

Taxation (GST and Remedial Matters) Bill

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (GST and Remedial Matters) Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Goods and Services Tax Act 1985 to strengthen certain rules in order to maintain the integrity and fairness of the goods and services tax (GST) system. This bill proposes to remove tax avoidance opportunities and clarifies taxpayers' obligations, as well as seeking to reduce business compliance costs. In addition, it proposes minor changes in a number of other areas.

The bill would, subject to certain conditions, require GST-registered vendors to charge GST at the rate of zero percent on land transactions in an effort to prevent “phoenix” fraud schemes. Other GST-related provisions are intended to simplify the method for making change-

in-use adjustments and streamline transactions involving nominated persons.

This bill would make significant changes to the GST system and we think it only fair and appropriate that the public be made aware of these changes well in advance. We are pleased that the Inland Revenue Department intends to issue a special bulletin explaining to the public key changes brought about by this bill.

This commentary covers the principal amendments that we recommend to this bill. It does not cover minor or technical amendments.

Zero-rating of land transactions

The bill contains provisions that would require GST-registered vendors to charge GST at the rate of zero percent on any transaction with a registered person involving land or in which land is a component. The provisions would come into effect on 1 April 2011. These changes are intended to prevent “phoenix” fraud schemes where GST is refunded to a registered purchaser with no corresponding GST payment made by the vendor. Transactions between a registered supplier and a non-registered purchaser would remain subject to the existing rules; while the new rules would not apply when the land was to be used as a principal place of residence by the purchaser or a relative.

Definition of land

We recommend amending clause 4(5) to expand the definition of “land” to include shares in flat-owning or office-owning companies (as defined in section 121A of the Land Transfer Act 1952). Given the significant risk of “phoenix” fraud transactions in this area, we consider it appropriate that the zero-rating provisions be extended to include such transactions. We also recommend excluding most ongoing lease arrangements from the definition of “land”, and therefore recommend an amendment to exclude interests in land involving periodic supplies for which 25 percent or less of total consideration under the agreement is provided in advance of—or contemporaneously with—provision of the land, in addition to regular ongoing payments. This amendment would ensure that normal lease payments, such as ongoing lease arrangements for easements, would not be captured.

Supply of goods

We recommend amending clause 10 to make it clear that whether a supply of goods would be zero-rated would depend on whether the relevant tests were met at the time of settlement; and inserting new clause 15B to provide that section 25 of the Goods and Services Tax Act 1985 (which relates to credit and debit notes) allows all vendors to adjust the GST on supply to provide the correct outcome following settlement where necessary. This change would allow the vendor to recover any GST already paid to Inland Revenue if the vendor standard-rated the transaction when it should have been zero-rated.

We recommend amending clause 6(2) to ensure that where a supply of goods that should have been standard-rated was incorrectly zero-rated, the provisions relating to zero-rating would apply. This amendment provides that section 5(21) of the Act applies irrespective of the reasons for the incorrect GST treatment, and clarifies that, under section 5(23) of the Goods and Services Tax Act, the supply of goods or services would be deemed to have occurred at the time of settlement. These amendments would require the purchaser to register and pay GST if the vendor zero-rated the transaction when it should have been standard-rated.

Supplies of land

We recommend amending clause 20 (new section 78F), to make it clear that the obligation for providing information on whether zero-rating is applicable would rest solely with the recipient of the supply of land. New section 78F(2) provides that the recipient must provide a written statement regarding their GST-registered status and their intended use of the land. New section 78F(3) makes it clear that the supplier could rely entirely on the information provided by the recipient. Successful application of the new rules at the correct time depends on the correct information being available at the time of settlement, and we therefore consider it vital that the obligation to provide key information is clearly set out in the legislation. As the recipient is undoubtedly in the best position to clarify their registration status and their intended use of the land under purchase, the obligation to disclose this information properly would lie entirely with the recipient. We consider that making suppliers actively seek information, or pursue the matter if information was not voluntarily provided, would be too onerous—particularly for small- to medium-sized enterprises.

We have therefore recommended removing any references to supplier's obligations to confirm information or make further inquiries. We note that the obligation on the recipient need not be onerous; it might, for example, be met by completing a "tick box" form along with the land purchase agreement.

Persons treated as registered

Clause 17 of the bill (new section 51B(4)) would require the purchaser to register for GST if they were treated as making a supply under section 5(23). We recommend amending clause 17 to make it clear that a recipient of goods should be treated as GST-registered from the date that the goods or services were supplied, and not from the time when the original supply to the purchaser was made, if the dates are different. We also recommend amending clause 17 to allow taxpayers who would be GST-registered under new section 51B(4) of the Act to deregister at no GST cost in certain circumstances (when the GST has been paid).

Transitional provision

We recommend amending clause 10 by inserting a transitional provision to allow taxpayers to treat agreements entered into before 1 April 2011 as being subject to the existing GST rules. The absence of a transitional provision would create difficulties for anyone entering into a sale and purchase agreement before 1 April 2011 for supply after 1 April.

Transactions involving nominees

This bill includes amendments to clarify the rules so that the GST treatment for transactions involving nominations (arrangements in which a purchaser nominates another person to receive goods, settle a transaction, or both) would be determined on the basis of the transaction's economic substance. The GST consequences of the transaction would depend on the nature of the particular transaction and on a determination as to who provided the consideration for the supply of goods or services.

We recommend amending clause 18 to provide that in nominee transactions involving land, the supply should always be treated as being made from the supplier to the nominee (the ultimate recipient).

We recommend amending clause 20 so that a purchaser could, on a prospective basis, make representations regarding the registration status and intentions of the relevant recipient of the supply if it was a person other than the purchaser (a nominee). This would accommodate companies that were yet to be incorporated and land use that was yet to be finalised.

We have made other recommendations for amendment which would facilitate the progress of transactions where there is a need for the ultimate recipient of a supply to remain anonymous. For example, where an agent acts on behalf of an undisclosed principal, and it would not be practical for the agent to disclose the registration details of the undisclosed principal (or even to inform the supplier that they acted for an undisclosed principal), our recommended amendments to clause 20 regarding the obligation of the recipient would mean the vendor could absolutely rely on representations made by the purchaser regarding the recipient's registration status and intentions in respect of land.

“Dwellings” and “commercial dwellings”

It is the intention of the bill to provide a narrow exemption from GST rules for personal homes or substitutable situations, and that the GST rules should capture all other dwelling situations. We recommend the insertion of new clause 4(6B), to provide for a definition of “principal place of residence” to be inserted into all relevant GST-related provisions in the Act, including the definition of “dwelling”. The inclusion of this definition would help to draw the intended distinction more clearly in key areas, by ensuring that a place that a person used as their main or principal residence would be exempt from GST. Without such a definition there would be uncertainty and a risk of confusion about what would be covered—particularly where rent is concerned.

We recommend amending clauses 4(3)(a)(ii) and 4(4)(a)(ii) by replacing “exclusive possession” with “quiet enjoyment”, consistent with the Residential Tenancies Act 1986, and the inclusion of new clause 4(b)(i). This clause would ensure that arrangements such as those made for boarders in domestic homes—which we consider interchangeable with living at home—would not be included under the GST rules, (so input deductions could not be claimed in respect of

matters such as the amount charged to the boarder, the cost of acquiring the house, and other matters related to the house). The GST rules would continue to apply to camping grounds, nursing homes, rest homes, and other commercial accommodation arrangements.

Rest homes

We considered whether provisions in clause 4(3) relating to rest homes were conflicting, and insufficiently clear as to whether rest homes were included in the definition of “commercial dwelling”. We do not believe there is lack of clarity in this area; clause 4(3)(a)(iii) provides that rest homes are included as commercial dwellings, except for the limited exclusion in subparagraph (b)(ii) of dwellings situated in a retirement village or rest home complex where the consideration paid is for the right to occupy the dwelling. This means that rest homes would be included under the GST rules where payment was made for services supplied (or the right to attend common areas), but would be excluded from GST in respect of payments for home-type accommodation arrangements. GST arrangements should be apportioned accordingly.

Student accommodation

We considered carefully whether student accommodation provided by tertiary institutions should be excluded from the definition of commercial dwelling, on the grounds that some student accommodation could be considered a student’s home. While we acknowledge the concerns of the submitter who raised this issue, we do not consider it appropriate to grant a specific exclusion for student accommodation. Both the current and proposed definitions of “dwelling” and “commercial dwelling” are based on the nature of the accommodation arrangement rather than the types of occupants of the premises, and we consider it appropriate that the distinction be drawn on this basis. This approach would provide more certainty for all, and it reflects accurately the policy intent of the bill (that GST not apply to an individual’s home or substitutable arrangements, but apply in all other situations).

We acknowledge the argument for excluding student accommodation on the grounds that it is similar to retirement or rest home arrangements, which have a specific exemption where payment is made for

the right to occupy a dwelling on the premises. However, we note that this exemption is based not on the identity of the occupants, but on a recognition that a retirement home situation is an arrangement highly comparable to home-ownership; the rest home tends to be the occupier's sole place of residence, and the sole occupancy arrangements are not made for a defined period but are expected to continue indefinitely. This is not the case for student accommodation generally.

We note that students occupy a wide range of accommodation, and while we acknowledge that some kinds might be substitutable for a home-ownership situation, many other arrangements will not. Some of the general changes that we recommend in relation to the definitions of "dwelling" and "commercial dwelling" should help clarify what we consider to be the appropriate distinction between "commercial dwelling" and "dwelling".

We have received assurance from the Inland Revenue and the Treasury that they will monitor the practical application of these definitions to guard against inconsistent or unfair treatment, and we expect any anomalies or difficulties in application to be drawn to our attention should they arise.

Apportionment rules

The bill seeks to replace existing change-in-use adjustments to deal with goods and services partly used for taxable purposes and partly for exempt purposes with a new approach that would apportion the related input tax deductions. The proposed apportionment rules are expected to be easier to use and understand, and significantly simpler, particularly for small businesses. The new apportionment rules would also apply to a registered person who imported services that were later used for non-taxable purposes. The reverse charge would apply in these circumstances.

Input tax deduction

We recommend amending clause 14 (insertion of new section 21AB) to allow registered persons to claim input tax in respect of goods and services they had acquired before they became GST-registered. The input tax deduction that could be claimed would take into account any previous non-taxable use. We also recommend amendments to

clause 13(2) (new section 20(3C)) to provide that goods and services “available for use” for making taxable supplies should be treated the same way as goods and services “used” for making taxable supplies.

Financial service sector’s compliance costs

To help reduce the financial service sector’s high compliance costs, we recommend amending clause 13 (new section 20(3DB)) and clause 14 (new section 21(5)) to allow financial service providers to agree with the Commissioner of Inland Revenue a fair and reasonable method of apportionment under the proposed apportionment provisions.

Adjustments for apportioned supplies

We further recommend amending clause 14, new section 21(2)(b) and (c), so that a person would not be required to make an adjustment if the value of goods and services, excluding GST, was \$5,000 or less, or the difference between the intended use on acquisition and actual use was less than 10 percentage points where the adjustment was less than \$1,000. We also recommend the insertion of new subparagraph (d) to provide that no adjustment need be made where the difference between the previous actual use calculated and the percentage of actual use was a similarly minimal amount (less than 10 percentage points and under \$1,000).

Concurrent uses of land

In clause 14, we recommend amending new section 21D to ensure that the taxable supply formula would apply only for the purposes of taking into account exempt or non-taxable supplies; and to confirm that, if the market value of the land was not readily ascertainable, the requirement could be satisfied by using other fair and reasonable methods to provide a reasonable approximation of the market value of the land.

Adjustment period

We also recommend amending new section 21F(2) in clause 14 to give taxpayers the option of treating the first adjustment period as ending on the first balance date, and allowing taxpayers who change

their balance date to realign their adjustment periods with the new balance date.

Transitional rules

In clause 14, we further recommend amending new section 21G by substituting new transitional rules. Under the proposed transitional rules goods (other than land) and services acquired before 1 April 2011 would require no further GST adjustments where the market value or book value of the goods and services was \$5,000 or less; after 1 April 2013 where the market value was between \$5,000 and \$10,000; and after 1 April 2016 for all other goods and services. In the bill as introduced the application of the transitional rules would have resulted in a cost to taxpayers, thereby discouraging people from using them.

Joint bank accounts

The bill seeks to amend a number of Acts to allow deductions from a joint bank account when one person can draw on the account without the signature of the other person. This would allow the Commissioner of Inland Revenue to require a third party, such as a bank, to deduct funds when a taxpayer failed to pay tax, interest, or a civil penalty.

We recommend amending clauses 16, 86, and 105 to remove from the original provisions joint bank accounts belonging to partnerships that file income tax returns. The provisions are intended to reflect the high priority the Government has accorded to debt collection; and while we support the intention, we are concerned about partnership bank accounts being accessed to satisfy the personal tax liability of a partner. Restricting the proposed amendment to partnerships that file tax returns would limit the exemption to genuine partnerships, and prevent taxpayers setting up joint accounts with the express purpose of avoiding section 157 of the Tax Administration Act 1994 and other tax recovery provisions.

We also recommend amending clauses 16, 86, and 105 by replacing “a signature” with “a signature or other authorisation”. This would make it clear that the provisions would apply to joint accounts that are accessed electronically.

Fringe benefit tax

We recommend amending clause 28 by deleting subsection (2) and deleting clause 89 entirely. The effect would be that the bill's amendment to the wording in the fringe benefit "on-premises" provisions would come into effect from the date of introduction of the Taxation (GST and Remedial Matters) Bill, in accordance with the general principle that legislation should not be retrospective, as set out in clause 7 of the Interpretation Act 1999.

New Zealand Emissions Trading Scheme

We recommend amending clause 34 to extend provisions relating to the proposed increase recognition rules to units transferred to Negotiated Greenhouse Agreement participants well as Climate Change Response Act 2002 transfers to compensate them for the increasing cost of their inputs. The bill seeks to amend the way that Government-allocated emissions units under the New Zealand Emissions Trading Scheme are recognised for income tax purposes. The provisions would enable businesses to move directly to the new rules, and would be effective from 1 July 2010, the date on which the industrial sector became subject to the scheme.

We agree that it would be desirable for the tax treatment of emissions unit transactions to be aligned with the accounting treatment of emissions unit transactions. This is not possible at present because the accounting treatment is not sufficiently established. Inland Revenue will monitor the treatment of emissions units with a view to aligning the tax and accounting treatment of units.

Portfolio investment entities

We recommend amending the bill's portfolio investment entity (PIE) provisions to allow a widely held investor to hold up to 100 percent of a listed PIE. This would be consistent with the approach already taken regarding an unlisted PIE. Our proposed amendments would ensure that the integrity of the PIE regime was maintained and prevent wholesale PIEs from losing their PIE status, which could have serious consequences for investors.

We recommend that our amendments apply from 1 October 2007.

The Auckland Council

We recommend amending clause 106(20) to include reference to section 19B of the Local Government (Tamaki Makaurau Reorganisation) Act 2009. The bill provides that the Auckland Council will be deemed to have advanced the amount of the principal when it enters into an acknowledgement of debt with a council-controlled organisation (CCO) even though it has not paid the principal to the CCO. The amendment we are proposing would extend this provision to include the Waterfront Development Agency. The provisions would have effect from 1 November 2010, which is the disestablishment date for outgoing Auckland local authorities.

Appendix

Committee process

The Taxation (GST and Remedial Matters) Bill was referred to the committee on 19 August 2010. The closing date for submissions was 9 September 2010. We received and considered 15 submissions from interested groups and individuals. We heard six submissions.

We received advice from the Inland Revenue Department, the Treasury, and our independent specialist tax adviser, Therese Turner.

Committee membership

Craig Foss (Chairperson)

Amy Adams

David Bennett

Hon John Boscawen (until 8 September 2010)

Brendon Burns

Hon David Cunliffe

Hon Sir Roger Douglas (from 8 September 2010)

Aaron Gilmore

Hon Shane Jones

Rahui Katene

Peseta Sam Lotu-Iiga

Stuart Nash

Dr Russel Norman

Taxation (GST and Remedial Matters) Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peter Dunne

Taxation (GST and Remedial Matters) Bill

Government Bill

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**Consequential amendments to Inland Revenue Acts:
ACC change**

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Taxation (GST and Remedial Matters) Act **2010**.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in this section. 5
- (2) **Section 104** is treated as coming into force on 1 January 2005.
- (3) **Sections 88, 89, 90, 92, and 93** are treated as coming into force on 1 April 2005. 10
- (3B) **Section 92B** is treated as coming into force on 1 April 2006.
- (4) **Section 90B and 91** ~~is~~are treated as coming into force on 1 October 2007.
- (5) **Section 11** is treated as coming into force on 30 November 2007. 15
- (6) **Sections 23, 24, 28, 29(1), 30, 30B, 40, 41, 42B, 43, 58, 60, 63, 65, 66, 67, 68, 69, 70, 71, 74(7B), and (9), 74B, 76, 80, 83, 85, and 108** are treated as coming into force on 1 April 2008.
- (7) **Section 64** is treated as coming into force on 1 October 2008. 20
- (8) **Section 82** is treated as coming into force on 6 October 2009.
- (9) **Sections 31, 32, 37, 44, 45, 46, 46B, 47, 47B, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57B, 62, 73(1B), and 74(2) and (4) 74(2), (4), and (6B), and 79B** are treated as coming into force on 1 April 2010. 25

- (10) **Sections 22, 33, and 34, 37B, 37C, 74(7C), and 100C** are treated as coming into force on 1 July 2010.
- (11) **Sections 79, 102, and 103** come into force on 1 August 2010.
- (11B) **Section 28** comes into force on 5 August 2010. 5
- (12) **Section 106** comes into force on 31 October 2010.
- (13) **Sections 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 15B, 17, 18, 19, 20, 25, 29(2) and (3), 35, 74(2B), and 75(1)(b), (c), and (d)** come into force on 1 April 2011.
- (14) **Section 64B** comes into force on the first day of the second month after the month in which the Governments of Australia and New Zealand exchange notes, as provided by clause 21 of the Arrangement between them on trans-Tasman retirement savings portability. 10

Part 1

15

Amendments to Goods and Services Tax Act 1985

3 Goods and Services Tax Act 1985

Sections 4 to 20 amend the Goods and Services Tax Act 1985. 20

4 Interpretation

- (1) The following amendments are made to section 2(1).
- (2) The following is inserted in its appropriate alphabetical order:
 “**adjustment period**, for a supply of goods or services to which **sections 8(4B)(b), 9(2)(h), 20(3C) to (3I), and 21 to 21G** apply, means a first or subsequent adjustment period referred to in **section 21F(2)**.” 25
- (3) The definition of **commercial dwelling** is replaced by the following:
 “**commercial dwelling**— 30
 “(a) means—
 “(i) a hotel, motel, homestay, farmstay, bed and breakfast establishment, inn, hostel, or boardinghouse:

- “(ii) a serviced apartment ~~or other accommodation~~ managed or operated by a third party for which services in addition to the supply of accommodation are provided and in relation to which a resident does not have ~~exclusive possession~~ quiet enjoyment, as that term is used in section 38 of the Residential Tenancies Act 1986: 5
- “(iii) a convalescent home, nursing home, rest home, or hospice:
- “(iv) a camping ground: 10
- “(v) premises of a similar kind to those referred to in **subparagraphs (i) to (iv)**; and
- “(vi) ~~premises other than a dwelling; and~~
- “(b) excludes—
- “(i) a hospital except to the extent to which the hospital is a residential establishment: 15
- “(ii) a dwelling situated in a retirement village or rest home if the consideration paid or payable for the supply of accommodation in the dwelling is for the right to occupy the dwelling.”. 20
- (4) The definition of **dwelling** is replaced by the following:
- “**dwelling**, for a person,—
- “(a) means premises, as defined in section 2 of the Residential Tenancies Act 1986,—
- “(i) that the person occupies, or that it can reasonably be foreseen that the person will occupy, as their principal place of residence; and 25
- “(ii) ~~of which the person has exclusive possession~~ in relation to which the person has quiet enjoyment, as that term is used in section 38 of the Residential Tenancies Act 1986; and 30
- “(b) includes ~~any appurtenances belonging to or used with the premises; and—~~
- “(i) accommodation provided to a person who is occupying the same premises, or part of the same premises, as the supplier of the accommodation and who meets the requirements of **paragraph (a)(i)**: 35

- “(ii) any appurtenances belonging to or used with the premises; and
- “(c) excludes a commercial dwelling.”.
- (5) The following is inserted in its appropriate alphabetical order:
- “**land**, in **sections 5(24), 11(1)(mb), 21D, 21F(4), 21G(2) and (5), 60B(5B), 75(3B), and 78F,—**
- “(a) includes—
- “(i) an estate or interest in land:
- “(ii) a right that gives rise to an interest in land:
- “(iii) an option to acquire land or an estate or interest in land: 10
- “(iv) a share in the share capital of a flat-owning or office-owning company, as defined in section 121A of the Land Transfer Act 1952:
- “(b) does not include— 15
- “(i) a mortgage:
- “(ii) a lease of a dwelling:
- “(iii) an interest in land in circumstances where the supply is made periodically and 25% or less of the total consideration specified in the agreement, in addition to any regular payments, is paid or payable under the agreement in advance of or contemporaneously with the supply being made:”. 20
- (6) The following are inserted in their appropriate alphabetical order: 25
- “**percentage actual use** is defined in **section 21F(1)(a)** for the purposes of **sections 8(4B)(b), 9(2)(h), and 21 to 21G:**
- “**percentage difference** is defined in **section 21F(1)(c)** for the purposes of **sections 21 to 21G:** 30
- “**percentage intended use** is defined in **section 21F(1)(b)** for the purposes of **sections 8(4B)(b), 20(3G), and 21 to 21G:**
- “**previous actual use** has the meaning given in **section 21B(b)(i):”.**
- (6B) The following is inserted in its appropriate alphabetical order: 35
- “**principal place of residence**, in the definition of **dwelling** and in **sections 5(15), 11(1)(mb), and 78F(2)**, means a place that a person occupies as their main residence for the

period to which the agreement for the supply of accommodation relates.”.

- (7) **Subsections (2) to (6B)** apply to ~~taxable~~ supplies made on or after 1 April 2011.

5 Meaning of input tax 5

- (1) Section 3A(1)(a) and (b) are replaced by the following:

“(a) tax charged under section 8(1) on a supply of goods or services acquired by the person:

“(b) tax levied under section 12(1) on goods entered for home consumption under the Customs and Excise Act 1996 by the person.”. 10

- (2) Section 3A(2)(c) is replaced by the following:

“(c) the goods acquired by the person for making taxable supplies are either—

“(i) not charged with tax at the rate of 0% under section 11A(1)(q) or (r); or 15

“(ii) charged with tax at the rate of 0% under section 11A(q) or (r) and, before the acquisition, have never been owned or used by the person or an associated person.” 20

- (2B) After section 3A(3), the following is inserted:

“(3B) Despite subsection (3)(a), if a supply wholly or partly consists of land, and is part of an arrangement involving more than 2 associated parties and more than 1 supply, the amount of input tax for the supply must not be more than the amount accounted for as output tax for all supplies that are part of the arrangement. 25

“(3C) For a supply of goods or services to which **section 21AB** applies, when the goods or services have been acquired from an associated person, the amount of input tax must not be more than the amount accounted for as output tax by the supplier of the goods or services. 30

- (3) Section 3A(4A) is repealed.

6 Meaning of term supply 35

- (1) Section 5(15) is replaced by the following:

“(15) When a principal place of residence is included in a supply, the supply of the residence is deemed to be a separate supply from the supply of any other real property included in the supply.”

(1B) Section 5(17) is repealed.

(2) After section 5(21), the following are added: 5

“(22) In relation to a supply to which subsection (2) applies, if the supply by the first person would be zero-rated under **section 11(1)(mb)**, the second person must zero-rate the supply in the same way.

“(23) ~~In relation to a supply to which **section 11(1)(mb)** applies, if the recipient of the supply has provided incorrect information, whether mistakenly or otherwise, that they are a registered person when in fact at the time of supply they are not a registered person, the recipient is treated as if they were a supplier making a supply that is chargeable with tax under section 8(1). If~~ 10
section 11(1)(mb) is treated as applying to a supply of goods and, after the date on which the relevant transaction is settled, it is found that the provision does not apply, the recipient of the supply is treated as if they were a supplier making, on the date of settlement, a supply of those goods that is chargeable with tax under section 8(1). 15 20

“(24) If a supply that wholly or partly consists of land is made, and the supply includes the provision of services, the supply of the services is treated as a supply of goods for the purposes of **section 11(1)(mb)**.” 25

(3) **Subsections (1), (1B) and (2)** apply to taxable supplies made on or after 1 April 2011.

7 Imposition of goods and services tax on supply

(1) In section 8(4B)(b) is replaced by the following:

“(b) the recipient of the supply— 30

“(i) estimates at the time of acquisition that the percentage intended use of the services is less than 95%; or

“(ii) determines at the end of an adjustment period that the percentage actual use of the services is less 35
 than 90%; and”.

- (2) **Subsection (1)** applies to ~~taxable~~ supplies made on or after 1 April 2011.

8 Time of supply

- (1) In section 9(2)(g), “takes place.” is replaced by “takes place:” and the following is added: 5

“(h) if **section 8(4B)(b)(ii)** applies, the supply is treated as having been made on the first day in the adjustment period when the percentage actual use of the services falls below 90%.”

- (1B) In section 9(6), “and section 21C” is omitted. 10

- (2) **Subsections (1) and (1B)** ~~applies~~apply to ~~taxable~~ supplies made on or after 1 April 2011.

9 Value of supply of goods and services

- (1) After section 10(7A), the following is inserted:

“(7B) If goods and services are treated as supplied by a person under **section 5(23)**, the value of the supply is an amount equal to the consideration for the supply first made to the recipient.” 15

- (1B) In section 10(8), “or, where goods and services are treated as being supplied under section 21” is omitted.

- (2) **Subsections (1) and (1B)** ~~applies~~apply to ~~taxable~~ supplies made on or after 1 April 2011. 20

10 Zero-rating of goods

- (1) After section 11(1)(m), the following is inserted:

“(mb) the supply wholly or partly consists of land, being a supply— 25

“(i) made by a registered person to another registered person who acquires the goods with the intention of using them for making taxable supplies; and

“(ii) that is not a supply of land intended to be used as a principal place of residence of the recipient of the supply or a person associated with them under section 2A(1)(c); or”. 30

- (1B) After section 11(8), the following is inserted:

“(8B) Whether a supply of goods is zero-rated under **subsection (1)(mb)** is determined at the time of settlement of the transaction relating to the supply.

“(8C) Despite **subsections (1)(mb) and (8B)**, a supplier may choose to apply the provisions of this Act applying before the changes made by the Taxation (GST and Remedial Matters) Act **2010** if they enter into a binding agreement before 1 April 2011 for which the time of supply is after that date.” 5

(2) **Subsections (1) and (1B)** ~~applies~~apply to ~~taxable~~ supplies made on or after 1 April 2011. 10

11 Special returns

(1) In section 17(1B), “A return that a person is required to furnish to the Commissioner under subsection (1) must be furnished on or before” is replaced by “The actions required of a person under subsection (1)(a) to (c) must be completed, on or before”. 15

(2) **Subsection (1)** applies to taxable periods ending on or after 30 November 2007.

12 Invoice basis for supplies over \$225,000

After section 19D(2), the following is inserted: 20

“(2B) Subsection (1) does not apply if the supplier is a non-profit body that determines on the basis of reasonable information that, at the time of supply, the recipient—

“(a) is not a registered person; and

“(b) is either— 25

“(i) not intending to use the goods and services for the purposes of carrying on a taxable activity; or

“(ii) intending to use the goods and services for the purposes of carrying on a taxable activity but only after the full consideration for the supply is paid to the supplier.” 30

13 Calculation of tax payable

(1A) In section 20(2)(d), “the supply:” is replaced by “the supply; or”, and the following is inserted:

- “(e) the supply is a supply of goods and services that is treated as made under **section 60B** to a nominated person and that person maintains sufficient records as required by **section 24(7B)**.”
- (1) Section 20(3)(e) is replaced by the following: 5
- “(e) any amount calculated under **subsections (3F) to (3I) and sections 21C(1) and (3)(a), and 21E**; and”.
- (2) ~~After section 20(3A)~~Before section 20(4), the following is inserted:
- “(3C) For the purposes of subsection (3), input tax may be deducted only to the extent to which the goods or services are used for, or are available for use in, making taxable supplies. **Subsection (3D)** overrides this subsection. 10
- “(3D) A registered person is not required to apportion input tax in an adjustment period if they make both taxable and exempt supplies and have reasonable grounds to believe that the total value of their exempt supplies will not be more than the lesser of— 15
- “(a) \$90,000;
- “(b) 5% of the total consideration for all their taxable and exempt supplies for the adjustment period. 20
- “(3DB) A registered person who principally makes supplies of financial services may choose to use a fair and reasonable method of apportionment, as agreed with the Commissioner, in relation to the supply for an apportionment on acquisition. 25
- For this purpose,—
- “(a) the method must have regard to the tenor of **subsections (3C) to (3I)**;
- “(b) the person may include a group of companies.
- “(3E) The method used to calculate the amount that may be deducted on acquisition is set out in **subsections (3C) to (3I)**. The rules for calculating adjustments are set out in **sections 21 to 21G**. 30
- “(3F) In determining the extent to which goods or services are used for making taxable supplies, a person must estimate at the time of acquisition how they intend to use the goods or services, choosing a determination method that provides a fair and reasonable result. The determination is expressed as a percentage of the total use. 35

“(3G) The ~~amount of input tax~~ extent to which a deduction for input tax is allowed is calculated using the formula—

full input tax deduction × percentage intended use.

“(3H) In the formula in **subsection (3G)**,—

“(a) **full input tax deduction** is the total amount of input tax to which the person would be entitled if they acquired the goods or services solely for making taxable supplies on the supply: 5

“(b) **percentage intended use** has the meaning set out in **section 21F(1)(b)**.

“(3I) For a supply to which **section 11(1)(mb)** applies, the recipient must,— 10

“(a) on acquisition,—

“(i) identify the nominal amount of tax (the **nominal GST component**) that would be chargeable on the value of the supply, as if the value were equal to the consideration charged for the supply, at the rate set out in ~~under~~ section 8(1); and 15

“(ii) determine the extent to which they intend to use the goods or services as described in **subsection (3F)**; and 20

“(iii) account for output tax under section ~~20(3)~~20(4) for the proportion of the nominal GST component for any non-taxable use of the goods; and

“(b) for later adjustment periods, make adjustments under the apportionment rules set out in **sections 21 to 21G** in relation to the taxable supply referred to in **paragraph (a)**. 25

“(3J) For the purposes of ~~section 3A(1) and (2)~~subsections (3) and **(3C)**, to the extent to which a non-profit body ~~acquires~~uses goods or services other than for making exempt supplies, ~~the supply is treated as acquired~~the goods or services are treated as being used for making taxable supplies.” 30

(3) In section 20(4)(b)(ii), “applies.” is replaced by “applies; or,” and the following is added:

“(c) in the case of a registered person who is required to account for tax payable under **section 21C(1) and (3)(b)**, for the relevant adjustment period.” 35

(4) After section 20(4), the following is inserted:

“(4B) A person who is treated under **section 5(23)** as a supplier of goods under **section 11(1)(mb)** is denied a deduction under subsection (3) in relation to the supply. However, this subsection does not apply to a person required to account for tax under **section 5(23)** who later becomes a registered person under section 51 and uses the relevant goods for making taxable supplies.” 5

(5) **Subsections ~~(1)(1A)~~ to (4)** apply to ~~taxable~~ supplies made on or after 1 April 2011. 10

14 Sections 21 to 21H replaced

(1) Sections 21 to 21H are replaced by the following:

“21 Adjustments for apportioned supplies

“(1) A registered person must ascertain at the end of an adjustment period whether an adjustment is required to be made for any percentage difference in a supply of goods or services for the period in relation to the actual use of those goods or services for making taxable supplies. 15

“(2) Despite **subsection (1)**, the person is not required to make an adjustment if— 20

“(a) **section 20(3D)** applies to them:

“(b) the ~~taxable~~ value of the goods or services, excluding GST, is less than \$5,000 or less:

“(c) the difference between the percentage intended use on acquisition and the percentage actual use for the relevant adjustment period is less than ~~10%~~10 percentage points, but this paragraph does not apply if the adjustment amounts to more than \$1,000; 25

“(d) the difference between the previous actual use calculated for the most recent adjustment period in which an adjustment was made and the percentage actual use for the relevant adjustment period is less than 10 percentage points, but this paragraph does not apply if the adjustment amounts to more than \$1,000. 30

“(3) If the threshold in **subsection (2)(c)** is exceeded in an adjustment period in relation to a supply of goods or services; 35

the person must make an adjustment for any percentage difference in the supply in all later adjustment periods.

“(4) An adjustment arises on the last day of the relevant adjustment period.

“(5) For an adjustment to which **sections 21A to 21G** apply, a registered person who principally makes supplies of financial services may choose to use a fair and reasonable method, as agreed with the Commissioner, for making adjustments in subsequent adjustment periods. For this purpose,—

“(a) the method must have regard to the tenor of **sections 21A to 21G**;

“(b) the person may include a group of companies.

“21A When adjustments required

A registered person must, at the end of an adjustment period,—

“(a) identify the percentage actual use of the goods or services in making taxable supplies in the period; and

“(b) compare the percentage actual use with percentage intended use or previous actual use, as applicable; and

“(c) if a percentage difference arises and **section 21(2)(c)** does not apply, make an adjustment for any percentage difference for the adjustment period.

“21AB Adjustments when person becomes registered after acquiring goods and services

“(1) This section applies when—

“(a) before becoming a registered person, a person acquires goods or services that were chargeable with tax under section 8(1); and

“(b) at the time of registration or at a later time, the person uses the goods or services for making taxable supplies.

“(2) The person may make an adjustment under **sections 21 and 21A**, treating as the first adjustment period, the period that—

“(a) starts on the date of the acquisition of the goods or services; and

“(b) ends on the first balance date that falls after the events referred to in **subsection (1)(b)**.

“(3) For the purposes of this section,—

- “(a) the person must either—
- “(i) provide a tax invoice in relation to the supply, as required by section 20(2); or
- “(ii) have adequate records that enable the identification of the particulars of an invoice as required by section 24(3): 5
- “(b) in identifying the percentage actual use of the goods or services in the first adjustment period referred to in **sub-section (2)**, the person may use a method that provides a fair and reasonable result. 10
- “(4) This section does not apply if the original cost of the goods or services, excluding GST, was \$5,000 or less.

“21B Adjustments for first and subsequent adjustment periods

For the purposes of **section 21A(b)**,—

- “(a) for the first adjustment period applying to the goods or services, the person must compare the percentage intended use of the goods or services with their percentage actual use: 15
- “(b) for a subsequent adjustment period, the person must compare the percentage actual use of the goods or services with— 20
- “(i) their percentage actual use in an earlier period that is the most recent period in which an adjustment has been made (the **previous actual use**):
- “(ii) their percentage intended use, if no adjustment has been made in an earlier period. 25

“21C Calculating amount of adjustment

- “(1) If a percentage difference arises for an adjustment period, a registered person must make a positive or negative adjustment for the period of an amount calculated using the formula— 30

full input tax deduction × percentage difference.

- “(2) In the formula,—

- “(a) **full input tax deduction** is the total amount of input tax to which the person would be entitled if they acquired the goods or services solely for making taxable

~~supplies~~ on the supply, including any nominal GST component chargeable under **section 20(3)(a)(i)**:

“(b) **percentage difference** has the meaning set out in **section 21F(1)(c)**.

“(3) For the purposes of **subsection (1)**,— 5

“(a) if the adjustment is positive and the percentage actual use is more than the person’s percentage intended use or previous actual use, as applicable, the person is entitled to an additional ~~amount of input tax deduction~~ under **section 20(3)(e)**: 10

“(b) if the adjustment is negative and the percentage actual taxable use is less than the person’s percentage intended use or previous actual use, as applicable, the person must treat the amount as a positive amount of output tax under ~~section 20(4)(c)~~ and account for it under **section 21A**. 15

“21D Concurrent uses of land

“(1) This section applies when a registered person uses all or part of an area of land during an adjustment period for making concurrent taxable and non-taxable supplies. The percentages determined under this section apply for the purposes of **sections 21A and 21F**. 20

“(2) This section does not apply if the Commissioner agrees that the registered person may use another calculation method.

“(3) The extent to which the land is used for making taxable supplies is calculated as a percentage using the formula— 25

$$\frac{\text{consideration for taxable supply}}{\text{total consideration for supply}} \times 100.$$

“(4) In the formula in **subsection (3)**,—

“(a) **consideration for taxable supply** is,—

“(i) on a disposal of the land in the adjustment period, the amount ~~derived~~ paid or payable; or 30

“(ii) the market value of the land at the time of making the adjustment:

“(b) **total consideration for supply** is the sum of the amount referred to in **paragraph (a)** and the amount of—

- “(i) all rental income that is the consideration for the supply of a dwelling paid or payable ~~derived from the land~~ since the land was acquired; or and
 “(ii) if no rental income is paid or payable in relation to the non-taxable use of the land, the market 5
value of rental income that would have been ~~de-~~ paid or payable since the land was acquired
if the land had been used for this purpose.
- “(5) For the purposes of **subsection (4)**, if the person disposes of the land to an associated person, or if the amount of rental 10
 income is not an arm’s length amount, **subsection (4)(a)(i) and (b)(i)** do not apply, and the amount of the consideration is measured under **subsection (4)(a)(ii) and (b)(ii)**.
- “(5B) For the purposes of **subsection (4)(a)(ii) and (b)(ii)**, if the 15
market value of the land or the market value of rental income is not readily identifiable, the person may use another method to provide a fair and reasonable estimate of the market value.
- “(6) If a person is required to estimate the extent of taxable use of the land under this section and the land has at any time been 20
 used in a month solely for making non-taxable supplies, the person must calculate the percentage use for the adjustment period on a month by month basis, calculated using the formula—
- $$\frac{\text{months}}{\text{total months}} \times \text{result under **subsection (3)**}.$$
- “(7) In the formula in **subsection (6)**,—
- “(a) **months** is the number of months since acquisition in 25
 which all or part of the land is used to some extent for making taxable supplies:
- “(b) **total months** is the total number of months since acquisition.
- “21E Treatment on disposal** 30
- “(1) This section applies when a registered person—
- “(a) acquires goods or services in relation to which they do not have a full ~~input tax~~ deduction, taking into account any adjustments made to input tax in adjustment periods after acquisition; and 35

- “(b) subsequently disposes, or is treated as disposing, of the goods or services in the course or furtherance of a taxable activity.
- “(2) The person must make a final adjustment to ~~input tax~~ of an amount calculated using the formula— 5
- $$\text{tax fraction} \times \text{consideration} \times \left[1 - \frac{\text{actual deduction}}{\text{full input tax deduction}} \right]$$
- “(3) For the purposes of the formula,—
- “(a) **tax fraction** has the meaning given in section 2(1):
- “(b) **consideration** is the amount of consideration received, or treated as received, for the supply:
- “(c) **actual deduction** is the amount of deduction already 10 claimed, taking into account adjustments made up to the date of disposal:
- “(d) the amount, when added to any deduction already claimed, must not be more than the amount of the **full input tax deduction** on acquisition referred to in 15 **section 21C(2)**.

“21F Definitions and requirements for apportioned supplies and adjustment periods

- “(1) For the purposes of this section and **sections 8(4B)(b), 9(2)(h), 20(3G), 21 to 21E, and 21G**,— 20
- “(a) **percentage actual use**, for a registered person and an adjustment period,—
- “(i) means the extent to which the goods or services are actually used by the person for making taxable supplies; and 25
- “(ii) is calculated for the period that starts when the goods or services are acquired and finishes at the end of the relevant adjustment period; and
- “(iii) is expressed as a percentage of total use:
- “(b) **percentage intended use**, for a registered person, 30 means the extent to which the goods or services are intended to be used by the person for making taxable supplies, estimated at the time of acquisition under

section 20(3F) and expressed as a percentage of total use:

- “(c) **percentage difference** means the difference between the percentage actual use determined under **paragraph (a)** and, as applicable,—
 - “(i) the percentage intended use determined under **paragraph (b)**; or
 - “(ii) for a subsequent adjustment period following a period in which a person has made an adjustment, the previous actual use of the goods or services in the earlier period.
- “(2) For the purposes of this section and **sections 21 to 21E and 21G**,—
 - “(a) the first adjustment period is a period ~~of at least 12 months~~ that—
 - “(i) starts on the date of acquisition; and
 - “(ii) ends on the date as the person chooses that either corresponds to the person’s first balance date described in section 15B(6) that falls after the date of acquisition, or corresponds to the person’s first balance date that falls at least 12 months after the date of acquisition:
 - “(b) a subsequent adjustment period is a period of 12 months that—
 - “(i) starts on the day after the end of an earlier adjustment period; and
 - “(ii) ends on the last day of the equivalent taxable period in which the first adjustment period ended.
- “(2B) For the purposes of **subsection (2)(b)**, a registered person who chooses under section 38(1) of the Tax Administration Act 1994 to change their balance date at some time in an income year may realign their subsequent adjustment periods with the new balance date. However, an affected adjustment period must be of at least 12 months duration and, if the new balance date causes an adjustment period to be shorter than 12 months, the relevant period is extended to the balance date of the following income year.

- “(3) The number of adjustment periods in which a registered person must determine whether an adjustment is required under **section 21A** may, as the person chooses, be limited to—
- “(a) one of the following based on the value of the goods or services, excluding GST: 5
 - “(i) 2 adjustment periods for goods or services valued at more than \$5,000 but not more than \$10,000:
 - “(ii) 5 adjustment periods for goods or services valued at more than \$10,000 but not more than \$500,000: 10
 - “(iii) 10 adjustment periods for goods or services valued at more than \$500,000; or
 - “(b) the relevant adjustment periods that is equal to the number of years for the estimated useful life of the relevant asset as determined under the Tax Depreciation Rates Determinations set by the Commissioner under section 91AAF of the Tax Administration Act 1994. 15
- “(4) **Subsection (3)** does not apply in relation to a supply of land.
- “(5) An election by a registered person under **subsection (3)** to limit the number of adjustment periods applying to goods or services acquired by them cannot subsequently be changed. 20
- “(6) Despite **subsection (3)** if, after making adjustments for goods or services for the number of adjustment periods, the person subsequently disposes, or is treated as disposing, of the relevant asset, they must make a final adjustment under **section 21E** in the taxable period in which the disposal occurs. 25
- “(7) If a person does not choose the number of adjustment periods for an apportioned supply, the limits set out in **subsection (3)(a)** apply.
- “**21G Transitional accounting rules** 30
- “(1) This section applies in relation to goods or services acquired before 1 April 2011, when a registered person determines the extent to which goods or services are applied for the purposes of making supplies other than taxable supplies under sections 21A to 21H (the **old apportionment rules**) as they were before the enactment of the Taxation (GST and Remedial Matters) Act **2010**. 35

- “(2) The person must continue to apply the old apportionment rules in relation to the supply. However, the making of these adjustments is limited as follows:
- “(a) for goods or services whose market value or book value on 1 April 2011 is \$5,000 or less, no adjustment under the old apportionment rules may be, or may be required to be, made after 1 April 2011: 5
 - “(b) for goods or services whose market value or book value on 1 April 2011 is more than \$5,000 but not more than \$10,000, no adjustment under the old apportionment rules may be, or may be required to be, made after 1 April 2013: 10
 - “(c) for other goods or services, no adjustment under the old apportionment rules may be, or may be required to be, made after 1 April 2016. 15
- “(2B) **Subsection (2)(a) to (c)** does not apply to a supply that wholly or partly consists of land.
- “(3) Despite **subsection (2)**, the person may choose to apply **sections 20(3G) to (3I) and 24 to 24F** (the **new apportionment rules**) in relation to the supply by taking the following steps: 20
- “(a) first, the person must treat themselves as disposing of the goods or services and account for output tax under section 8(1) on the total market value of the supply at the time of the deemed disposal; and
 - “(b) secondly, the person must treat themselves as acquiring the goods or services for the total market value referred to in **paragraph (a)** and— 25
 - “(i) apply **section 20(3G) to (3I)** to calculate the amount that they may deduct on the deemed acquisition on the basis of an estimation of the intended use of the goods or services; and 30
 - “(ii) for adjustment periods after the period in which the deemed acquisition occurred, apply **sections 24 to 24F** to calculate any adjustment arising in relation to the apportioned supply.” 35
- “(4) For the purposes of **subsection (3)(a)**, the person is not entitled to recover any amount of an adjustment made under section 24 of the old apportionment rules before any accounting for the supply is made under the new apportionment rules.”

- (2) **Subsection (1)** applies to ~~taxable~~ supplies made on or after 1 April 2011.

15 Tax invoices

- (1) After section 24(7), the following is inserted:

“(7B) Despite subsections (1) and (3), if a tax invoice is not available in relation to a supply of goods to which **section 60B(3) to (5)** applies, the nominated person must maintain sufficient records to enable the following particulars to be ascertained:

“(a) the name and address of the supplier; and

“(b) the date on which payment for the supply was made; and

“(c) a description of the goods supplied; and

“(d) the consideration for the supply.”

- (2) **Subsection (1)** applies to ~~taxable~~ supplies made on or after 1 April 2011.

15B Credit and debit notes

- (1) After section 25(1)(aa), the following is inserted:

“(ab) **section 11(1)(mb)** was incorrectly applied to the treatment of the supply, so that the supply was either zero-rated when it should not have been, or not zero-rated when it should have been; or”.

- (2) After section 25(3)(e), the following is added:

“(f) in the case of a supply to which **subsection (1)(ab)** applies, a credit note may not be issued after 7 years from the date of settlement of the transaction relating to the supply.”

- (3) **Subsections (1) and (2)** apply to supplies made on or after 1 April 2011.

16 Deduction of tax from payment due to defaulters

After section 43(1), the following is inserted:

“(1B) For the purposes of the definition of **amount payable** in subsection (1), money that is on deposit or is deposited to the credit of a registered person includes money that—

“(a) is held in a joint bank account in the name of the registered person and 1 or more other persons; and

“(b) can be withdrawn from the account by or on behalf of the registered person without a signature or other authorisation being required at the time of the withdrawal from, or on behalf of, the other person or persons.

“(1C) **Subsection (1B)** does not apply when the joint bank account is an account of a partnership that files a return of income under section 33(1) of the Tax Administration Act 1994.” 5

17 Persons treated as registered

(1) After section 51B(3), the following is added:

“(4) For the purposes of this Act, in relation to a supply to which **section 11(1)(mb)** applies, a recipient who is treated as a supplier under **section 5(23)**— 10

“(a) is treated as registered from the date of the supply under section 5(23); and

“(b) must apply under ~~subsection~~ section 51(2) to the Commissioner for registration. 15

“(5) A person who is treated as registered under **subsection (4)(b)** may ask the Commissioner to cancel their registration under section 52(2) once they have accounted for output tax as required under **section 5(23)**. 20

“(6) For the purposes of **subsection (5)**, section 5(3) does not apply if—

“(a) the person seeks cancellation of their registration by the end of the taxable period in which they have accounted for the output tax under **section 5(23)**; or 25

“(b) the Commissioner so determines, on application by the person.”

(2) **Subsection (1)** applies to ~~taxable~~ supplies made on or after 1 April 2011.

18 New section 60B 30

(1) After section 60, the following is inserted:

“60B Nominated recipients of supplies

“(1) This section applies when a person (**person A**) enters into a contract to supply goods and services to another person (**person B**) ~~who is the recipient of the supply under the contract,~~ 35
and person B directs person A to provide the goods and ser-

vices to a nominated person (**person C**) who is not party to the contract.

- “(2) If person B pays the full consideration for the supply, the supply is treated as a supply from person A to person B and the existence of person C is ignored. 5
- “(3) If person C pays the full consideration for the supply, the supply is treated as a supply from person A to person C and the existence of person B is ignored.
- “(4) If person B and person C each pay part of the consideration for the supply, the supply is treated as a supply from person A 10 to person B. However, person B and person C may agree in writing that the supply is to be treated as a supply made to person C, but no such agreement can be made if person B has claimed input tax in relation to the supply.
- “(5) Despite **subsections (2) to (4)**, if the registration status of person B differs from the registration status of person C, the supply must be treated as a supply from person A to person C. For the purposes of this subsection, registration status differs when— 15
- “(a) person B is a registered person and person C is not a registered person; or 20
- “(b) person C is a registered person and person B is not a registered person.
- “(5B) Despite **subsections (2) to (5)**, for a supply that wholly or partly consists of land, the supply is treated as made by person A to person C. 25
- “(6) Section 60 overrides this section.”
- (2) **Subsection (1)** applies to ~~taxable~~ supplies made on or after 1 April 2011.

19 Keeping of records 30

- (1) After section 75(3), the following is inserted:
- “(3B) For the purposes of **section 11(1)(mb)**, the supplier must maintain sufficient records to enable the following particulars in relation to the supply to be ascertained:
- “(a) the name and address of the recipient; and 35
- “(b) the registration number of the recipient; and
- “(c) a description of land; and

“(d) the consideration for the supply.”

- (2) **Subsection (1)** applies to ~~taxable~~ supplies made on or after 1 April 2011.

20 New section 78F

- (1) After section 78E, the following is inserted: 5

“78F Liability in relation to supplies of land

- “(1) This section applies in relation to a supply ~~of goods to which~~ **section 44(1)(mb)** ~~applies~~ that wholly or partly consists of land.

- “(2) ~~The supplier must obtain the recipient’s registration details and confirm that —~~ 10

“(a) ~~the recipient is acquiring the goods with the intention of using them for making taxable supplies;~~

“(b) ~~the supply is not a supply of land intended to be used as a principal place of residence of the recipient or a person associated with them under section 2A(1)(c).~~ 15

- “(3) ~~If, in the circumstances relating to the supply, the supplier is unable to obtain the details described in subsection (2), the supplier must make sufficient inquiries into the recipient’s registration status and otherwise obtain all the information that the Commissioner requires in relation to a supply of land.~~ 20

- “(4) ~~Having met the requirements of subsections (2) and (3), the supplier is not liable for tax on the supply under section 20(4) in a case of mistake or misrepresentation by the recipient.~~

- “(5) ~~If the actions of both the supplier and the recipient mean that the requirements of this section are not met, the Commissioner may determine which party is liable for tax on the supply.~~ 25

- “(2) At or before settlement of the transaction relating to the supply, the recipient is required to provide a statement in writing to the supplier as to whether, at the date of settlement,— 30

“(a) they are, or expect to be, a registered person; and

“(b) they are acquiring the goods with the intention of using them for making taxable supplies; and

“(c) they do not intend to use the land as a principal place of residence for them or a person associated with them under section 2A(1)(c). 35

- “(3) The supplier may rely on the information provided by the recipient in determining the tax treatment of the supply.
- “(4) For the purposes of section 5(2), the statement referred to in **subsection (2)** must be provided to the second person referred to in section 5(2). 5
- “(5) For the purposes of **section 60B** and a transaction that wholly or partly consists of land, **subsection (2)** is modified in relation to the nominated person so that the information provided by the recipient relates to their expectation of the nominated person’s circumstances. 10
- (2) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011.

Part 2

Amendments to Income Tax Act 2007

- 21 **Income Tax Act 2007** 15
Sections 22 to 76 amend the Income Tax Act 2007.
- 22 **Disposal of emissions units**
 Section CB 36(7), other than the heading, is replaced by the following:
- “(7) The person is treated as selling a unit that is not a forest land emissions unit for an amount equal to the unit’s market value if the person— 20
- “(a) the person surrenders the unit when it has a value of zero; and
- “(b) has the unit was transferred the unit to the person under Part 4, subpart 2 of the Climate Change Response Act 2002 at a price of zero.” 25
- 23 **Returns of capital: on-market share cancellations**
- (1) In section CD 24(2)(a)(i), “section CD 29” is replaced by “section CD 40”. 30
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

24 Amounts derived in connection with employment

- (1) Section CE 1(1)(c) is repealed.
- (2) After section CE 1(1), the following is inserted:
“Benefit of accommodation
“(1B) The market value of the following benefits provided to a person is income of the person if the benefit is provided in relation to an office or position held by them:
“(a) the provision of accommodation:
“(b) the provision of an accommodation allowance instead of accommodation.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

25 Adjustment for GST

- (1) In section CH 5(1), “An amount calculated under sections 21F and 21G” is replaced by “An adjustment taken into account under section 20(3)(e)”.
- (2) Section CH 5(2), other than the heading, is replaced by the following:
“(2) This section does not apply to an adjustment made in relation to a capital asset.”
- (3) In section CH 5, in the list of defined terms, “taxable supply” is omitted.
- (4) **Subsections (1) and (2)** apply to taxable supplies made on or after 1 April 2011.

26 Income of non-resident general insurer

- (1) In section CR 3(1), “derived from New Zealand” is replaced by “having a source in New Zealand”.
- (2) In section CR 3, in the list of defined terms,—
(a) “derived from New Zealand” is omitted:
(b) “source in New Zealand” is inserted.

27 Non-resident film renters

- (1) In section CV 17(2), “derived from New Zealand by the non-resident person” is replaced by “that have a source in New Zealand”.

- (2) In section CV 17, in the list of defined terms,—
- (a) “derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

28 Benefits provided on premises

In section CX 23(1), “received or used” is replaced by “used or consumed” in each place where it appears.

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

29 Goods and services tax

- (1) In section DB 2(2), “a supply of goods or services that section 21 or 21I(1) to (3)” is replaced by “a supply of goods or services that section 5B, 21, or 21I(1) to (3)”.

- (2) Section DB 2(2) is replaced by the following:

“When subsection (2B) applies

- “(2) **Subsection (2B)** applies when a registered person is charged output tax in relation to—

“(a) a supply of goods and services that section 5B of the Goods and Services Tax Act 1985 treats them as making;

“(b) an apportionment of input tax made in relation to the supply under **section 20(3G) to (3I)** of that Act;

“(c) an adjustment made in relation to the supply under **sections 21 to 21G** of that Act.

“Deduction

- “(2B) The person is allowed a deduction for the amount but only to the extent to which—

“(a) they are allowed a deduction for expenditure that they incur in acquiring the goods or services; or

“(b) they are allowed a deduction for an amount of depreciation loss for the goods or services.”

- (2) In section DB 2(2), “output tax on a supply of goods or services that section 21 or 21I(1) to (3) of the Goods and Services Tax Act 1985 treats them as making,” is replaced by “deductible output tax”.

- (3) Section DB 2(3), other than the heading, is replaced by the following:

- “(3) **Subsection (2)** does not apply to an adjustment made in relation to a capital asset.”
- (4) ~~In section DB 2, in the defined terms list, “taxable supply” is omitted.~~
- (4) In section DB 2, in the defined terms list,— 5
 (a) “deductible output tax” is inserted;
 (b) “taxable supply” is omitted.
- (5) **Subsection (1)** applies for the 2008–09 and later income years.
- (6) **Subsections (2) and (3)** apply to taxable supplies made on 10
 or after 1 April 2011.
- 30 Avoiding, remedying, or mitigating effects of discharge of contaminant**
- (1) In section DB 46(1)(b)(i), “schedule 19, part B” is replaced by “schedule 19, in either part A or B”. 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 30B Variance during logbook term**
- (1) In section DE 10, “20%” is replaced by “20 percentage points”. 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 31 Transfer of expenditure to master fund**
 In section DV 2, in the defined terms list, “investor interest” is omitted. 25
- 32 Investment funds: transfer of expenditure to master funds**
 In section DV 5, in the defined terms list, “investor interest” is omitted.
- 33 Valuation of excepted financial arrangements**
- (1) Section ED 1(7B)(a) is replaced by the following: 30
 “(a) an emissions unit transferred under section 64, or Part 4, subpart 2, of the Climate Change Response Act 2002 in

an income year for no payment of a price, and to which **section ED 1B** does not apply, has a value of zero for the period beginning with the transfer and ending before the end of the income year.”.

- (1B) After section ED 1(7B)(c), the following is inserted: 5
- “(cb) a fishing quota emissions unit has a value at the end of each income year of—
- “(i) the market value of the unit at the end of the income year, if the holder of the unit would derive income, other than exempt income and excluded income, from a disposal of the individual transferable quota to which the units relate; or 10
- “(ii) zero, if **subparagraph (i)** does not apply.”.
- (2) In section ED 1, in the list of defined terms, “pay” is inserted.
- 34 Section ED 1B replaced** 15
- Section ED 1B is replaced by the following:
- “ED 1B Valuation of emissions units issued for zero price**
- “What this section applies to*
- “(1) This section applies to emissions units held by a person in an income year that— 20
- “(a) ~~are transferred to the person under Part 4, subpart 2, of the Climate Change Response Act 2002 at a price of zero; and~~ are transferred to the person at a price of zero—
- “(i) under Part 4, subpart 2, of the Climate Change Response Act 2002: 25
- “(ii) by a public authority under a supplementary agreement to a negotiated greenhouse agreement; and
- “(b) have been held continuously by the person from the time of the transfer; and 30
- “(c) have not been valued under either of **subsections (4)(a) and (8)(a)** before the income year; and
- “(d) are not forest land emissions units; and
- “(e) are not replacement forest land emissions units; and 35
- “(f) are not fishing quota emissions units.

“Value of units transferred to person if no earlier emissions unit shortfall year

- “(2) If an emissions unit is transferred to the person in the income year and there is no earlier income year that is an emissions unit shortfall year for the person under **subsections (9) and (10)**, the emissions unit is assigned a value of zero at the time of the transfer. 5

“Value of units transferred to person in income year after emissions unit shortfall year

- “(3) If an earlier income year is an emissions unit shortfall year for the person immediately before an emissions unit (the **transferred unit**) is transferred to the person in the income year, the value of the transferred unit at the time of the transfer is given by the application of the paragraphs in **subsection (4)** in alphabetical order to transferred units until all the transferred units are assigned a value. 10 15

“Valuation method at transfer for transferred units

- “(4) If emissions units are transferred to the person in an income year when there is a unit shortfall under **subsections (9) and (10)** for an earlier emissions unit shortfall year,— 20
- “(a) for each emissions unit shortfall year in date order, transferred units, up to the number corresponding to the unit shortfall relating to the emissions unit shortfall year, are each assigned a value equal to the market value of an emissions unit at the end of the emissions unit shortfall year: 25
- “(b) transferred units are each assigned a value equal to zero.

“Value of units with zero value immediately before end of income year

- “(5) If the value of an emissions unit (the **revalued unit**) held by the person immediately before the end of the income year is zero, the value of the revalued unit at the end of the year is given by the application of the paragraphs in **subsection (8)** in alphabetical order to revalued units until all the revalued units are assigned a value. 30 35

“Limit on application of subsection (8)(a)

- “(6) The maximum number of units valued under **subsection (8)(a)** for the income year is the greater of zero and the number calculated using the formula—

unit entitlement – disposals at zero value.

“Definition of items in formula

5

- “(7) In the formula,—

“(a) **unit entitlement** is the total for the income year of ~~amounts for each calendar year ending 31 December that overlaps the income year, each amount being the final allocation entitlement under section 83 of the Climate Change Response Act 2002, or the allocation entitlement under section 85 of that Act, that the person would have for the period of overlap between the calendar year and the income year if the period of overlap were treated as a year for the purposes of that Act; amounts, each of which the person would have for the period of overlap between a calendar year ending 31 December and the income year if the period of overlap were treated as a year, of—~~

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“(i) final allocation entitlement under section 83 of the Climate Change Response Act 2002;

20

“(ii) allocation entitlement under section 85 of that Act;

“(iii) emissions units corresponding to the actual emissions amount under a supplementary agreement to a negotiated greenhouse agreement;

25

“(b) **disposals at zero value** is the number of emissions units disposed of by the person in the income year that had a value of zero at the disposal.

“Valuation method at end of income year for revalued units

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- “(8) If the person holds revalued units immediately before the end of the income year, the units are each assigned a value—

“(a) equal to the market value of an emissions unit at the end of the income year:

“(b) equal to zero.

35

“Emissions unit shortfall year

- “(9) If the number of units assigned a market value for an income year under **subsection (8)(a)** is less than the maximum number given by **subsection (6)** for the income year, at the end of the income year— 5
- “(a) the income year is an **emissions unit shortfall year** and has 2 numbers (the **unit shortfall** and the **unit shortfall value**) associated with it:
- “(b) the unit shortfall relating to the emissions unit shortfall year is the difference between the maximum number given by **subsection (6)** for the income year and the number of zero value units assigned a market value under **subsection (8)(a)** for the income year: 10
- “(c) the unit shortfall value relating to the emissions unit shortfall year is the unit shortfall multiplied by the market value of an emissions unit at the end of the income year. 15

“Reductions in unit shortfall and unit shortfall value

- “(10) When an emissions unit held by a person is assigned a value under **subsection (4)(a)** in relation to a year that is an emissions unit shortfall year for the person,— 20
- “(a) the unit shortfall relating to that year is reduced by the number of emissions units assigned a value in relation to that year:
- “(b) the unit shortfall value relating to that year is reduced by an amount equal to the number of emissions units assigned a value in relation to that year multiplied by the value assigned to each of those emissions units: 25
- “(c) the year ceases to be an emissions unit shortfall year, if the unit shortfall relating to the year is reduced to zero. 30

“Unit shortfall values treated as values of additional emissions units for purposes of adjustments

- “(11) For the purposes of sections CH 1 and DB 49 (which relate to adjustments for values of excepted financial arrangements), the person is treated as holding at the end of the income year additional emissions units with a value equal to the total of the 35

unit shortfall values relating to emissions unit shortfall years for the person.

“Defined in this Act: amount, emissions unit, emissions unit shortfall year, fishing quota emissions units, forest land emissions units, income year, public authority, replacement forest land emissions units, year”.

5

35 Cost: GST

(1A) In section EE 54(2), “subsection (3)” is replaced by “**subsections (3) and (4)**”.

(1) Section EE 54(3) and (4) are replaced by the following:

“*Deductions from output tax*

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“(3) The item’s cost is reduced by the amount of any adjustment taken into account in the income year under **section 20(3)(e)** of the Goods and Services Tax Act 1985.

“*Adjustments for output tax*

“(4) The item’s cost is increased by the amount of output tax charged in the income year as a result of—

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“(a) an apportionment of input tax made in relation to the supply under **section 20(3G) to (3I)** of that Act:

“(b) an adjustment made in relation to the supply under **sections 21 to 21G** of that Act.

20

“(4) The item’s cost is increased by adding an amount of deductible output tax that the person has for the income year.”

(2) In section EE 54, in the list of defined terms, “taxable supply” is omitted.

(2) In section EE 54, in the list of defined terms,—

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(a) “deductible output tax” is inserted:

(b) “taxable supply” is omitted.

(3) **Subsection (1)** applies to taxable supplies made on or after 1 April 2011.

36 Election to use balance date used in foreign country

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(1) In section EG 1(10), in the definition of **foreign source income**, “that is not derived from New Zealand” is replaced by “that does not have a source in New Zealand”.

(2) In section EG 1, in the list of defined terms,—

(a) “derived from New Zealand” is omitted:

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(b) “source in New Zealand” is inserted.

37 Superannuation schemes providing life insurance

(1) Section EY 11(5) is replaced by the following:

“Nature of funds

“(5) At all times in the income year, the fund must be 1 of the following kinds: 5

“(a) a fund established by an employer, or a group of employers who are associated, to provide benefits only to persons who are employees of, or related by employment to, such an employer, or to another associated employer who agrees after the fund’s establishment to make contributions to it: 10

“(b) a fund constituted under the Government Superannuation Fund Act 1956 that provides benefits only to persons who are employees of, or related by employment to, an employer who agrees or is required to contribute, or on whose behalf contributions are made, to the fund: 15

“(c) a fund constituted under the National Provident Fund Act 1950, the National Provident Fund Restructuring Act 1990, or the National Provident Fund Restructuring Amendment Act 1997 that has as its trustee the Board of Trustees of the National Provident Fund.” 20

(2) **Subsection (1)** applies for the 2010–11 and later income years.

37B Outstanding claims reserving amount: non-participation policies not annuities

(1) In section EY 24(2)(a)(ii) “but including amounts that were included in the closing sum insured for the calculation of mortality profit for the prior year or an earlier income year” is replaced by “but using a basis consistent with the one that the insurer used for tax purposes in that prior year (*for example*: if IBNR liability was not accounted for, for tax purposes, in the prior year, the opening balance calculation does not take into account IBNR liability)”. 25 30

(2) **Subsection (1)** applies—

(a) on and after 1 July 2010, unless **paragraph (b)** applies: 35

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Tax-

ation, Life Insurance, and Remedial Matters) Act 2009
in a return of income for the tax year corresponding to
the first relevant income year.

37C Transitional adjustments: life risk

- (1) In section EY 30(3)(b), “subsection (5)(a) or (b)” is replaced 5
by “subsection (5)(a), (b), or (c).”
- (2) Section EY 30(3)(e) is replaced by the following:
 - “(e) either—
 - “(i) to the extent to which, looking through to the in- 10
dividual lives covered, the amount of life insur-
ance cover at the finish of a cover review period,
or at the finish of any shorter period if the life in-
surer chooses to measure within the cover review
period, has not increased by more than the greater
of 10% and the percentage change in the con- 15
sumer price index for the relevant period, as com-
pared to the amount of life insurance cover at the
beginning of the relevant cover review period; or
 - “(ii) in the case of a policy that is life reinsurance, 20
to the extent to which a relevant underlying life
insurance policy is, or would be ignoring section
EY 10(2), one that this subsection or subsection
(2) applies to.”
- (3) In section EY 30(8)(b), “sections EY 24 to EY 27” is replaced 25
by “section EY 25 or EY 26 (as applicable).”
- (4) **Subsections (1), (2), and (3) apply—**
 - (a) on and after 1 July 2010, unless **paragraph (b)** applies:
 - (b) for an income year that includes 1 July 2010 and later
income years, if the life insurer chooses to apply the new
life insurance rules in the Taxation (International Tax- 30
ation, Life Insurance, and Remedial Matters) Act 2009
in a return of income for the tax year corresponding to
the first relevant income year.

38 Non-resident life insurers with life insurance policies in New Zealand

- (1) In section EY 48(2), the subsection heading is replaced by “*Income having source in New Zealand*”.
- (2) In section EY 48(2), “derived from New Zealand” is replaced by “that has a source in New Zealand”.
- (3) In section EY 48, in the list of defined terms,—
 - (a) “income derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

39 What this subpart does

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- (1) In section FE 1(1), “derived from New Zealand” is replaced by “that has a source in New Zealand”.
- (2) In section FE 1, in the list of defined terms,—
 - (a) “income derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

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40 Threshold for application of interest apportionment rule

- (1) In section FF 4(1)(a), “\$50,000 or more; or” is replaced by “\$50,000 or more; and”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

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41 When amalgamating companies are parties to financial arrangement

- (1) Section FO 18(2) to (4) is replaced by the following:
“*Financial arrangement discharged*”
- “(2) The financial arrangement is, for the purposes of section EW 31 (Base price adjustment formula), treated as having been discharged immediately before the amalgamation. The consideration for the discharge is as follows:
 - “(a) on a resident’s restricted amalgamation,—
 - “(i) if the amalgamating company is solvent, the consideration is the accrued balance for the financial arrangement:
 - “(ii) if the amalgamating company is insolvent but is likely to be able to meet its obligations under the

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financial arrangement, the consideration is the accrued balance for the financial arrangement:

“(iii) if the amalgamating company is insolvent and is unlikely to be able to meet its obligations under the financial arrangement, the consideration is the market value of the financial arrangement on the date of the amalgamation: 5

“(b) on an amalgamation other than a resident’s restricted amalgamation, the consideration is the market value of the financial arrangement on the date of the amalgamation. 10

“When subsection (4) applies

“(3) **Subsection (4)** applies when an amalgamating company that is the borrower under the financial arrangement—

“(a) is solvent; or 15

“(b) is insolvent but is likely to be able to meet its obligations under the financial arrangement.

“No remission

“(4) The other party to the financial arrangement is not regarded as remitting an amount in excess of the consideration treated as paid for the discharge under **subsection (2)(a)(i) or (ii) or (b)**, as applicable, merely by virtue of the discharge. 20

“When subsection (6) applies

“(5) **Subsection (6)** applies when an amalgamating company that is the borrower under the financial arrangement is insolvent and is unlikely to meet its financial obligations under the financial arrangement. 25

“Market value treated as paid

“(6) For the purposes of section EW 31, the financial arrangement is treated as discharged immediately before the amalgamation and the market value of the financial arrangement is treated as being paid by the amalgamating company to the other party to the financial arrangement. 30

“Amount remitted

“(7) For the purposes of **subsection (6)**, the other party to the financial arrangement is treated as having remitted an amount equal to the excess over market value of the outstanding 35

- accrued balance for the financial arrangement, *see* section FO 20.”
- (2) In section FO 18, in the list of defined terms, “pay” is inserted.
- (3) **Subsection (1)** applies for the 2008–09 and later income years. 5
- 42 Persons buying goods from overseas**
- (1) In section HD 29(2)(c), “derived from New Zealand” is replaced by “having a source in New Zealand”.
- (2) In section HD 29, in the list of defined terms,—
- (a) “derived from New Zealand” is omitted: 10
- (b) “source in New Zealand” is inserted.
- 42B Investor interest size requirement**
- (1) Section HL 9(3), other than the heading, is replaced by the following:
- “(3) An entity with an investor holding of more than 20% of the total portfolio investor interests in a class does not breach the investor interest size requirement if the investor is listed in subsection (4).” 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20
- 43 New section HL 19B**
- (1) After section HL 19, the following is inserted:
- “HL 19B Treatment of certain provisions made by portfolio tax rate entity**
- “When this section applies* 25
- “(1) This section applies for the purposes of section HL 19 when—
- “(a) a portfolio tax rate entity—
- “(i) is likely to have future income:
- “(ii) makes a provision for future expenditure or loss; and 30
- “(b) the amount—
- “(i) is reflected in the entity’s valuation of portfolio investor interests; or
- “(ii) if **subparagraph (i)** does not apply, is shown in its financial statements. 35

“Future amounts

- “(2) For the purposes of determining an amount for a portfolio allocation period under section HL 19(3), a portfolio tax rate entity may take account of an amount of future income or future expenditure or loss that is— 5
- “(a) for future income, an amount that, when derived, would be class assessable income under section HL 19(4)(a):
- “(b) for future expenditure or loss,—
- “(i) an expense likely to be incurred by the entity in the tax year in which the portfolio allocation period falls, or within 93 days after the end of the tax year; and 10
- “(ii) an amount that, when incurred, would be a class deduction under section HL 19(4)(b). 15

“Reasonable estimation

- “(3) For the purposes of **subsection (2)**, the entity must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by— 15
- “(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and 20
- “(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate. 25

“Credit impairment provisions

- “(4) A portfolio tax rate entity may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in **subsection (2)(b)(i)** does not apply in relation to a credit impairment provision. 30
- “Defined in this Act: amount, deduction, income, NZIAS 39, portfolio allocation period, portfolio investor interest, portfolio tax rate entity, tax year”.
- (2) **Subsection (1)** does not apply to a portfolio tax rate entity in relation to a tax position taken by the entity—
- (a) in the period from 1 April 2008 to the date of Royal assent of this Act; and 35

- (b) in relation to the attribution of income to investors in the entity and the determination of net amounts in section HL 19; and
- (c) relying on the rules related to portfolio investment entities as they were before the amendment made by **sub-section (1)**. 5

44 Foreign PIE equivalents

- (+) In section HM 3(e), “investors’ interests” is replaced by “investor interests”.
- (1) Section HM 3(e) is replaced by the following: 10
 - “(e) if it has investors who are resident in New Zealand, those investors meet the requirements relating to investor interests in section HM 15 taking into account the limitations under sections HM 21(2) to (4) and HM 22.”
- (2) **Subsection (1)** applies for the 2010–11 and later income 15
 - years.

45 What is an investor class?

- (1) In section HM 5(4)(a), “amount contributed to it:” is replaced by “amount contributed to it; and”.
- (2) In section HM 5, in the defined terms list, “investor interest” 20
 - is omitted.
- (3) **Subsection (1)** applies for the 2010–11 and later income
 - years.

46 Intended effects for multi-rate PIEs and investors

- (1) In section HM 6(2)(b), “for which the PIE has a tax liability” 25
 - is replaced by “for which the PIE has no tax liability”.
- (2) **Subsection (1)** applies for the 2010–11 and later income
 - years.

46B Collective schemes

- (1) In section HM 9(d), “held in the fund.” is replaced by “held in 30
 - the fund:”, and the following is added:
- “(e) the trustees of a group investment fund in relation to income derived by them to the extent to which the income

is not treated as income derived by a company under paragraph (a)."

- (2) **Subsection (1)** applies for the 2010–11 and later income years.

47 Maximum investors' interests 5

- (1) In section HM 15, in the section heading, "**investors' interests**" is replaced by "**investor interests**".
- (2) In section HM 15(1), "total interests of investors in the class" is replaced by "total investor interests in the class".
- (3) In section HM 15, in the list of defined terms, "investor interest" is inserted. 10

47B Exceptions for certain investors

- (1) In section HM 21(2), in the subsection heading "*in non-listed PIEs*" is omitted.
- (2) In section HM 21(2), "other than a listed PIE" is omitted. 15
- (3) Section HM 21(3) is repealed.
- (4) **Subsections (1) to (3)** apply for the 2010–11 and later income years.

48 Exceptions for foreign PIE equivalents

In section HM 23(1)(b), "investors' interests" is replaced by "investor interests". 20

49 Rules for multi-rate PIEs

In section HM 31(1)(c), "investors' interests" is replaced by "investor interests of investors".

50 Determining net amounts and taxable amounts 25

- (1A) Section HM 35(3)(a) is replaced by the following:

"(a) **assessable income** is the total amount of the PIE's assessable income attributed to the class for the attribution period in the manner referred to in subsection (8), including any tax credits received for the income:" 30

- (1) In section HM 35(8)(a), "investors' interests" is replaced by "investor interests".

- (2) **Subsections (1A) and (1)** ~~applies~~apply for the 2010–11 and later income years.

51 New section HM 35B

- (1) After section HM 35, the following is inserted:

“HM 35B Treatment of certain provisions made by multi-rate PIEs 5

“When this section applies

- “(1) This section applies for the purposes of section HM 35 when—

“(a) a multi-rate PIE—

“(i) is likely to have future income: 10

“(ii) makes a provision for future expenditure or loss;
and

“(b) the amount—

“(i) is reflected in the PIE’s valuation of portfolio investor interests; or 15

“(ii) if **subparagraph (i)** does not apply, is shown in its financial statements.

“Future amounts

- “(2) For the purposes of determining a net amount under section HM 35(2) for an attribution period, a multi-rate PIE may take 20
account of an amount of future income or future expenditure or loss that is—

“(a) for future income, an amount that, when derived, would be assessable income under section HM 35(3)(a):

“(b) for future expenditure or loss,— 25

“(i) an expense likely to be incurred by the PIE in the tax year in which the attribution period falls, or within 93 days after the end of the tax year; and

“(ii) an amount that, when incurred, would be a deduction under section HM 35(3)(b). 30

“Reasonable estimation

- “(3) For the purposes of **subsection (2)**, the PIE must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by—

“(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and 35

- “(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate.

“Credit impairment provisions

- “(4) A multi-rate PIE may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in **subsection (2)(b)(i)** does not apply in relation to a credit impairment provision. 5

“Defined in this Act: amount, attribution period, deduction, income, investor interest, multi-rate PIE, NZIAS 39, tax year” 10

- (2) **Subsection (1)** applies for the 2010–11 and later income years. However, **subsection (1)** does not apply to a multi-rate PIE in relation to a tax position taken by the PIE—
 - (a) in the period from 1 April 2010 to the date of Royal assent of this Act; and 15
 - (b) in relation to the attribution of income to investors in the PIE and the determination of net amounts in section HM 35; and
 - (c) relying on the PIE rules as they were before the amendment made by **subsection (1)**. 20

52 Quarterly calculation option

- (1) In section HM 43(3) and (4), “an investor’s interest” is replaced by “the investor interest of an investor” in each place where it appears. 25
- (2) **Subsection (1)** applies for the 2010–11 and later income years.

53 Calculation of tax liability or tax credit of multi-rate PIEs

- (1) In section HM 47(2)(a), “an interest” is replaced by “an investor interest”. 30
- (2) **Subsection (1)** applies for the 2010–11 and later income years.

54 Adjustments to investors’ interests or to distributions

- (1) In section HM 48, in the section heading, “investors’ interests” is replaced by “investor interests”. 35

-
- (2) In section HM 48(1), in the introductory words before paragraph (a), “an adjustment to an investor’s interest” is replaced by “an adjustment to the investor interest of the investor”.
- (3) In section HM 48(1)(a), “the investor’s interest” is replaced by “the investor interest of the investor”. 5
- (4) **Subsections (1) to (3)** apply for the 2010–11 and later income years.
- 55 Certain exiting investors zero-rated**
- (1) In section HM 61(a), “the interest of the investor” is replaced by “the investor interest of the investor”. 10
- (2) **Subsection (1)** applies for the 2010–11 and later income years.
- 56 Exit levels for investors**
- (1) In section HM 62, “the investor’s interest” is replaced by “the investor interest of the investor”. 15
- (2) **Subsection (1)** applies for the 2010–11 and later income years.
- 56B Bankruptcy-remote property during application of section HR 9**
- (1) In section HR 9B, “the extent that” is replaced by “the extent to which”. 20
- (2) In section HR 9B(a), “such tax debt” is replaced by “the tax debt”.
- (3) In section HR 9B(b), “such property” is replaced by “the property”. 25
- 57 Trusts that may become complying trusts**
- (1) In section HZ 2(2), “that is derived from outside New Zealand, or derived from New Zealand” is replaced by “having a source outside New Zealand, or having a source in New Zealand”.
- (2) In section HZ 2, in the list of defined terms,— 30
- (a) “derived from New Zealand” is omitted:
- (b) “source in New Zealand” is inserted.

57B Common ownership: group of companies

(1) In section IC 3(1), “portfolio tax rate entity” is replaced by “multi-rate PIE”.

(2) **Subsection (1)** applies for the 2010–11 and later income years.

5

58 Tax credits for transitional circumstances

(1) In section LC 4(1)(c), “subpart MB (Adjustment of net income for family scheme)” is replaced by “subpart MD, ME, or MZ (which relate to tax credits under the family scheme)”.

(2) In section LC 4(1)(d), “subpart MB” is replaced by “subpart MD, ME, or MZ”.

10

(3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

59 Assessment when person is non-resident

(1) In section LC 12(1)(b), “assessable income from New Zealand” is replaced by “assessable income having a source in New Zealand”.

15

(2) In section LC 12, in the list of defined terms,—

(a) “derived from New Zealand” is omitted:

(b) “source in New Zealand” is inserted.

20

60 Credits for persons who are non-resident or who receive exempt income

(1) Section LF 8(1), other than the heading, is replaced by the following:

“(1) This section applies for a tax year when a company resident in New Zealand pays a dividend with an FDP credit attached to a person as shareholder if—

25

“(a) the person is non-resident; or

“(b) the person is resident in New Zealand and the dividend is exempt income other than under sections CW 9 to CW 11 (which relate to dividends that are exempt income).”

30

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

61 What this subpart does

- (1) In section LJ 1(2)(a), “that is not derived from New Zealand” is replaced by “that does not have a source in New Zealand”.
- (2) In section LJ 1, in the list of defined terms,—
- (a) “derived from New Zealand” is omitted: 5
 - (b) “source in New Zealand” is inserted.

62 Tax credits for certain exiting investors

In section LS 4(2), “investor’s interest” is replaced by “investor interest of the investor”.

63 Minimum family tax credit

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- (1) In section ME 1(2), the formula is replaced by the following:

$$(\text{prescribed amount} - \text{net family scheme income}) \times \frac{\text{weekly periods}}{52}.$$

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

64 Orders in Council

In section MF 7(1)(a)(i), “Consumer Price Index” is replaced by “Consumer Price Index that has not yet been taken into account by an increase”.

15

64B Treatment of tax credits on permanent emigration other than to Australia

- (1) In the heading to section MK 8(1), “other than to Australia” is omitted. 20
- (2) In section MK 8(1), “to a place other than Australia” is omitted.

65 ICA debit for loss of shareholder continuity

- (1) After section OB 41(3), the following is inserted: 25
- “*Qualifying companies*
- “(3B) This section does not apply to a qualifying company in circumstances other than those set out in section HA 18 (Treat-

- ment of dividends when qualifying company status ends), and that section overrides subsections (1) to (3).”
- (2) In section OB 41, in the defined terms list, “qualifying company” is inserted.
- (3) In section OB 41, in the compare note, “s ME 5(1)(i), (2)(h)” is replaced by “ss HG 13(6), ME 5(1)(i), (2)(h)”.
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years.
- 66 FDPA debit for loss of shareholder continuity**
- (1) After section OC 24(3), the following is inserted:
- “*Qualifying companies*
- “(3B) This section does not apply to a qualifying company in circumstances other than those set out in section HA 18 (Treatment of dividends when qualifying company status ends), and that section overrides subsections (1) to (3).”
- (2) In section OC 24, in the defined terms list, “qualifying company” is inserted.
- (3) In section OC 24, in the compare note, “s MG 5(1)(i), (2)(g), (3), (4)” is replaced by “ss HG 13(6), MG 5(1)(i), (2)(g), (3), (4)”.
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years.
- 67 Subpart OZ—Terminating provisions**
- In sections OZ 7 to OZ 17, the compare notes are omitted.
- 68 Payment of amounts of tax to Commissioner**
- (1) In section RD 4(2), “withheld and paid under subsection (1)” is replaced by “withheld under subsection (1)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 69 Salary or wages**
- (1) In section RD 5(1)(c)(v), “subsection (8)” is replaced by “subsection (9)”.

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

70 Returns for amounts of tax paid to Commissioner

- (1) In section RD 22(2), “employer monthly schedule and” is omitted. 5
- (2) After section RD 22(2), the following is inserted:
“Employer monthly schedule
 “(2B) The employer or PAYE intermediary must provide the employer monthly schedule referred to in subsection (1) by the 5th day of the month following that in which they withhold an amount of tax for a PAYE income payment, or if the month is December, by the 15th day of January.” 10
- (3) In section RD 22(3) and (4), “subsection (2)” is replaced by “subsections (2) and **(2B)**” in each place where it appears.
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years. 15

71 Repayment of employment-related loans

- (1) Section RD 36(2)(b) is replaced by the following:
 “(b) is payable to the employee without any amount of tax withheld under the PAYE rules, the RWT rules, or the NRWT rules; and” 20
- (2) In section RD 36, in the list of defined terms,—
 (a) “amount of tax”, “NRWT rules”, and “RWT rules” are inserted;
 (b) “non-resident passive income” and “resident passive income” are omitted. 25
- (3) **Subsection (1)** applies for the 2008–09 and later income years.

72 Resident passive income

- (1) In section RE 2(5)(f), “dividend derived from New Zealand” is replaced by “dividend that has a source in New Zealand”. 30
- (2) In section RE 2, in the list of defined terms,—
 (a) “derived from New Zealand” is omitted:
 (b) “source in New Zealand” is inserted.

73 Non-resident passive income

- (1) In section RF 2(1), “income derived from New Zealand by a non-resident consisting of” is replaced by “income having a source in New Zealand that a non-resident derives and that consists of”. 5
- (1B) In section RF 2(2)(c), “section CX 56 (Distributions to investors by listed PIEs)” is replaced by “sections CX 56B and CX 56C (which relate to attributed PIE income), as applicable”.
- (2) In section RF 2, in the list of defined terms,— 10
- (a) “derived from New Zealand” is omitted:
- (b) “source in New Zealand” is inserted.
- (3) **Subsection (1B)** applies for the 2010–11 and later income years.

74 Definitions

- (1) This section amends section YA 1. 15
- (2) In the definition of **boutique investor class**, in paragraph (d), “the interests of investors” is replaced by “the investor interests of investors”.
- (2B) The following is inserted in its appropriate alphabetical order: 20
- “**deductible output tax**, in sections DB 2 (Goods and services tax) and EE 54 (Cost: GST) the sum of the following amounts, as applicable:
- “(a) an amount of output tax charged in relation to a supply of goods and services that the Goods and Services Tax Act 1985 treats a registered person as making under— 25
- “(i) **section 5(23)** of that Act:
- “(ii) section 5B of that Act when they have no deduction for any input tax on the acquisition of the goods or services: 30
- “(iii) the old apportionment rules referred to in **section 21G** of that Act; and
- “(b) an amount that is the result of an apportionment of input tax made in relation to the supply under **section 20(3C) to (3H)** of that Act to the extent to which the person does not have a deduction from output tax for the full amount of input tax: 35

- “(c) an amount of output tax accounted for in relation to the supply under **section 20(3I)** of that Act:
- “(d) an amount of output tax that is the result of adjustment made in relation to the supply under **sections 21 to 21G** of that Act”. 5
- (3) The definition of **derived from New Zealand** is repealed.
- (4) The following is inserted in its appropriate alphabetical order:
“**emissions unit shortfall year**, for a person means an income year that—
- “(a) is an emissions unit shortfall year for the person under **section ED 1B(9)(a)** (Valuation of emissions units issued for zero price); and 10
- “(b) has not ceased to be an emissions unit shortfall year for the person under **section ED 1B(10)(c)**”.
- (4B) In the definition of **financial institution special purpose vehicle**,— 15
- (a) paragraph (c) is replaced by the following:
- “(c) receives only funds that—
- “(i) relate to financial arrangements described in paragraph (b): 20
- “(ii) are incidental to the company’s or trustees’s sole purpose described in paragraph (e); and
- (b) in paragraph (d)(ii), “in respect of” is replaced by “in relation to”.
- (5) The definition of **foreign non-dividend income** is replaced by the following: 25
- “**foreign non-dividend income** means income that—
- “(a) does not have a source in New Zealand; and
- “(b) is not a dividend; and
- “(c) is not FIF income calculated under the fair dividend rate method”. 30
- (6) The definition of **income derived from New Zealand** is repealed.
- (6B) The definition of **land investment company** is replaced by the following: 35
- “**land investment company** means a company that, in a tax year,—
- “(a) is not a portfolio investment entity; and

- “(b) on 80% or more of the days in the corresponding income year on which the company has property with a market value of \$100,000 or more, owns property that—
- “(i) consists of interests in land or shares in a land investment company that does not own, directly or indirectly, shares in the company; and 5
- “(ii) has a market value of 90% or more of the market value of all the property of the company; and
- “(c) meets the requirements of section HM 12 (Income sources)”. 10
- (7) In the definition of **non-filing taxpayer**, in paragraph (b), “derived from New Zealand” is replaced “having a source in New Zealand”.
- (7B) In the definition of **outstanding claims reserve**, paragraph (a), “insurer’s financial statements” is replaced by “insurer’s financial statements less the amount of reinsurance and non-reinsurance recoveries receivable, as measured for the financial statements”. 15
- (7C) In the definition of **profit participation policy**, paragraph (b)(ii), “relates” is replaced by “relates:”, and the following is added: 20
- “(c) does not include a life insurance policy that covers life risk and is—
- “(i) life reinsurance:
- “(ii) a multiple life policy, as defined in section EY 30(14) (Transitional adjustments: life risk): 25
- “(iii) a workplace group policy, as defined in section EY 30(15)”.
- (8) In the definition of **source in New Zealand**, “New Zealand source)” is replaced by “New Zealand source) and section YZ 1 (Source rule for interest)”.
- (9) In the definition of **transfer of value**, in paragraph (b)(ii), “paragraph (a)” is replaced by “subparagraph (i)”.
- (10) **Subsections (2), and (4), and (6B)** apply for the 2010–11 and later income years. 35
- (10B) **Subsection (7B)** applies—
- (a) for the 2009–10 and later income years, unless **paragraph (b)** applies:

- (b) for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2009–10 income year and the person chooses to use IFRS 4 in a return of income for that first year. 5
- (10D) **Subsection (7C)** applies—
- (a) on and after 1 July 2010, unless **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year. 10
- (11) **Subsection (9)** applies for the 2008–09 and later income years. 15
- 74B Meaning of income tax varied**
- (1) In section YA 2(5), “tax imposed by another country” is replaced by “tax of another country, whether imposed by a central, state, or local government”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20
- 75 Schedule 32—Recipients of charitable or other public benefit gifts**
- (1) In schedule 32,—
- (a) after the entry for “Surf Aid International Incorporated”, an entry for “Te Tuao Tawahi: Volunteer Service Abroad Incorporated” is inserted: 25
- (b) after the entry for “The Band Aid Box”, an entry for “The Bouganville Library Trust” is inserted:
- (c) before the entry for “The Commonwealth Foundation”, an entry for “The Branch Foundation” is inserted: 30
- (d) after the entry for “The Leprosy Mission New Zealand Incorporated”, an entry for “The Mutima Charitable Trust” is inserted:
- (e) the entry for “The Volunteer Service Abroad (Incorporated)” is repealed. 35

- (2) **Subsection (1)(b)** applies for the 2011–12 to 2018–19 tax years.
- (3) **Subsection (1)(d)** applies for the 2011–12 to 2016–17 tax years.

76 Schedule 51—Identified changes in legislation

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- (1) In schedule 51, before the entry for section FA 3(2), the following is inserted:

CD 39(9)(b), (c)	A dividend payable to a shareholder by a company when the amount is applied under section CD 39(9)(a) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (2) In schedule 51, after the entry for MC 6, the following is inserted:

RD 36(2)	A dividend payable to a shareholder by a company when the amount is applied under section RD 36(1) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

Part 3

Amendments to Tax Administration Act 1994

77 Tax Administration Act 1994

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Sections 78 to 86 amend the Tax Administration Act 1994.

78 Interpretation

- (1) This section amends section 3(1).
- (2) In the definition of **late payment penalty**, paragraph (b)(iv) is repealed.

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- (3) The definition of **tax payable** is removed and reinserted in its correct alphabetical order after the definition of **tax paid**.

79 Persons with approved issuer status

- (1) Section 32M(1) and (2) are replaced by the following:
- “(1) A person who borrows, has borrowed, or will borrow money is eligible to elect to pay approved issuer levy in relation to a security for the purposes of—
- “(a) the NRWT rules;
- “(b) an exemption under a double tax agreement.
- “(2) For the purposes of **subsection (1)**, the person elects to pay approved issuer levy in relation to a security by—
- “(a) either being an approved issuer or becoming an approved issuer under **subsection (2B)**; and
- “(b) applying under section 86G of the Stamp and Cheque Duties Act 1971 to register the security; and
- “(c) paying the amount of the levy for the security under section 86I of that Act.
- “(2B) To become an approved issuer, the person must notify the Commissioner that they wish to have approved issuer status.”
- (2) After section 32M(4), the following is inserted:
- “(4B) If the Commissioner revokes a person’s approved issuer status under subsection (3) within 20 working days of having been notified under **subsection (2B)**, the revocation applies from the date of notification.”
- (3) In section 32M(5), “for the purposes of the NRWT rules and Part 6B of the Stamp and Cheque Duties Act 1971” is replaced by “for the purposes of the NRWT rules, an exemption under a double tax agreement, and Part 6B of the Stamp and Cheque Duties Act 1971, as applicable”.

79B Annual returns of income not required

- (1) In section 33A(1)(b)(xi), “portfolio investor allocated income” is replaced by “attributed PIE income”.
- (2) **Subsection (1)** applies for the 2010–11 and later income years.

80 Consequential adjustments on change in balance date

- (1) In section 39(5), the formula is replaced by the following:

$$\frac{365}{\text{income year days}} \times \text{taxable income.}$$

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

81 Officers to maintain secrecy

5

After section 81(4)(t), the following is added:

- “(u) communicating to a person’s fund provider under **section 220B** of the KiwiSaver Act 2006 any information specified in that section for the purposes set out in the section.”

10

82 Disclosure of information for verification of government screen production payment entitlement

In section 85F(3), “large budget screen production grant” is replaced by “government screen production payment”.

83 Non-electronic filing penalty

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- (1) In section 139AA(1)(a), “section RD 22(2)” is replaced by “section RD 22(2) and **(2B)**”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

84 Shortfall penalty for not taking reasonable care or for taking unacceptable tax position may not be more than \$50,000

20

In section 141JAA(1), “if the taxpayer voluntarily discloses the shortfall,” is replaced by “if the taxpayer voluntarily discloses the shortfall under section 141G,”.

25

85 Due date for payment of late filing penalty

- (1) In section 142(1A), “section RD 22(2)(b)” is replaced by “**section RD 22(2B)**”.

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

86 Deduction of tax from payments due to defaulters

After section 157(10), the following is added:

- “(11) For the purposes of the definition of **amount payable** in sub- 5
section (10), money that is on deposit or is deposited to the
credit of a taxpayer includes money that—
“(a) is held in a joint bank account in the name of the tax-
payer and 1 or more other persons; and
“(b) can be withdrawn from the account by or on behalf of 10
the taxpayer without a signature or other authorisation
being required at the time of the withdrawal from, or on
behalf of, the other person or persons.
“(12) **Subsection (11)** does not apply when the joint bank account
is an account of a partnership that files a return of income under 15
section 33(1).”

Part 4

Amendments to Income Tax Act 2004

87 Income Tax Act 2004

Sections 88 to 93 amend the Income Tax Act 2004. 20

88 Amounts derived in connection with employment

- (1) Section CE 1(1)(c) is repealed.
(2) After section CE 1(1), the following is inserted:
“*Benefit of accommodation*
“(1B) The market value of the following benefits provided to a per- 25
son is income of the person if the benefit is provided in relation
to an office or position held by them:
“(a) the provision of accommodation:
“(b) the provision of an accommodation allowance instead 30
of accommodation.”
(3) **Subsections (1) and (2)** apply for the 2005–06 and later in-
come years.

89 Benefits provided on premises

- (1) In section ~~CX~~ 20(1), “received or used” is replaced by “used or consumed” in each place where it appears.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

5

90 GST

- (1) In section DB 2(2), “a supply of goods or services that section 21 or 21I(1) to 21I(3)” is replaced by “a supply of goods or services that section 5B, 21, or 21I(1) to (3)”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

10

90B Investor interest size requirement

Section HL 9(3), other than the heading, is replaced by the following:

- “(3) An entity with an investor holding of more than 20% of the total portfolio investor interests in a class does not breach the investor interest size requirement if the investor is listed in subsection (4).”

15

91 New section HL 19B

- (1) After section HL 19, the following is inserted:

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“HL 19B Treatment of certain provisions made by portfolio tax rate entity

“When this section applies

- “(1) This section applies for the purposes of section HL 19 when—

“(a) a portfolio tax rate entity—

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“(i) is likely to have future income:

“(ii) makes a provision for future expenditure or loss; and

“(b) the amount—

“(i) is reflected in the entity’s valuation of portfolio investor interests; or

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“(ii) if **subparagraph (i)** does not apply, is shown in its financial statements.

“Future amounts

- “(2) For the purposes of determining an amount for a portfolio allocation period under section HL 19(3), a portfolio tax rate entity may take account of an amount of future income or future expenditure or loss that is— 5
- “(a) for future income, an amount that, when derived, would be class assessable income under section HL 19(4)(a):
- “(b) for future expenditure or loss,—
- “(i) an expense likely to be incurred by the entity in the tax year in which the portfolio allocation period falls, or within 93 days after the end of the tax year; and 10
- “(ii) an amount that, when incurred, would be a class deduction under section HL 19(4)(b). 15

“Reasonable estimation

- “(3) For the purposes of **subsection (2)**, the entity must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by— 15
- “(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and 20
- “(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate. 25

“Credit impairment provisions

- “(4) A portfolio tax rate entity may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in **subsection (2)(b)(i)** does not apply in relation to a credit impairment provision. 30
- “Defined in this Act: amount, deduction, income, NZIAS 39, portfolio allocation period, portfolio investor interest, portfolio tax rate entity, tax year”.
- (2) **Subsection (1)** does not apply to a portfolio tax rate entity in relation to a tax position taken by the entity— 35
- (a) in the period from 1 October 2007 to the date of Royal assent of this Act; and

- (b) in relation to the attribution of income to investors in the entity and the determination of net amounts in section HL 19; and
- (c) relying on the rules related to portfolio investment entities as they were before the amendment made by **sub-section (1)**. 5

92 Employment-related loans: repayment

- (1) Section ND 1E(2)(b) is replaced by the following:
 - “(b) is payable to the employee without any tax deduction under the PAYE rules, the RWT rules, or the NRWT rules; and”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

92B Definitions

- (1) In section OB 1, in the definition of **outstanding claims reserve**, “insurer’s financial statements” is replaced by “insurer’s financial statements less the amount of reinsurance and non-reinsurance recoveries receivable, as measured for the financial statements”. 15
- (2) **Subsection (1)** applies for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if the person chooses to use IFRS 4 in a return of income for that first year. 20

93 Schedule 22A—Identified policy changes

- (1) In schedule 22A, after the entry for section CB 9(1)(b), the following is inserted: 25

CD 28(9)(b)	A dividend payable to a shareholder by a company when the amount is applied under section CD 28(9)(a) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (2) In schedule 22A, after the entry for section FC 21, the following is added:

ND 1E(2)	A dividend payable to a shareholder by a company when the amount is applied under section ND 1E(1) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.

Part 5

Amendments to KiwiSaver Act 2006

- 94 KiwiSaver Act 2006** 5
Sections 95 to ~~400~~100C amend the KiwiSaver Act 2006.
- 95 Commissioner provisionally allocates certain people to default KiwiSaver schemes and sends investment statement**
- (1) In section 50(4), in the words before the paragraphs, “a person if the Commissioner receives” is replaced by “a person when”.
- (2) In section 50(4)(a) “notice” is replaced by “the Commissioner receives notice”.
- (3) Section 50(4)(b) is replaced by the following:
- “(b) the Commissioner receives notice under section 15
173(1)(b) that the person must transfer to another
scheme on a scheme’s winding up and **paragraph (bb)**
does not apply; or
- “(bb) a scheme winds up, if that winding up is after the
Commissioner receives notice under section 173(1)(b) 20
that the person must transfer to another scheme on the
scheme’s winding up; or”.
- (4) In section 50(4)(c) “notice” is replaced by “the Commissioner receives notice”.
- (5) In section 50(4)(d) “notice” is replaced by “the Commissioner 25
receives notice”.

- 96 Completion of allocation to default KiwiSaver scheme if person does not choose his or her own KiwiSaver scheme**
- (1) After section 51(1), the following is inserted:
- “(1B) Despite subsection (1), subsections (4) and (5) do not apply if **section 50(4)(b) or (bb)** applies. Instead, the allocation under section 50(3) is treated as completed on the day on which it occurs.” 5
- (2) In section 51(4)(b), “section 50(4)” is replaced by “section 50(4)(a), (c), or (d)”.
- 97 Involuntary transfers** 10
- Section 57(1)(b) is replaced by the following:
- “(b) the Commissioner has received notice under section 173(1)(b) that the person must transfer to another scheme on a scheme’s winding up and **paragraph (bb)** does not apply; or 15
- “(bb) a scheme winds up, if that winding up is after the Commissioner has received notice under section 173(1)(b) that the person must transfer to another scheme on the scheme’s winding up; or”.
- 98 Commissioner must send information to involuntary transferees** 20
- In section 59(a), “information pack” is replaced by “information pack, but not if section 57(1)(b) applies”.
- 99 Initial steps in winding up of KiwiSaver scheme**
- In section 173(1)(b), “name” is replaced by “name, tax file number,”. 25
- 100 New section 220B**
- Before the heading before section 221, the following is inserted:
- “220B Information sharing** 30
- The Commissioner and a provider may, for the purposes of administering this Act or a KiwiSaver scheme, communicate to each other by electronic means a person’s name, address, date of birth, and tax file number.”

100B Crown contribution

In section 226(1), “a member” is replaced by “a member before they reach the New Zealand superannuation qualification age”.

100C Schedule 1—KiwiSaver scheme rules

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(1) In schedule 1, in clause 8(5), in the words before the paragraphs, “either” is replaced by “any”.

(2) In schedule 1, after clause 8(5)(a), the following is inserted:
“(ab) the estate in land is a leasehold estate:”.

(3) In schedule 1, in clause 8(6), “fee simple estate” is replaced by “fee simple estate, a leasehold estate”.

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Part 6
Amendments to Stamp and Cheque
Duties Act 1971

101 Stamp and Cheque Duties Act 1971

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Sections 102 and 103 amend the Stamp and Cheque Duties Act 1971.

102 Section 86I replaced

Section 86I is replaced by the following:

“86I Application of approved issuer levy and zero-rating

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“(1) This section applies for the purposes of—

“(a) the NRWT rules of the Income Tax Act 2007:

“(b) an exemption under a double tax agreement:

“(c) section 86J.

“(2) Despite the NRWT rules, a payment of interest under a registered security is treated as paid by an approved issuer only to the extent to which—

25

“(a) approved issuer levy in relation to the security is paid by or on behalf of the approved issuer; and

“(b) the amount of the levy, based on the leviable value of the registered security at the time of the payment of the interest, is paid—

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“(i) at the rate set out in section 86J; and

- “(ii) by the date set out in section 86K or 86KA or, subject to the payment of interest or penalties imposed under Part 7 or 9 of the Tax Administration Act 1994, by a later date.”

103 Refund of levy paid in error or in excess 5

Section 86L(2) is replaced by the following:

- “(2) For the purposes of the NRWT rules of the Income Tax Act 2007 or an exemption under a double tax agreement, as applicable, if an amount is refunded under subsection (1), the payment of interest to which the approved issuer levy relates is treated as not having been paid by an approved issuer in relation to a registered security.” 10

Part 7

Amendments to other legislation

Income Tax Act 1994 15

104 Accounting for goods and services tax

In section ED 4(3) of the Income Tax Act 1994, “under section 21 or section 21I(1) to 21I(3)” is replaced by “under section 5B, 21, or 21I(1) to (3)”.

Gaming Duties Act 1971 20

105 Deduction of duty from payments due to defaulters

After section 12L(1B) of the Gaming Duties Act 1971, the following is inserted:

- “(1C) For the purposes of subsection (1), an amount payable or becoming payable includes money that— 25
- “(a) is held in a joint bank account in the name of the defaulter and 1 or more other persons; and
- “(b) can be withdrawn from the account by or on behalf of the defaulter without a signature or other authorisation being required at the time of the withdrawal from, or on behalf of, the other person or persons. 30

- “(1D) **Subsection (1C)** does not apply when the joint bank account is an account of a partnership that files a return of income under section 33(1) of the Tax Administration Act 1994.”

Local Government (Auckland Transitional Provisions) Act 2010

106 Tax

After section 83(18) of the Local Government (Auckland Transitional Provisions) Act 2010, the following are added: 5

- “(19) If an Order in Council under section 37(1) of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 provides that Watercare Services Limited is liable for a debt to the Auckland Council as at 1 November 2010, for the purposes of the financial arrangements rules as defined in section YA 1 of the Income Tax Act 2007, the Auckland Council is treated as paying to Watercare Services Limited on 1 November 2010 consideration equal to the debt. 10
- “(20) If a council-controlled organisation of the Auckland Council is established by the Transition Agency under section 19B or 15
19C of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 and is liable for a debt to the Auckland Council as at 1 November 2010, for the purposes of the financial arrangements rules as defined in section YA 1 of the Income Tax Act 2007, the Auckland Council is treated as paying to the 20
council-controlled organisation on 1 November 2010 consideration equal to the debt.”

Student Loan Scheme (Charitable Organisations) Regulations 2006

107 Schedule—Charitable organisations for purposes of section 38AE(1)(b) of Student Loan Scheme Act 1992 25

In the schedule to the Student Loan Scheme (Charitable Organisations) Regulations 2006,—

- (a) after the entry for “Te Ora Hou Aotearoa Incorporated”, an entry for “Te Tuao Tawahi: Volunteer Service Abroad Incorporated” is inserted: 30
- (b) the entry for “Volunteer Service Abroad Inc” is repealed.

*Health Entitlement Cards Regulations 1993***108 Interpretation**

- (1) In the Health Entitlement Cards Regulations 1993, regulation 2, definition of **net income**, paragraph (d), “section EX 37(2) and (3) of the Income Tax Act 2007” is replaced by “section EX 43(2) and (3) of the Income Tax Act 2007”. 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

*Inland Revenue Acts***109 Consequential amendments to Inland Revenue Acts: ACC change** 10

The provisions in the enactments listed in the schedule are amended by replacing “Injury Prevention, Rehabilitation, and Compensation Act 2001” by “Accident Compensation Act 2001”. 15

Schedule
Consequential amendments to Inland
Revenue Acts: ACC change

s 109

Enactment	Provision	Definitions
<i>Income Tax Act 2007</i>	CF 1(2)(f)-(h) in each place where it appears CW 33(1)(b) CW 35(a) DF 4(1) EF 3(5) in each place where it appears EW 13(2) EZ 35(9)(c)(i) LB 7(1)(a)(i) LB 8(1)(a) LC 5(4) in each place where it appears MD 9(3)(e), (4)(b), (c) in each place where it appears OB 1(2)(e) RA 22(2)(d) YA 1, in the definition of—	ACC accident compensation earnings-related payment, paragraph (d) combined tax and earner-related payment, paragraph (b)(iii)

Enactment	Provision	Definitions
<i>Tax Administration Act 1994</i>	schedule 4, part I, clause 1	exempt interest , paragraph (f) income from employment , paragraph (b)(iv) personal service rehabilitation payment , paragraph (a)
	3, in the definition of—	tax law , paragraph (d)
	4A(3)(aa)	
	33A(1)(a)(iiic), (2)(d)(i)(B) in each place where it appears	
	33C	
	81(1)(a)(iia), (3)(a)(ii) in each place where it appears	
	82(9), in the definition of—	earnings related compensation , paragraph (c)
	85E(1), (3) in each place where it appears	
	86(1), (2), (5)(a), (b), (f) in each place where it appears	
	142(1)(c)	
	156A(2)	
	157(10), in the definition of—	income tax , paragraph (b)

Taxation (GST and Remedial Matters) Bill

Enactment	Provision	Definitions
	167(1), (2) 168(1) 169(1)	
<i>Goods and Services Tax Act 1985</i>	5(13), proviso, paragraph (b) 20(3)(d)(v)	
<i>KiwiSaver Act 2006</i>	4, in the definition of—	salary or wages, paragraph (a)(v)(B)

Legislative history

5 August 2010
19 August 2010

Introduction (Bill 182–1)
First reading and referral to Finance and
Expenditure Committee