Inland Revenue
Te Tari Taake

AMENDMENT PAPER COMMENTARY

Amendment Paper No 559 to the Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

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Minster of Revenue

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Amendment Paper No 559 to the Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill – commentary on the Amendment Paper

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Overview

Amendment Paper No 559 contains further measures to be added to the Taxation (Annual Rates for 2024–25, Compliance Simplification, and Remedial Matters) Bill.

The proposed changes would:

- allow qualifying foreign investments in infrastructure projects and businesses to fully deduct their interest expenses when these arise from third-party limited recourse debt
- introduce a legislative discretion to allow the Commissioner of Inland Revenue (the Commissioner) to provide relief from interest that applies to a student loan when a borrower is overseas based
- allow the New Zealand Superannuation Fund (NZSF), Venture Capital Fund, and associated wholly-owned Crown companies to pay income tax on an annual basis
- extend the period for which tax pooling can be used to pay income tax owing for the 2022–23 and 2023–24 income years until 1 October 2027 if certain conditions are met, and
- make other remedial amendments.

Thin capitalisation settings for infrastructure investment

Thin capitalisation settings for infrastructure investment

Clauses 11B, 69B, 69C, and 95(6B), (13B), (14BB), (18B), (18C), (18D), and (25C)

Summary of proposed amendment

The proposed amendment would introduce a new thin capitalisation rule that applies specifically to infrastructure investment. The new rule would allow an "eligible infrastructure entity" to deduct interest on more debt than is usually allowed under the standard thin capitalisation rules without a thin capitalisation income adjustment, but only for debt from unrelated third parties, when the lenders' claims are limited to the assets and income of that entity.

Effective date

The new rule would come into force on 1 April 2026 and apply from the 2026–27 income year.

Background

Foreign investors can choose to fund their New Zealand investments with either equity or debt. However, when compared with the non-deductible treatment of dividends on equity investment, the tax-deductible treatment of interest on debt provides an incentive for them to invest into New Zealand through debt rather than equity.

The thin capitalisation rules protect the New Zealand tax base by preventing foreign investors from allocating excessive debt to New Zealand to reduce their tax liability. This is done by limiting the amount of deductible debt (debt with tax deductible interest) that will be recognised for tax purposes in New Zealand. Generally, a thin capitalisation income adjustment would effectively deny some interest deductions if the New Zealand group's debt percentage (that is, the ratio between the debt and the assets' value after subtracting non-debt liabilities) exceeds 60%, and 110% of the multinational group's worldwide debt percentage.

The rules were relaxed in 2018 to provide an exemption from the thin capitalisation rules for public private partnership (PPP) infrastructure projects. The specific exemption recognised that the standard thin capitalisation rules might not work well for PPP projects because they can be very highly geared commercially. This allowed these projects to take on debt exceeding the limits imposed by the general rules without triggering a thin capitalisation income adjustment, provided the debt is third-party debt with limited recourse (that is, it is fully supported by the project with no recourse to the investors). However, this treatment applies only to PPP infrastructure projects with the Crown or a public authority. It does not apply to other infrastructure investments.

Although the thin capitalisation rules generally work as intended, they may be too rigid, particularly for foreign investment in infrastructure not covered by the PPP exemption. High levels of third-party debt (exceeding 60%) can arise in some infrastructure projects and businesses because they tend to be capital intensive but usually have stable cashflows backed by long-term contracts or service agreements. Under the current rules, some interest expense deductions may be denied even though the levels of debt may not be considered excessive commercially. This could raise funding costs and disincentivise such investment.

The primary aim of the proposed new rule is to address existing concerns with the thin capitalisation rules that may be hindering foreign investment in New Zealand's infrastructure, while still preserving the integrity of the overall regime.

Key features

The Government has agreed to a targeted exemption to the thin capitalisation rules, specifically for infrastructure investment (including new infrastructure projects as well as existing infrastructure businesses), that aims to mitigate a potential impediment to foreign investment in New Zealand's infrastructure under the existing rules.

An entity that would otherwise breach the standard thin capitalisation thresholds would be able to elect to apply the proposed new rule if the entity:

- is a New Zealand company controlled by a foreign investor or a foreign company operating in New Zealand through a partnership or a fixed establishment
- carries on a business or project primarily consisting of creating, operating, maintaining, or upgrading qualifying infrastructure assets in New Zealand
- owns assets that are entirely, or almost entirely, attributable to such activities, and
- has no assets situated outside New Zealand (except in limited circumstances), nor fixed establishment or interest in an entity, partnership, or trust outside New Zealand.

An entity electing to apply the new rule would be able to deduct interest expenses on its debt, without a thin capitalisation income adjustment, if the debt:

- is applied to the eligible infrastructure entity's business or project
- is from a genuine third party and does not have any equity-like features, and
- has recourse only to the assets and income of the entity.

Any interest on debt that did not meet these requirements (such as debt from related parties) would not be deductible when the entity elected to apply the new rule.

These requirements are important for integrity reasons. To ensure the entity's debt was still at a commercially reasonable level for its infrastructure assets in New Zealand, the entity would need to

be capable of supporting the debt on a standalone basis (without any further support from its investors) relying on those New Zealand infrastructure assets and activities.

Detailed analysis

The new rule in proposed new section FE 7C of the Income Tax Act 2007 would generally be available (subject to meeting the requirements to apply the rule) to:

- a New Zealand company controlled by a non-resident company, trust, or individual person
- a non-resident partner (company) of a New Zealand limited partnership, or
- a non-resident company operating in New Zealand through a fixed or permanent establishment.

The new rule would not be available to a New Zealand company owned by a group of non-residents ("non-resident owning body"). This is because the interest deductions of such a company would not have a thin capitalisation income adjustment applied under existing law when the debt is from a genuine third party and the shareholders are not providing a guarantee for that debt.

The new rule would also not be available to New Zealand-owned companies with foreign subsidiaries (that is, outbound thin capitalisation).

To apply the new rule for a given income year, an entity would have to:

- be an "eligible infrastructure entity"
- have "qualifying infrastructure debt"
- elect to apply the new rule, and
- not elect to apply the PPP exemption.

Eligible infrastructure entity

To be an "eligible infrastructure entity", the entity's principal operation must be carrying on a business or a project consisting of creating, operating, maintaining, or upgrading "qualifying infrastructure assets" in New Zealand that it owns. In addition, the entity may also undertake any other activities that are ancillary to or facilitate such activities.

Whether an activity is considered "ancillary" or "facilitative" would depend on specific facts and circumstances. However, the principal business of the entity would have to be creating, operating, maintaining, or upgrading "qualifying infrastructure assets" that it owns. The ancillary or facilitative activities are intended to cover supporting activities.

Example 1: Ancillary or facilitative activities

An entity whose primary business is sub-leasing retail units in shopping malls, running a hotel chain, or operating a car park would not qualify to apply the new rule.

However, an entity that is registered to operate an airport may sub-lease retail units in the terminal, buildings to a hotel chain, and land to a car park operator. None of them would be provided if there was no airport. Therefore, they could be considered ancillary or facilitative to operating the airport.

If the operator also holds other land away from the airport through which it leases a shopping mall or commercial properties, this would not generally be considered ancillary and facilitative to operating the airport.

To qualify as an "eligible infrastructure entity", the entity must also satisfy a value test assessed based on an appropriate balance sheet of the entity. The starting point for an appropriate balance sheet would be the entity's statement of financial position in its annual financial statements.

If the entity was part of a consolidated group's financial statements, then an appropriate balance sheet would be the individual balance sheet of the entity that forms part of the consolidated group's financial statements. To arrive at the individual balance sheet of the entity, the consolidated accounts accounting standards must be applied for the purposes of determining the carrying value of all its assets, liabilities, and equity.

The value test requires that all, or all but an insignificant portion (at least 95% of the total value of the entity's assets), of the entity's assets are used in, or for the purposes of, the eligible infrastructure activities listed above (including the ancillary or facilitative activities). The test is intended to ensure that the debt of the entity is supported primarily by assets that are attributable to such activities, recognising that such an entity's balance sheet would also include other assets that are not, in themselves, infrastructure assets but are essential in carrying out the infrastructure activities. In that regard, projects aimed at constructing new infrastructure assets should qualify provided a majority of their resources are dedicated to the creation of these assets. This is the case despite the fact that the entity's balance sheet may not yet include the infrastructure assets themselves.

For the purpose of the value test, assets used in, or for the purposes of, an infrastructure business or project could include, among other things, staff accommodation within a remote electricity generation facility, resource consents to build and operate an infrastructure asset, or hedging instruments used to manage foreign currency or interest rate risks. They would also include goodwill related to the eligible activities.

The new rule would apply only to entities whose principal operations involved conducting the eligible infrastructure activities in New Zealand. Therefore, in addition to the above criteria, an entity would also not be an "eligible infrastructure entity" if the entity:

- has a permanent establishment or an interest in an entity, partnership, or trust outside New Zealand, or
- owns an asset situated outside New Zealand, unless the asset is held in relation to the eligible infrastructure activities described above, and is either minor, situated outside New Zealand temporarily (no more than six months cumulatively for the particular asset) or for maintenance (in which case, the six-month limit does not apply), or a hedging instrument.

This requirement is intended to be read narrowly because it is important that an "eligible infrastructure entity" would be able to support the level of debt on a standalone basis relying on its New Zealand infrastructure assets and activities. It should not be restrictive for infrastructure projects when a special purpose entity has been established for a particular project in New Zealand (like a new solar farm development). However, it would mean that infrastructure businesses with foreign operations or investments would not qualify for the new rule (unless those assets were held in another entity that was not owned by the relevant New Zealand infrastructure entity or group).

Some flexibility would be provided by allowing the entity to have foreign assets that are related to eligible infrastructure activities in New Zealand, but only in some specific circumstances, such as when the value of the asset is "minor" in relation to the total assets of the entity. Whether a foreign asset would be related to eligible infrastructure activities and "minor" would depend on the circumstances, but one example could be a small balance in a foreign bank account (like a United States clearing account for United States private placement debt incurred for the purpose of constructing New Zealand infrastructure assets). Another example could be a laptop used by an employee while travelling abroad for a few days.

Example 2: Assets satisfying the value test

The balance sheet of an electricity lines company (Electrify Co) as at 31 March 2027 includes:

	$000	$000
Assets		
Cash and cash equivalents held in New Zealand	800	
Cash in foreign bank account held to make purchases for purpose of infrastructure business in New Zealand	60	
Trade and other receivables from carrying on the infrastructure business	9,000	
Network systems (electricity distribution and transmission assets, including the land on which they are placed)	200,000	
Equipment related to maintaining, monitoring, and repairing the electricity and transmission assets, such as tools, spare parts, etc	20,000	
Other land and buildings related to infrastructure assets, including a warehouse storing repair equipment and an office building where the infrastructure business is managed	100,000	
Office plant and equipment related to the infrastructure business, including laptops, office equipment, and software for office workers managing the infrastructure business	50	
Intangible assets – Resource planning consent for the infrastructure project	200	
Investment assets – interest in a shopping mall in Newmarket, Auckland	100,000	
Total assets		**430,110**
Liabilities		
Trade and other payables	8,000	
Employee benefits	3,000	
Borrowings	350,000	
Deferred tax liability	30,000	
Total Liabilities		**391,000**
Equity		
Share capital	12,000	
Accumulated surplus	27,110	
Total equity		**39,110**

In relation to the assets held by the business:

- The network systems would be the qualifying infrastructure assets because they are tangible assets located in New Zealand and they provide, or are integral to providing, the energy needs of the public.
- The cash amounts in New Zealand, the trade and other business receivables, the land where the networks systems sit, the equipment used in maintaining, monitoring and repairing the system, the plant and equipment, other land and buildings, and the resource consent would not themselves be qualifying infrastructure assets. However, they would be used in or held for the purpose of the New Zealand infrastructure business, so they would be included in assets that qualify to meet the 95% value test.
- The overseas bank account is not located in New Zealand. However, it would be related to the eligible infrastructure activities, and it would be considered minor. Therefore, it would not stop the person from applying the new rule. The bank account would still be included in infrastructure assets for the purposes of the 95% test because it would be held for the purpose of the New Zealand infrastructure business.
- The investment asset (the interest in a shopping mall) would be neither qualifying infrastructure assets nor considered to be used in, or for the purpose of, the New Zealand infrastructure business. Accordingly, they would not qualify to meet the 95% value test.

In this example, the assets owned by the entity that are not attributable to the infrastructure business (the interest in a shopping mall) would make up more than 5% of the entity's total assets. Therefore, the entity would not be eligible to apply the rule.

However, the entity would be eligible to apply the rule if its interest in the shopping mall was held in another group entity that it did not own (directly or indirectly).

Qualifying infrastructure asset

In general, an entity would need to own a "qualifying infrastructure asset" to qualify for the rule, except when the asset is being created. The asset would also have to be located in New Zealand.

The proposed definition of "qualifying infrastructure asset" contains a non-exhaustive list of examples, which includes:

- transport infrastructure (for example, roads, rail, ports, airports, ferries)
- energy infrastructure (for example, electricity generation, transmission, and distribution assets)
- water infrastructure (for example, water supply, wastewater, and stormwater systems)
- telecommunications infrastructure (for example, fibre networks, data centres, and communications towers)
- waste infrastructure (for example, recycling facilities and landfills), and

- social infrastructure (for example, hospitals, schools, libraries, prisons, large-scale student accommodation or similar public facilities).

A "qualifying infrastructure asset" would also include any other tangible asset located in New Zealand that provides, or is integral to providing, essential services to the public or a class of users on a shared-use basis, that is similar in nature to the types of assets listed above.

The non-exhaustive list is intended to cover the assets that would typically be infrastructure. It generally includes fixed, long-lived assets and structures that facilitate the production of goods and services and have a public benefit. The non-exhaustive list of examples would be monitored and could be added to over time as needed.

Rail infrastructure would include rolling stock, and ferries have been included as an extension of the road network.

Ownership structures for infrastructure vary with central and local government owning most of the infrastructure in New Zealand. The thin capitalisation rules would only be relevant when the infrastructure is owned by the private sector and there is significant foreign ownership. The non-exhaustive list should be viewed in that light, because some types of infrastructure in the list would not be owned by the private sector (for example, water infrastructure owned by local government) and so would not fall within the scope of the new rule. However, they have still been included on the list as examples of typical infrastructure.

Some tangible assets would have satisfied the above definition of "eligible infrastructure assets", except that they provide, or are integral to providing, essential services to a single user or a small group of users rather than to the public or a class of users on a shared-use basis. Such assets would qualify if the services provided are of the kind that are ordinarily provided on a shared-use basis to the public or a class of users, but the absence of the shared use arises solely because the services or products are supplied to a single user or a small group of users under contractual arrangements.

Example 3: Qualifying infrastructure asset

Wind Co is set up to develop a new wind farm in New Zealand and has a 10-year power purchase agreement (PPA) with a single recipient of the generation. The project will help boost the development of renewable energy generation in New Zealand, alleviate pressure on the national grid, and provide electricity into the grid once the PPA ends. The new wind farm would be treated as a "qualifying infrastructure asset" under the new rule.

Commercial buildings (for example, offices, supermarkets, and shopping malls), industrial buildings (for example, factories), and dwellings (for example, private residential housing) would not be "qualifying infrastructure assets", except if they are the types of assets that meet the definition of "qualifying infrastructure assets" (for example, airports, hospitals, and schools). However, such

assets might be assets that meet the value test if those assets are used, or for the purpose of, the eligible infrastructure activities carried on by the entity (refer to "Eligible infrastructure entity" above).

Example 4: Dwellings

Dam Co is set up to develop a new hydroelectric power project in a remote part of New Zealand. This involves setting up dwellings for contractors working on the project so they can live nearby during construction. Some of the dwellings will be temporary and some will be permanent for the people that operate the new hydroelectric dam once it is operational.

The hydroelectric power dam would be a qualifying infrastructure asset. The temporary and permanent dwellings would not be qualifying infrastructure assets, but they would be treated as part of assets used in, or for the purpose of, the infrastructure business under the value test in these circumstances.

Qualifying infrastructure debt

An eligible entity electing to apply the new rule would be allowed to fully deduct interest expenses incurred on the entity's "qualifying infrastructure debt". Debt would qualify if it is:

- applied to the entity's business or project
- third-party debt, and
- limited recourse debt.

An entity that has non-qualifying debt (such as related-party loans from investors) would still be able to elect to apply the rule. However, the rule would effectively deny the interest expenses incurred on such debt. This would be achieved by requiring the entity to recognise an amount of income equivalent to the amount of interest expenses incurred on the non-qualifying debt. The entity would also be required to recognise an amount of income equivalent to the total amount of dividends paid by the entity for fixed-rate foreign equity or fixed-rate shares held by any other person that is a resident in New Zealand.

Third-party debt

Under the new rule, interest expenses would be deductible (without a thin capitalisation income adjustment) only if the debt is provided by an unrelated third party. This is intended to ensure that foreign investors would not be able to substitute related-party debt for equity, thus preventing the investors from extracting higher returns by claiming interest deductions for the New Zealand operations without materially increasing their risk.

This means that the debt would have to be provided by a person who is not:

- a person with a direct or indirect ownership interest in the borrowing entity, or

- an associated person of a person with a direct or indirect ownership interest in the borrowing entity.[1]

This is intended to be a strict requirement so that the interest on any debt from a shareholder, or associated person of that shareholder, would effectively not be deductible (through a thin capitalisation income adjustment). A similar requirement would apply to limited partnerships so that interest on any debt from a partner (or associated person of that partner) would effectively not be deductible.

This requirement might impose an undue compliance burden for an infrastructure company that is listed on a stock exchange if investors hold both small quantities of shares and company-issued bonds. Therefore, the new rule would include an exception to the third-party debt requirement above that would apply narrowly to an "eligible infrastructure entity" listed on a stock exchange. It would deem a debt to be from a third party if the debt is provided by a shareholder holding, together with any associated persons, 5% or less of the shares in the listed company. The exception would also generally apply to an associated person of such a shareholder.

Example 5: Third-party debt – no shareholder debt

A new company (NZ Infrastructure Co) is set up by three non-resident investor companies that hold their shares in the following proportions:

- Foreign Co A: 60%
- Foreign Co B: 30%
- Foreign Co C: 10%.

If any of the foreign companies (or associated persons of the foreign companies) provide debt to NZ Infrastructure Co, the interest on the debt would not be deductible under the new rule (a thin capitalisation income adjustment would apply to effectively deny the deduction).

[1] The term "associated person" is defined in subpart YB of the Income Tax Act 2007.

Example 6: Third-party debt – no partner debt

A new limited partnership (NZ Infrastructure LP) is set up by three non-resident partner companies that hold their partnership interests in the following proportions:

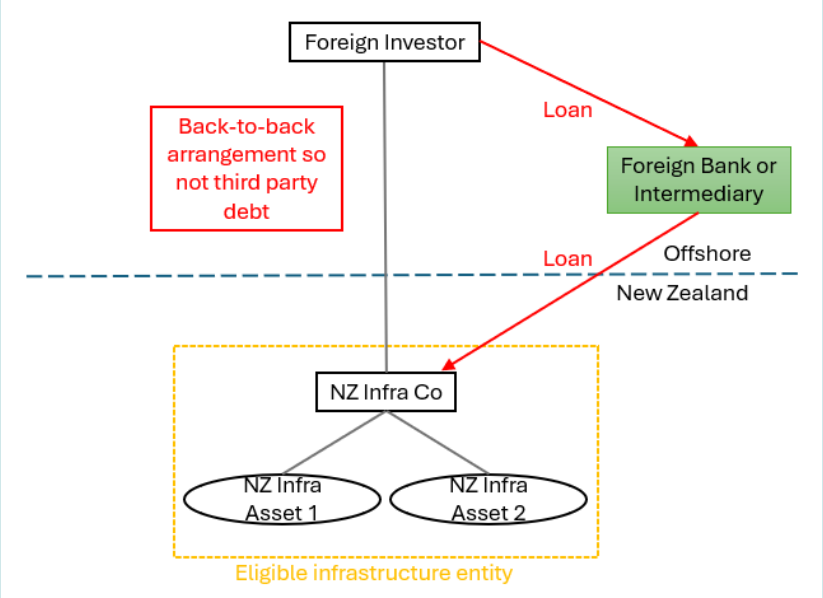
- Foreign Co A: 60%
- Foreign Co B: 30%
- Foreign Co C: 10%.

There is also a company (NZ Co), which is the general partner of NZ Infrastructure LP, that is owned by the three non-resident partner companies.

If any of the foreign companies (or associated persons of the foreign companies) provide debt to NZ Infrastructure LP, the interest on the debt would not be deductible under the new rule (a thin capitalisation income adjustment would apply to effectively deny the deduction).

In addition, debt would also not be regarded as third-party debt if the funds are provided by a direct or indirect owner of the borrowing entity through a back-to-back arrangement. This back-to-back arrangement exclusion would also apply to arrangements involving the associated persons of the owner.

Example 7: Third-party debt – back-to-back arrangement



If Foreign Investor has lent money to an unrelated third party (Foreign Bank or Intermediary) that then lends those funds to the eligible infrastructure entity (NZ Infra Co), this would not constitute third-party debt. This is because the definition of "third-party debt" would exclude debt when the funds are provided by a direct or indirect owner of the borrowing entity through a back-to-back arrangement.

The exclusion for back-to-back arrangements is not intended to preclude the eligible infrastructure entity (NZ Infra Co) from obtaining debt funding from the bankers of the Foreign Investor (or investors as the case may be) when it has funds on deposit and trading accounts as part of its normal business operations that are unrelated to the relevant borrowing. However, when the debt funding does come from the Foreign Investor's bankers, the eligible infrastructure entity should maintain documentation that substantiates that the lending has been provided on arm's-length terms and independent from the deposit and trading accounts of the Foreign Investor.

To further ensure that a debt instrument would not be used as a replacement for equity, the new rule would specifically disallow interest expense deductions if the debt had equity-like characteristics or features, or if the return was calculated by reference to profits or cashflows of the eligible infrastructure entity or its associates. Under the new rule, debt would not be regarded as "third-party debt" if it has any of the following features:

- The debt is convertible into shares, other equity interests, or partner's interests of the borrower or an associated person.
- The return due to the lender is calculated by reference to profits, cashflows, or distributions of the borrower or an associated person.
- The debt entitles the lender to any amount from the borrower or an associated person beyond repayment of principal and accrued interest on the debt, other than lender's fees.

Example 8: Debt with equity-like characteristics

A new company (NZ Infrastructure Co) has issued senior debt, subordinated debt, and convertible notes.

The interest rate on the subordinated debt varies so that the providers of the subordinated debt share in some upside, depending on the interest rate on the senior debt. More specifically, if the interest rate on the senior debt is lower than expected, then a portion of the reduction is paid in additional interest to the providers of the subordinated debt. Consequently, the subordinated debt would not be treated as third-party debt under the new rule.

The convertible notes pay an annual coupon rate of interest and can be converted into shares in NZ Infrastructure Co at the option of the company providing the funding. The convertible notes would not be treated as third-party debt under the new rule.

Example 9: Debt when interest not paid under cashflow waterfall

A new company (NZ Infrastructure Co) has senior debt from external banks. Since NZ Infrastructure Co is still in the early phase of its business's lifecycle, it is not generating sufficient cashflow to fully pay the interest on the senior debt. The interest rate is arm's length and is calculated based on the formula: BKBM + 2%.

While the interest on the debt may not be fully paid because of insufficient cashflow, the interest has not been calculated by reference to profits, cashflows, or distribution of the borrower (or an associated person). Therefore, the senior debt would qualify as third-party debt.

Limited recourse debt

Under the new rule, interest expense would only be deductible (without a thin capitalisation income adjustment) when the debt only has recourse to the assets and income of the eligible infrastructure entity, including the shares in the entity.

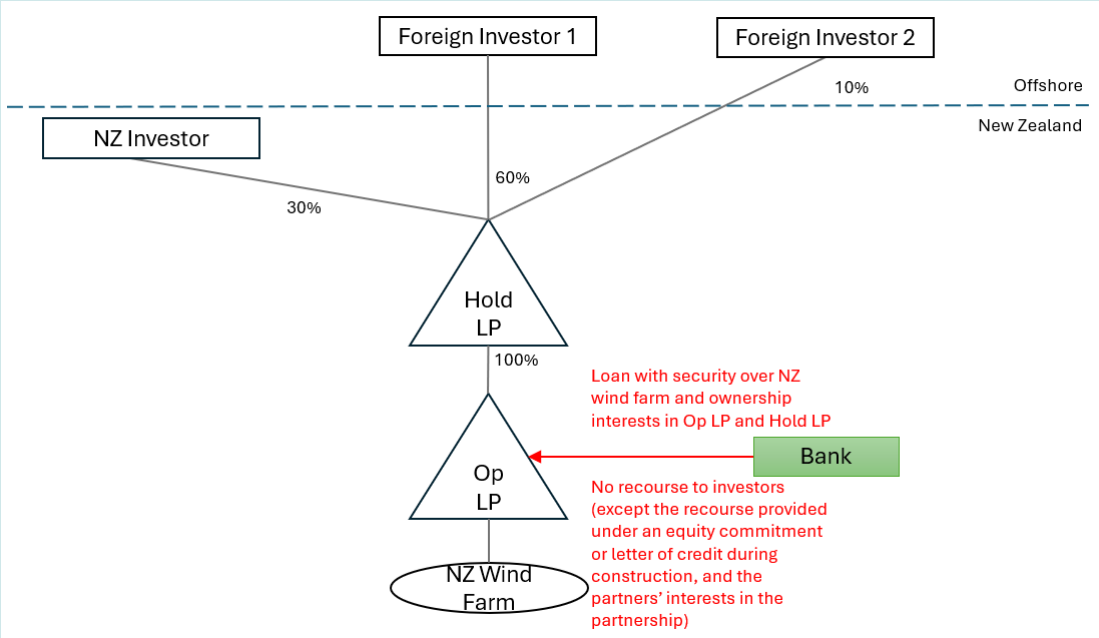
If the eligible infrastructure entity is a partner in a partnership, the recourse would have to be limited to the assets and income only of the partnership giving rise to the eligible infrastructure entity (not the assets and income of the partners that do not form part of the partnership), including any interests in that partnership.

This means the debt cannot have any recourse to the shareholders or partners (except for their interests in the eligible infrastructure entity). In particular, the shareholders or partners cannot provide any form of guarantee over the debt, because this would mean the lender has recourse to these investors in the event of default. There would be a limited exception from this rule for equity commitment letters issued during the construction phase of an infrastructure project (described further below).

The rationale for this requirement is that the eligible infrastructure entity would have to be able to support the level of third-party debt on a standalone basis, relying on its New Zealand infrastructure assets and activities, for it to be a commercially reasonable level of debt for the business or project.

Example 10: Limited recourse debt

A double limited partnership structure, comprising a holding limited partnership (Hold LP) and an operating limited partnership (Op LP), is set up for a new wind farm development in New Zealand. Op LP has external third-party debt from a New Zealand bank that is secured over the wind farm assets of Op LP and the partnership interests in Op LP. Two companies, HoldCo and OpCo, were set up to be the general partners of Hold LP and Op LP respectively. Both HoldCo and OpCo do not own assets that are not part of the partnership.



NZ Investor is not subject to the thin capitalisation rules unless it is controlled by a foreign investor.

Foreign Investor 1 would be able to elect to apply the new rule regardless of whether Foreign Investor 2 elected to apply the rule. This is provided Foreign Investor 1 meets the requirements to be an eligible infrastructure entity on the partner level.

Likewise, Foreign Investor 2 would be able to elect to apply the new rule, provided it meets the requirements to be an eligible infrastructure entity.

In this case, the debt from the bank is third-party debt, and it only has recourse to the assets of the partnership giving rise to the eligible infrastructure entity and to the limited partnership interest. Accordingly, the bank debt would qualify as limited recourse debt for the purpose of the rule.

The bank's recourse does not need to be over a specified asset or group of assets. It also does not need to be in the form of a particular security interest. In this case, the requirement would be that recourse is effectively limited to the assets and income of the partnership giving rise to the eligible infrastructure entity and the partnership interests. Therefore, an ordinary general loan to Op LP would still qualify as a limited recourse loan, provided there were no guarantees or credit support, etc, from other entities.

If OpCo also owns other assets that are not part of the partnership, a general loan to Op LP would not be considered a limited recourse loan because the recourse is not limited to the assets and income of the partnership.

Some infrastructure projects involve the investors providing an equity commitment document, or a letter of credit, to the project entity when a new asset is being constructed. This is when a pre-determined level of equity has been committed by the investors but will only be paid into the project entity when it is needed for the project. Third-party lenders will only provide funds to the

project entity if the equity funds required for the project have been committed through an equity commitment document and/or a letter of credit. This is particularly relevant for investments in new infrastructure assets that do not generate income/derive value at the outset.

The new rule would include a narrow exception for project-financed investment that results in the creation of a new infrastructure asset to allow the use of an equity commitment letter or a letter of credit, subject to meeting certain conditions.[2] The exception is intended to only apply narrowly to a project that results in the creation of a new infrastructure asset that is project financed. It is not intended to apply to an existing infrastructure business. The equity commitment letter or the letter of credit would have to only be for a specified amount that is equivalent to the amount of equity reasonably required to obtain the finance. It would also have to cease to have effect when the infrastructure asset has been constructed (or before that).

Example 11: Equity commitment letter

A new company is set up to construct a new solar farm for $100 million. External banks will provide $75 million of debt, with the remaining $25 million to come in the form of equity from foreign investors. The new company will draw down the $75 million of debt first and then call on the $25 million of equity during the construction phase. Since the equity is coming at the end of the construction phase, the foreign investors provide equity commitment letters to the new company that are also backed by a standby letter of credit for the $25 million of equity. This provides comfort to the external banks that the new company has access to all the funds needed for construction.

In this case, the equity commitment letter and the standby letter of credit would fall within the exclusion from the limited recourse debt requirement. Accordingly, the $75 million of debt provided by the external banks would still be considered as limited recourse debt and the infrastructure company would be eligible to apply the new rule (assuming the other requirements are met).

Qualifying infrastructure group

The new rule would include an option for a wholly-owned group of companies, or a subset of a wholly-owned group of companies, to be a qualifying infrastructure group and treated as if they were a single entity in applying the rule. By making the election, the group would be considered on a consolidated basis. This means that intra-group loans and dividends would be ignored.

This is intended to:

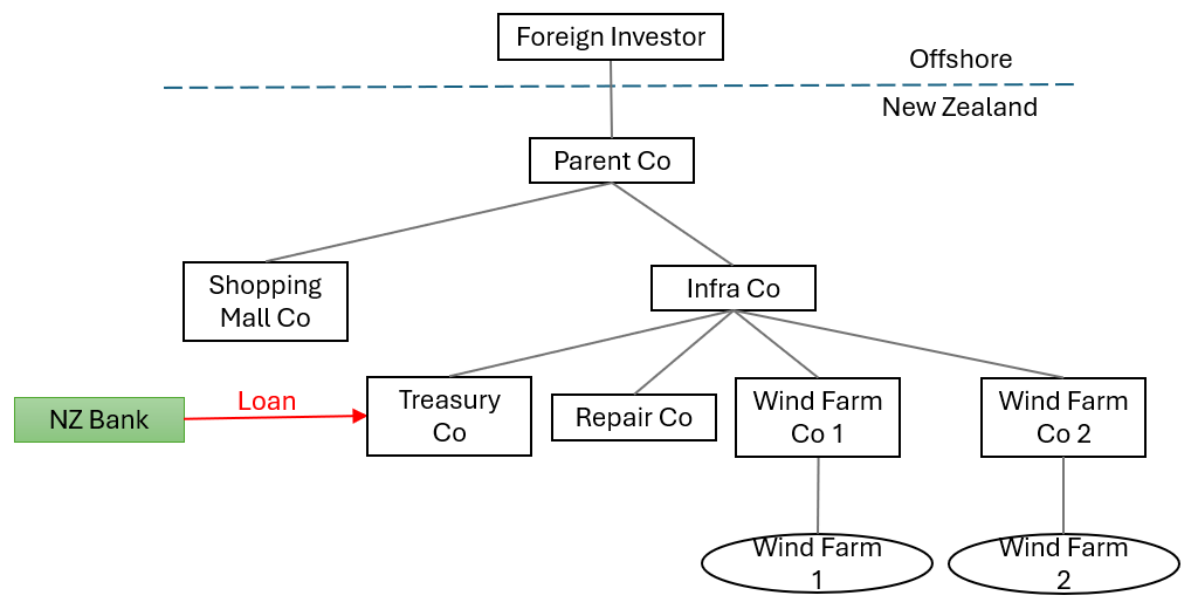
[2] Project finance is a long-term financing of projects that relies on the projected cashflows of the project for debt repayment, rather than the balance sheets of its sponsors. It is typically done through a special purpose entity created for each project to isolate risks.

- provide flexibility in instances when the recourse or the security arrangements on the debt are wider than one company
- allow a corporate group that carries on both infrastructure and non-infrastructure businesses to apply the new rule to the infrastructure part of the group
- provide flexibility when the infrastructure business of the wholly-owned group is split across several subsidiaries with some holding the qualifying infrastructure assets and others undertaking ancillary activities, and
- simplify compliance costs so the group can apply the new rule when the critical tests relating to qualifying infrastructure assets and ancillary and facilitative activities are only met by the group collectively.

To be a subset of a wholly-owned group of companies, every member of the wholly-owned group that is owned by a member of the subset must also be part of the subset. In addition, the members of the subset cannot have ownership interest in any other entity that is not part of the subset.

Example 12: Electing as qualifying infrastructure group

A Wellington group has a parent company (Parent Co) that directly owns 100% of two other companies, Shopping Mall Co and Infra Co. Infra Co, in turn, directly owns 100% of four other companies, Treasury Co, Repair Co, Wind Farm Co 1, and Wind Farm Co 2.



Wind Farm Co 1 and Wind Farm Co 2 own and operate wind farms. Treasury Co performs the treasury function for the wind farms. It borrows from external lenders, secured against the wind farms (with recourse limited to those assets), and on-lends the funds to the wind farm companies as needed. Repair Co repairs and maintains the wind farms under contract with the companies that own them. Shopping Mall Co owns and operates a shopping mall.

Wind Farm Co 1 and Wind Farm Co 2 would be carrying on eligible infrastructure activities. However, all their funding is provided by a related party (Treasury Co), so they would not

hold any qualifying infrastructure debt (which must be third-party debt). Therefore, both companies would not be able to elect to apply the rules as separate entities.

Repair Co does not own the infrastructure assets that it repairs and maintains, and so it would not be carrying on an eligible infrastructure activity. Treasury Co, Shopping Mall Co, Infra Co and Parent Co would also not be carrying on eligible infrastructure activities.

Therefore, none of the companies would be eligible to apply the new rule on a standalone basis.

However, Infra Co, Treasury Co, Repair Co, Wind Farm Co 1, and Wind Farm Co 2 can form a subset that elects to be treated as a single entity in applying the rule, because the following would apply:

The external funding borrowed by Treasury Co and on-lent to the wind farm-owning companies would be treated as provided directly to the infrastructure group by external third parties. Accordingly, it would be qualifying infrastructure debt, meaning interest deductions would be able to be claimed on it by the group.

The activities carried out by Treasury Co would be ancillary to the operation of the operation of the qualifying infrastructure assets owned by the group (the wind farms), and so would be considered eligible infrastructure activities.

Since the wind farms are owned by the group, the activities carried out by Repair Co would now be considered eligible activities (maintaining qualifying infrastructure assets owned by the group).

The wholly-owned group of companies that include Parent Co and Shopping Mall Co cannot elect to be treated as a single entity in applying the rule because the shopping mall assets owned by Shopping Mall Co would not be qualifying infrastructure assets These assets would exceed 5% of the group's total assets so the inclusion of Shopping Mall Co in the group would cause it to fail the 95% asset test, meaning the group as a whole would not be able to apply the new rule.

Shopping Mall Co and Parent Co would continue to apply the standard thin capitalisation rules. They would not include any debt, interest, assets, and non-debt liabilities of the subset in their balance sheets for the purposes of calculating their thin capitalisation percentage under the standard rules.

Election to use the rule

Entities would be allowed to make an annual election to apply the new rule on an annual basis. This would enable entities to use the rules that best fit each year, especially when their situations may have changed. The standard thin capitalisation rules would apply to entities not making the election.

The election would need to be made by lodging a letter in MyIR with the heading "ELIGIBLE INFRASTRUCTURE ENTITY ELECTION" when filing the return. The letter would also need to state

whether the new rule would be applied to a single entity or to a group. If it is to be applied as a group, the letter would need to specify the companies that would apply the rule collectively as a group.

By electing to apply the rule, the debt, interest, assets, and non-debt liabilities of the eligible infrastructure entity would be excluded when applying the standard thin capitalisation rules to the remaining members of the New Zealand group that the entity would otherwise be a part of.

When an existing infrastructure company is purchased through a holding company and the amount paid for the transaction exceeds the fair market value of the net identifiable assets of the company, the difference is likely to be recognised as goodwill in the consolidated financial statements of the group (the holding company and operating company). An election for the acquired infrastructure company to apply the new rule would also result in any goodwill associated with its business being excluded from the thin capitalisation calculation of the wider group (that is, the part of the group other than the entity to which the new rule would be applied). This is because the goodwill is inherent in the business of the acquired infrastructure company and would be taken into account by third-party lenders in deciding how much they would lend to that infrastructure company.

Recognising that goodwill as an asset in the balance sheet of the wider group (that has not made an election) would effectively allow it to be counted again for the part of the group that is not applying the new rule. For example, it could be used to support further loans (including related-party loans from the foreign investor) to the holding company under the standard thin capitalisation rules.

Infrastructure Funding and Financing Act 2020 levies

Infrastructure Funding and Financing Act levies (IFF levies) are levies used to fund Crown endorsed infrastructure projects, but they do not currently fit within the PPP thin capitalisation rule.

The levies are approved by the Government and imposed on ratepayers or users of the infrastructure. The levies are paid to a special purpose vehicle (SPV) that holds the right to impose them under an Order in Council. The SPV then borrows to fund an infrastructure project being carried out by another entity and uses the levies to repay that debt over a period.

The SPVs are mostly debt funded, with only a small amount of equity funding. The infrastructure itself is not owned or built by the SPV (which would generally be required under the new rule). Therefore, they would generally not meet the activity test and the value test under the definition of "eligible infrastructure entity" (refer to "Eligible infrastructure entity" above).

The debt in these SPVs is typically limited recourse debt. However, the following two exceptions have been catered for to enable the new rule to be applied:

- The Crown typically provides a guarantee (largely covering regulatory risk, for example, the risk of the Crown repealing the levy) so that lenders are comfortable the SPV will have a revenue stream.
- If the SPV provides funding to a developer for a project, it is expected that security will be sought to guarantee the performance of the developer's obligations (for example, that the infrastructure will be built).

To ensure that SPVs with a right to receive the IFF levies would be able to apply the new rule, the definition of "eligible infrastructure entity" would specifically include such entities. In addition, an exception to the limited-recourse debt requirements would apply for such entities to allow for the two forms of guarantees mentioned above that are commonly used in this type of arrangement.

Student loans

Student loans – discretion to provide relief from interest

Clauses 180AB to 180AI

Summary of proposed amendment

The proposed amendments would introduce a legislative discretion to allow the Commissioner of Inland Revenue to provide some relief from interest that applies to a student loan when a borrower is overseas based. The proposal extends the existing discretion to provide relief from late payment interest to core loan interest when the Commissioner considers it equitable.

Effective date

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

Background

The Commissioner can currently only provide relief from late payment interest on student loans (that is, interest that applies when a borrower does not make a payment on time). The Commissioner does not have the discretion to provide relief from interest charged on student loans more generally (that is, interest that applies when a borrower is overseas based).

Interest charged on student loans can be a significant driver of debt accumulation over time. Correspondence and direct engagement with borrowers indicate that, for some overseas-based borrowers (OBBs), accrued interest has resulted in debts becoming so large that they disengage from Inland Revenue altogether. While some OBBs acknowledge responsibility for their circumstances, many are seeking greater flexibility to negotiate settlement of their loan, particularly through the ability to obtain relief from interest.

The proposed amendments would give the Commissioner the discretion to provide some relief from interest. The discretion would be broad in nature and exercisable when the Commissioner considered some relief was equitable. Use of the term "equitable" is a decision-making consideration that means people in similar situations would be treated consistently. To qualify for any relief the loan would have to be repaid in full, either in a lump sum payment or through a short-term instalment arrangement.

Key features

The proposals would:

- introduce a discretion to allow the Commissioner to provide some relief from core student loan interest, and
- allow borrowers to enter instalment arrangements for full settlement of their loans (and interest is cancelled for the duration of these arrangements provided the borrower remains compliant with the arrangement).

Detailed analysis

The proposed amendments to the Student Loan Scheme Act 2011are summarised in the table below.

Section reference	Section title	Description
145A (proposed new section)	Commissioner may grant relief from loan interest	This section would provide for the new discretion to provide some relief from loan interest if a borrower has loan interest, applies for relief, and agrees an amount with the Commissioner to repay their loan balance in full. Subsection (2) provides that the Commissioner (having regard to the circumstances and if the Commissioner considers it equitable) would be able to write off as much loan interest as he considers equitable. Subsection (3) provides that the borrower's consolidated loan balance would be decreased either by decreasing the borrower's loan balance when the interest has been added to their loan balance or by decreasing their consolidated loan balance itself because the interest has been calculated and accrued but not yet charged and added to their loan balance (because it does not update on a real-time basis). Subsection (4) would allow the Commissioner to reverse the amount that was written off if it was written off due to false or misleading information provided by the borrower.
138A (proposed new section)	Loan interest cancelled if instalment arrangement complied with	This section would provide that, when a borrower entered an instalment arrangement for the agreed amount to repay their loan balance, their loan interest would be cancelled for the period of the

Section reference	Section title	Description
		arrangement. This is intended to ensure that when a borrower enters such an arrangement for an agreed amount, the amount would not increase because of loan interest. However, if a borrower did not comply with the arrangement, this section would not apply, and loan interest would apply.
141B (proposed new section)	Late payment interest cancelled if instalment arrangement complied with	This section would provide that when a borrower entered an instalment arrangement for an agreed amount to repay their loan balance, their late payment interest (on any unpaid amount) would be cancelled. However, if a borrower did not comply with the arrangement, this section would not apply, and late payment interest would apply to the unpaid amount.
141(1)(b)(ii)	Late payment interest reduced if instalment arrangement complied with	This amendment would ensure no conflict would exist between this provision and the proposed new section 141B. If the instalment arrangement is in accordance with proposed new section 154(1B) and proposed new section 141B applies to cancel the late payment interest, this provision for a reduced rate of late payment interest would not apply. However, if the borrower did not comply with their obligations under proposed new section 141B, late payment interest would no longer be cancelled, and this provision could apply to reduce late payment interest for those months in which the borrower was compliant.
145(1)(aa) and (2)	Application for different types of relief for borrower	These proposed amendments would allow a borrower to apply for relief from loan interest by notifying the Commissioner.
154(1B)	Application for instalment arrangement	This proposed new subsection would allow a borrower to apply to enter an instalment arrangement for an amount they have agreed with the Commissioner is required for the borrower to repay their consolidated loan balance in full.

Section reference	Section title	Description
184(1)(aa) and (2)	Challenge to decision concerning relief	These proposed amendments would allow a borrower to challenge a decision made under the proposed new relief provision, section 145A.
196(1)(a) and (b)	Cancellation of interest if consolidated loan balance repaid early	These proposed amendments would ensure the notice the Commissioner sends (in cases of full and final settlement) reflects the amount required to repay the borrower's consolidated loan balance.

Aligning tax payments by NZSF

Aligning tax payments by NZSF with similar taxpayers

Clauses 81B, 82B, and 93B

Summary of proposed amendment

The proposed amendment would allow the New Zealand Superannuation Fund (NZSF), Venture Capital Fund (VCF), and certain wholly-owned Crown companies (under section HR 4B(3) of the Income Tax Act 2007) to pay income tax annually instead of provisional tax.

Effective date

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

Background

The NZSF was created to help taxpayers manage the cost of New Zealand Superannuation. It currently pays provisional tax in three instalments during the income year.

Due to the volatility of investment markets, it is impossible for the NZSF to accurately estimate its provisional tax liability for the year. This often leads to significant underpayments or overpayments of provisional tax.

This is inefficient for both the NZSF and taxpayers. Overpayment ties up funds that could otherwise be invested and, conversely, underpayment results in interest costs, at a loss to the Government.

The proposed annual tax payment is not new. Under current rules, multi-rate portfolio investment entities, for example, some KiwiSaver funds, have the option to exempt themselves from provisional tax and instead pay their income tax liability (excluding exiting investors) at the end of the tax year. The NZSF and VCF are similar vehicles to KiwiSaver funds.

Income tax debt pilot with tax pooling industry

Income tax debt pilot with tax pooling industry

Clause 93C

Summary of proposed amendment

The proposed amendment would extend the period for which tax pooling can be used to pay income tax until 1 October 2027 for the 2022–23 and 2023–24 income years if certain conditions are met.

Effective date

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

Background

Tax pooling intermediaries facilitate the payment of tax by pooling tax payments and provide a mechanism to offset underpayments and overpayments of provisional tax between taxpayers. This can result in more favourable interest rates than standard use of money interest rates and help mitigate late payment penalties.

Under current rules, tax pooling cannot be used for any tax or use of money interest after 75 days[3] from a taxpayer's terminal tax date (except in specific cases such as a reassessment).

The proposed extension of the period for which tax pooling can be used to pay income tax for a target population may enable Inland Revenue to determine whether income tax debt can be effectively collected through an extended tax pooling period.

Key features

If certain conditions are met, a person could make a contract with a tax pooling intermediary on or before 1 October 2026 to satisfy an obligation for either or both the 2022–23 and 2023–24 income years for:

- provisional tax (other than under the accounting income method)
- terminal tax, or
- interest under Part 7 of the Tax Administration Act 1994 (TAA) on the provisional tax or terminal tax.

[3] Or 76 days for some terminal tax dates in a leap year.

The contract must be settled by 1 October 2027.

Detailed analysis

Conditions

To be eligible for the extended tax pooling period, the following conditions would have to be met by the taxpayer.

On the date the contract is entered into, the taxpayer must not:

- be bankrupt or liquidated
- be presumed to be unable to pay debts under section 287 of the Companies Act 1993 at some time in the previous 12 months
- have committed an act of bankruptcy under the Insolvency Act 2006 at some time in the previous 12 months, or
- be the subject of legal recovery proceedings for unpaid tax.

And on the date the contract is entered into, the taxpayer must have provided:

- returns of income as required under section 33 of the TAA
- returns as required under the Goods and Services Tax Act 1985 (GST Act), and
- employment income information to the Commissioner of Inland Revenue as required under sections 23E to 23H and 23J of the TAA.

And on the date the contract is entered into, the taxpayer does not have any of the following amounts payable for which the due date for payment has already passed:

- goods and services tax payable under section 23 of the GST Act, and
- an amount set out in section RA 5 of the Income Tax Act 2007 (Tax obligations for employment-related taxes).

The Commissioner may waive some or all of the above conditions if the Commissioner has accepted a request for financial relief under section 177 of the TAA.

Remedial items

Updating credit reporting notification requirements

Clause 169(1BB)(a) and (b)

Summary of proposed amendment

The proposed amendment would allow notification for the purposes of the credit reporting rules by electronic means or standard post.

Effective date

The proposed amendment would take effect on 1 April 2026.

Background

Credit reporting was introduced in 2017 to encourage compliance and help the business community by increasing visibility of significant tax debts. Credit reporting allows the Commissioner of Inland Revenue to share tax debt information with approved credit reporting agencies.

For a taxpayer to be credit reported, the following criteria must be met:

- reportable unpaid tax debt must exceed $150,000 or the debt must have been unpaid for a year and equal to 30% or more of the taxpayer's assessable income for that year
- "reasonable efforts" must have been made by the Commissioner to recover the reportable unpaid tax, and
- the taxpayer must be formally notified 30 days before being credit reported.

Following notification, if the taxpayer does not resolve the debt (for example, make payment or enter into an instalment arrangement), the Commissioner can share tax debt information with approved credit reporting agencies. The rules only apply to companies.

To credit report a taxpayer, the Commissioner must "formally notify" the taxpayer that they have reportable unpaid tax. Section 14D of the Tax Administration Act 1994 (TAA) provides that to "formally notify" a person means the communication must be in print and personally delivered or sent by registered post. Because of this, any communication by electronic means cannot constitute formal notification, including the use of messages via myIR.

The proposed change would update the rules to reflect modern practices. The change would allow the Commissioner to notify a taxpayer of the intent to credit report by standard post or by electronic means, such as myIR. This would allow the Commissioner to better automate the use of

credit reporting with the objective of notifying all eligible taxpayers above the unpaid tax threshold.

Key features

The amendment would remove the word "formal" in the credit reporting disclosure rules in schedule 7, part C, clause 33 of the TAA. As a result, the formal notification requirements in section 14D of the TAA would no longer apply. Instead, the notification requirements in section 14C of the TAA would apply. These would allow a broader range of options for the Commissioner to notify the taxpayer, including by electronic means, of the intention to credit report them.

Clarifying new debt can be disclosed to credit reporting agencies

Clause 169(1BB)(c)

Summary of proposed amendment

The amendment would clarify that the Commissioner of Inland Revenue is able to disclose new tax debts that arise after an initial disclosure to an approved credit reporting agency.

Effective date

The proposed amendment would take effect on 1 October 2025.

Background

The credit reporting legislation sets out that the Commissioner can disclose "reportable unpaid tax" to an approved credit reporting agency. Before the Commissioner can make an initial disclosure of a taxpayer's reportable unpaid tax, the criteria in schedule 7, part C, clause 33(3) or (4) of the Tax Administration Act 1994 (TAA) must be satisfied. Clause 33(3) is generally most applicable, and the criteria under that clause are summarised in "Updating credit reporting notification requirements".

It is clear the original amount disclosed can be updated with credit reporting agencies, for example, if a taxpayer makes repayments. However, it is not clear whether the Commissioner can disclose new tax debt to credit reporting agencies if a taxpayer continues to miss tax payments.

If the Commissioner is unable to disclose new tax debt to credit reporting agencies, the market will be operating on outdated information. As a result, the trading community, such as lenders and suppliers, may make decisions without knowing the true debt position of taxpayers they are trading with, which could potentially lead to suboptimal outcomes.

The policy intent of the credit reporting rules is to provide the most up-to-date information to the trading community until the taxpayer has repaid its debt. However, the way the rules are currently drafted, it is unclear if that policy intent has been achieved. This amendment would clarify the legislation to ensure new unpaid tax amounts can be reported to credit reporting agencies after an initial disclosure. This would realign the rules with the original policy intent.

Key features

The amendment would introduce new clause 33(4B) and (4C) to the credit reporting disclosure rules in schedule 7, part C of the TAA.

Clause 33(4B) would clarify that if a taxpayer has one or more additional amounts of reportable unpaid tax after the original disclosure occurs, the Commissioner would also be able to disclose information about those additional amounts to approved credit reporting agencies.

Clause 33(4C) would further clarify that once a taxpayer has paid the original, and any additional, reported amounts in full, clause 33(4B) no longer applies, that is the Commissioner cannot disclose any further amounts to approved credit reporting agencies under that provision.

The amendment would ensure that the Commissioner is able to report additional amounts of reportable unpaid tax owed by a taxpayer that arise after the original disclosure. The Commissioner would be able to disclose additional reportable unpaid tax even if the amount that was subject to the original disclosure had been paid, provided the taxpayer still had an amount of additional reportable unpaid tax that had been disclosed and was outstanding. The amendment would ensure the Commissioner could disclose any new reportable unpaid tax amounts that arise until such time as the taxpayer pays off their reportable unpaid tax debt (both the original amount disclosed and any additional amounts disclosed) in full.

If the taxpayer paid off all their original and additional reportable unpaid tax in full, clause 33(4C) would mean the Commissioner could not rely on clause 33(4B) to report any subsequent amounts of reportable unpaid tax that arise after the tax debt was paid off in full. Any such subsequent amounts could only be disclosed if the initial disclosure criteria in existing clause 33(3) or (4) were satisfied.

Example 13: Reporting new tax debt – Jones Co

Jones Co has $150,000 of tax debt and the Commissioner proceeds to credit report Jones Co to credit reporting agencies. For any repayments, or penalties and interest in relation to the $150,000 of tax debt, the credit reporting agency is informed. However, if Jones Co missed a future tax payment of $50,000, the legislation is not currently clear whether the Commissioner could report this additional amount. Proposed new clause 33(4B) would make it clear that the Commissioner could disclose this new tax debt to credit reporting agencies.

Jones Co subsequently pays the outstanding $200,000 of tax debt. The Commissioner is now unable to report additional amounts unless the initial disclosure criteria are satisfied.

GloBE rules – remedial timing amendment

Clauses 75BB, 75K, and 95(1B) and (24BB)

Summary of proposed amendment

The amendment would set the application date in the Income Tax Act 2007 for the OECD guidance "Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package", to the application date specified by the OECD.

Effective date

The proposed amendment would take effect on 26 December 2025.

Background

OECD guidance on the Global Anti-Base Erosion Rules (GloBE rules) published on 5 January 2026 contains simplifications to the rules and establishes a side-by-side system. This system excludes multinational enterprises (MNEs) headquartered in countries with qualified domestic and international tax systems (such as the United States) from the GloBE rules.

New Zealand's GloBE rules automatically incorporate OECD guidance published before the start of a MNE's fiscal year. This means the guidance published on 5 January 2026 automatically applies for fiscal years beginning on or after 6 January 2026 (the day after publication). As a result, under current legislation the guidance (and the corresponding side-by-side system) would not apply until the 2027 fiscal year for MNEs with a December balance date whose fiscal year begins, for example, on 1 January. However, it is meant to apply for the 2026 fiscal year in these circumstances.

The proposed amendment is required to set the application date for this guidance to the date specified by the OECD, which is a few days earlier than the application date that automatically applies.

Key features

The amendment would set the application date of the OECD guidance published on 5 January 2026 as follows:

- For MNEs with a fixed date fiscal year end (eg, 31 December), for fiscal years beginning on or after 1 January 2026.
- For MNEs with a 52- or 53-week fiscal year that ends on the same day of the week each year (eg, the last Thursday in December), for fiscal years beginning on or after 26 December 2025.

The amendment would also update the commencement date of the side-by-side system in the OECD guidance itself (on page 79 onwards) to fiscal years commencing on or after 1 January 2026, or on or after 26 December 2025 for MNEs with a 52- or 53-week fiscal year.

Alignment of contractor definition

Clauses 83B, 83C, 112(2B), and 173(2)

Summary of proposed amendment

The proposed amendments would ensure that workers meeting the new definition of "specified contractor" (the gateway test), recently introduced into the Employment Relations Act 2000 (ERA) by the Employment Relations Amendment Act 2026, and therefore excluded from being an employee for employment law purposes and treated as engaged under a contract for services, would be treated the same for tax purposes (subject to the schedular payment and withholding tax rules).

The proposed changes would also apply when any other legislation specifies a worker to be engaged under a contract for services.

The proposed amendments would ensure this treatment applies for the purposes of the Income Tax Act 2007, the Goods and Services Tax Act 1985, and the KiwiSaver Act 2006.

Effective date

The proposed amendments would take effect on 21 February 2026, the date the new definition took effect for employment law purposes.

Background

The amendment to the ERA, which follows the recent Supreme Court decision relating to Uber drivers,[4] is likely to create a mismatch between the employment law and tax law definitions of an "employee". While other situations currently exist with the potential for a misalignment of the definition of employee for employment law and tax law purposes, the scope for mismatch has been far more limited.

However, the recent amendment to the ERA introduces a statutory definition of "specified contractor" that is separate from the determination as to whether someone is engaged under a contract of service (an employee) or a contract for services (a contractor), which is the key test for tax purposes. Because the tax definition of employee follows this common law test and is not linked to legislation, the enactment of the new definition in the ERA creates the potential for a

[4] Rasier Operations BV, Uber Portier BV, Uber BV, Portier New Zealand Limited and Rauser New Zealand Limited v E Tū Incorporated and First Union Incorporated – SC 105/2024

mismatch between a worker's employment status for employment law and tax law purposes on a large scale, which would be undesirable for those workers and the businesses engaging them.

Key features

The amendments would ensure that when a worker is excluded from being an employee and deemed to be working under a contract for services under the ERA, they would have the same status for tax purposes.

The exception to this would be when a person is subject to the schedular payment rules, which would continue to apply to a person despite their employment and tax status.

Changes are proposed to the Income Tax Act 2007, the Goods and Services Tax Act 1985, and the KiwiSaver Act 2006.

GST and bad debt deductions made by specified agents

Clause 128BA

Summary of proposed amendment

The proposed technical amendment would ensure that bad debt deductions claimed by liquidators, receivers, and other "specified agents" that are related to supplies made before the specified agent was appointed, can be set off against tax debts (payable under the Inland Revenue Acts) that existed before the specified agent's appointment. The amendment would ensure the rules are consistent with the long-standing policy intent.

Effective date

The proposed amendment would take effect on 10 October 2000 to align with the introduction of the original set-off rules for specified agents.

Background

Specified agents (such as liquidators and receivers appointed under section 58 of the Goods and Services Tax Act 1985) can deduct input tax related to supplies made before their appointment if the deductions have not already been claimed. This includes deductions for bad debts.

The policy intention is to allow bad debt deductions claimed by specified agents, related to supplies made before their appointment, to be set off against tax debt payable (under the Inland Revenue Acts) that existed before the specified agent was appointed.

The proposed amendment would align the law with the policy intent.

Example 14: Bad debt deduction claimed by specified agent in practice

A business sells $115 of goods to a buyer. The business accounts for GST of $15 on the sale by including the sale in its GST return. The business never receives payment from the buyer and, shortly after, the business goes into liquidation.

On appointment, the liquidator enquires into the debt and concludes it is unlikely it will be paid. Consequently, the liquidator writes the $115 debt off as bad. The liquidator then claims a GST deduction for the bad debt of $15.

The proposed amendment ensures that the $15 deduction would be set off against tax debt payable by the business prior to the liquidator being appointed.

ACC earners' levy payments

Clauses 136(6B) and 181B

Summary of proposed amendment

The proposed amendment would permit Inland Revenue to pay to the Accident Compensation Corporation (ACC) employee earners' levies collected from employers and any associated penalties calculated using a formula agreed between the Commissioner of Inland Revenue and the Chief Executive of ACC.

The formula closely approximates the actual levies and penalties received, based on recovery rates from previous years.

Effective date

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

Background

Inland Revenue collects ACC earners' levies as part of pay-as-you-earn deductions (PAYE deductions) on behalf of ACC as its agent and pays the earners' levies to ACC under provisions in the Accident Compensation Act 2001. These provisions require Inland Revenue to pass on the amounts "received" from employees.

Inland Revenue receives information relating to PAYE deductions in aggregate, without separate identification of the ACC earners' levy component (unlike other items, such as KiwiSaver contributions). This means that Inland Revenue cannot pay to ACC the exact amount of earners' levies and associated penalties "received" without requiring employers to incur significant compliance costs amending payroll systems and records.

To closely approximate the actual amounts received by Inland Revenue in relation to earners' levies and associated penalties, Inland Revenue and ACC have developed a formula based on prior year levy recovery rates and a square-up approach, using actual levy recoveries, to determine the amounts of earners' levies and associated penalties that Inland Revenue will pay to ACC.

Key features

The proposed amendment provides that amounts of the earners' levies and any penalties for late filing or payment of those levies that Inland Revenue pays to ACC are calculated using a formula

agreed between the Commissioner of Inland Revenue and the Chief Executive of ACC. The formula must provide for a close approximation of the amount of the levies and penalties collected based on previous years' collection rates.

The proposed Accident Compensation Act amendment would accompany a proposed change to the Tax Administration Act 1994 to ensure the provision deeming earners' levies to be a tax under the Accident Compensation Act is treated as a tax law for the purposes of the Tax Administration Act 1994.

Water services reform – remedial tax issue

Clauses 18B, 24B, and 95(27BB)

Summary of proposed amendment

This amendment would ensure that no income tax liabilities arise as a result of a water organisation's change in tax status from taxable to exempt under section CW 55BC of the Income Tax Act 2007 (ITA).

Effective date

The proposed amendment would apply for the 2024–25 and 2025–26 income years.

Background

The Local Water Done Well reforms established new service delivery models such as "water organisations".

In August 2025, the Local Government (Water Services) (Repeals and Amendments) Act 2025 was enacted. This included an amendment to the ITA (new section CW 55BC) to exempt from income tax income derived by a water organisation for the 2025–26 and later income years.

Section 255 of the Local Government (Water Services) Act 2025, provides that, for the purposes of Inland Revenue Acts, the new water services entities set up as part of the Local Water Done Well reforms are treated as if they were the same person as the person previously providing water services. This ensures that any transfer of assets or liabilities between parties are tax neutral and do not result in either tax liabilities or tax benefits.

However, no provisions were included to ensure tax neutrality for a water organisation when there is no transfer of assets or liabilities but there is a change in tax status because of the reforms. As such, it is possible for income tax liabilities, in particular depreciation recovery income, to arise as a result of a water organisation's change in tax status.

Depreciation recovery income

When a depreciable asset is sold above its depreciated value for tax purposes, the difference between the tax book value and lesser of the sale price and original cost is taxed as depreciation recovery income. This effectively claws back past depreciation deductions that exceed the actual depreciation in the value of the asset.

Depreciation recovery income is also deemed to arise when there is a change in use of an asset. This includes when an asset is no longer used to derive assessable income because a tax-paying entity becomes exempt from income tax. In this case, depreciation recovery income is calculated on the difference between the tax book value and the lesser of the market value and cost of the assets.

The water services reforms were intended to be tax neutral. The proposed amendment would give effect to that intent by ensuring depreciation recovery income (and any other tax liabilities) do not arise when a water organisation has become exempt from income tax under the reforms.

Key features

Proposed new section CZ 42 of the ITA would ensure that no income tax liabilities arise for a water organisation that became tax exempt because of the Local Government (Water Services) (Repeals and Amendments) Act. Specifically, depreciation recovery income would not arise.

This amendment would only apply for the 2024–25 and 2025–26 income years. The 2024–25 income year is the year that depreciation recovery income would, in the absence of this amendment, be deemed to arise. The 2025–26 income year is the first year in which a water organisation's income becomes exempt under section CW 55BC of the ITA.