the following income year. This would allow the cost of acquiring the shares to be returned in the same year as the income from selling the shares when this occurs in the following income year.

A proposed amendment to the comparative value method of the FIF rules would add a deeming provision so that the share supplier would be treated as the holder of the original share subject to a returning share transfer. This matches the deeming provisions in the fair dividend rate annual and periodic methods.

Detailed analysis

The proposed amendments would clarify the tax treatment for share users when short selling with foreign shares. This is because of the uncertainty created by the potential dual application of the FIF rules and the ordinary revenue account property rules when a share user acquires an original share, short sells it, buys an identical share and returns it to the share supplier.

The FIF rules provide that, under the fair dividend rate (FDR) annual and periodic methods, the share supplier is treated as holding the original shares in a returning share transfer, except if the share user is related to the share supplier or the returning share transfer is part of a structured arrangement (referred to here as the "deeming provisions" in section EX 52(14C) or EX 53(16C) of

the Income Tax Act 2007 (ITA)). Therefore, one interpretation of the deeming provisions is that the share user is not the holder of the original shares in a returning share transfer, unless one of the exceptions applies.

The potential issue for short selling foreign shares arises if the share user sells the original share. That part of the short selling arrangement is not included in the share user's FDR income calculation because the share supplier (rather than the share user) is treated as holding the original share under the deeming provisions. The gross proceeds on the short sell are therefore income in the hands of the share user under ordinary rules for revenue account property. Because the share user did not incur a cost when they acquired the original share from the share supplier, they would have no tax deduction.

The share user then buys an identical share at a later date and returns it to the share supplier for no consideration. For the identical share, the share user is treated as holding an attributing interest in a FIF for the purposes of the FDR method, because the deeming provisions only apply to the original share and not to the identical share, under this interpretation. The way the various FDR calculations work means that the share user would therefore not receive a tax deduction for the cost of acquiring the identical share.

The net tax result of the short selling arrangement would be that the share user has assessable income from the short sale of the original share, but no tax deduction for the cost of the identical share. This is not an appropriate tax result, and we are not aware of any taxpayers having treated short selling with foreign shares in this way in practice.

The proposed amendments would clarify that short selling foreign shares is treated in a similar way to short selling New Zealand shares. This would be achieved by providing that a share user's rights in the original share and identical share are not attributing interests in a FIF, when there is a short selling arrangement under which a share user:

- acquires an original share under a returning share transfer
- disposes of the original share to a person other than the share supplier or a person associated with the share supplier, and
- acquires an identical share to return to the share supplier under the returning share transfer.

Section EA 5 of the ITA allocates income from a short sale of an original share as part of a share-lending arrangement to the year the identical share is purchased if that occurs in the following income year. A proposed amendment would change the reference to share-lending arrangement in that section to returning share transfer, which is a broader term that should make it easier for short sales with foreign shares to qualify for deferral of the income to the following income year. This would allow the income from the sale of an original share and the deduction from the acquisition

of an identical share in a short selling arrangement to be aligned when the arrangement spans one balance date (that is, when the arrangement lasts for up to a maximum of two years).

Another proposed amendment to the comparative value method of the FIF rules would add a deeming provision so that the share supplier would be treated as the holder of the original share subject to a returning share transfer. This matches the deeming provisions in the FDR annual and periodic methods. The comparative value method is generally applied by individuals and trusts that are unlikely to have been the share supplier in returning share transfers when the deeming provisions were introduced, however, there is more potential for this now with the rise of retail share trading and online investment platforms.

Foreign-sourced amounts and non-resident trustees

Clause 72

Summary of proposed amendment

The proposed amendment would repeal a redundant provision that relates to foreign-sourced amounts of income derived by non-resident trustees to improve legislative clarity.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Generally, foreign-sourced amounts derived by non-residents are not assessable income (section BD 1(4)(a) and (b) of the Income Tax Act 2007 (ITA)). However, foreign-sourced amounts derived by non-resident trustees can be assessable income, if the settlor of the trust is a New Zealand resident (sections BD 1(4)(c) and HC 25).

Section HC 25 of the ITA contains a redundant provision applying to a New Zealand-resident trustee (section HC 25(2)(c)). It was originally enacted when the legislation was not as clear as it is now regarding the treatment of multiple trustees of a trust. The legislation now clarifies that trustees of a trust are a notional single person.

Accordingly, the reference to a New Zealand resident trustee in section HC 25(2)(c) is redundant because the section can only apply to a non-resident trustee.

Short-process rulings and non-resident applicants with income over $20 million

Clause 161

Summary of proposed amendment

The proposed amendment would ensure non-residents applying for short-process rulings would have their foreign-sourced income considered in determining whether they have income below the $20 million threshold.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Short-process rulings are a type of binding rulings targeted at small- to medium-sized enterprises. To determine whether an applicant is a small- to medium-sized enterprise, it must have annual gross income of $20 million or less for the tax year preceding the application.

Due to how the eligibility criteria is drafted, non-resident applicants that derive more than $20 million of income are not precluded from meeting the eligibility criteria. This is because "annual gross income" is defined with reference to the person's "assessable income", and "assessable income" excludes any foreign-sourced income of a non-resident. This means that non-resident applicants with considerable foreign-sourced income can meet the criteria for a short-process ruling, providing non-resident applicants with an unintended advantage over New Zealand tax residents.

Detailed analysis

The Bill proposes to amend section 91EL of the Tax Administration Act 1994, which sets out the criteria an applicant must meet to be eligible for a short-process ruling. The proposed amendment would provide that a non-resident applicant must have income below $20 million. To determine this, their:

- exempt or excluded income is ignored, and
- foreign-sourced income is included.

This would ensure that non-resident applicants have their income determined in the same way that resident applicants have their income determined, because resident applicants have their foreign-sourced income included in their annual gross income.

The Bill also provides that this income would be measured to the non-resident's most recently completed financial year. This is not necessarily a "tax year" or an "income year" because these concepts will not be relevant for a non-resident with no or minimal presence in New Zealand, or no New Zealand-sourced income.

Donation tax credit clawback for refunded donations

Clause 150(3)

Summary of proposed amendment

The proposed amendment would implement a clawback mechanism allowing Inland Revenue to recover a donation tax credit if the related donation is returned.

Effective date

The proposed amendment would take effect for donations returned to donors on and after the date of introduction of this Bill.

Background

An individual can claim a donation tax credit of 33.33% for a tax year when they make a donation over $5 to an approved organisation (that is, an entity described in section LD 3 of the Income Tax Act 2007) such as a school or charity. The amount of an individual's gifts made in a tax year that are eligible for a tax credit are capped at the total amount of their taxable income.

In some cases, a gift may be returned to an individual by an approved organisation. Under existing legislation, there is no specific provision that allows the tax credit to be clawed back.

However, it is the policy intent that any donation tax credit should be recovered in these circumstances. A person should not receive the benefit of a donation tax credit when they have not incurred the financial cost of the donation (because the donation has been returned).

Relocation of donation tax credit cap

Clauses 77 and 150(1) and (2)

Summary of proposed amendment

The proposed amendment would move the donation tax credit cap legislation from the Tax Administration Act 1994 (TAA) to the Income Tax Act 2007 (ITA) where the eligibility rules reside.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

An individual can claim a donation tax credit of 33.33% when they make a donation over $5 to an approved organisation such as a school or charity. The amount of an individual's donations made in a tax year that are eligible for a tax credit are capped at the total amount of their taxable income.

Currently, the entitlement for the donation tax credit arises under section LD 1 of the ITA. However, the rule capping the eligible donations to an individual's taxable income is in section 41A of the TAA. This separation may cause confusion and increase compliance costs because individuals must refer to two different Acts to calculate their donation tax credit.

Amounts received in trust by public or local authorities

Clauses 16, 17, and 18

Summary of proposed amendments

The proposed amendments would remove redundant provisions that set out specific trustee capacity rules in the income tax exemptions for public authorities, public purpose Crown-controlled companies, and local authorities. This would improve the legislative clarity of these exemptions.

Effective date

The proposed amendments would take effect on the day after the date the Bill receives the Royal assent.

Background

Sections CW 38, CW 38B, and CW 39 of the Income Tax Act 2007 (ITA) provide tax exemptions for public authorities, public purpose Crown-controlled companies, and local authorities.

Each of these sections provides that any income derived by the relevant entity in its capacity as a trustee is not exempt income.

In 2018, section YA 5 of the ITA was enacted to clarify that when a person is acting as a trustee of a trust, they are treated for income tax purposes as acting solely in that capacity and not in their personal, body corporate, or other capacity.

Following the introduction of this general rule, it is no longer necessary to include specific trustee capacity rules for public authorities, public purpose Crown-controlled companies, and local authorities.

Increase cash basis person thresholds

Clauses 44 and 45

Summary of proposed amendment

The proposed amendment would increase the thresholds for a taxpayer to be a cash basis person and therefore excluded from having to comply with the financial arrangements rules in the Income Tax Act 2007. Additionally, it is proposed to increase the threshold for variable principal debt instruments (for example, overdrafts) to be treated as excepted financial arrangements.

Effective date

The proposed amendment would be effective for the 2026–27 and later income years.

Background

The financial arrangements rules seek to spread the income or expenditure under financial arrangements, for example, debt obligations, over the life of those arrangements with the purpose of preventing deductions for expenditure being accelerated and income recognition being deferred.

The rules are complex and for those who have lower levels of interest in financial arrangements they can increase compliance costs with no real impact on the amount of tax collected from the arrangement other than minor timing issues.

Smaller taxpayers are excluded from the rules when they meet certain criteria. These taxpayers are termed a "cash basis person" and return income or expenditure from a financial arrangement on a cash rather than an accrual basis.

In addition, small value variable principal debt instruments are treated as excepted financial arrangements to ensure undue compliance costs are not incurred by applying the rules to those small value instruments.

The thresholds have not been adjusted since 1999 and are now considered by taxpayers to be outdated, leading to anecdotal lower compliance of these rules.

Key features

The proposed amendments would increase the following thresholds as shown in the table below.

Table 1: Threshold changes

Threshold	Current value	Proposed value
Variable principal debt instrument	$50,000 or less	$100,000 or less
Cash basis person:		
▪ Income and expenditure	$100,000 or less	$200,000 or less
▪ Absolute value	$1,000,000 or less	$2,000,000 or less
▪ Deferral	$40,000 or less	$100,000 or less

Child support and domestic maintenance requests

Clause 181

Summary of proposed amendment

The amendment would remove the requirement for payee uplifts to be in writing and signed. This would allow for uplifts to be made in a way approved by the Commissioner of Inland Revenue.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Payees (carers receiving child support and recipients of domestic maintenance) can elect for Inland Revenue to stop collecting amounts owed to them by the liable person. This is commonly referred to as a request for an "uplift" of arrears and can apply to overdue amounts and future amounts that are not yet payable. The Child Support Act 1991 requires that an uplift must be in writing and be signed.

Many references to writing (or in writing and signed) have been removed from the Child Support Act. In 2015, the provisions for electing to end a child support formula assessment were amended to allow for the request to be given either by using the approved form or in another way approved by the Commissioner. Currently, a cancellation can be given in a recorded call. However, if the receiving carer does not want Inland Revenue to collect any part of the assessment payable until the cease date (whether it is in arrears or not yet due), they must then complete the uplift request separately because this cannot be given during the recorded call.

Key features

The requirement for payee uplifts to be in writing and signed would be removed, allowing uplifts to be made in a way approved by the Commissioner. This would be consistent, for example, with a request for cancellation of child support.

Clarify Commissioner's ability to publish information on internet

Clauses 95(18), 108(10), 134, 136(4), 137, 138, 171, and schedule 2

Summary of proposed amendment

The proposed amendment would clarify that when the Commissioner of Inland Revenue is required to publish information under the Tax Administration Act 1994 (TAA), the Income Tax Act 2007 (ITA), or the Goods and Services Tax Act 1985 (GST Act), this requirement can be satisfied when the information is made accessible and available on an internet site maintained by or on behalf of Inland Revenue.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

The GST Act, ITA and TAA sometimes include provisions that require the Commissioner to publish certain information in "a publication", for example, determinations and rulings on tax issues. Inland Revenue currently publishes this information on its website and in its online *Tax Information Bulletin*.

Detailed analysis

To modernise and align publication obligations with that of other agencies and current practice, proposed new section 14H of the TAA would clarify that when the Commissioner is required to publish information under the TAA, ITA, or GST Act, this requirement would be satisfied when the information is made accessible and available on an internet site maintained by or on behalf of Inland Revenue. This amendment would ensure that requirements to publish information match Inland Revenue's practice since the *Tax Information Bulletin* moved to online-only format in 2015. This amendment would therefore not result in changes to how information required to be published by the Commissioner is accessed by users.

Proposed new section 14H of the TAA would only apply to publishing requirements set out in the TAA, ITA, and GST Act because other Inland Revenue Acts either do not require the Commissioner to publish information or have their own notification provisions that already enable the publishing

of information on the internet.[25] This approach aligns with other provisions under "Modes of communication" in the TAA (subpart 2D of Part 2), under which proposed new section 14H would be inserted.

The Bill also proposes several consequential and minor amendments to the ITA, GST Act and TAA to cross-reference proposed new section 14H of the TAA and generally modernise and standardise current publishing requirements. Requirements to publish secondary legislation and information in a register would not be changed. Requirements for the Commissioner to both notify and publish determinations and rulings is proposed to be simplified so that the Commissioner would only be required to publish the determination or ruling itself.

[25] See for example section 210 of the Student Loan Scheme Act 2011, which allows the Commissioner to provide information free of charge on an internet site.

Fine defaulter email address sharing

Clause 169(2) and (3)

Summary of proposed amendment

The proposed amendment would support the collection and enforcement of monetary penalties by enabling Inland Revenue to share the last known contact details, including email addresses, of fine defaulters with the Ministry of Justice.

Effective date

The proposed amendment would take effect on 1 April 2026.

Background

Inland Revenue has an Information Matching Agreement with the Ministry of Justice to improve the collection and enforcement of monetary penalties. The Tax Administration Act 1994 (TAA) alongside the Agreement enables the Ministry of Justice to share a fine defaulter's name and date of birth with Inland Revenue. Inland Revenue then matches this information with the information it holds about the defaulter. If the information matches, Inland Revenue sends the following information it holds about the fine defaulter to the Ministry of Justice:

- the last known physical address
- the last known telephone number
- the name of the last known employer
- the physical address of the last known employer
- the telephone number of the last known employer.

The Ministry of Justice has requested an update to the TAA and the Agreement to enable it to request and receive the fine defaulter's email address to enable correspondence via email rather than post. This amendment modernises the authorising provision in the TAA to enable the last known contact details, including email addresses, of the fine defaulter to be shared with the Ministry of Justice.

Unclaimed money remedials

Clauses 177, 178, and 179

Summary of proposed amendments

The proposed amendments would reduce the existing time bar from 25 years to 20 years. They would also improve the collection of information associated with amounts of unclaimed money when transferred to Inland Revenue.

Effective date

The proposed amendments would take effect on 1 April 2026.

Background

Under current settings, unclaimed money is available to be claimed by owners for 25 years after it is transferred to Inland Revenue by a holder.

Holders are required to provide Inland Revenue with information about the origin of the funds and the identity of the owner when transferring unclaimed money to Inland Revenue.

Key features

The proposals would:

- reduce the existing time bar on an owner's ability to claim an amount of unclaimed money from 25 years to 20 years, and
- expand the information that holders are required to supply when transferring unclaimed money to Inland Revenue.

Detailed analysis

Unclaimed money is money that has become detached or disconnected from its owner for a given period (for example, money left untouched in a bank account for several years). Eventually, this money is transferred to Inland Revenue, which is responsible for administering unclaimed money under the Unclaimed Money Act 1971.

Changes to the existing time bar

Currently, owners of unclaimed money have 25 years to claim amounts of unclaimed money once it has been transferred to Inland Revenue. This time bar was introduced in 2021 and was installed in recognition of the fact that money is less likely to be successfully claimed as it increases in age.

The proposed remedial would reduce the existing time bar from 25 years to 20 years. This means that owners of unclaimed money would need to claim any amounts owed to them within 20 years of it being held by Inland Revenue.

Collection by Inland Revenue

Recent reforms to the Unclaimed Money Act 1971 improved the administration of unclaimed money, as well as an owner's ability to make a claim for amounts owed to them. However, it is common for Inland Revenue to receive amounts of unclaimed money with little associated information. When this occurs, Inland Revenue staff often need to contact the transferring holder and seek further information about the funds received. This creates costs for both Inland Revenue and holders of unclaimed money.

The proposed remedial would expand a holder's information supply obligations and require them to supply specific information about the owner of the unclaimed money. In addition to the existing information supply obligations,[26] holders would also be required to supply the owner's:

- full name
- date of birth
- IRD number
- full address, and
- contact information.

Where relevant, holders would also have to provide:

- the account number where the money is held
- the date the account was opened, and
- the date of the of the owner's last interaction with the account.

Requiring holders to supply this information with or before is the payment of the money to the Commissioner is intended to reduce the need for Inland Revenue staff to contact holders to seek

[26] The existing information supply requirements that remain applicable are the source, and history of the accrual, of the amount and the source of the owner's entitlement to payment of the money.

further information about amounts of unclaimed money and result in owners being more efficiently united with their funds.

Exclude tax pooling from disputes process

Clause 165

Summary of proposed amendment

The proposed amendment would exclude tax pooling from the disputes process, in line with the treatment of other discretionary decisions.

Effective date

The proposed amendment would take effect on 1 April 2026.

Background

The Commissioner of Inland Revenue has discretion in allowing a taxpayer to use tax pooling for paying voluntarily disclosed tax shortfalls in some circumstances under the Income Tax Act 2007 (ITA).

Most provisions where the Commissioner has discretion are specifically excluded from the disputes process. Because current legislation does not list tax pooling for voluntary disclosures as one of the legislative provisions that is not subject to challenges, taxpayers can issue a Notice of Proposed Adjustment to the Commissioner when the decision to exercise discretion is declined. This is inconsistent with the treatment of other similar discretionary decisions.

Key features

The proposed amendment would insert a reference to section RP 17B of the ITA into section 138E(1)(e)(iii) of the Tax Administration Act 1994 to specifically exclude tax pooling from the disputes process.

Maintenance amendments

Maintenance amendments table

Summary of proposed amendments

The proposed amendments in the table reflect minor technical maintenance items arising from both the rewrite of income tax legislation and subsequent changes.

Effective date

Effective dates for the proposed amendments are outlined in the table.

Minor maintenance items

The proposed amendments in the table would 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.

Clause	Section	Act	Amendment	Effective Date
5	CC 15	ITA 07[27]	Correcting terminology	22 May 2025
25–32	DE 1, DE 2B, DE 5, DE 7, DE 9, DE 10, DE 11, DE 12	ITA 07	Replacing undefined terms with defined terms	1 April 2008 for most, 1 April 2017 for some
50(1)	EX 46(1)(b)	ITA 07	Inserting cross-reference	1 July 2018

[27] Income Tax Act 2007

Clause	Section	Act	Amendment	Effective Date
61(4)	EX 62(9), (10)	ITA 07	Removing redundant provisions	1 April 2025
68	FB 1B	ITA 07	Correcting punctuation	Day after Royal assent
69, 93	FC 9, RL 1	ITA 07	Correcting cross-reference	1 July 2024
75	HM 35	ITA 07	Correcting typographical error	Day after Royal assent
81	MK 2	ITA 07	Correcting cross-reference	Day after Royal assent
89	RD 50	ITA 07	Updating threshold to correct amount	1 April 2025
95(13)	YA 1 (definition of imputation credit)	ITA 07	Removing redundant reference	Day after Royal assent
95(24)	YA 1 (definition of schedular income)	ITA 07	Removing redundant reference	1 April 2010
96	YA 2	ITA 07	Removing redundant references	Day after Royal assent
105	schedule 35	ITA 07	Updating Crown-controlled company names	21 February 2025
106, schedule 1, part A	CD 40, CD 41, OB 71, OB 72, OB 72B, OP 6, RM 10, RM 13, RM 17, RM 22, RM 23, RM 26, RM 33, schedule 1	ITA 07	Removing redundant references	Day after Royal assent

Clause	Section	Act	Amendment	Effective Date
115	11A	GSTA[28]	Inserting cross-reference	30 March 2025
131	90	GSTA	Correcting cross-reference	30 March 2025
136(6)	3 (definition of tax)	TAA[29]	Deleting unnecessary word	Day after Royal assent
148	22C	TAA	Correcting cross-reference	Day after Royal assent
149(1)	32M(1B)	TAA	Correcting wording	1 April 2008
149(2), (3)	32M(1B), (2)	TAA	Correcting wording	1 April 2010
155	75	TAA	Removing redundant provision	Day after Royal assent
166	226E	TAA	Removing redundant provision covered by Legislation Act 2019	Day after Royal assent
170, schedule 1, part B	184, 184AA	TAA	Removing redundant references	Day after Royal assent
173, 174	4 (definition of compulsory employer contribution), 101A	KSA[30]	Replacing undefined term with defined term	Day after Royal assent
175	schedule 1	KSA	Deleting redundant subclauses	Day after Royal assent

[28] Goods and Services Tax Act 1985

[29] Tax Administration Act 1994

[30] KiwiSaver Act 2006

Clause	Section	Act	Amendment	Effective Date
180	schedule 1	SLSA[31]	Replacing outdated references	Day after Royal assent
184	2	Emergency Response Act[32]	Correcting commencement of a provision	Day after Royal assent

[31] Student Loan Scheme Act 2011

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

Revocations

Order revocations

Clause 192

Summary of proposed amendment

The Bill would revoke the following regulations as a consequence of the shift of the power to set certain rates from the Governor-General to the Commissioner of Inland Revenue:

- Income Tax (Fringe Benefit Tax, Interest on Loans) Regulations 1995 (SR 1995/41)
- Taxation (Use of Money Interest Rates Setting Process) Regulations 1997 (SR 1997/7)
- Taxation (Use of Money Interest Rates) Regulations 1998 (SR 1998/105).

Effective date

The revocations would take effect on the day after the date the Bill receives the Royal assent.