

Student Loan Scheme Bill

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Student Loan Scheme Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to replace the Student Loan Scheme Act 1992, rewriting the legislation governing the administration of student loans, reforming the way student loans are repaid, the way borrowers manage their loans, and the way loans are to be administered. The changes would allow borrowers to manage their loans electronically, and Inland Revenue to provide more services to borrowers. The annual assessment of income for the majority of borrowers would be replaced by deductions from salary and wages. Interest rules would be simplified and the penalty rules replaced by those applying to other taxes. Most of the changes would apply from 1 April 2012.

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

In the course of our consideration, the Minister introduced a Supplementary Order Paper (No 200) including amendments which would allow the Commissioner to recall the full amount of a student loan. We resolved to consider the Supplementary Order Paper along with the bill, and recommend amending the bill to include its provisions, with some minor changes. The key changes we recommend to the provisions proposed in the Supplementary Order Paper are also set out in this commentary.

Repayment deduction exemptions

Full-time study for part of the year

We recommend an amendment to clause 48. Under the bill as introduced full-time full-year students would not be required to have repayment deductions made from their salaries or wages. Our recommended amendment would extend this exemption to students who undertake the equivalent of a full-time study workload for part of a year. We consider it fair to treat those who undertake the equivalent of full-time study for part of the year the same way as students who do so over a whole year.

Income during periods of non-study

We recommend a further amendment to clause 48 so that students who started to draw down on student loans before their study commenced, or who worked over short “non-study” periods or the Christmas period and intended to study after the period, would not be required to have student loan repayments deducted from their salary or wages during those periods. The bill as introduced would require deductions to start as soon as a student was assessed as no longer being a full-time student. We consider such an approach could be counter-productive, discouraging students from seeking employment in holidays or other “non-study” periods, and thus increasing their likely reliance on the student loan scheme. Our recommended amendments would ensure that repayment obligations began only once full-time study was complete.

Overpayment of student loan repayments

We recommend an amendment to the meaning of “excess repayment” in clause 111 to allow refunds to borrowers who derive “other income”, of the salary or wage deductions made in excess of a borrower’s annual repayment obligation. The bill as introduced does not allow such overpayments to be treated the same as other excess repayments, and our recommended amendment would correct this oversight.

The Credit Contracts and Consumer Finance Act

We recommend amendments to subpart 2 of Part 1 and schedule 7 to ensure that the provisions of this bill and the Student Loan Scheme Act 1992 accord with the spirit and intent of the Credit Contracts and Consumer Finance Act 2003. Specifically, we recommend amendments to require a loan manager to provide the borrower with a copy of their contract within six working days. In addition, we recommend amendments to require Inland Revenue to disclose to a borrower additional details of their loan balance. We also recommend amendments to require Inland Revenue to notify borrowers of any unilateral changes either to their contract or to statutes that increase the borrowers’ obligations. We also recommend the insertion of clause 10E to allow applicants to cancel their student loan contracts within seven working days after a loan entitlement advice letter is sent to them.

Clause 199 and schedule 7 of the bill as introduced make it clear that student loans are not contracts within the meaning of the Credit Contracts Act 1981 or the Credit Contracts and Consumer Finance Act. While we consider this appropriate, as we believe it would not be appropriate for borrowers of students loans to be able to bring causes of action under these Acts, we consider that the spirit of these Acts—which seek to protect consumers in contractual borrowing situations through disclosure requirements—is applicable, and we see no reason that it should not be reflected in the student loan legislation.

Passing of information

We recommend an amendment to clause 11(2)(a) to extend the information that the loan manager (StudyLink) must provide to In-

land Revenue, to facilitate the administration and collection of student loans. Our recommended amendment would require StudyLink to give Inland Revenue a borrower's phone number. This would help Inland Revenue contact borrowers, and collect outstanding payments. The amendment would also require StudyLink to communicate to Inland Revenue the date on which it advised the borrower of their loan via a loan entitlement advice letter. Inland Revenue needs to know this date to set up the borrower's account in its system. This information would also help create system checks to ensure loan advances could not be made before StudyLink provided the loan entitlement advice.

Confirming StudyLink information

We recommend an amendment to clause 9 and the insertion of clause 10A relating to the transfer of information between StudyLink and Inland Revenue. The bill as introduced would allow information to be transferred from StudyLink to Inland Revenue in order to confirm that the information they hold matches. These amendments would require Inland Revenue to tell StudyLink in which field—such as date of birth—an error had occurred, so that StudyLink could contact the borrower to update the particular information. These amendments would make it easier for StudyLink to update its information, as it would know which field needed to be updated, reducing administrative costs for StudyLink and compliance costs for borrowers.

Near-real-time transfer of loan advances

We recommend amendments to clauses 9, 11, 12, 13, and 160 and the insertion of clauses 10A and 12A. These amendments would clarify the administration of the real-time transfer of loan advances from StudyLink to Inland Revenue. Inland Revenue would take over the role of providing a statement to borrowers. These statements would advise of loan advances made for the period covered by the statement, and would be issued at least twice a year. Objections to the details of a loan advance could still be made to StudyLink, and would have to be made within a specified timeframe (of no less than 31 days) of receiving the statement from Inland Revenue. We consider these amendments necessary to clarify precisely how the transfer of loan services from StudyLink to Inland Revenue would work.

Interim and remaining repayments

We recommend a number of amendments to clauses 73, 74, 75, 76, 85, 86, 87, 88, and 89 and the insertion of clauses 4A, 76A and 88A, to rectify problems with the way interim and remaining payments are calculated, and how interest is imposed on them. These amendments reflect the original policy intent behind the bill, which is to align more closely the treatment of interim and remaining payments with that of provisional tax.

- Interim payment amounts would be updated following the end-of-year assessment of the actual repayment obligation for the year, in a similar way to provisional tax payments.
- When a borrower repays their loan during the year, the interim repayments payable during the year would be limited to the outstanding loan balance at the start of the year and loan advances since that date. This would avoid the borrower over-paying.
- A new provision would be made to ensure that interim payments are not required for a tax year when a borrower's repayment obligations from pre-taxed or other income sources are less than \$1,000. This would reduce compliance costs for borrowers with small repayment obligations.
- Late payment interest would be charged on interim repayments or remaining repayments only once the Commissioner has determined the borrower's repayment obligation for the year. Also, interest on interim or remaining repayments would arise only if the amount paid was less than the actual repayment obligation determined at the end of the year. This would ensure borrowers who underpaid their interim repayments were not penalised if at the end of the year they had a lower or no repayment liability for the year.
- When a borrower estimated their repayment obligation for the year or when their pre-taxed or other income repayment obligation is \$16,000 or more, they would be required by the bill as introduced to take greater care to pay the correct amount during the year. If they paid less than their end-of-year liability late payment interest would apply to the underpayment. This is achieved by the repayment obligation being due on the same date as the interim payments, which they would replace. Our

proposed amendment would ensure that borrowers would be subject to interest only on remaining repayments, and not on the interim payments which they would replace.

Deferring the application of parts of the bill

We recommend changes to defer parts of the bill until 1 April 2013. The implementation of the policy and administrative reforms through a new loan management system has proven more complicated than Inland Revenue expected, and a deferral until 1 April 2013 is necessary to ensure that the changes can be implemented in the department's existing systems. In order to effect this deferral, we recommend deleting clauses 125, 126, 127, 128, 129, 130, 131, 132, 133, 187, 188 and 189, and replacing them with new clauses to reflect existing legislative arrangements in these areas. We recommend associated amendments to clauses 4, 136, 138, 191 and the introduction of clause 4A. We also recommend the insertion of new clauses 2(3A), 2(3B) and 2(3B), and new schedule 6A. Together, these provisions provide that the amendments we recommend to reinstate the current legislative arrangements would be repealed on 1 April 2013, and replaced by those contained in new schedule 6A. Under clause 2(3B), this repeal and replacement would happen automatically on 1 April 2013, unless it were deferred by the Governor-General, by Order in Council.

Loan interest and late payment interest

We recommend changes in relation to the provisions which would apply to loan interest and late payment interest from 2013. When the bill was introduced, it was anticipated that the new loan management system would operate in a way which would allow loan interest and late payment interest to be calculated daily, charged monthly, and compounded annually. However, the new regime makes it possible for late payment interest and penalties to be calculated daily, and charged and compounded monthly, and we recommend amendments to the provisions relating to loan interest and late payment interest to reflect this. This is more in keeping with the new regime to be implemented, and is likely to be fairer for the borrower and Inland Revenue alike.

We recommend a consequential amendment to clause 130. It would allow borrowers to take advantage of the lower late payment penalty proposed in the bill as introduced, by reducing the penalty applying to the 2012–13 tax year from 1.5 percent per month to 0.843 percent. This would equate to the annual equivalent rate of 10.6 percent proposed in the bill.

Payment priority rules

We recommend amendments to payment priority rules to provide that existing practice continues past 2013. Under this system, payments first go towards repaying outstanding debt, with any remainder being applied to the borrower's current repayment obligations. The bill as introduced allocates repayments first to current repayment obligations (unless the borrower is under an instalment arrangement), with any remainder going towards outstanding debt.

Small balance write-off

We recommend changes to the provisions relating to small balance write-off (schedule 6A) which would allow the Commissioner to write off a loan when the balance falls below \$20. Currently a loan below \$20 cannot be written off until 31 March. This amendment would allow loan accounts to be finalised more quickly, benefiting both the borrower and Inland Revenue. This amendment would be effective from 1 April 2013, when schedule 6A comes into force. We also recommend an amendment to clause 191 which would provide for the write-off of loan balance from the date of death and would apply from the 2012/13 tax year onward.

Instalment arrangements

We recommend changes to the provisions relating to instalment arrangements (schedule 6A) to align instalment arrangements for the repayment of student loan debt with those that apply to other tax debts. Our recommended amendments would simplify the instalment arrangement process for both borrowers and Inland Revenue, who could then follow the same process as for other tax debts. It would replace these instalment arrangements with a process which would impose the higher late-payment interest rate on the total amount outstanding for months when the arrangement was not met.

Period within which a borrower can claim a refund

We recommend amending clauses 61 and 123 to extend the time that overseas-based borrowers have to elect to receive a refund of a significant over-deduction, or to receive a refund of an excess repayment or apply the excess repayment to future repayment obligations. Our recommended amendment would allow overseas borrowers to seek a refund within six months of being notified of an over-deduction or of making an excess repayment. This would align the time overseas-based borrowers have to make this decision with the six months already allowed to New-Zealand based borrowers for this purpose.

Ability to challenge Commissioner's decisions

We recommend the insertion of clause 170A, which would allow a borrower to challenge a decision by the Commissioner not to issue a special deduction rate certificate, to take account of the borrower's unused repayment threshold, on the grounds that the decision was not fair and reasonable. This amendment would also allow a borrower to challenge a decision by the Commissioner on the rate in a special deduction rate certificate, on the grounds that the decision was erroneous. We also recommend the insertion of clause 173A, which would allow a borrower who was prohibited under section 63 from making an application under section 36 or a declaration under section 49 to challenge the prohibition, again on the grounds that it was not fair and reasonable. These amendments would ensure that borrowers who were prohibited from making an application for a full-time study exemption could challenge this. Borrowers who were prohibited from making a declaration under section 49 could also challenge this. This would benefit borrowers, and is consistent with other provisions in the bill for a borrower to challenge decisions by the Commissioner.

Supplementary Order Paper

Supplementary Order Paper (No 200) proposed the introduction of new clause 197A, which would give the Commissioner the right to recall loans. It also proposed a change to clause 2(1) that would bring clause 197A into effect on the day after the bill received Royal assent. We recommend the adoption of amendments to effect the changes proposed by the Supplementary Order Paper No, but rec-

ommend that they be effected in a way not set out in the Supplementary Order Paper. We are concerned that the approach suggested by the Supplementary Order Paper could create enforcement problems in relation to clause 197A. We recommend the inclusion of new clause 63N (schedule 7), which would come into force on the day after the bill receives Royal assent, and the insertion of new clause 197A, which would come into force on 1 April 2012. Clause 63N would operate until the Student Loan Scheme Act 1992 is repealed on 1 April 2012. Clause 63N is necessary because if clause 197A were to have been introduced on the day after the bill receives Royal assent it would have been a standalone provision, which did not accord with the wording in the Student Loan Scheme Act 1992.

New Zealand Labour minority view

New Zealand Labour concurs with the Green Party of Aotearoa/New Zealand minority view below, with respect to the \$60 student loan establishment fee and the \$40 annual administration fee. We consider this will add an extra financial burden on those who are already struggling to pay their bills and who have incurred substantial debts as a result of their studying.

Green Party of Aotearoa/New Zealand minority view

The Green Party of Aotearoa/New Zealand support the general intent of this bill, however object to it proceeding given the imposition of additional student loan fees which will just add to the national student loan.

The national student debt is in excess of \$11 billion and the loan burden facing hundreds of thousands of Kiwi students and graduates is having a negative affect on families, society and the economy.

The increase to \$60 for the student loan establishment fee and a new \$40 annual administration fee will add to the student debt burden, likely increase repayment times, and will reduce the effectiveness of the voluntary repayment bonus.

The Green Party note the Inland Revenue regulatory impact statement which states the proposed changes are occurring at the same time as the student loan computer redesign, therefore there are no additional administrative costs. We heard from student representa-

tives that many students and graduates facing these additional fees will be cynical of this new “tax”.

The Green Party also object to the pay-period changes and believes the current annual assessment is fairer, especially for those students who earn the bulk of their years income over summer break and who will be disadvantaged financially under this bill given that many will not apply for exemptions.

In particular, the Green Party support electronic management of loans as a positive step, however cannot support this bill in its current form as the administrative fees and pay-period changes benefit Inland Revenue, primarily at students’ disadvantage.

Appendix

Committee process

The Student Loan Scheme Bill was referred to the committee on 14 October 2010. The closing date for submissions was 6 December 2010. We received and considered ten submissions from interested groups and individuals. We heard four submissions.

We received advice from Inland Revenue. The Regulations Review Committee reported to the committee on the powers contained in clauses 5 and 209.

Committee membership

Amy Adams (Chairperson)

David Bennett

Brendon Burns

Hon David Cunliffe

Hon Sir Roger Douglas

Hon Craig Foss (until 9 June 2011)

Aaron Gilmore

Hon Shane Jones (until 9 February 2011, and from 18 May 2011)

Rahui Katene

Peseta Sam Lotu-Iiga

Hon Trevor Mallard (from 9 February 2011 to 18 May 2011)

Stuart Nash

Dr Russel Norman

Michael Woodhouse (from 9 June 2011)

Hon Craig Foss was chairperson until 9 June 2011.

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peter Dunne

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Student Loan Scheme Act **2010**.

2 Commencement

- (1) **Sections 57, 208 to 210 and, 214, and 218(1AA) and Schedule 7** come into force on the day after the date on which this Act receives the Royal assent. 5
- (2) **Section 212** comes into force on ~~1 October 2011~~ 1 March 2012.
- (3) **Sections 9 to 45Subpart 2 of Part 1, subpart 4 of Part 4, sections 167 to 169, 179, 180, 195, 203 to 207, and 211, and Schedule 5** come into force on 1 January 2012. 10

- (3A) **Sections 46 and 47** come into force on 1 April 2013.
- (3B) **Schedule 6A** comes into force on 1 April 2013 unless, before that date, the Governor-General by Order in Council appoints a later date; and 1 or more orders may be made bringing different clauses of **Schedule 6A** into force on different later dates. 5
- (4) The rest of this Act comes into force on 1 April 2012.

Part 1

Preliminary matters, loan advances, and New Zealand-based and overseas-based borrowers 10

Subpart 1—Preliminary provisions

3 Purposes

The purposes of this Act are to—

- (a) provide for the effective administration of student loans; and 15
- (b) provide for the collection of student loan repayments; and
- (c) provide transparency about student loans so that borrowers understand their obligations for those loans; and
- (d) encourage borrowers to repay their student loans at the earliest possible time. 20

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

annual gross income has the same meaning as in section BC 2 of the Income Tax Act 2007, except that for a borrower who is a non-resident it includes non-residents' foreign-sourced income as if the borrower were a New Zealand resident 25

annual repayment threshold means,—

- (a) ~~for the tax year commencing on 1 April 2009, \$19,084;~~
- (b) for each subsequent tax year, the amount prescribed by regulations 30

annual repayment threshold means—

- (a) \$19,084 for the tax year commencing on 1 April 2012 and for each subsequent tax year to which regulations referred to in **paragraph (b)** do not apply; or 35

(b) the amount prescribed by regulations for a tax year and subsequent tax years

annual total deduction has the same meaning as in section BC 3 of the Income Tax Act 2007, except that for a borrower who is a non-resident it includes non-residents' foreign-sourced deductions that may be offset against the borrower's non-residents' foreign-sourced income as if the borrower were a New Zealand resident

base interest rate means the interest rate that applies for a tax year, calculated in accordance with the formula—

$$a\% = b\% + 0.74\%$$

where—

a% rounded to the nearest 1 decimal place is the interest rate for the relevant tax year

b% is the average, rounded to the nearest 2 decimal places, of the monthly average 10-year government bond yield rates published by the Reserve Bank of New Zealand for the 5 years ending in December in the year that precedes the relevant tax year

borrower means a person who has received or been charged with a loan advance and who has not fully repaid his or her consolidated loan balance

borrower deduction means a deduction from a borrower's salary or wages in accordance with **section 33A**

challenge, for the purposes of **subpart 5 of Part 4**, has the same meaning as in section 3(1) of the Tax Administration Act 1994

charity means a charitable organisation that is specified in regulations

chief executive means the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964

Commissioner means the Commissioner of Inland Revenue as defined in section 3(1) of the Tax Administration Act 1994

Commissioner deduction means a deduction from a borrower's salary or wages in accordance with **section 33**

consolidated loan balance means the total amount incurred by a borrower and outstanding under the student loan scheme and this Act, consisting of—

- (a) the loan balance; and
- (b) ~~any uncompounded overseas-based interest; and~~ 5
- (c) any unpaid amount; ~~and~~
- (d) ~~any uncompounded late payment interest~~

declaration of pre-taxed income means a declaration ~~made~~ in accordance with **section 68**

employer has the same meaning as in paragraphs (a) and (b) of the definition of **employer** in section YA 1 of the Income Tax Act 2007 10

employer or PAYE intermediary means an employer or a person acting as a PAYE intermediary for the employer

extra deduction means a deduction from a borrower's salary or wages ~~made in accordance with a request from a borrower as set out in~~ **section 33(1)(b)** 15

excess repayment has the meaning given to it in **section 111**

extra pay has the same meaning as in section RD 7 of the Income Tax Act 2007 20

formally notify has the meaning given to it in **section 206**

income tax has the same meaning as in section YA 1 of the Income Tax Act 2007

inform has the meaning given to it in **section 203**

interim payment means the amount that a borrower is obliged to pay towards, as applicable,— 25

- (a) the next tax year's pre-taxed repayment obligation in accordance with ~~sections 76 and 77~~ section 76 or 76A and section 77 or 78; or
- (b) the next tax year's other income repayment obligation in accordance with ~~sections 88 and 89~~ section 88 or 88A and section 89 or 90 30

late filing penalty means a penalty imposed under **section 148**

late payment interest means interest that a borrower is liable to pay under ~~section 129(1)~~ 130(1) 35

lender means the Crown acting by and through the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964

loan advance means all— 5

- (a) money that is advanced by the loan manager to a borrower under the student loan scheme; and
- (b) student loan establishment fees charged by the loan manager to the borrower under **section 8 10D**; and
- (c) student loan establishment fees and any other type of fee charged by the loan manager to the borrower in accordance with a loan contract 10

loan advance debt means the debt created by the loan manager making or charging a loan advance to a borrower

loan balance— 15

- (a) means the following to the extent that they have not been repaid or paid:
 - (i) loan advances; and
 - ~~(ii) overseas-based interest that has been compounded under **section 126(4)**; and~~ 20
 - (ii) loan interest that has been added to a borrower's loan balance under **section 126(2)**; and
 - (iii) late filing penalties; and
 - (iv) student loan shortfall penalties; and
 - (v) annual administration fees charged under **section 63D 63L** of the Student Loan Scheme Act 1992 or **section 181** of this Act; ~~but and~~ 25
 - (vi) an amount that is added to the loan balance in accordance with **clause 6 of Schedule 6**; but
- (b) does not include—an unpaid amount 30
 - ~~(i) un-compounded overseas-based interest; or~~
 - ~~(ii) an unpaid amount; or~~
 - ~~(iii) un-compounded late payment interest~~

loan contract means any loan agreement or contract entered into by the lender and the borrower under the student loan scheme 35

loan interest means interest that a borrower is liable to pay under **section 125(1)**

loan manager means any person who is appointed by the lender to make, charge, and administer loan advances under the student loan scheme

net income has the same meaning as in section YA 1 of the Income Tax Act 2007

5

net income means a borrower's net income calculated in accordance with the formula—

$$a = b - c$$

where—

a is the borrower's net income

10

b is the borrower's annual gross income

c is the borrower's annual total deductions

however, if the sum of $b - c$ is less than zero, then a must be treated as if it were zero

New Zealand-based has the meaning given to it in **section 17**

15

New Zealand resident has the same meaning as in section YA 1 of the Income Tax Act 2007

non-resident means a person who is not a New Zealand resident

20

notify has the meaning given to it in **section 204**

notify a person in writing has the meaning given to it in **section 205**

other income, in relation to a tax year, means,—

(a) if a borrower ~~files~~ is required to file a return of income for that tax year, the borrower's net income for that tax year other than from salary or wages or pre-taxed income:

25

(b) if a borrower ~~provides~~ is required to provide details of his or her annual gross income and annual total deductions under **section 106** for that tax year, the borrower's ~~annual gross net~~ income for that tax year other than from salary or wages or pre-taxed income

30

other income repayment obligation means the repayment obligation of a New Zealand-based borrower for the other income the borrower derives for a tax year, calculated in accordance with **section 84**

35

outstanding obligation means so much of each of the following as has not been paid on or before the due date and has not been decreased, reduced, or written off by the Commissioner:

- (a) a remaining repayment: 5
- (b) an interim payment: 5
- (c) an overseas-based repayment obligation:
- (d) a consolidated loan balance that is payable as a result of a demand made under a loan contract:
- (e) an amount that must be paid by a borrower in accordance with a written notification under **section 47**: 10
- (f) a late filing penalty:
- (g) a student loan shortfall penalty

overseas-based has the meaning given to it in **section 18**

overseas-based interest means interest that a borrower is liable to pay under **section 125(1)** 15

overseas-based repayment obligation means the repayment obligation of an overseas-based borrower under **subpart 4 of Part 2**

pay period, for a borrower who receives a payment of salary or wages, means the period for which that payment is payable 20

PAYE intermediary has the same meaning as in section YA 1 of the Income Tax Act 2007

PAYE rules has the same meaning as in section YA 1 of the Income Tax Act 2007

pre-taxed income means annual gross income derived from 1 25 or more of the following:

- (a) interest, as defined in section YA 1 of the Income Tax Act 2007:
- (b) a dividend, as defined in sections CD 3 to CD 20 of the Income Tax Act 2007: 30
- (c) a taxable Māori authority distribution, as defined in section HF 7 of the Income Tax Act 2007:
- (d) a personal service rehabilitation payment, as defined in section YA 1 of the Income Tax Act 2007:
- (e) salary or wages from employment as a casual agricultural employee, as defined in section YA 1 of the Income Tax Act 2007: 35

- (f) salary or wages from employment as an election day worker, as defined in section YA 1 of the Income Tax Act 2007

pre-taxed repayment obligation means the repayment obligation of a New Zealand-based borrower for the pre-taxed income the borrower derives for a tax year, calculated in accordance with **section 71 or 72** 5

primary employment earnings has the same meaning as in section 3(1) of the Tax Administration Act 1994, except that it— 10

- (a) includes an extra pay paid to the borrower in the pay period; but

(b) does not include—

- (i) salary or wages from employment as a casual agricultural employee, as defined in section YA 1 of the Income Tax Act 2007: 15

- (ii) salary or wages from employment as an election day worker, as defined in section YA 1 of the Income Tax Act 2007

provisional tax has the same meaning as in section YA 1 of the Income Tax Act 2007 20

provisional tax rules has the same meaning as in section YA 1 of the Income Tax Act 2007

regulations means regulations made under this Act

remaining repayment means the amount that a borrower is obliged to pay towards, as applicable,— 25

- (a) a pre-taxed repayment obligation in accordance with **sections 74 and 75 section 74 and section 75 or 78:**

- (b) an other income repayment obligation in accordance with **sections 86 and 87 section 86 and section 87 or 90** 30

repayment obligation means the requirements of so much of the following as applies to a borrower for a particular tax year:

- (a) ~~salary or wage~~ standard deductions: 35

- (ab) Commissioner deductions for the purposes set out in section 43(1)(a):

- (b) pre-taxed repayment obligation:

- (c) other income repayment obligation:
- (d) overseas-based repayment obligation
- repayment percentage** means 10% or any other rate prescribed by regulations
- return of income** means a return of income required under section 33 of the Tax Administration Act 1994 5
- salary or wage deduction** means ~~a deduction from a New Zealand-based borrower's salary or wages in accordance with **subpart 4 of Part 2**~~, but does not include an extra deduction— 10
- (a) a standard deduction:
- (b) a Commissioner deduction:
- (c) a borrower deduction
- salary or wages** has the same meaning as in section RD 5 of the Income Tax Act 2007, except that it— 15
- (a) includes an extra pay; but
- (b) does not include salary or wages from employment as—
- (i) a casual agricultural employee, as defined in section YA 1 of the Income Tax Act 2007; or
- (ii) an election day worker, as defined in section YA 1 of the Income Tax Act 2007 20
- secondary employment earnings** has the same meaning as in section 3(1) of the Tax Administration Act 1994, except that it—
- (a) includes an extra pay; but 25
- (b) does not include—
- (i) salary or wages from employment as a casual agricultural employee, as defined in section YA 1 of the Income Tax Act 2007:
- (ii) salary or wages from employment as an election day worker, as defined in section YA 1 of the Income Tax Act 2007 30
- significant over-deduction** means a ~~salary or wage~~ standard deduction, from a borrower who does not derive other income in the tax year in which the deduction is made, that— 35
- (a) is more than the amount that is required to be deducted in accordance with **subpart 4 of Part 2 section 32**; and

- (b) exceeds the threshold determined by the Commissioner in accordance with **section 57(1)**

significant under-deduction means a ~~salary or wage~~ standard deduction that—

- (a) either— 5
- (i) is required to be made ~~in accordance with subpart 4 of Part 2~~ but is not made; or
- (ii) is less than the amount that is required to be deducted in accordance with **subpart 4 of Part 2 section 32**; and 10
- (b) exceeds the threshold determined by the Commissioner in accordance with **section 57(1)** 10

special deduction rate means a special deduction rate specified in a special deduction rate certificate that is issued in relation to a borrower under— 15

- (a) **section 39** (special deduction rate certificate for unused repayment threshold); or
- (b) **section 94** (special deduction rate certificate for lower repayment obligation); or
- (c) **section 140** (special deduction rate certificate for hardship relief) 20

standard deduction means a deduction from a borrower's salary or wages in accordance with **section 31(2)**

student loan means any loan assistance provided to a borrower by means of a loan contract 25

student loan scheme means the scheme established by the Crown on 1 January 1992 to provide loan assistance to tertiary students, as amended from time to time

student loan shortfall penalty means a student loan shortfall penalty imposed on a borrower by the Commissioner under **section 152** 30

tax file number has the same meaning as in section YA 1 of the Income Tax Act 2007

tax year has the same meaning as in section YA 1 of the Income Tax Act 2007 35

uncompounded late payment interest means any late payment interest that—

(a) has been charged in relation to an unpaid amount under **section 131(2)**; but

(b) has not been compounded under **section 131(4)** 5

uncompounded overseas-based interest means any overseas-based interest that—

(a) has been charged in relation to an overseas-based borrower under **section 126(2)**; but

(b) has not been compounded under **section 126(4)** 10

unpaid amount means the aggregate amount of a borrower's outstanding obligations and, if applicable, any late payment interest that has been compounded under **section 131(4)**:

unpaid amount has the meaning given to it in **section 4A**.

(2) A reference to a borrower— 15

(a) **estimating his or her pre-taxed repayment obligation** is a reference to a borrower making a fair and reasonable estimate of his or her pre-taxed repayment obligation for a tax year in accordance with section RC 7 of the Income Tax Act 2007, as applied by **section 79 and Schedule 3** of this Act; and 20

(b) **estimating his or her other income repayment obligation** is a reference to a borrower making a fair and reasonable estimate of his or her other income repayment obligation for a tax year in accordance with section RC 7 of the Income Tax Act 2007, as applied by **section 91 and Schedule 4** of this Act. 25

Compare: 1992 No 141 ss 2, 38AE(1)(b)

4A Meaning of unpaid amount

(1) In this Act, **unpaid amount**, in relation to a borrower, means each of the following to the extent that it, and any late payment interest that has been added to it under **section 130(2)**, has not been paid on or before its due date and has not been decreased, reduced, or written off by the Commissioner: 30

(a) a remaining repayment: 35

(b) an interim payment default:

(c) an overseas-based instalment default:

- (d) a consolidated loan balance that is payable as a result of a demand made under a loan contract:
- (e) any part of a loan advance or a loan balance that the Commissioner has recalled or demanded repayment of under **section 197A** of this Act or **section 63N** of the Student Loan Scheme Act 1992. 5
- (2) In this section,—
- due date,—**
- (a) in relation to interim payment defaults, means,—
- (i) for any instalment of an interim payment due on or before the third instalment date, the date specified in Schedule 3 of the Income Tax Act 2007 as the date for payment of the third instalment: 10
- (ii) for any instalment of an interim payment due after the third instalment date, the date specified by the Commissioner as the due date; and 15
- (b) in relation to an overseas-based instalment default, means—
- (i) the last day of the tax year; or
- (ii) if the Commissioner has determined the instalments that must be paid under **section 104(3)** or **107(1)(d)**, the dates determined by the Commissioner; and 20
- (c) in all other cases, has its ordinary meaning
- interim payment default** means, as applicable,— 25
- (a) the lesser of—
- (i) the difference between 105% of a borrower’s pre-taxed repayment obligation or other income repayment obligation for an immediately preceding tax year and the amount of interim payments made for a tax year; and 30
- (ii) the difference between a borrower’s pre-taxed repayment obligation or other income repayment obligation for a tax year and the amount of interim payments made for that tax year; and 35
- (iii) the difference between the amount of a borrower’s interim payments last notified by the Commissioner as due by the third instalment

| | | |
|----------|--|----|
| | <u>date for a tax year and the amount of the interim payments made for that tax year:</u> | |
| | (b) <u>the amount of any instalment of an interim payment due after the third instalment date that is not paid on or before the due date</u> | 5 |
| | <u>overseas-based instalment default</u> means an instalment of an overseas-based borrower's repayment obligation for a tax year that must be paid in accordance with section 104 or 107(1)(d) . | |
| 5 | Application of Act | 10 |
| (1) | This Act applies— | |
| | (a) to all persons who— | |
| | (i) are borrowers under the Student Loan Scheme Act 1992 on the close of 31 March 2012; or | |
| | (ii) apply for a student loan on or after 1 April 2012; or | 15 |
| | (iii) are borrowers under this Act; and | |
| | (b) to all student loans (regardless of when they were entered into) on 1 April 2012 in relation to the tax year starting on 1 April 2012 and every subsequent year; and | 20 |
| | (c) to liabilities to repay student loans for the tax year starting on 1 April 2012 and every subsequent year; and | |
| | (d) to income derived by a borrower on or after 1 April 2012; and | |
| | (e) to actions or omissions that occur on or after 1 April 2012 in relation to a matter under this Act. | 25 |
| (2) | However, regulations made under section 209 , sections 211 to 213 , and Schedules 5 and 6 override subsection (1) . | |
| | Compare: 1992 No 141 s 1(3) | 30 |
| 6 | Application of Act to bonded scholarships | |
| (1) | An amount repayable under a bonded scholarship (the default amount), along with interest payable in accordance with the scholarship agreement, may be recovered under this Act as if— | 35 |
| | (a) the default amount were a loan advance; and | |
| | (b) the recipient of the scholarship were a borrower; and | |

- (c) the scholarship agreement were a loan contract.
- (2) Despite any enactment or rule of law, if a provision in an agreement for a bonded scholarship conflicts with this section, this section prevails.
- (3) In this section, **bonded scholarship** means an allowance or agreement that is declared under section 307AC of the Education Act 1989 to be a bonded scholarship. 5
Compare: 1992 No 141 s 2A
- 7 Act binds Crown** 10
This Act binds the Crown.
Compare: 1992 No 141 s 3
- ~~Subpart 2—Student loan establishment
fee and transfer of information and loan
advance debts from loan manager to
Commissioner~~Establishment of student loan 15
Student loan establishment fee
- 8 Student loan establishment fee** 20
A student loan establishment fee of \$60 (or any other amount prescribed by regulations) must be charged by the loan manager to a borrower each time the borrower enters into a loan contract after 31 March 2012.
- Transfer of information and loan advance debts
from loan manager to Commissioner*
- 9 Purposes of sections ~~10 to 12~~, 10A, 11, and 12** 25
The purposes of **sections ~~10 to 12~~, 10A, 11, and 12** are to authorise the transfer of information between the loan manager and the Commissioner so as to—
- (a) enable the ~~Commissioner~~ loan manager to confirm the identity of a person who applies for a student loan; and
- (b) enable the Commissioner to inform borrowers about their consolidated loan balance; and 30
- (c) facilitate the transfer of loan advance debts from the loan manager to the Commissioner; and

- (d) enable the collection of borrowers' consolidated loan balances.

10 Loan manager must notify Commissioner of persons who apply for student loan

- (1) The loan manager must notify the Commissioner of all persons who apply for a student loan. 5
- (2) That notification must include the following information:
- (a) the applicant's full name; and
 - (b) the applicant's tax file number; and
 - (c) the applicant's date of birth; and 10
 - (d) any further information specified in regulations.
- (3) The Commissioner and the loan manager may, for the purpose of this section, determine by written agreement between them—
- (a) the frequency with which that notification must be supplied; and 15
 - (b) the form in which that notification must be supplied; and
 - (c) the method by which that notification must be supplied.
- (4) **Subsection (3)(b) and (c) apply despite section 204.** 20
Compare: 1992 No 141 s 62A(2), (3)

10A Commissioner must confirm information provided by loan manager

- (1) The Commissioner must notify the loan manager—
- (a) whether the information that is provided in accordance with **section 10** about an applicant for a student loan is consistent with the information held by the Commissioner; and 25
 - (b) if the information differs from that held by the Commissioner, of the matter in relation to which the information differs. 30
- (2) The Commissioner and the loan manager may, for the purpose of this section, determine by written agreement between them—
- (a) the frequency with which that notification must be supplied; and 35
 - (b) the form in which that notification must be supplied; and

- (c) the method by which that notification must be supplied.
 (3) **Subsection (2)(b) and (c)** apply despite **section 204**.

10B Loan manager must provide copy of loan contract

The loan manager must provide a person who applies for a student loan with a copy of the loan contract before the day that is 6 working days after the day on which the person enters into the contract. 5

Compare: SR 2010/341 r 5

10C Certain information must be disclosed in loan contract

Every loan contract entered into after 31 March 2012 must specify the following information that applies at the date the loan contract is entered into: 10

- (a) the annual repayment threshold:
 (b) the base interest rate:
 (c) the repayment percentage: 15
 (d) the amount of the student loan establishment fee charged under **section 10D**:
 (e) the amount of the annual administration fee charged under **section 181**:
 (f) the borrower's right, under **section 10E**, to cancel the loan contract: 20
 (g) the borrower's right, under **sections 160 to 165**, to object to the details of a loan advance set out in a notification given to the borrower in accordance with **section 12A**: 25
 (h) the date on or before which an objection by a borrower under **section 160** must be received by the loan manager (see **section 12A(2)(e)**):
 (i) any further information specified in regulations.

10D Student loan establishment fee

A student loan establishment fee of \$60 (or any other amount prescribed by regulations) must be charged by the loan manager to a borrower each time the borrower enters into a loan contract after 31 March 2012. 30

10E Right to cancel loan contract

- (1) A borrower may cancel his or her loan contract by—
- (a) formally notifying the loan manager of the cancellation within 7 working days of the date on which the borrower's loan entitlement letter was issued; and 5
 - (b) returning any loan advance received by the borrower under the loan contract to the loan manager within a time frame set by the loan manager; and
 - (c) paying any interest accrued on any loan advance received by the borrower under the loan contract to the loan manager within a time frame set by the loan manager. 10
- (2) If a borrower cancels his or her loan contract in accordance with **subsection (1)**, the loan manager must waive the student loan establishment fee charged under **section 10D**. 15

11 Loan manager must notify Commissioner of borrower's details

- (1) The loan manager must notify the Commissioner—
- (a) of every person who becomes a borrower; and
 - (b) if the loan manager becomes aware that any of the information provided by the loan manager is incorrect or has changed. 20
- (2) That notification must—
- (a) include the following information:
 - (iaa) the date on which the borrower's loan entitlement letter was issued; and 25
 - (i) the borrower's full name; and
 - (ii) the borrower's tax file number; and
 - (iii) the borrower's date of birth; and
 - (iv) ~~a~~ all current postal address addresses for the borrower; and 30
 - (v) ~~a~~ all current electronic address addresses for the borrower (if the borrower has ~~one~~ any); and
 - (va) all current telephone numbers for the borrower (if the borrower has any); and 35
 - (vi) any further information specified in regulations; and

- (b) if applicable, indicate which information has been corrected or changed.
- (3) The Commissioner and the loan manager may, for the purpose of this section, determine by written agreement between them— 5
- (a) the frequency with which that notification must be supplied; and
- (b) the form in which that notification must be supplied; and
- (c) the method by which that notification must be supplied.
- (4) **Subsection (3)(b) and (c)** apply despite **section 204**. 10
 Compare: 1992 No 141 s 62A(2), (3)
- 12 ~~Loan manager must notify Commissioner of loan advances made or charged to borrowers~~**
- (1) ~~The loan manager must notify the Commissioner of each loan advance that is made or charged to each borrower.~~ 15
- (2) ~~The Commissioner and the loan manager may, for the purpose of this section, determine by written agreement between them—~~
- (a) ~~the frequency with which that notification must be supplied; and~~ 20
- (b) ~~the form in which that notification must be supplied; and~~
- (c) ~~the method by which that notification must be supplied.~~
- (3) **~~Subsection (2)(b) and (c)~~** apply despite **~~section 204~~**.
 Compare: 1992 No 141 ss 5, 62A(3)
- 12 Loan manager must transfer loan advance debts to Commissioner for collection** 25
- (1) After a loan advance is made or charged to a borrower, the loan manager must—
- (a) transfer the loan advance debt to the Commissioner for collection; and 30
- (b) notify the Commissioner of the borrower to whom that debt belongs.
- (2) The Commissioner and the loan manager may, for the purpose of this section, determine by written agreement between them— 35
- (a) the frequency with which transfers must occur; and

- (b) the form in which transfers and notification must occur;
and
- (c) the method by which transfers and notification must occur.
- (3) **Subsection (2)(b) and (c)** apply despite **section 204.** 5
Compare: 1992 No 141 s 4
- 12A Commissioner must notify borrowers of loan advances**
- (1) The Commissioner must notify a borrower in writing if a loan advance debt that belongs to that borrower is transferred to the Commissioner in accordance with **section 12(1).** 10
- (2) The notification must—
- (a) specify the period to which it applies, which must not be greater than 6 months; and
- (b) set out the details of all loan advances that have been made or charged to the borrower (and that the Commissioner has been notified of in accordance with **section 12(1)**) during that period; and 15
- (c) specify the borrower's consolidated loan balance on the first and last days of the period to which it applies; and
- (d) set out the borrower's right, under **sections 160 to 165**, to object to the details of a loan advance set out in the notification; and 20
- (e) state the date on or before which an objection by the borrower under **section 160** must be received by the loan manager, which must be at least 31 days after the date on which the borrower is notified in accordance with this section; and 25
- (f) provide any other information that the Commissioner considers appropriate.
- 13 Commissioner must inform borrowers about consolidated loan balance** 30
- (1) The Commissioner—
- (a) must inform borrowers about their consolidated loan balances as soon as practicable after the loan manager has notified the Commissioner in accordance with **section 12(1)**; and 35
- (b) must keep that information up to date.

- (2) For the purposes of **subsection (1)**, the Commissioner must provide the following information for each borrower:
- (a) details of all loan advances that have been made or charged to the borrower (and that the Commissioner has been notified of in accordance with **section 12(1)**); and 5
 - (ab) details of the date and amount of any interest added to the borrower's loan balance in accordance with a loan contract or this Act; and
 - (ac) details of the date and amount of any penalties charged to the borrower in accordance with a loan contract or this Act; and 10
 - (ad) details of the date and amount of all fees charged to the borrower in accordance with a loan contract or this Act; and
 - (b) details of all repayments that have been made; and 15
 - (ba) the current base interest rate; and
 - (c) any other information that the Commissioner considers appropriate.
- (3) The Commissioner must correct that information if the Commissioner becomes aware that any of the information is incorrect or has changed. 20

Compare: 1992 No 141 ss 5, 13(1), 43(1)

14 Loan manager must transfer loan advance debts to Commissioner

- (1) The loan manager must, as soon as practicable, transfer all loan advance debts that relate to a borrower to the Commissioner. 25
- (2) However, no loan advance debt may be transferred to the Commissioner before—
- (a) a statement of loan advances for that loan advance debt has been given to the borrower in accordance with **section 15**; and 30
 - (b) the date of transfer specified in the statement of loan advances for that loan advance debt in accordance with **section 15(2)(e)** has passed; and
 - (c) if an objection to the details of the loan advance is made in accordance with **section 160**, the objection procedures under **sections 164 to 166** have come to an end. 35

Compare: 1992 No 141 ss 4, 5, 12

15 Loan manager must notify borrowers of loan advance debts to be transferred to Commissioner

- (1) This section applies if the loan manager—
- (a) has made or charged 1 or more loan advances to a borrower; and 5
 - (b) proposes to transfer the loan advance debt of the borrower to the Commissioner.
- (2) The loan manager must give the borrower a statement of loan advances that—
- (a) states that the loan manager is proposing to transfer the borrower's loan advance debt to the Commissioner; and 10
 - (b) sets out the details of the loan advances that will be included in the transfer; and
 - (c) sets out the borrower's right, under **sections 160 to 165**, to object to the details of a loan advance made or charged to the borrower; and 15
 - (d) states the date on or before which an objection by a borrower must be received by the loan manager, which must be at least 31 days after the date on which the statement of loan advances is given to the borrower; and 20
 - (e) states the date on which it is proposed that the transfer will occur, which must be at least 3 days after the date specified in accordance with **paragraph (d)**.
- (3) The loan manager must give the statement of loan advances by notifying the borrower in writing. 25
- Compare: 1992 No 141 ss 5, 6

14 Borrower must be notified of certain changes to obligations

- (1) The Commissioner must notify a borrower if— 30
- (a) a change is made to the borrower's obligations in relation to his or her student loan; and
 - (b) that change increases the borrower's obligations in a more than minor way, including a change to—
 - (i) the borrower's repayment obligation; or
 - (ii) the repayment percentage; or 35
 - (iii) the base interest rate; and
 - (c) that change is made—
 - (i) without the borrower's prior agreement; or

- (ii) by, or as a consequence of, an enactment.
- (2) Details of the change must be notified to the borrower within 7 months after the day on which the change is made.
- (3) However, **subsections (1) and (2)** do not apply if the Commissioner is aware that he or she has incorrect contact details for the borrower or cannot reasonably locate the borrower. 5
- Compare: SR 2010/341 r 8

Subpart 3—Determining whether borrowers are New Zealand-based or overseas-based

- 16 Overview of being New Zealand-based or overseas-based** 10
- (1) This subpart specifies when a borrower is treated as being New Zealand-based and when a borrower is treated as being overseas-based.
- (2) Under **Part 2**, different repayment obligations apply to a borrower depending upon whether that borrower is New Zealand-based or overseas-based. 15
- (3) Under **subpart 1 of Part 4**, a borrower is liable to pay ~~overseas-based~~ loan interest for each day that that borrower is overseas-based.
- (4) This section is intended as a guide only. 20
- 17 Meaning of New Zealand-based**
- (1) The following persons are treated as being New Zealand-based:
- (a) a borrower who is physically in New Zealand, or treated as being physically in New Zealand under **section 20(1)**, for a period of 183 consecutive days: 25
- (b) a borrower who—
- (i) is physically absent from New Zealand for a period, or aggregated periods, of no more than 31 days during a period of 183 consecutive days; 30
but
- (ii) is physically in New Zealand, or treated as being physically in New Zealand under **section 20(1)**, for the balance of that 183-day period, including the first day of that period. 35

- (2) A period of 183 consecutive days may include any days before the day on which a person becomes a borrower.
- (3) For the purposes of **subsection (1)**, a borrower is treated as being New Zealand-based—
- (a) from the later of— 5
- (i) the day on which he or she became a borrower; and
- (ii) the first day of the 183-day period; and
- (b) for each subsequent day.
- (4) A borrower ceases to be New Zealand-based if that borrower becomes overseas-based. 10
- Compare: 1992 No 141 s 38AB(1), (2)

18 Meaning of overseas-based

- (1) The following persons are treated as being overseas-based:
- (a) a borrower who is not treated as being New Zealand-based under **section 17**: 15
- (b) a New Zealand-based borrower who is physically absent from New Zealand for a period of 184 consecutive days:
- (c) a New Zealand-based borrower who— 20
- (i) is physically in New Zealand, or treated as being physically in New Zealand under **section 20(1)**, for a period, or aggregated periods, of 31 days or less during a period of 184 consecutive days; and
- (ii) is physically absent from New Zealand for the balance of that 184-day period, including the first day of that period. 25
- (2) A period of 184 consecutive days may include any days before the day on which a person becomes a borrower.
- (3) For the purposes of **subsection (1)**, a borrower is treated as being overseas-based— 30
- (a) from the later of—
- (i) the day on which he or she became a borrower; and
- (ii) the first day of the 184-day period; and 35
- (b) for each subsequent day.

- (4) A borrower ceases to be overseas-based if that borrower becomes New Zealand-based.
Compare: 1992 No 141 s 38AC(1)–(3)

19 Treatment of partial days

For the purposes of **sections 17 and 18**, if a borrower is physically in New Zealand for part of a day, that borrower is treated as—

- (a) being physically in New Zealand for the whole of that day; and
(b) not being physically absent from New Zealand for any part of that day.

Compare: 1992 No 141 s 38AD

Certain borrowers may be treated as being physically in New Zealand

20 Commissioner may treat certain borrowers as being physically in New Zealand

- (1) On the application of a borrower, the Commissioner may, for the purposes of **sections 17 to 19** and if the Commissioner considers that it is fair and reasonable to do so, treat a borrower as being physically in New Zealand if the principal reason that the borrower is not, was not, or will not be physically in New Zealand is because—
- (a) the borrower is in the service in any capacity of the Government of New Zealand; or
(b) the borrower is working as a volunteer or for token payment for a charity; or
(c) of an unexpected delay; or
(d) of an unplanned personal absence; or
(e) the borrower is required to be overseas because of the borrower's employment or occupation; or
(f) the borrower is accompanying his or her spouse, civil union partner, or de facto partner overseas; or
(g) the borrower is undertaking study that meets the requirements of **clause 7 of Schedule 1**; or
(h) the borrower is undertaking study that meets the requirements of **clause 8 of Schedule 1**; or

- (i) the borrower is undertaking study that meets the requirements of **clause 9 of Schedule 1**; or
- (j) the borrower is in 1 or more of Niue, the Cook Islands, Tokelau, or the Ross Dependency.
- (2) **Subsection (1)(b) to (j)** are subject to the conditions set out in, as applicable, **clauses 2 to 10 of Schedule 1**. 5
- ~~(3) **Subsection (1)(a) to (f)** apply only to days on or after 1 April 2006.~~
- ~~(4) **Subsection (1)(g), (h), and (i)** apply only to days on or after 1 April 2007.~~ 10
- ~~(5) **Subsection (1)(j)** applies only to days on or after 1 April 2009.~~
- Compare: 1992 No 141 ss 38AE(1), (3A)–(7A), (9), 38AJ(1), 38AJA(1)–(3), (7)
- 21 Method of making application and provision of evidence and information** 15
- A borrower who applies to the Commissioner to be treated as being physically in New Zealand under **section 20(1)** must—
- (a) make that application by notifying the Commissioner; and 20
- (b) provide the evidence or information that is required by **clauses 2 to 10 of Schedule 1**, as applicable, by notifying the Commissioner in a manner acceptable to the Commissioner; and
- (c) provide any other evidence or information that the Commissioner may reasonably require in order to establish whether one of the grounds for the grant of that application applies by notifying the Commissioner in a manner acceptable to the Commissioner. 25
- Compare: 1992 No 141 ss 38AE(8), 38AJ(2)(c), 38AJA(4)(b) 30
- 22 Commissioner must notify borrower and specify period or conditions when granting application**
- If the Commissioner treats a borrower as being physically in New Zealand under **section 20(1)**, the Commissioner must—
- (a) notify the borrower in writing; and 35
- (b) specify either—

- (i) the start and end dates for the period for which the borrower is treated as being physically in New Zealand; or
- (ii) any conditions that must apply or be met in order for the borrower to be treated as being physically in New Zealand. 5

Compare: 1992 No 141 ss 38AE(2), 38AIA(2), 38AJ(3), 38AJA(5)

*Borrowers must notify Commissioner of absence
from and return to New Zealand*

23 Borrower to notify Commissioner of absence from New Zealand of 184 or more days 10

- (1) A borrower who intends to be, or will be, physically absent from New Zealand for a period of 184 or more consecutive days must, before leaving New Zealand, notify the Commissioner of the following matters: 15
 - (a) 1 of the following ways for the Commissioner to notify the borrower:
 - (i) a permanent overseas postal address; or
 - (ii) a New Zealand postal address; or
 - (iii) the name and New Zealand postal address of a person empowered to act for the borrower; and 20
 - (b) an electronic means of communication prescribed by the Commissioner by which the Commissioner may notify the borrower; and
 - (c) any information that the Commissioner reasonably requires in order to determine— 25
 - (i) the borrower's repayment obligation (if any); and
 - (ii) whether the borrower is liable to pay ~~overseas-based~~ loan interest.
- (2) A borrower who is physically absent from New Zealand must notify the Commissioner of the matters required by **subsection (1)**, as well as the date on which the borrower left New Zealand, as soon as practicable after the earlier of the following: 30
 - (a) the borrower becomes overseas-based: 35
 - (b) the borrower becomes aware that he or she will be overseas-based.

Compare: 1992 No 141 s 37

24 Borrower to notify Commissioner of return to New Zealand of more than 183 days

- (1) An overseas-based borrower who is physically in New Zealand must comply with **subsection (2)** as soon as practicable after the earlier of the following: 5
- (a) the borrower becomes New Zealand-based;
 - (b) the borrower becomes aware that he or she will be New Zealand-based.
- (2) The borrower must notify the Commissioner of— 10
- (a) the date on which the borrower returned to New Zealand; and
 - (b) any other information that the Commissioner may reasonably require in order to establish whether the borrower is New Zealand-based.
- Compare: 1992 No 141 s 38 15

Part 2

Repayment obligations of borrowers

25 Borrower's liability to repay consolidated loan balance

- (1) Each borrower must repay his or her consolidated loan balance in accordance with this Act and the loan contract. 20
- (2) **Section 197** applies if there is an inconsistency between this Act and the loan contract.
- Compare: 1992 No 141 ss 13(2), 63

26 Repayment obligations that apply to New Zealand-based borrowers and overseas-based borrowers

- (1) If a borrower— 25
- (a) is New Zealand-based, the repayment obligations in **subparts 1 to 3** apply to that borrower;
 - (b) is overseas-based, the repayment obligations in **subpart 4** apply to that borrower. 30
- (2) **Subpart 5** applies to a borrower who—
- (a) is New Zealand-based but is a non-resident; or
 - (b) is both New Zealand-based and overseas-based during a tax year; or
 - (c) is overseas-based but derives salary or wages from New Zealand. 35

27 Interrelationship between subparts 1 to 3

- (1) This section applies to New Zealand-based borrowers.
- (2) If a borrower derives only salary or wages, **subpart 1** applies to that borrower.
- (3) If a borrower derives only pre-taxed income, **subpart 2** applies to that borrower. 5
- (4) If a borrower derives only other income, **subpart 3** applies to that borrower.
- (5) If a borrower derives salary or wages, and pre-taxed income, **subparts 1 and 2** both apply to the borrower. 10
- (6) If a borrower derives salary or wages, and other income, **subparts 1 and 3** both apply to the borrower.
- (7) If a borrower derives pre-taxed income and other income, **subpart 3** applies to the borrower (and **subpart 2** does not apply).
- (8) If a borrower derives salary or wages, pre-taxed income, and other income, **subparts 1 and 3** both apply to the borrower (and **subpart 2** does not apply). 15
- (9) This section is intended as a guide only.

Subpart 1—New Zealand-based borrowers’
repayment obligations for salary or wages 20

28 Application of this subpart

This subpart applies to New Zealand-based borrowers who derive salary or wages.

*Repayment codes***29 Repayment codes for New Zealand-based borrowers who derive salary or wages** 25

- (1) For the purpose of the application of the PAYE rules under **section 64**, the repayment code of all New Zealand-based borrowers who derive salary or wages is either—
- (a) “SL”; or 30
- (b) “STC”.
- (2) The repayment code “STC” applies to a borrower only if—
- (a) a special deduction rate applies to the borrower; and
- (b) the borrower’s employer is notified in writing that the special deduction rate applies to the borrower. 35

- (3) If another Act requires an employer to withhold an amount of tax for a PAYE income payment to a borrower and pay the amount to the Commissioner, the repayment code “STC” may be combined with another code applying under that Act.

Compare: 1992 No 141 s 17B; 1994 No 166 s 24B(4)

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30 Borrowers with “SL” repayment code must notify employers

- (1) A borrower whose repayment code is “SL” must notify his or her employer in a manner acceptable to the Commissioner.

- (2) The borrower must notify his or her employer as soon as practicable—

(a) after the later of—

(i) the time at which the borrower becomes an employee of the employer; and

(ii) the time at which the borrower becomes a borrower; and

(b) if a special deduction rate ceases to apply to the borrower; and

(c) if the borrower wants a special deduction rate to cease to apply to him or her.

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Compare: 1992 No 141 s 18

Salary or wage deductions and extra deductions

31 Employer or PAYE intermediary must make salary or wage standard deductions from salary or wages

- (1) This section applies if—

25

(a) a borrower has notified his or her employer under **section 30**; or

(b) the Commissioner has notified a borrower’s employer or PAYE intermediary that the repayment code that should be applied to the borrower’s salary or wages is “SL”; or

30

(c) a borrower’s employer has been notified in writing that a special deduction rate applies to the borrower.

- (2) Each time the employer or PAYE intermediary pays an amount to the borrower that is salary or wages for a pay period, the

35

employer or PAYE intermediary must make a deduction from that amount in accordance with **section 32(1) or (2)**.

Compare: 1992 No 141 s 19(1)

- 32 Deduction rates that apply to borrower standard deductions from salary or wages** 5
- (1) If a borrower's repayment code is "SL", deductions must be made at the rate of 10 cents in each complete dollar from—
- (a) so much of the primary employment earnings paid to the borrower as exceeds the pay period repayment threshold; and 10
 - (b) any secondary employment earnings paid to the borrower.
- (2) If a borrower's repayment code is "STC", deductions must be made at the special deduction rate specified in the applicable special deduction rate certificate from— 15
- (a) the primary employment earnings paid to the borrower; and
 - (b) any secondary employment earnings paid to the borrower.
- (3) If the repayment percentage is changed by regulations, the deduction rate in **subsection (1)** is changed accordingly. 20
- (4) In this section, **pay period repayment threshold** means,—
- (a) if the salary or wages are paid weekly, an amount equal to one fifty-second of the annual repayment threshold; and 25
 - (b) if the salary or wages are paid fortnightly, twice the amount specified in **paragraph (a)**; and
 - (c) if the salary or wages are paid three-weekly, 3 times the amount specified in **paragraph (a)**; and
 - (d) if the salary or wages are paid four-weekly, 4 times the amount specified in **paragraph (a)**; and 30
 - (e) if the salary or wages are paid monthly, an amount equal to one-twelfth of the annual repayment threshold; and
 - (f) if the salary or wages are paid other than as set out in **paragraphs (a) to (e)**, an amount determined by the Commissioner to reflect the pay period. 35

Compare: 1992 No 141 ss 19(2), 20

33 Employer or PAYE intermediary must make further deductions from salary or wages

- (1) This section applies if a borrower's employer or PAYE intermediary—
- (a) has received an additional deduction rate notice that has been issued in relation to the borrower under **section 43(2)**; or
 - (b) has been requested by the borrower to make extra deductions at an additional deduction rate or of a specified amount.
- (2) Each time the employer or PAYE intermediary pays an amount to the borrower that is salary or wages for a pay period, the employer or PAYE intermediary must, in addition to the deductions under **section 32**, make a deduction from that amount—
- (a) at the additional deduction rate specified in the notice; or
 - (b) at the additional deduction rate, or of the amount, requested by the borrower.
- (3) Deductions made in accordance with **subsection (2)** must have the tax code "SLADR" applied to them.
- (4) Deductions made in accordance with **subsection (2)(b)** must continue to be made until the borrower notifies his or her employer or PAYE intermediary otherwise.
- (5) Nothing in this section limits **section 31 or 32**.
Compare: 1992 No 141 s 19(1), (2)

33 Employer or PAYE intermediary must make Commissioner deductions from salary or wages

- (1) This section applies if a borrower's employer or PAYE intermediary has received an additional deduction rate notice that has been issued in relation to the borrower under **section 43(2)**.
- (2) Each time the employer or PAYE intermediary pays an amount to the borrower that is salary or wages for a pay period, the employer or PAYE intermediary must make a deduction from that amount at the additional deduction rate specified in the notice.
- (3) Deductions made in accordance with this section must—

- (a) be made in addition to standard deductions and, if applicable, borrower deductions; and
- (b) have the tax code “SLCIR” applied to them; and
- (c) continue to be made until the earlier of the date on which— 5
- (i) the Commissioner notifies the employer or PAYE intermediary otherwise; or
- (ii) the deductions equal the amount specified in the additional deduction rate notice in accordance with **section 43(2)(b)**. 10
- (4) Nothing in this section limits **section 31, 32, or 33A**.
Compare: 1992 No 141 ss 19(1), (2), 20A(4)
- 33A Employer or PAYE intermediary must make borrower deductions from salary or wages**
- (1) This section applies if a borrower requests his or her employer or PAYE intermediary to make deductions at an additional deduction rate or of a specified amount. 15
- (2) Each time the employer or PAYE intermediary pays an amount to the borrower that is salary or wages for a pay period, the employer or PAYE intermediary must make a deduction from that amount at the additional deduction rate, or of the amount, requested by the borrower. 20
- (3) Deductions made in accordance with this section must—
- (a) be made in addition to standard deductions and, if applicable, Commissioner deductions; and 25
- (b) have the tax code “SLBOR” applied to them; and
- (c) continue to be made until the borrower notifies his or her employer or PAYE intermediary otherwise.
- (4) Nothing in this section limits **section 31, 32, or 33**.
Compare: 1992 No 141 s 19(1), (2) 30
- 34 ~~Salary or wage deductions~~ Deductions from income-tested benefits**
- (1) This section applies if—
- (a) a borrower receives an income-tested benefit for a pay period; and 35

- (b) the equivalent gross amount of that income-tested benefit exceeds the pay period repayment threshold (calculated in accordance with **section 32(4)**) for that pay period.
- (2) The chief executive— 5
- (a) must not make a salary or wage deduction from the income-tested benefit ~~in accordance with **section 32**~~; and
- (b) must make a deduction from the income-tested benefit of an amount determined by the Commissioner in consultation with the chief executive. 10
- (3) This section overrides ~~**section 31(2)**~~**sections 31(2), 33, and 33A.**
- (4) In this section,—
- equivalent gross amount** means the sum of—
- (a) the amount of an income-tested benefit; and 15
- (b) any amount that was paid to the Commissioner in accordance with section 83A of the Social Security Act 1964 for income tax payable on that income-tested benefit
- income-tested benefit** means an income-tested benefit as defined in section YA 1 of the Income Tax Act 2007. 20
- Compare: 1992 No 141 s 23
- Unused repayment threshold may be allocated to secondary employment earnings*
- 35 Definitions relating to repayment thresholds** 25
- In **sections 36 to 42**,—
- estimated salary or wages**, in relation to a quarter, means the amount determined in accordance with **section 37**
- quarter** means a period of 3 consecutive calendar months that ends with the last day of March, June, September, or December 30
- unused repayment threshold for a pay period** means the amount determined in accordance with **section 38.**
- 36 Application for unused repayment threshold to be allocated to secondary employment earnings**
- (1) **Subsection (2)** applies to a New Zealand-based borrower 35 who, for a quarter,—

- (a) has 1 or more sources of secondary employment earnings; and
 - (b) has an unused repayment threshold for a pay period that is greater than zero; and
 - (c) does not derive other income. 5
- (2) The borrower may apply to the Commissioner for the borrower's unused repayment threshold for a pay period to be allocated to the borrower's secondary employment earnings.
- (3) The borrower must apply by notifying the Commissioner, in a manner acceptable to the Commissioner, of— 10
- (a) the borrower's estimated salary or wages; and
 - (b) any other information requested by the Commissioner.

37 Determining estimated salary or wages

- (1) A borrower must determine his or her estimated salary or wages by making a fair and reasonable estimate of the total income the borrower will derive for the relevant quarter from each of the following: 15
- (a) the borrower's primary employment earnings;
 - (b) the borrower's secondary employment earnings.
- (2) The borrower must— 20
- (a) take reasonable care in making the estimate; and
 - (b) revise the estimate if, at some time in the quarter, the amount estimated is no longer fair and reasonable.

Compare: 2007 No 97 s RC 7(2), (4)

38 Calculating borrower's unused repayment threshold for pay period 25

A borrower's **unused repayment threshold for a pay period** is calculated in accordance with the formula—

$$a = \frac{b - c}{d}$$

where—

- a is the unused repayment threshold for a pay period 30
- b is the annual repayment threshold for the relevant tax year divided by 4

- c is the borrower's estimated primary employment earnings in the relevant quarter, as notified to the Commissioner in accordance with **section 36(3) or 41(2)(a)**
- d is the number of the borrower's pay periods in the quarter for his or her primary employment earnings. 5

39 Special deduction rate certificate for unused repayment threshold

Upon receiving an application in accordance with **section 36**, the Commissioner may issue a special deduction rate certificate that, in relation to the borrower's secondary employment earnings,— 10

- (a) specifies a special deduction rate that reflects the borrower's unused repayment threshold for a pay period; and
- (b) specifies the period for which the special deduction rate is to apply to the borrower; and 15
- ~~(c) requires the borrower's employer to make salary or wage deductions at the special deduction rate.~~
- (c) requires the borrower's employer or PAYE intermediary to make deductions from the borrower's salary or wages at the special deduction rate. 20

Compare: 1992 No 141 s 20A(2)

40 Issue and application of special deduction rate certificate

- (1) If the Commissioner issues a special deduction rate certificate under **section 39**, the Commissioner must give a copy of the certificate to the borrower. 25
- (2) The special deduction rate certificate—
 - (a) revokes all other special deduction rate certificates previously issued in relation to the borrower under **section 39 or 94**; and 30
 - (b) does not limit the application of **sections 139 to 145** (concerning hardship relief).

Compare: 1992 No 141 s 20A(5)–(7)

41 Ongoing obligations of borrower to review and notify

- (1) The borrower— 35

- (a) must review an estimate he or she made under **section 37** before the end of each quarter; and
 - (b) may revise an estimate he or she made under **section 37** at any time.
- (2) The borrower must notify the Commissioner in a manner acceptable to the Commissioner, and provide details, if—
- (a) the borrower revises an estimate he or she made under **section 37**; or
 - (b) any of the circumstances set out in **section 36(1)** change; or
 - (c) the borrower ends any employment or starts any new employment.

Compare: 2007 No 97 s RC 7(3)

42 Time when special deduction rate ceases to apply

The special deduction rate applies until the earlier of—

- (a) the end of the period specified in the special deduction rate certificate; or
- (b) the date on which the Commissioner notifies the employer in writing otherwise; or
- (c) the date on which the borrower notifies the employer otherwise.

Compare: 1992 No 141 s 20A(4)

Commissioner may issue additional deduction rate notice
Commissioner deductions may be used to recover amounts that remain unpaid

43 Commissioner may must issue additional deduction rate notice to obtain Commissioner deductions

- (1) ~~This section applies~~ The Commissioner may obtain Commissioner deductions from a borrower's salary or wages if—

- (a) there is a significant under-deduction in relation to ~~a~~ the borrower in the current tax year or in any prior tax year that the Commissioner reasonably believes has occurred because of—
 - (i) an error by the borrower's employer; or
 - (ii) an error or omission by the borrower; or
- (b) ~~a~~ the borrower has ~~an unpaid amount.~~ an unpaid amount.

(ii) ~~uncompounded late payment interest.~~

(2) ~~The Commissioner may~~ To obtain Commissioner deductions from a borrower's salary or wages, the Commissioner must issue an additional deduction rate notice that—

- (a) specifies the additional deduction rate that is to apply to the borrower (in addition to ~~the rate that applies under section 32(1) or (2)~~ standard deductions and, if applicable, borrower deductions); and 5
- (b) specifies the total amount payable by the borrower at the additional deduction rate; and 10
- (c) requires some or all of the borrower's employers or PAYE intermediaries to make ~~deductions from the borrower's salary or wages (in addition to the deductions under section 32)~~ Commissioner deductions at the additional deduction rate until those deductions equal the amount specified in accordance with **paragraph (b)**. 15

(3) The additional deduction rate specified under **subsection (2)(a)** must be 5% or less.

Compare: 1992 No 141 s 20A(1), (2)

44 Procedures for issue of additional deduction rate notice 20

(1) If the Commissioner issues an additional deduction rate notice under **section 43(2)**, the Commissioner must—

- (a) give that notice to the employers or PAYE intermediaries of the borrower to whom the notice applies; and
- (b) notify the borrower in writing— 25
- (i) that an additional deduction rate notice has been issued in relation to the borrower under **section 43(2)**; and
- (ia) that Commissioner deductions will be made from the borrower's salary or wages; and 30
- (ii) of all of the information in that notice.

(2) An additional deduction rate notice issued in relation to a borrower revokes an additional deduction rate notice previously issued in relation to the borrower.

(3) Nothing in **section 43** or this section limits the application of **sections 139 to 145** (concerning hardship relief). 35

Compare: 1992 No 141 s 20A(3), (5)–(7)

45 Time when additional deduction rate ceases to apply

The additional deduction rate applies until the earlier of the date on which—

- (a) the Commissioner notifies the borrower's employers or the PAYE intermediaries in writing otherwise; or 5
- (b) the deductions made from the borrower's salary or wages in accordance with the additional deduction rate notice equal the amount specified in the notice in accordance with **section 43(2)(b)**;

Compare: 1992 No 141 s 20A(4) 10

Further means of recovering amounts that remain unpaid

46 Assessment of salary or wage standard deductions that ought to have been made

- (1) This section applies if, in relation to a borrower,— 15
 - (a) there is a significant under-deduction ~~in relation to a borrower~~ in the current tax year or in any prior tax year that the Commissioner reasonably believes has occurred because—
 - (i) of a deliberate action or omission by the borrower; or 20
 - (ii) the borrower has prevented a salary or wage standard deduction from being made; or
 - (b) the Commissioner has been unable to obtain Commissioner deductions ~~from a borrower's salary or wages in accordance with an additional deduction rate notice issued under **section 43(2)**~~ for the purposes ~~of set out in **section 43(1)(a)**~~; or 25
 - (c) the Commissioner is satisfied that he or she will be unable to obtain Commissioner deductions within a reasonable period of time from ~~a~~ the borrower's future salary or wages ~~in accordance with an additional deduction rate notice issued under **section 43(2)**~~ for the purposes ~~of set out in **section 43(1)(a)**~~. 30
- (2) However, this section does not apply if the borrower derives other income within the tax year in question. 35

- (3) The Commissioner may make an assessment in relation to the borrower to determine the ~~salary or wage~~ standard deductions that ought to have been made for any period.
- (4) In making an assessment under this section, the Commissioner may have regard to any information that the Commissioner considers to be relevant. 5
- (5) The assessment must be made in accordance with this subpart and the loan contract.
- (6) **Section 197** applies if there is an inconsistency between this subpart and the loan contract. 10
Compare: 1992 No 141 ss 15, 20A(1)
- 47 Recovery of assessed amounts**
- (1) The Commissioner must, as soon as practicable after making an assessment under **section 46**, notify the borrower in writing— 15
- (a) that an assessment of the borrower has been carried out; and
- (b) of the amount, if any, that must be paid by the borrower; and
- (c) of the date by which that payment must be made, which must be at least 30 days after the date of the assessment; and 20
- (d) that if that amount is not paid by the specified date, then it may be subject to late payment interest (*see* **section ~~129(1)~~ 130(1)**). 25
- (2) The amount specified in accordance with **subsection (1)(b)** must be no greater than the amount the Commissioner considers the borrower should or would have paid under this subpart for the period in question. 30
Compare: 1992 No 141 s 15(4); 1994 No 166 s 44

*Exemption from salary or wage standard
deductions for borrowers who are full-time,
full-year students*

- 48 Borrowers who are eligible for exemption from salary or wage deductions** 5
- (1) **Subsection (2)** applies to a New Zealand-based borrower who, for a tax year (**year A**),—
- (a) is a full-time, full-year student; and
 - (b) reasonably expects that his or her gross income from salary or wages and pre-taxed income for year A will not exceed the annual repayment threshold for year A; and
 - (c) does not derive other income.
- (2) The borrower may make a declaration in accordance with **section 49** in order to obtain an exemption from future salary or wage deductions in year A. 15
- (3) In this section, **full-time, full year student** means a borrower who is undertaking a course of study that is, or courses of study that are,—
- (a) of at least 32 weeks in duration in any 52-week period that ends during year A; and
 - (b) at least 80% of equivalent full-time study, as determined in accordance with the formula used for the purposes of the Education Act 1989. 20
- 48 Definitions relating to exemption for full-time students** 25
- In **sections 48A to 54**,—
- exemption period means a period of time—
- (a) between the date on which a borrower first has a loan advance made to him or her and the date on which the borrower starts a programme of study; and 30
 - (b) during which a borrower is undertaking a programme of study; and
 - (c) between semesters of a programme of study, provided that—
 - (i) a borrower has completed 1 or more semesters of a programme of study; and 35
 - (ii) the borrower intends to continue a programme of study in the next semester; and

- (iii) the period of time between semesters is no more than—
- (A) 15 weeks for a holiday that includes Christmas day; or
- (B) 3 weeks for any other holiday 5
- full-time student** means a borrower who—
- (a) is undertaking a programme of study; or
- (b) will start a programme of study in the tax year referred to in **section 48A(1)(a)**
- programme of study** means a programme of study that— 10
- (a) is 32 weeks or longer in duration in any 52-week period and at least 0.8 of equivalent full-time student units, as determined in accordance with the formula used for the purposes of section 159 of the Education Act 1989; or
- (b) is 12 weeks or longer in duration in any 52-week period and at least 0.3 of equivalent full-time student units, as determined in accordance with the formula used for the purposes of section 159 of the Education Act 1989 or the equivalent on a pro-rata basis (as set out in the loan entry threshold table that is used for student loan entitlement purposes). 15 20
- 48A Borrowers who are eligible for exemption from standard deductions**
- (1) This section applies to a New Zealand-based borrower who—
- (a) is a full-time student in a tax year (**year A**); and 25
- (b) reasonably expects that his or her gross income from salary or wages and pre-taxed income for year A will not exceed the annual repayment threshold for year A; and
- (c) does not derive other income. 30
- (2) The borrower may obtain an exemption from future standard deductions for an exemption period by making a declaration in accordance with **section 49**.
- 49 Declaration by eligible borrowers for exemption from salary or wage standard deductions** 35
- A declaration must—
- (a) specify the tax year to which it relates; and

- (ab) specify the exemption period to which it relates; and
- (b) contain all of the information prescribed by the Commissioner; and
- (c) be made by notifying the Commissioner in a manner acceptable to the Commissioner. 5

50 Notice from Commissioner

Upon receiving a declaration that complies with **section 49** from a borrower, the Commissioner must—

- (a) ~~grant an exemption from salary or wage deductions to the borrower; and~~ 10
- (a) grant the borrower an exemption from standard deductions; and
- (b) issue a notice to the borrower that—
 - (i) states that an exemption from ~~salary or wage~~ standard deductions has been granted to the borrower; and 15
 - (ii) specifies the exemption period to which the exemption applies; and
 - (iii) summarises the effect of **section 51**.

51 Consequences of exemption from ~~salary or wage~~ standard deductions 20

- (1) If a borrower's employer is notified in writing that an exemption from ~~salary or wage~~ standard deductions has been granted to the borrower, then—
 - (a) the repayment codes “SL” or “STC”, as applicable, cease to apply to the borrower; and 25
 - (b) nothing in **sections 29 to 32 or 34** applies in relation to the borrower.
- (2) **Subsection (1)(a) and (b)** apply from the later of—
 - (a) the start date of the exemption period ~~to which the exemption applies, as specified in the notice issued by the Commissioner~~ in accordance with **section 50(b)**; and 30
 - (b) the date on which the borrower's employer is notified in writing that the exemption has been granted to the borrower. 35
- (3) ~~The grant of an exemption from salary or wage deductions to a borrower does not affect the ability of the Commissioner~~

to issue an additional deduction rate notice in relation to that borrower under **section 43(2)**.

- (3) The grant of an exemption from standard deductions does not limit **section 33 or 33A**.

- 52 Withdrawal of declaration** 5
A borrower may withdraw a declaration under **section 49** by—
- (a) notifying the Commissioner; and
 - (b) notifying the borrower's employer.
- 53 Notice of change of circumstances** 10
- (1) A borrower must notify the Commissioner and the borrower's employer, and provide details, as soon as practicable, if—
 - (a) any of the matters in **section 48(1) 48A(1)** cease to apply to that borrower; or
 - (b) the borrower becomes aware that any of those matters will cease to apply to him or her. 15
 - (2) If the Commissioner becomes aware that any of the matters in **section 48(1) 48A(1)** have ceased, or will cease, to apply to a borrower, the Commissioner may—
 - (a) notify the borrower in writing; and 20
 - (b) notify the borrower's employer in writing.
 - (3) A notification under **subsection (1) or (2)** must specify the date on which the matters ceased, or will cease, to apply to the borrower.
- 54 When exemption from salary or wage standard deductions ceases to apply** 25
- (1) **Section 51** ceases to apply in relation to a borrower from the earliest of the following:
 - (a) the end of the exemption period specified in the notice issued in accordance with **section 50(b)**: 30
 - (b) the date on which the borrower withdraws his or her declaration in accordance with **section 52**;
 - (c) the date of a change of circumstances as notified to the Commissioner by the borrower under **section 53(1) and (3)**: 35

- (d) the date of a change of circumstances as notified to the borrower by the Commissioner under **section 53(2) and (3)**.
- (2) From the date on which **section 51** ceases to apply in relation to a borrower,— 5
- (a) the repayment code “SL” or “STC”, as applicable, applies to the borrower; and
- (b) **sections 29 to 32 and 34** apply in relation to the borrower.

Information and determinations 10

55 Information to show salary or wage deductions or extra deductions made

- (1) The Commissioner may—
- (a) require an employer or PAYE intermediary who is required to make a salary or wage deduction ~~or an extra deduction~~ to provide the Commissioner with any information the Commissioner may reasonably require in order to establish the amount of that deduction; and 15
- (b) specify the date on or before which that information must be provided. 20
- (2) The Commissioner must notify the employer or PAYE intermediary in writing of a requirement under **subsection (1)**.
- (3) An employer or PAYE intermediary must provide the Commissioner with any information required under **subsection (1)** by notifying the Commissioner, in a manner acceptable to the Commissioner, on or before the date specified by the Commissioner. 25

Compare: 1992 No 141 s 24

56 Commissioner must determine question about amount of salary or wage deductions 30

- (1) An employer or PAYE intermediary may request the Commissioner to determine any question as to the amount, if any, of salary or wage deductions that ought to be made.
- (2) The Commissioner must, as soon as practicable after receiving a request under **subsection (1)**,— 35

- (a) determine the amount, if any, of salary or wage deductions that ought to be made; and
 - (b) notify the employer or PAYE intermediary in writing of the Commissioner's determination.
- (3) A request under **subsection (1)** must be made by notifying the Commissioner (*see* **section 204**). 5
- Compare: 1992 No 141 s 22

Significant under-deductions and over-deductions

- 57 Commissioner determines what is significant under-deduction or significant over-deduction** 10
- (1) The Commissioner must determine the thresholds (which may differ) for what is to be treated as a significant under-deduction or a significant over-deduction.
 - (2) The Commissioner must exercise his or her discretion under **subsection (1)**— 15
 - (a) in order to maintain the integrity of the student loan scheme; and
 - (b) having regard to the resources available to the Commissioner. 20
 - (3) A determination under **subsection (1)** may ~~take into account the cumulative effect of 2 or more under-deductions or over-deductions from a borrower's salary or wages;—~~
 - (a) take into account the cumulative effect of 2 or more under-deductions or over-deductions from a borrower's salary or wages; and 25
 - (b) be set by reference to 1 or more time periods.
 - (4) The Commissioner must, on or before 31 March each year, inform borrowers of the threshold determined by the Commissioner for significant over-deductions for the next tax year. 30
- 58 ~~Salary or wage~~ Standard deductions are full and final unless significant error**
- (1) **Subsection (2)** applies if—
 - (a) there is an incorrect deduction; and
 - (b) the incorrect deduction is not a significant under-deduction or a significant over-deduction. 35

- (2) If this subsection applies,—
- (a) the Commissioner must not take corrective action in relation to the incorrect deduction; and
 - (b) the incorrect deduction must be treated as if it was the amount that was required to be deducted from a borrower's salary or wages in accordance with this subpart; and
 - (c) this Act must be interpreted and applied with all necessary modifications in order to give effect to **paragraph (b)**.
- (3) **Subsection (2)** applies despite anything to the contrary.
- (4) In this section, **incorrect deduction** means a ~~salary or wage standard~~ deduction that—
- (a) is required to be made ~~in accordance with this subpart~~ but is not ~~made~~; or
 - (b) is less than or more than the amount that is required to be deducted in accordance with ~~this subpart~~ **section 32**.

59 Significant over-deduction identified by borrower

- (1) If a borrower reasonably believes that a significant over-deduction was made in relation to him or her, the borrower—
- (a) may request the Commissioner to determine whether a significant over-deduction was made; and
 - (b) must provide any evidence or information that the Commissioner may reasonably require in order to establish whether a significant over-deduction was made.
- (2) The borrower must make a request under **subsection (1)(a)** within 6 months after the date on which the borrower believes the significant over-deduction was made.
- (3) A request under **subsection (1)(a)** must be made by notifying the Commissioner (*see* **section 204**).

60 Commissioner must determine whether significant over-deduction made

- If the Commissioner receives a request in accordance with **section 59**, the Commissioner must, as soon as practicable,—
- (a) determine whether a significant over-deduction was made; and

- (b) notify the borrower in writing if the Commissioner determines that a significant over-deduction was not made.

61 Procedure if significant over-deduction made

- (1) This section applies if the Commissioner— 5
 - (a) identifies that a significant over-deduction has been made in relation to a borrower; or
 - (b) determines (in accordance with **section 60**) that a significant over-deduction has been made in relation to a borrower. 10
- (2) The Commissioner must—
 - (a) offset the significant over-deduction against the borrower's consolidated loan balance in accordance with **section 188**; and
 - (b) as soon as practicable, notify the borrower in writing— 15
 - (i) that a significant over-deduction has been made in relation to the borrower; and
 - (ii) that the over-deduction has been offset against the borrower's consolidated loan balance in accordance with **section 188**; and 20
 - (iii) of the amount of the over-deduction; and
 - (iv) that the borrower may choose to receive a refund of the over-deduction (*see sections 193 and 194*) by notifying the Commissioner in a manner acceptable to the Commissioner; and 25
 - (v) of the time frames within which the borrower must notify the Commissioner if the borrower chooses to receive a refund of the over-deduction.
- (3) If the borrower is New Zealand-based, the borrower must make a choice under **subsection (2)(b)(iv)** within 6 months after the date on which the borrower was notified by the Commissioner of the significant over-deduction. 30
- (4) If the borrower is overseas-based, the borrower must make a choice under **subsection (2)(b)(iv)** within 2 months after the date on which the borrower was notified by the Commissioner of the significant over-deduction. 35

- (5) A choice made by a borrower under **subsection (2)(b)(iv)** is irrevocable.

61 Procedure if significant over-deduction made

- (1) This section applies if the Commissioner—
- (a) identifies that a significant over-deduction has been made in relation to a borrower; or 5
 - (b) determines (in accordance with **section 60**) that a significant over-deduction has been made in relation to a borrower.
- (2) The Commissioner must, as soon as practicable, notify the borrower in writing—
- (a) that a significant over-deduction has been made in relation to the borrower; and
 - (b) of the amount of the over-deduction; and
 - (c) that the over-deduction has been offset against the borrower's consolidated loan balance; and 15
 - (d) that the borrower may choose to receive a refund of the over-deduction (*see sections 193 and 194*); and
 - (e) of the time frame within which the borrower must notify the Commissioner if the borrower chooses to receive a refund of the over-deduction. 20
- (3) To receive a refund of the over-deduction, the borrower must notify the Commissioner in a manner acceptable to the Commissioner within 6 months after the date on which the borrower was notified in accordance with **subsection (2)**. 25
- (4) A choice made by the borrower to receive a refund of the over-deduction is irrevocable.

62 Applicable procedures if significant under-deduction

The procedures in **section 43 or 46** may be applied to a borrower if there is a significant under-deduction in relation to him or her. 30

*Matters of general application to salary or
wage deductions and extra deductions*

63 Prohibition on applications or declarations to maintain integrity of student loan scheme

The Commissioner may prohibit a borrower from making an application under **section 36** (application for unused repayment threshold to be allocated to secondary employment earnings) or a declaration under **section 49** (declaration by eligible borrowers for exemption from salary or wage standard deductions) if the Commissioner is satisfied that that borrower is using, or has used, either of those procedures in a manner that damages the integrity of the student loan scheme.

64 PAYE rules apply to salary or wage deductions and extra deductions

Subject to **Schedule 2**,—

- (a) the PAYE rules apply to salary or wage deductions and extra deductions; and
- (b) every employer, PAYE intermediary, and borrower must comply with the PAYE rules to the extent to which those rules apply under this section.

Compare: 1992 No 141 s 25

65 Salary or wage deductions and extra deductions in addition to income tax withheld

Salary or wage deductions and extra deductions are in addition to amounts of tax for PAYE income payments that are required to be withheld and paid to the Commissioner under the PAYE rules.

Compare: 1992 No 141 s 19(3)

Subpart 2—New Zealand-based borrowers’
repayment obligations for pre-taxed income

66 Application of this subpart

This subpart applies to New Zealand-based borrowers—

- (a) who derive \$1,500 or more of net pre-taxed income (as defined in **section 67**) for a tax year; and

- (b) whose income from net pre-taxed income and salary or wages (if any) for that tax year is \$1,500 or more above the annual repayment threshold; and
- (c) who do not derive other income for that tax year.

67 Definitions relating to net pre-taxed income 5

In this subpart,—

allowable expenses means—

- (a) expenditure or interest for which a person is allowed a deduction under section DB 3, DB 5, or DB 6 of the Income Tax Act 2007: 10
- (b) a premium under a policy of income protection insurance for which a person is allowed a deduction under section DA 1 of the Income Tax Act 2007

net pre-taxed income, in relation to a borrower for a tax year, means the amount calculated in accordance with the formula— 15

$$a = b - c$$

where—

- a is the borrower's net pre-taxed income for the tax year
- b is the borrower's pre-taxed income (as defined in **section 4(1)**) for the tax year 20
- c is the borrower's allowable expenses for the tax year.

Declaration of pre-taxed income and assessment of pre-taxed repayment obligation

68 Declaration of pre-taxed income 25

- (1) If this subpart applies to a borrower, the borrower must make a declaration of pre-taxed income.
- (2) The declaration of pre-taxed income must be made—
 - (a) by notifying the Commissioner in a manner acceptable to the Commissioner; and 30
 - (b) on or before—
 - (i) 7 July in the tax year following the tax year in which the pre-taxed income was derived; or
 - (ii) if the borrower has received an extension of time to make the declaration in accordance with **sec-** 35

tion 69, the date on which the borrower is required to make the declaration; or

- (iii) if the Commissioner has granted a borrower an extension of time to make the declaration (other than in accordance with **section 69**), the date on which the borrower is required to make the declaration as specified by the Commissioner. 5

69 Extension of time for making declaration of pre-taxed income

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

- (a) the reference to “the due date required under this section” were a reference to “the due date required under **section 68(2)(b)(i)** of the Student Loan Scheme Act **2010**”; and 15
- (b) every reference to a taxpayer were a reference to a borrower; and 20
- (c) every reference to a return or a return of income were a reference to a declaration of pre-taxed income.

70 Commissioner to assess borrower’s pre-taxed repayment obligation

- (1) The Commissioner must assess the amount (if any) of a borrower’s pre-taxed repayment obligation for a tax year as soon as practicable after the borrower makes his or her declaration of pre-taxed income. 25
- (2) In making the assessment, the Commissioner may have regard to— 30
- (a) the borrower’s declaration of pre-taxed income; and
- (b) any other information that the Commissioner considers to be relevant.
- (3) The assessment must be made in accordance with this subpart and the loan contract. 35
- (4) **Section 197** applies if there is an inconsistency between this subpart and the loan contract.

- (5) The Commissioner must, as soon as practicable after making the assessment, notify the borrower in writing of—
- (a) the borrower’s pre-taxed repayment obligation for the tax year; and
 - (b) the due dates (if any) on or before which the pre-taxed repayment obligation must be paid (*see sections 75 and 77, 77, and 78*); and 5
 - (c) the amounts (if any) that must be paid on or before those due dates.
- Compare: 1992 No 141 s 15 10

Calculation of pre-taxed repayment obligation

71 Calculation of borrower’s pre-taxed repayment obligation if salary or wages are less than annual repayment threshold

- (1) **Subsection (2)** applies if, in relation to a tax year,— 15
- (a) this subpart applies to a borrower; and
 - (b) the gross income that the borrower derived from salary or wages is less than the annual repayment threshold.
- (2) The borrower’s pre-taxed repayment obligation for the tax year must be calculated in accordance with the formula— 20
- $$a = b \times (c - d)$$
- where—
- a is the borrower’s pre-taxed repayment obligation for the tax year
 - b is the repayment percentage 25
 - c is the income that the borrower derives from net pre-taxed income and from salary or wages for the tax year
 - d is the annual repayment threshold.
- (3) If the borrower’s pre-taxed repayment obligation for the tax year is zero or less, the borrower has no pre-taxed repayment obligation for the tax year. 30

72 Calculation of borrower’s pre-taxed repayment obligation if salary or wages are equal to or more than annual repayment threshold

- (1) **Subsection (2)** applies if, in relation to a tax year,— 35

- (a) this subpart applies to a borrower; and
- (b) the gross income that the borrower derived from salary or wages is equal to or more than the annual repayment threshold.
- (2) The borrower's pre-taxed repayment obligation for the tax year must be calculated in accordance with the formula— 5
- $$a = b \times c$$
- where—
- a is the borrower's pre-taxed repayment obligation for the tax year 10
- b is the repayment percentage
- c is the income that the borrower derives from net pre-taxed income for the tax year.

Payment of pre-taxed repayment obligation

- 73 Payment of pre-taxed repayment obligation** 15
- (1) A borrower whose pre-taxed repayment obligation for a tax year is greater than zero must pay remaining repayments—
- (a) calculated in accordance with **section 74**;
- (b) on or before the due dates determined in accordance with **section 75 or 78**. 20
- (1A) Subsection (2) applies to a borrower if—
- (a) the borrower's pre-taxed repayment obligation for a tax year is \$1,000 or more; or
- (b) the borrower has not made a declaration of pre-taxed income for a tax year and the amount of the borrower's pre-taxed income repayment obligation for the immediately preceding tax year was \$1,000 or more. 25
- (2) ~~A borrower whose pre-taxed repayment obligation for a tax year is \$1,000 or more~~ A borrower must also pay interim payments for the next tax year— 30
- (a) calculated in accordance with **section 76 or 76A**;
- (b) on or before the due dates determined in accordance with **section 77 or 78**.

- (3) However, a borrower is not liable to make interim repayments for a tax year if the borrower's pre-taxed repayment obligation for that year is less than \$1,000.

Compare: 1992 No 141 s 26

- 74 Calculation of remaining repayments for tax year** 5
- (1) **Subsections (2) and (3)** apply—
- (a) if a borrower has a pre-taxed repayment obligation for a tax year of less than \$1,000; or
- (b) if—
- (i) a borrower has a pre-taxed repayment obligation for a tax year that is \$1,000 or more, but less than \$16,000; and 10
- (ii) that borrower has not estimated his or her pre-taxed repayment obligation for that tax year.
- (2) The amount of each of a borrower's remaining repayments (for the borrower's pre-taxed repayment obligation for the tax year) is the same and must be calculated in accordance with the formula— 15

$$a = \frac{(b - c) - (d - c)}{e}$$

where—

- a is the amount of each of the borrower's remaining repayments 20
- b is the borrower's pre-taxed repayment obligation for the tax year
- c is the amount of the borrower's interim payments for the tax year calculated in accordance with **section 76 or 76A** 25
- d is the sum of any amounts that satisfy (so far as they extend) the borrower's pre-taxed repayment obligation for the tax year
- e is,— 30
- (a) for a borrower who has a pre-taxed repayment obligation for the tax year of less than \$1,000, 1; or

- (b) for all other borrowers, the number of due dates the borrower has for the next tax year determined in accordance with **section 75(3)**.
- (3) However,—
- (a) if the sum of (b – c) is less than zero, then it must be treated as if it were zero; and 5
- (b) if the sum of (d – c) is less than zero, then it must be treated as if it were zero; and
- (c) if a is not divisible into equal amounts, then the final remaining repayment carries the difference. 10
- (4) If **subsections (2) and (3)** do not apply, then the amount of each of a borrower’s remaining repayments (for the borrower’s pre-taxed repayment obligation for the tax year) may vary and must be calculated separately in accordance with the formula— 15

$$a = \frac{b}{c} - d$$

where—

- a is the amount of the borrower’s remaining repayment
- b is the borrower’s pre-taxed repayment obligation for the tax year
- c is the number of due dates the borrower has for the tax year determined in accordance with **section 75(4)** 20
- d is the amount that, as at the due date of the remaining repayment, has been used to satisfy (so far as it extends) the interim payment due on the same date. 25

Compare: 1992 No 141 s 29

75 Due dates for payment of remaining repayments

(1AA) **Subsection (1)** applies if a borrower—

- (a) has a pre-taxed repayment obligation for a tax year that is less than \$1,000; or
- (b) does not have to make interim payments for a tax year. 30
- (1) ~~A borrower whose pre-taxed repayment obligation for a tax year is less than \$1,000~~ The borrower must pay 1 remaining repayment on or before the date in column B, D, or F of the

table in Part A of Schedule 3 of the Income Tax Act 2007 that—

- (a) corresponds to the month of the borrower's balance date; and
 - (b) immediately follows the date on which the borrower is required to file his or her declaration of pre-taxed income for the tax year. 5
- (2) **Subsection (3)** applies if—
- (a) a borrower has a pre-taxed repayment obligation for a tax year that is \$1,000 or more, but less than \$16,000; and 10
 - (b) that borrower has not estimated his or her pre-taxed repayment obligation for that tax year.
- (3) The borrower—
- (a) must make the same number of remaining repayments for a tax year (**tax year A**) as the number of interim payment dates the borrower has for tax year A; but 15
 - (b) must pay a remaining repayment on or before each of the interim payment dates that immediately follow the date on which the borrower is required to file his or her declaration of pre-taxed income for tax year A, even though this may require those payments to be made in tax year A and in the tax year following tax year A. 20
- (4) If **subsections (1) and (3)** do not apply, a borrower must pay a remaining repayment for a tax year on or before ~~each of the interim payment dates for the same tax year.~~ 25
- (a) each of the interim payment dates for the same tax year;
or
 - (b) if the borrower does not have to make interim payments for the tax year, each of the interim payment dates that would have applied for the tax year if the borrower had to make interim payments for the tax year. 30
- (5) In this section, **interim payment dates** means the dates determined in accordance with **section 77 or 78** on which a borrower must pay his or her interim payments. 35

Compare: 1992 No 141 s 30(1)

76 Calculation of interim payments for next tax year

(1) If a borrower has not estimated his or her pre-taxed repayment obligation for a tax year, the amount of the borrower's interim payments for the tax year is calculated in accordance with the formula—

5

$$a = \frac{b}{c}$$

where—

a is the amount of each of the borrower's interim payments

b is—

(a) the amount of the borrower's pre-taxed repayment obligation for the immediately preceding tax year multiplied by 105%; or

(b) if the borrower has not filed a declaration of pre-taxed income for the immediately preceding tax year, the amount of the borrower's pre-taxed repayment obligation for the year before the immediately preceding tax year multiplied by 110%

c is the number of due dates the borrower has for the tax year.

(2) If a borrower has estimated his or her pre-taxed repayment obligation for a tax year, the amount of the borrower's interim payments for the tax year is calculated in accordance with the formula—

10

15

20

$$a = b \times \frac{c}{d} - e$$

where—

a is the amount of each of the borrower's interim payments 25

b is the amount of the borrower's estimated pre-taxed repayment obligation for the tax year

c is the number derived by adding 1 to the number of due dates the borrower has for the tax year that have passed as at the date on which the borrower estimated his or her pre-taxed repayment obligation for the tax year, except 30

- that this number must not be greater than the number of due dates the borrower has for the tax year
- d is the number of due dates the borrower has for the tax year
- e is the aggregate amount of all of the borrower's interim payments that were due before the date on which the borrower estimated his or her pre-taxed repayment obligation for the tax year. 5
- (3) For the purposes of this section, the number of due dates a borrower has is determined by reference to the number of interim payments the borrower must make, as set out in **section 77**: 10
Compare: 1992 No 141 s 27

76 Calculation of interim payments for next tax year

- (1) If a borrower has not estimated his or her pre-taxed repayment obligation for a tax year and the borrower's uplifted pre-taxed repayment obligation for the tax year is less than \$16,000, then the amount of each of the borrower's interim payments for the tax year may vary and must be calculated separately in accordance with the formula— 15

$$a = b \times \frac{c}{d} - e$$

where— 20

- a is the amount of the borrower's interim payment
- b is the amount of the borrower's uplifted pre-taxed repayment obligation for the tax year
- c is a number reflecting which of the interim payments for the tax year is being calculated (for example, 2 if the second interim payment for the tax year is being calculated) 25
- d is the total number of interim payment due dates the borrower has for the tax year
- e is the aggregate amount of all of the borrower's interim payments for the tax year that were due before the interim payment being calculated. 30
- (2) If a borrower has estimated his or her pre-taxed repayment obligation for a tax year or the borrower's uplifted pre-taxed

repayment obligation for the tax year is \$16,000 or more, the amount of each of the borrower's interim payments for the tax year is calculated in accordance with the formula—

$$\underline{a} = \frac{\underline{b}}{\underline{c}}$$

where—

- a is the amount of the borrower's interim payment 5
- b is, as applicable,—
- (a) the amount of the borrower's estimated pre-taxed repayment obligation for the tax year; or
- (b) the amount of the borrower's uplifted pre-taxed repayment obligation for the tax year 10
- c is the total number of interim payment due dates the borrower has for the tax year.
- (3) For the purposes of this section, the total number of interim payment due dates a borrower has is determined by reference to the number of interim payments the borrower must make as determined in accordance with **section 77 or 78**. 15
- (4) If the total amount of the borrower's interim payments calculated in accordance with **subsection (1) or (2)** for a tax year is not divisible into equal amounts, then the final interim payment carries the difference. 20
- (5) In this section, **uplifted pre-taxed repayment obligation—**
- (a) means—
- (i) the amount of the borrower's pre-taxed repayment obligation for the immediately preceding tax year multiplied by 105%; or 25
- (ii) if the borrower did not make a declaration of pre-taxed income for the immediately preceding tax year, the amount of the borrower's pre-taxed repayment obligation for the year before the immediately preceding tax year multiplied by 110%; 30
- but
- (b) the amount calculated in accordance with **paragraph (a)** must not exceed the sum of the borrower's loan balance on 1 April of the relevant tax year plus any loan

advances made or charged to the borrower for that tax year after that date.

Compare: 1992 No 141 s 27

- 76A Commissioner may assess interim payments if declaration for preceding year not made** 5
- (1) The Commissioner may assess a borrower's interim payments for a tax year in the manner set out in section RC 6(3) of the Income Tax Act 2007 if the borrower did not make a declaration of pre-taxed income for the immediately preceding tax year. 10
- (2) **Section 76** does not apply if the Commissioner makes an assessment in accordance with **subsection (1)**.
- 77 Due dates for payment of interim payments**
- (1) If a borrower is in a transitional year, the borrower must pay an interim payment on or before each of the dates on which the borrower's provisional tax for that tax year is due in accordance with the provisional tax rules. 15
- (2) If a borrower is not in a transitional year, the due dates for the payment of the borrower's interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower's balance date. 20
- (3) In this section, **transitional year** has the same meaning as in section YA 1 of the Income Tax Act 2007.
- 78 Commissioner's powers in relation to due dates** 25
- (1) The Commissioner may determine the dates on or before which a borrower must pay his or her remaining repayments or interim payments for a tax year if—
- (a) the borrower requests the Commissioner to determine the borrower's due dates; or 30
- (b) the Commissioner considers it necessary or appropriate in the circumstances.
- (2) The dates determined by the Commissioner under **subsection (1)** may differ from the dates specified in **sections 75 and 77**.

- (3) If the Commissioner determines the dates on or before which a borrower must pay his or her remaining repayments or interim payments for a tax year,—
- (a) the Commissioner must, as soon as practicable, notify the borrower in writing— 5
 - (i) of that fact; and
 - (ii) of the dates determined by the Commissioner; and
 - (b) the amount of those remaining repayments or interim payments must be calculated by reference to those dates. 10
- (4) This section overrides **sections 70(5) and 73 to 75 and 77**.
Compare: 1992 No 141 s 30(2)

- 79 Interim payments to be paid in same manner as provisional tax** 15
Subject to **Schedule 3**,—
- (a) interim payments for a borrower's pre-taxed repayment obligation for a tax year are payable in the same manner as provisional tax; and
 - (b) a borrower must comply with the requirements of the provisional tax rules. 20
- Compare: 1992 No 141 s 28

- 80 Consequence of failure to meet repayment obligations**
A borrower may be liable to pay late payment interest if the borrower does not meet his or her repayment obligations under this subpart (*see section ~~129(1)~~ 130(1)*). 25

Subpart 3—New Zealand-based borrowers'
repayment obligations for other income

- 81 Application of this subpart**
This subpart applies to New Zealand-based borrowers who derive other income. 30

Assessment of other income repayment obligation

- 82 Commissioner to assess borrower's other income repayment obligation**
- (1) The Commissioner must assess the amount (if any) of a borrower's other income repayment obligation for a tax year as soon as practicable after the borrower provides—
- (a) his or her return of income for that tax year; or
 - (b) details of his or her annual gross income and annual total deductions under **section 106**. 10
- (2) In making the assessment, the Commissioner may have regard to—
- (a) a return of income; and
 - (b) the details of a borrower's annual gross income and annual total deductions provided to the Commissioner under **section 106**; and 15
 - (c) any other information that the Commissioner considers to be relevant.
- (3) The assessment must be made in accordance with this subpart and the loan contract. 20
- (4) **Section 197** applies if there is an inconsistency between this subpart and the loan contract.
- (5) The Commissioner must, as soon as practicable after making the assessment, notify the borrower in writing of—
- (a) the borrower's other income repayment obligation for the tax year; and 25
 - (b) the due dates (if any) on or before which the other income repayment obligation must be paid (*see sections **87 and 89, 89, and 90***); and
 - (c) the amounts (if any) that must be paid on or before those due dates. 30

Compare: 1992 No 141 s 15

Calculation of other income repayment obligations

83 Certain borrowers have no other income repayment obligations

If a borrower's net income for the tax year is equal to or less than the annual repayment threshold, then the borrower has no other income repayment obligation for the tax year. 5

84 Calculating borrower's other income repayment obligation

- (1) **Subsection (2)** applies if, in relation to a tax year,— 10
- (a) this subpart applies to a borrower; and
 - (b) the borrower's net income is more than the annual repayment threshold.

- (2) The borrower's other income repayment obligation for a tax year must be calculated in accordance with the formula— 15

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

where—

- a is the amount of the borrower's other income repayment obligation for the tax year
- b is the repayment percentage 20
- c is the amount of the borrower's net income for the tax year
- d is the annual repayment threshold
- e is the total amount of salary or wage standard deductions made in accordance with **subpart 4** for the tax year. 25

- (3) If the amount of the borrower's other income repayment obligation for the tax year is zero or less, the borrower has no other income repayment obligation for the tax year.

Compare: 1992 No 141 ss 14(1), 26 30

Payment of other income repayment obligations

85 Payment of other income repayment obligations

- (1) A borrower whose other income repayment obligation for a tax year is greater than zero must pay remaining repayments— 35
- (a) calculated in accordance with **section 86**:

- (b) on or before the due dates determined in accordance with **section 87 or 90**.
- (1A) **Subsection (2)** applies to a borrower if—
 - (a) the borrower’s other income repayment obligation for a tax year is \$1,000 or more; or 5
 - (b) the borrower has not provided a return of income or details of his or her annual gross income and annual total deductions under **section 106** for a tax year (see **section 82**) and the amount of the borrower’s other income repayment obligation for the immediately preceding tax year was \$1,000 or more. 10
- (2) ~~A borrower whose other income repayment obligation for a tax year is \$1,000 or more~~ A borrower must also pay interim payments for the next tax year—
 - (a) calculated in accordance with **section 88 or 88A**; 15
 - (b) on or before the due dates determined in accordance with **section 89 or 90**.
- (3) However, a borrower is not liable to make interim repayments for a tax year if the borrower’s other income repayment obligation for that year is less than \$1,000. 20

Compare: 1992 No 141 s 26

86 Calculation of remaining repayments for tax year

- (1) **Subsections (2) and (3)** apply—
 - (a) if a borrower has an other income repayment obligation for a tax year of less than \$1,000; or 25
 - (b) if—
 - (i) a borrower has an other income repayment obligation for a tax year that is \$1,000 or more, but less than \$16,000; and
 - (ii) that borrower has not estimated his or her other income repayment obligation for that tax year. 30
- (2) The amount of each of a borrower’s remaining repayments (for the borrower’s other income repayment obligation for the tax year) is the same and must be calculated in accordance with the formula— 35

$$a = \frac{(b - c) - (d - c)}{e}$$

where—

- a is the amount of each of the borrower's remaining repayments
- b is the borrower's other income repayment obligation for the tax year 5
- c is the total amount of the borrower's interim payments for the tax year calculated in accordance with **section 88 or 88A**
- d is the sum of any amounts that satisfy (so far as they extend) the borrower's other income repayment obligation for the tax year 10
- e is,—
 - (a) for a borrower who has an other income repayment obligation for the tax year of less than \$1,000, 1; or 15
 - (b) for all other borrowers, the number of due dates the borrower has for the next tax year determined in accordance with **section 87(3)**.

(3) However,—

- (a) if the sum of (b – c) is less than zero, then it must be treated as if it were zero; and 20
- (b) if the sum of (d – c) is less than zero, then it must be treated as if it were zero; and
- (c) if a is not divisible into equal amounts, then the final remaining repayment carries the difference. 25

(4) If **subsections (2) and (3)** do not apply, then the amount of each of a borrower's remaining repayments (for the borrower's other income repayment obligation for the tax year) may vary and must be calculated separately in accordance with the formula— 30

$$a = \frac{b}{c} - d$$

where—

- a is the amount of the borrower's remaining repayment
- b is the borrower's other income repayment obligation for the tax year

- c is the number of due dates the borrower has for the tax year determined in accordance with **section 87(4)**
- d is the amount that, as at the due date of the remaining repayment, has been used to satisfy (so far as it extends) the interim payment due on the same date. 5

Compare: 1992 No 141 s 29

87 Due dates for payment of remaining repayments

(1AA) Subsection (1) applies if a borrower—

- (a) has an other income repayment obligation for a tax year that is less than \$1,000; or 10
- (b) does not have to make interim payments for a tax year.
- (1) ~~A borrower whose other income repayment obligation for a tax year is less than \$1,000~~ The borrower must pay 1 remaining repayment on or before the date in column B, D, or F of the table in Part A of Schedule 3 of the Income Tax Act 2007 15 that—
 - (a) corresponds to the month of the borrower’s balance date; and
 - (b) immediately follows the date on which the borrower is required to file his or her return of income for the tax year. 20
- (2) **Subsection (3) applies if—**
 - (a) a borrower has an other income repayment obligation for a tax year that is \$1,000 or more, but less than \$16,000; and 25
 - (b) that borrower has not estimated his or her other income repayment obligation for that tax year.
- (3) The borrower—
 - (a) must make the same number of remaining repayments for a tax year (**tax year A**) as the number of interim payment dates the borrower has for tax year A; but 30
 - (b) must pay a remaining repayment on or before each of the interim payment dates that immediately follow the date on which the borrower is required to file his or her return of income for tax year A, even though this may 35 require those payments to be made in tax year A and in the tax year following tax year A.

- (4) If **subsections (1) and (3)** do not apply, a borrower must pay a remaining repayment for a tax year on or before each of the interim payment dates for the same tax year.—
- (a) each of the interim payment dates for the same tax year;
or 5
- (b) if the borrower does not have to make interim payments for the tax year, each of the interim payment dates that would have applied for the tax year if the borrower had to make interim payments for the tax year.
- (5) In this section, **interim payment dates** means the dates determined in accordance with **section 89 or 90** on which a borrower must pay his or her interim payments. 10
Compare: 1992 No 141 s 30(1)

88 Calculation of interim payments for next tax year

- (1) If a borrower has not estimated his or her other income repayment obligation for a tax year, the amount of the borrower's interim payments for the tax year is calculated in accordance with the formula— 15

$$a = \frac{b}{e}$$

where—

- a is the amount of each of the borrower's interim payments 20
- b is—
- (a) the amount of the borrower's other income repayment obligation for the immediately preceding tax year multiplied by 105%; or 25
- (b) if the borrower has not filed a return of income for the immediately preceding tax year, the amount of the borrower's other income repayment obligation for the year before the immediately preceding tax year multiplied by 110% 30
- e is the number of due dates the borrower has for the tax year.
- (2) If a borrower has estimated his or her other income repayment obligation for a tax year, the amount of the borrower's interim

payments for the tax year is calculated in accordance with the formula—

$$a = b \times \frac{c}{d} - e$$

where—

- a is the amount of each of the borrower's interim payments 5
- b is the amount of the borrower's estimated other income repayment obligation for the tax year
- c is the number derived by adding 1 to the number of due dates the borrower has for the tax year that have passed as at the date on which the borrower estimated his or her other income repayment obligation for the tax year, except that this number must not be greater than the number of due dates the borrower has for the tax year 10
- d is the number of due dates the borrower has for the tax year 15
- e is the aggregate amount of all of the borrower's interim payments that were due before the date on which the borrower estimated his or her other income repayment obligation for the tax year.
- (3) For the purposes of this section, the number of due dates a borrower has is determined by reference to the number of interim payments the borrower must make, as set out in **section 89**. Compare: 1992 No 141 s 27 20

88 Calculation of interim payments for next tax year

- (1) If a borrower has not estimated his or her other income repayment obligation for a tax year and the borrower's uplifted other income repayment obligation for the tax year is less than \$16,000, then the amount of each of the borrower's interim payments for the tax year may vary and must be calculated separately in accordance with the formula— 25 30

$$a = b \times \frac{c}{d} - e$$

where—

- a is the amount of the borrower's interim payment
- b is the amount of the borrower's uplifted other income repayment obligation for the tax year
- c is a number reflecting which of the interim payments for the tax year is being calculated (for example, 2 if the second interim payment for the tax year is being calculated)
- d is the total number of interim payment due dates the borrower has for the tax year
- e is the aggregate amount of all of the borrower's interim payments for the tax year that were due before the interim payment being calculated.

- (2) If a borrower has estimated his or her other income repayment obligation for a tax year or the borrower's uplifted other income repayment obligation for the tax year is \$16,000 or more, the amount of each of the borrower's interim payments for the tax year is calculated in accordance with the formula—

$$a = \frac{b}{c}$$

where—

- a is the amount of the borrower's interim payment
- b is, as applicable,—
- (a) the amount of the borrower's estimated other income repayment obligation for the tax year; or
- (b) the amount of the borrower's uplifted other income repayment obligation for the tax year
- c is the total number of interim payment due dates the borrower has for the tax year.
- (3) For the purposes of this section, the total number of interim payment due dates a borrower has is determined by reference to the number of interim payments the borrower must make as determined in accordance with **section 89 or 90**.
- (4) If the total amount of the borrower's interim payments calculated in accordance with **subsection (1) or (2)** for a tax year is not divisible into equal amounts, then the final interim payment carries the difference.

(5) In this section, **uplifted other income repayment obligation**—

(a) means—

(i) the amount of the borrower's other income repayment obligation for the immediately preceding tax year multiplied by 105%; or 5

(ii) if the borrower did not provide a return of income or details of his or her annual gross income and annual total deductions under **section 106** for the immediately preceding tax year (see **section 82**), the amount of the borrower's other income repayment obligation for the year before the immediately preceding tax year multiplied by 110%; but 10

(b) the amount calculated in accordance with **paragraph (a)** must not exceed the sum of the borrower's loan balance on 1 April of the relevant tax year plus any loan advances made or charged to the borrower for that tax year after that date. 15

Compare: 1992 No 141 s 27 20

88A **Commissioner may assess interim payments if information for preceding year not provided**

(1) The Commissioner may assess a borrower's interim payments for a tax year in the manner set out in section RC 6(3) of the Income Tax Act 2007 if the borrower did not provide, for the immediately preceding tax year (see **section 82**),— 25

(a) his or her return of income; or

(b) details of his or her annual gross income and annual total deductions under **section 106**.

(2) **Section 88** does not apply if the Commissioner makes an assessment in accordance with **subsection (1)**. 30

89 **Due dates for payment of interim payments**

(1) A borrower must pay an interim payment for a tax year on or before each of the dates on which the borrower must pay his or her provisional tax for that tax year in accordance with the provisional tax rules. 35

(2) However,—

- (a) if a borrower uses a GST ratio to determine his or her provisional tax for a tax year and that year is not a transitional year for the borrower, the due dates for the payment of the borrower's interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower's balance date: 5
- (b) if a borrower uses a GST ratio to determine his or her provisional tax for a tax year and that year is a transitional year for the borrower, the due dates for the payment of the borrower's interim payments are every second date in the table headed "GST ratio provisional taxpayers" in Part B of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower's balance date except that— 10
- (i) if the borrower only has 1 payment date, the borrower only has 1 due date; and
- (ii) if the borrower has an odd number of payment dates, then the last payment date does not apply to the borrower: 15
- (c) if a borrower does not pay provisional tax for a tax year, the due dates for the payment of the borrower's interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower's balance date: 20
- (d) if a borrower pays provisional tax on a 6-monthly basis for the 2012–13 tax year, the due dates for the payment of the borrower's interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower's balance date. 25
- (3) In this section, **GST ratio** and **transitional year** have the same meaning as in section YA 1 of the Income Tax Act 2007.
- (4) **Subsection (2)(d)** is repealed on the close of 31 March 2014. 30

- 90 Commissioner's powers in relation to due dates**
- (1) The Commissioner may determine the dates on or before which a borrower must pay his or her remaining repayments or interim payments for a tax year if—
- (a) the borrower requests the Commissioner to determine the borrower's due dates; or
 - (b) the Commissioner considers it necessary or appropriate in the circumstances.
- (2) The dates determined by the Commissioner under **subsection (1)** may differ from the dates specified in **sections 87 and 89**.
- (3) If the Commissioner determines the dates on or before which a borrower must pay his or her remaining repayments or interim payments for a tax year,—
- (a) the Commissioner must, as soon as practicable, notify the borrower in writing—
 - (i) of that fact; and
 - (ii) of the dates determined by the Commissioner; and
 - (b) the amount of those remaining repayments or interim payments must be calculated by reference to those dates.
- (4) This section overrides **sections 82(5) and 85 to 87 and 89**.
Compare: 1992 No 141 s 30(2)
- 91 Interim payments to be paid in same manner as provisional tax**
- Subject to **Schedule 4**,—
- (a) interim payments for a borrower's other income repayment obligation for a tax year are payable in the same manner as provisional tax; and
 - (b) a borrower must comply with the requirements of the provisional tax rules.
- Compare: 1992 No 141 s 28
- 92 Consequence of failure to meet repayment obligations**
- A borrower may be liable to pay late payment interest if the borrower does not meet his or her repayment obligations under this subpart (*see* **section 129(1) 130(1)**).

*Reduction of ~~salary or wage~~ deduction rate for
borrower with lower repayment obligation*

- 93 Borrower may apply for reduction of ~~salary or wage~~ deduction rate to reflect lower repayment obligation** 5
- (1) **Section 94** applies if a borrower—
- (a) either—
 - (i) derives other income in a tax year; or
 - (ii) incurs a loss from other income for the tax year; and
 - (b) derives salary or wages in the tax year; and 10
 - (c) considers on reasonable grounds that his or her balance of repayment obligations for the tax year is, or will be, less than his or her ~~salary or wage~~ standard deductions for the tax year; and
 - (d) applies to the Commissioner for a reduction in the ~~salary or wage~~ deduction rate that applies to the borrower under **section 32(1) or (2)** in order to reflect the difference in **paragraph (c)**. 15
- (2) An application under **subsection (1)(d)** must be made by notifying the Commissioner in a manner acceptable to the Commissioner. 20
- (3) The borrower must, as soon as practicable, notify the Commissioner if the circumstances in **subsection (1)(c)** change.
- (4) In this section, **balance of repayment obligations** means the sum that is derived when the amount calculated in accordance with the formula in **section 84(2)** for the borrower for the tax year is offset against the total amount of the borrower's ~~salary or wage~~ standard deductions for the tax year. 25
- 94 Special deduction rate certificate for lower repayment obligation** 30
- (1) If this section applies, the Commissioner may, in relation to the borrower, issue a special deduction rate certificate that—
- (a) specifies a special deduction rate that reflects the difference in **section 93(1)(c)**; and
 - (b) specifies the period for which the special deduction rate is to apply to the borrower; and 35

- (c) requires the borrower's employers to make salary or wage deductions at the special deduction rate.
- (c) requires the borrower's employer or PAYE intermediary to make deductions from the borrower's salary or wages at the special deduction rate. 5
- (2) In determining the specified deduction rate that is to apply to the borrower, the Commissioner must have regard to the amount of any excess repayment the borrower may have for the tax year if the special deduction rate certificate is not issued to the borrower. 10
Compare: 1992 No 141 s 20A(2)
- 95 Issue and application of special deduction rate certificate**
- (1) If the Commissioner issues a special deduction rate certificate under **section 94**, the Commissioner must give a copy of the certificate to the borrower. 15
- (2) The special deduction rate certificate—
- (a) revokes all other special deduction rate certificates previously issued in relation to the borrower under **section 94 or 3939 or 94**; and
- (b) does not limit the application of **sections 139 to 145** (concerning hardship relief). 20
Compare: 1992 No 141 s 20A(5)–(7)
- 96 Time when special deduction rate ceases to apply**
- The special deduction rate applies until the earlier of—
- (a) the end of the period specified in the special deduction rate certificate; or 25
- (b) the date on which the Commissioner notifies the employer in writing otherwise; or
- (c) the date on which the borrower notifies the employer otherwise. 30
Compare: 1992 No 141 s 20A(4)
- Subpart 4—Overseas-based borrowers' repayment obligations
- 97 Application of this subpart**
- This subpart applies to overseas-based borrowers. 35

98 Definitions used in this subpart

In this subpart,—

opt-out period means a period for which an overseas-based borrower chooses, under **section 100(1)**, not to have a repayment holiday 5

repayment holiday means a period during which a borrower's overseas-based repayment obligation is reduced to zero for the purposes of **section 99**.

Compare: 1992 No 141 s 31

*Repayment holiday from overseas-based
repayment obligations* 10

99 Overseas-based borrowers are entitled to 3-year repayment holiday

(1) A borrower who ~~becomes~~ is overseas-based is entitled to a repayment holiday for a maximum period of 3 years. 15

(2) A borrower is entitled to a repayment holiday only for periods when the borrower is overseas-based.

(3) A repayment holiday may consist of 1 or more periods of time when a borrower is overseas-based, but in total those periods must be 3 years or less. 20

(4) If a borrower is, at any time, overseas-based after that borrower's 3-year repayment holiday has ended, that borrower's repayment obligation must be calculated in accordance with **sections 102 and 103**.

(5) Any 1 borrower is entitled to receive only one 3-year repayment holiday. 25

Compare: 1992 No 141 s 32

100 Borrowers may choose to opt out of repayment holiday

(1) A borrower may, by notifying the Commissioner, choose to have 1 or more opt-out periods for any period during which that borrower is overseas-based. 30

(2) An opt-out period may begin from a date before the date on which a borrower notifies the Commissioner under **subsection (1)**.

(3) An opt-out period ends if a borrower ~~becomes New Zealand-based~~ based. 35

- (a) becomes New Zealand-based; or
 (b) notifies the Commissioner to end the opt-out period.
- (4) A repayment holiday—
 (a) ends if an opt-out period begins; and
 (b) begins when an opt-out period ends (but only if the borrower, at that time, is overseas-based and has had a repayment holiday for a total of less than 3 years). 5
- (5) If a borrower chooses to have an opt-out period, the borrower's repayment obligation must be calculated in accordance with **sections 102 and 103.** 10
 Compare: 1992 No 141 s 33

Assessment of overseas-based repayment obligation

- 101 Assessments for years in which borrower is overseas-based**
- (1) The Commissioner must assess the amount (if any) of a borrower's overseas-based repayment obligation for a tax year as soon as practicable after being notified that, or becoming aware that, the borrower is or ~~will be~~ was overseas-based. 15
- (2) The Commissioner must ~~continue to~~ assess the amount of a borrower's overseas-based repayment obligation for each tax year, or part of a tax year, during which the borrower ~~remains~~ is or was overseas-based. 20
- (3) In making an assessment under this section, the Commissioner may have regard to any information that the Commissioner considers to be relevant. 25
- (4) The assessment must be made in accordance with this subpart and the loan contract.
- (5) **Section 197** applies if there is an inconsistency between this subpart and the loan contract.
- (6) The Commissioner must, as soon as practicable after making an assessment, notify the borrower in writing of— 30
 (a) the borrower's overseas-based repayment obligation for the tax year; and
 (b) the due dates on or before which the overseas-based repayment obligation must be paid (*see* **section 104**); 35
 and

(c) the amounts that must be paid on or before those due dates.

- (7) **Subsection (6)** does not apply if the amount assessed is zero.
Compare: 1992 No 141 s 36B

*Calculation and payment of overseas-based
repayment obligation* 5

102 Repayment obligations of overseas-based borrowers

- (1) This section applies to an overseas-based borrower—
- (a) whose 3-year repayment holiday has ended; or
 - (b) who has chosen to have an opt-out period. 10
- (2) If the borrower's consolidated loan balance is less than \$1,000, the borrower's repayment obligation for a tax year (or, if applicable, part of a tax year) during which this section applies to the borrower is the amount of the borrower's consolidated loan balance. 15
- (3) If the borrower's consolidated loan balance is—
- (a) \$1,000 or more, but less than or equal to \$15,000, the borrower's repayment obligation is \$1,000 for each full tax year during which the borrower is overseas-based;
 - (b) more than \$15,000, but less than or equal to \$30,000, the borrower's repayment obligation is \$2,000 for each full tax year during which the borrower is overseas-based; 20
 - (c) more than \$30,000, the borrower's repayment obligation is \$3,000 for each full tax year during which the borrower is overseas-based. 25
- (4) The borrower's repayment obligation for the portion of a tax year (being less than a full tax year) during which ~~the borrower is overseas-based~~ this section applies is calculated in accordance with the formula—

$$\frac{a}{365} \times b$$

where— 30

- a is the number of days in the tax year during which this section applies to the borrower ~~was overseas-based~~
- b is one of the following:

- (a) \$1,000, if the borrower's consolidated loan balance is \$1,000 or more, but less than or equal to \$15,000; or
- (b) \$2,000, if the borrower's consolidated loan balance is more than \$15,000, but less than or equal to \$30,000; or 5
- (c) \$3,000, if the borrower's consolidated loan balance is more than \$30,000.
- (5) For the purposes of this section, the amount of a borrower's consolidated loan balance is the amount of the consolidated loan balance as at the date on which this section applies to the borrower and then (subject to **section 107**) as at 31 March in each year after that date. 10
- (5) If the amount of a threshold or the amount of a repayment obligation set out in **subsections (2) to (4)** is changed by regulations, that amount is changed accordingly. 15
- (6) In this section, **consolidated loan balance** means,—
- (a) for the first tax year during a period when this section applies to a borrower, the borrower's consolidated loan balance on the date on which this section first applies to the borrower in that period; and 20
- (b) for each subsequent tax year (**year A**) during that period, the sum determined by—
- (i) including the amount of the borrower's consolidated loan balance on 31 March in the year prior to year A (the **previous year**); and 25
- (ii) including the amount of any annual administration fee charged under **section 181** for the previous year; and
- (iii) excluding any 10% bonus the borrower is entitled to under **Part 3** for an excess repayment for the previous year. 30

Compare: 1992 No 141 s 34

- 103 Exceptions to repayment obligations of overseas-based borrowers** 35
- (1) For each tax year in which an overseas-based borrower has an unpaid amount but has no loan balance, the borrower's repayment obligation is zero.

- (2) For each tax year in which an overseas-based borrower's repayment obligation under **section 102** is equal to or more than the borrower's loan balance, the borrower's repayment obligation (~~the adjusted repayment obligation~~) is equal to the ~~total of~~ borrower's loan balance. 5
- (a) ~~the borrower's loan balance; and~~
- (b) ~~any uncompounded overseas-based interest that the borrower is liable to pay at the time when the adjusted repayment obligation is paid in full.~~
- (3) Nothing in this section affects— 10
- (a) a borrower's liability for an unpaid amount or late payment interest; or
- (b) **section 185.**
- (4) This section overrides **section 102.**
- (5) In this section, loan balance means,— 15
- (a) for the first tax year during a period when **section 102** applies to a borrower, the borrower's loan balance on the date on which that section first applies to the borrower in that period; and
- (b) for each subsequent tax year (year A) during that period, the sum determined by— 20
- (i) including the amount of the borrower's loan balance on 31 March in the year prior to year A (the **previous year**); and
- (ii) including the amount of any annual administration fee charged under **section 181** for the previous year; and 25
- (iii) excluding any 10% bonus the borrower is entitled to under **Part 3** for an excess repayment for the previous year. 30

Compare: 1992 No 141 ss 14(3), 35

104 Repayment to be made by instalments

- (1) A borrower's overseas-based repayment obligation for a tax year must be paid by the borrower as follows: 35
- (a) half of the total amount must be paid in the tax year on or before 30 September:
- (b) the other half of the total amount must be paid in the tax year on or before 31 March.

- (2) If the total amount payable is not divisible into equal amounts, then the final payment carries the difference.
- (3) However, a borrower's overseas-based repayment obligation for a tax year must be paid by the borrower in instalments as determined by the Commissioner if— 5
- (a) the borrower's 3-year repayment holiday ends part-way through the tax year; or
- (b) the borrower chooses part-way through the tax year to have an opt-out period. 10
- Compare: 1992 No 141 s 36
- 105 Consequence of failure to meet repayment obligations**
A borrower may be liable to pay late payment interest if the borrower does not meet his or her repayment obligations under this subpart (*see* **section ~~429(4)~~ 130(1)**).
- Subpart 5—New Zealand-based non-resident borrowers and borrowers with New Zealand-based and overseas-based repayment obligations 15
- 106 Notification of worldwide income by New Zealand-based non-resident borrowers** 20
- (1) This section applies to a New Zealand-based borrower who is a non-resident.
- (2) For each tax year and each part of a tax year to which this section applies to a borrower, the borrower must notify the Commissioner, in a manner acceptable to the Commissioner, of the borrower's annual gross income and annual total deductions. 25
- (3) The borrower must notify the Commissioner at the time when, if the borrower were a New Zealand resident, he or she would have had to provide—
- (a) a declaration of pre-taxed income; or 30
- (b) a return of income for a tax year.
- (4) The Commissioner may require the borrower to provide evidence of the borrower's annual gross income and annual total deductions. 35
- Compare: 1992 No 141 s 14A

107 Repayment obligations of borrowers who are overseas-based for part of tax year

- (1) If a borrower is both New Zealand-based and overseas-based during a tax year,—
- (a) **subparts 1 to 3** apply to the borrower for the period in the tax year during which he or she is New Zealand-based (the **New Zealand-based period**), except that, for the purposes of **subparts 2 and 3**, the amount of the annual repayment threshold for the tax year must be proportionately decreased to the same proportion as the number of days in the New Zealand-based period bears to the number of days in a year; and
- (b) only the income that the borrower derived during the period that the borrower was New Zealand-based during the year must be taken into account when calculating the borrower's repayment obligation under **subparts 1 to 3**; and
- (c) **section 102(4)** or **103** (as applicable) applies to any portion of the tax year during which the borrower is overseas-based and—
- (i) is not entitled to a repayment holiday (as defined in **section 98**); or
- (ii) has chosen to have an opt-out period (as defined in **section 98**); and
- (d) the borrower's overseas-based repayment obligation is payable in instalments as determined by the Commissioner.
- (2) **Subsection (1)** applies despite anything to the contrary in this Act.
Compare: 1992 No 141 ss 14(2), 36A

108 Overseas-based borrowers who derive salary or wages from New Zealand

- (1) **Subpart 1** applies to an overseas-based borrower who derives salary or wages from New Zealand as if the borrower were New Zealand-based.
- (2) **Subsection (1)** applies despite anything to the contrary in this Act.

109 Overseas-based borrower's salary or wage deductions standard and Commissioner deductions satisfy overseas-based repayment obligation

- (1) A specified deduction that is made for an overseas-based borrower in a tax year satisfies (so far as it extends) each future obligation of the borrower that has a due date in that tax year in the order in which those obligations become due. 5
- (2) ~~However,—~~
- (a) **subsection (1)** does not apply to a future obligation whose due date has passed at the time when the deduction is made; and 10
- (b) the Commissioner may, if the Commissioner considers that it is fair and reasonable to do so, treat a specified deduction as satisfying a future obligation that has a due date in the tax year following the tax year in which the specified deduction was made. 15
- (3) In this section,—
- future obligation** means an instalment of an overseas-based borrower's repayment obligation for a tax year that must be paid in accordance with **section 104 or 107(1)(d)** 20
- specified deduction** means a deduction made (in accordance with **section 108**)—
- (a) from the salary or wages an overseas-based borrower derives from New Zealand; and
- (b) ~~under—~~ 25
- (i) **sections 31 and 32**; or
- (ii) **section 33(1)(a)** in relation to an additional deduction rate notice issued for the purposes of **section 43(1)(a)**—
- specified deduction** means the following deductions made (in accordance with **section 108**) from the salary or wages an overseas-based borrower derives from New Zealand: 30
- (a) a standard deduction:
- (b) so much of a Commissioner deduction for the purposes set out in **section 43(1)(a)** as the Commissioner considers relates to a significant under-deduction that occurred while the borrower was overseas-based. 35
- (4) This section overrides **section 487-186**.

Part 3 Excess repayments

110 Interpretation

In this Part, unless the context otherwise requires,—

10% bonus means the bonus specified in, as appropriate, **section 115(2), 116(2), or 117(2)** 5

excess repayment has the meaning given to it in **section 111**

final excess repayment means an excess repayment that, when combined with the resulting 10% bonus, results in the borrower's consolidated loan balance being fully repaid. 10

Compare: 1992 No 141 s 45A

~~111~~ Meaning of excess repayment

~~(1)~~ In this Part, **excess repayment** means so much of a borrower's salary or wage deductions and extra deductions in a tax year, and payments made to the Commissioner for the borrower for a tax year, as exceeds— 15

~~(a)~~ the borrower's total obligations for the tax year; and

~~(b)~~ all amounts that, during the tax year, are due and payable for a prior tax year.

~~(2)~~ In determining whether an excess repayment has been made, the Commissioner must— 20

~~(a)~~ disregard a deduction from a borrower's salary or wages that is more than the amount that is required to be deducted in accordance with **subpart 1 of Part 2** unless it is a significant over-deduction or an extra deduction; 25
and

~~(b)~~ disregard a salary or wage deduction or extra deduction made, or payment made to the Commissioner, that is subsequently refunded; and

~~(c)~~ treat a borrower's repayment obligation as if any relief granted under **section 139** had not been granted; and 30

~~(d)~~ disregard any fee refunded by an education provider to the loan manager or the Commissioner.

~~(3)~~ Excess repayments may be made for a tax year—

~~(a)~~ at any time during that tax year; and 35

- (b) if a borrower must make interim payments for that tax year, at any time up to and including the due date of that borrower's final interim payment for that tax year.
- (4) In **subsection (1)**, **total obligations** means the total amount of— 5
- (a) a borrower's repayment obligations for a tax year, excluding any amount that—
- (i) is required to be deducted from a borrower's salary or wages in accordance with an additional deduction rate notice issued under **section 43(2)**; and 10
- (ii) must be paid by the borrower during the tax year in accordance with a written notification under **section 47**; and
- (b) any uncompounded late payment interest that the borrower has; and 15
- (c) any unpaid amount that the borrower has; and
- (d) any late filing penalties that must be paid by the borrower during the tax year; and
- (e) any student loan shortfall penalties that must be paid by the borrower during the tax year. 20

Compare: 1992 No 141 s 45B

111 Meaning of excess repayment

- (1) A borrower makes an excess repayment in relation to a tax year if, as at the close of that tax year, that borrower's total payments exceed his or her total obligations. 25
- (2) In determining whether an excess repayment has been made, the Commissioner must—
- (a) disregard a standard deduction that is more than the amount that is required to be deducted unless— 30
- (i) it is a significant over-deduction; or
- (ii) it is made from a New Zealand-based borrower who derives other income; or
- (iii) it is made (in accordance with **section 108**) from the salary or wages an overseas-based borrower derives from New Zealand; and 35
- (b) disregard a salary or wage deduction or a payment made to the Commissioner that is subsequently refunded; and

- (c) treat a borrower's repayment obligation as if any relief granted under **section 139** had not been granted; and
- (d) disregard any fee refunded by an education provider to the loan manager or the Commissioner.
- (3) In this section,— 5
- total obligations** means—
- (a) all unpaid amounts; and
- (b) all repayment obligations for the tax year
- total payments** means—
- (a) all salary or wage deductions required to be made during the tax year; and 10
- (b) all payments received by the Commissioner during the tax year for a borrower who—
- (i) does not have to pay interim payments for the tax year; or 15
- (ii) must pay the final instalment of an overseas-based repayment obligation in the tax year; and
- (c) for a borrower who must pay interim payments for the tax year, all payments that—
- (i) are received by the Commissioner on or before the due date of the borrower's final interim payment for the tax year; and 20
- (ii) are for the tax year; and
- (d) for a borrower who must pay the final instalment of an overseas-based repayment obligation after the tax year, all payments that— 25
- (i) are received by the Commissioner on or before the due date of the final instalment; and
- (ii) are for the tax year; and
- (e) any excess repayment from a prior tax year that is used to satisfy a repayment obligation for the tax year in accordance with **section 123(1)(b)**. 30

Compare: 1992 No 141 s 45B

112 Commissioner must notify borrower of excess repayment

- (1) **Subsection (2)** applies if— 35
- (a) an excess repayment is made for a borrower; or

- (b) upon investigation by the Commissioner of a borrower's repayment obligation for a prior tax year, the Commissioner is satisfied that—
- (i) the repayment obligation assessed by the Commissioner is incorrect; and 5
 - (ii) as a result, an excess repayment has been made.
- (2) ~~The Commissioner must—~~
- (a) ~~offset the excess repayment against the borrower's consolidated loan balance in accordance with **section 188 or 189**, as applicable; and~~ 10
 - (b) ~~as soon as practicable, notify the borrower in writing—~~
 - (i) ~~that an excess repayment has been offset against the borrower's consolidated loan balance in accordance with **section 188 or 189**, as applicable; and~~ 15
 - (ii) ~~of the borrower's options in relation to excess repayments (see **section 113**); and~~
 - (iii) ~~of the time frames within which the borrower must notify the Commissioner if the borrower wishes to exercise 1 or more of those options.~~ 20
- (3) ~~**Subsection (2)(b)** does not apply if an excess repayment is \$5 or less.~~
- (2) The Commissioner must, as soon as practicable, notify the borrower in writing—
- (a) that an excess repayment has been made for the borrower; and 25
 - (b) of the amount of the excess repayment; and
 - (c) that the excess repayment has been offset against the borrower's consolidated loan balance; and
 - (d) of the borrower's options in relation to the excess repayment (see **section 113**); and 30
 - (e) of the time frames within which the borrower must notify the Commissioner if the borrower wishes to exercise 1 or more of those options.
- (3) **Subsection (2)** does not apply if the excess repayment is \$5 or less. 35

Compare: 1992 No 141 s 58A

113 Options that apply to excess repayments

- (1) If an excess repayment is made for a borrower, the borrower may—
- (a) be eligible to receive a 10% bonus in accordance with **subpart 1**; or 5
 - (b) choose to receive a refund of the excess repayment in accordance with **subpart 2**; or
 - (c) choose to use the excess repayment to satisfy a future repayment obligation of the borrower in accordance with **subpart 2**. 10
- (2) However, any part of an excess repayment that exceeds a borrower's consolidated loan balance—
- (a) is not eligible for a 10% bonus; and
 - (b) must be refunded by the Commissioner (*see sections 193 and 194*). 15
- (3) **Subsection (2)** overrides **section 122(1)(a)**.

114 Exception to general rule if repayment obligations for prior tax years reassessed

- (1) **Subsection (2)** applies if, upon investigation by the Commissioner of a borrower's repayment obligations for 2 or more prior tax years (the **investigated years**),— 20
- (a) the Commissioner assesses the borrower as having a repayment obligation for an investigated year for which no assessment has been made previously, or alters an assessment for an investigated year so as to increase the repayment obligation; and 25
 - (b) the Commissioner also identifies that an excess repayment has been made for an investigated year.
- (2) If this subsection applies,—
- (a) the Commissioner may, to the extent that he or she considers equitable, offset the excess repayment against any repayment obligation due for any of the investigated years; and 30
 - (b) **sections 112 and 113** apply only to so much of the excess repayment (if any) as is not offset against a repayment obligation in accordance with **paragraph (a)**. 35

- (3) **Subsection (2)** applies despite anything to the contrary in this Act.
 Compare: 1992 No 141 s 58

Subpart 1—Excess repayment bonus

- 115 Borrower’s entitlement to 10% bonus for ~~total excess repayments~~ excess repayment of \$500 or more** 5
- (1) **Subsection (2)** applies to a borrower if—
- (a) ~~the borrower’s total excess repayments for a tax year are \$500 or more; and~~
 - (a) the borrower’s excess repayment for a tax year is \$500 or more; and 10
 - (b) at the beginning of the tax year for which the excess ~~repayments were~~ repayment was made, the borrower’s loan balance was \$550 or more.
- (2) The Commissioner must reduce the borrower’s loan balance by an amount equal to 10% of the borrower’s ~~total excess repayments~~ excess repayment for the relevant tax year. 15
 Compare: 1992 No 141 s 45C
- 116 Borrower’s entitlement to bonus if loan balance is less than \$550** 20
- (1) **Subsection (2)** applies to a borrower if—
- (a) the borrower’s final excess repayment for a tax year is \$500; and
 - (b) at the date on which the final excess repayment was made, the borrower’s loan balance was more than \$500 but less than \$550. 25
- (2) The Commissioner must reduce the borrower’s loan balance to zero.
 Compare: 1992 No 141 s 45D
- 117 Borrower may be entitled to 10% bonus if under-deduction is due to PAYE system** 30
- (1) **Subsection (2)** applies to a borrower if—
- (a) the borrower derives other income; and
 - (b) ~~the borrower’s total excess repayments for a tax year are less than \$500; and~~ 35

- (b) the borrower's excess repayment for a tax year is less than \$500; and
- (c) the difference between the borrower's ~~total excess repayments~~excess repayment for the tax year and \$500 (the **shortfall**) is because of an under-deduction through the PAYE system; and 5
- (d) the shortfall meets 1 or more of the following criteria:
- (i) it is less than \$20;
- (ii) it is due to the borrower starting or ending employment; 10
- (iii) it is due to an action or an omission of the borrower's employer; and
- (e) the Commissioner considers that the borrower's ~~total excess repayments~~excess repayment for the tax year would have been \$500 or more if the under-deduction referred to in **paragraph (c)** had not occurred; and 15
- (f) at the beginning of the tax year, the borrower's loan balance was \$550 or more.
- (2) The Commissioner must reduce the borrower's loan balance by an amount equal to 10% of the borrower's ~~total excess repayments~~excess repayment for the tax year that the Commissioner considers would have been made if the under-deduction referred to in **subsection (1)(c)** had not occurred. 20

Compare: 1992 No 141 s 45E

- 118 Time at which 10% bonus is credited** 25
- (1) If a borrower's loan balance will be fully repaid as a result of being reduced by a 10% bonus, that bonus must be credited to the borrower's loan balance with effect from the date on which the final excess repayment was made.
- (2) If a borrower's loan balance will not be fully repaid as a result of being reduced by a 10% bonus, that bonus must be credited to the borrower's loan balance with effect from ~~1 April in the tax year that follows the tax year for which the excess repayments were made.~~ 30
- (a) 1 April in the tax year that follows the tax year for which the excess repayment was made; or 35
- (b) any other date that the Commissioner considers appropriate if the borrower dies or is declared bankrupt.

- (3) ~~However, the Commissioner must not credit a 10% bonus to a borrower's loan balance in accordance with **subsection (1) or (2)** until after the Commissioner has determined the borrower's total excess repayments for a tax year.~~
- (3) However, the Commissioner must not credit a 10% bonus to a borrower's loan balance in accordance with **subsection (1) or (2)** until the earlier of the following: 5
- (a) the Commissioner determines the borrower's excess repayment for the tax year; or
- (b) the Commissioner is satisfied that there is unlikely to be any further activity in relation to the borrower's student loan. 10
- (4) If the Commissioner credits a borrower's loan balance in accordance with **subsection (3)(b)**, the Commissioner may reverse that action and instead credit the borrower's loan balance in accordance with **subsection (3)(a)** if— 15
- (a) the borrower requests the Commissioner to do so; or
- (b) the Commissioner considers that it is appropriate in the circumstances.
- (5) A request under **subsection (4)(a)** must be made by notifying the Commissioner (see **section 204**). 20
- Compare: 1992 No 141 s 45F(1)–(3)

119 Restriction on amount of 10% bonus

- (1) The total amount of a 10% bonus that may be credited to a borrower must not exceed an amount equal to one-eleventh of the borrower's loan balance on either— 25
- (a) the date on which the 10% bonus is credited; or
- (b) an earlier date determined by the Commissioner, at his or her discretion, that is within the relevant tax year.
- (2) The Commissioner may determine a date under **subsection (1)(b)** for a borrower only if— 30
- (a) 1 or more excess repayments are made for a tax year; and
- (b) a final excess repayment was made for the same tax year. 35
- Compare: 1992 No 141 s 45F(4), (5)

119A Application of sections 110 to 114 and this subpart to part years

If a 10% bonus is credited to a borrower's loan balance part-way through a tax year, then—

- (a) sections 110 to 114 and this subpart must be interpreted as if all references to a tax year were a reference to a tax year that ends on the day on which the 10% bonus is credited to the borrower's loan balance; and 5
- (b) the reference to all repayment obligations for the tax year in the definition of total obligations in section 111(3) were a reference to all repayment obligations payable during the tax year. 10

120 Consequences of refund or credit to next tax year

- (1) If the whole or part of a borrower's excess repayment for a tax year is refunded or used to satisfy a future repayment obligation of the borrower in accordance with **subpart 2**, any 10% bonus that was credited to that borrower must be reduced to an amount equal to 10% of the remaining excess repayment (if any) for the tax year that is \$500 or more. 15
- (2) If the 10% bonus was credited under **section 117(2)**, then the remaining excess repayment (if any) for the tax year that is \$500 or more must be determined by reference to the borrower's ~~total excess repayments~~excess repayment for the tax year that the Commissioner considered (under **section 117**) would have been made if the under-deduction referred to in **section 117(1)(c)** had not occurred. 20 25

Compare: 1992 No 141 s 45G

121 Commissioner must advise borrowers to seek financial advice

The Commissioner must, in all material that provides information about 10% bonuses and that is made available to all borrowers, include a statement to the effect that borrowers are advised to seek appropriate financial advice before making excess repayments in order to obtain a 10% bonus. 30

Compare: 1992 No 141 s 45H

35

Subpart 2—Refund of excess repayments
and satisfaction of future repayment
obligation

122 Limit on use of excess repayments

- (1) If an excess repayment is \$5 or less, the Commissioner may 5
refrain from—
- (a) refunding the excess repayment to a borrower; or
 - (b) using the excess repayment to satisfy a future repayment obligation of the borrower.
- (2) This section overrides **section 123**. 10
Compare: 1992 No 141 s 51(1)

123 Borrower may receive refund or apply excess repayment to future repayment obligations

- (1) A borrower may choose, by notifying the Commissioner in a 15
manner acceptable to the Commissioner, that the whole or part of an excess repayment—
- (a) be refunded (see **sections 193 and 194**); or
 - (b) be used to satisfy a future repayment obligation of the borrower.
- (2) If the borrower is New Zealand-based, the borrower must 20
make a choice under **subsection (1)(a)** within 6 months after the date on which the borrower received notification of the excess repayment from the Commissioner in accordance with **section 112**.
- (3) If the borrower is overseas-based, the borrower must make a 25
choice under **subsection (1)(a)** within 2 months after the date on which the borrower received notification of the excess repayment from the Commissioner in accordance with **section 112**.
- (4) A choice made by a borrower under **subsection (1)(a)** is ir- 30
revocable.
Compare: 1992 No 141 ss 56, 57

123 Borrower may receive refund or apply excess repayment to future repayment obligations

- (1) A borrower may choose for the whole or part of an excess 35
repayment to be—

- (a) refunded (*see* **sections 193 and 194**); or
 (b) used to satisfy a future repayment obligation of the borrower.
- (2) To exercise a choice under **subsection (1)**, the borrower must notify the Commissioner in a manner acceptable to the Commissioner within 6 months after the date on which the borrower was notified of the excess repayment in accordance with **section 112**. 5
- (3) A choice made by the borrower to receive a refund of an excess repayment is irrevocable. 10
 Compare: 1992 No 141 ss 56, 57

Part 4

Interest, relief, penalties and offences, rights of objection, and rights to challenge

Subpart 1—Interest 15

124 No interest applied to student loans except as specified in this Part

Except as provided in this Part, no interest is payable on a consolidated loan balance.

Overseas-based interest charged for borrowers who are overseas-based 20

125 ~~Overseas-based interest charged for borrowers who are overseas-based~~

- (1) ~~A borrower is liable to pay overseas-based interest on his or her loan balance for each day that the borrower is overseas-based.~~ 25
- (2) ~~Overseas-based interest must be calculated in accordance with the formula—~~

$$a = \frac{(b \times e)}{365}$$

where—

- a is the overseas-based interest 30
 b is the borrower's loan balance on the relevant day

e is the base interest rate.

Compare: 1992 No 141 ss 38AA, 38AB(3), 38AC(4), (5)

126 Overseas-based interest calculated daily, charged monthly, and compounded annually

- (1) Overseas-based interest is calculated each day that a borrower is overseas-based. 5
- (2) Overseas-based interest is charged on the last day of each month.
- (3) However, no interest is charged under **subsection (2)** for a month if the loan balance and all uncompounded overseas-based interest are paid in full on or before the last day of that month. 10
- (4) On 31 March each year, a borrower's loan balance is increased by the amount of the outstanding overseas-based interest.
- (5) In this section, **outstanding overseas-based interest** means all overseas-based interest charged in relation to a loan balance on or after 1 April that remains unpaid on 31 March the following year. 15

127 Notification that overseas-based interest has compounded

- (1) The Commissioner must, as soon as practicable after a borrower's loan balance is increased by the amount of the outstanding overseas-based interest in accordance with **section 126(4)**, notify the borrower in writing— 20
- (a) that the borrower's loan balance has been increased by the amount of the outstanding overseas-based interest; and 25
- (b) of the new total of the borrower's loan balance; and
- (c) that the new total of the borrower's loan balance is itself subject to overseas-based interest.
- (2) The Commissioner may notify a borrower in writing of the borrower's loan balance and overseas-based interest at any other time the Commissioner chooses. 30

Compare: 1992 No 141 s 43(1)

128 Overseas-based interest written-off for quick repayment of consolidated loan balance

- (1) This section applies to a person who—
- (a) was an overseas-based borrower; and
 - (b) would subsequently have been treated as being New Zealand-based except that he or she ceased to be a borrower because of **paragraph (c)**; and
 - (c) fully repaid his or her consolidated loan balance before the end of the period of 183 consecutive days under which the borrower would have been treated as being New Zealand-based.
- (2) Overseas-based interest that is charged on the person's loan balance is reduced to zero for the period—
- (a) starting on the first day of the 183-day period; and
 - (b) ending on the day on which the person's consolidated loan balance was fully repaid.

Compare: 1992 No 141 s 38AM

*Late payment interest***129 Late payment interest charged on unpaid amount**

- (1) A borrower is liable to pay late payment interest on his or her unpaid amount if that unpaid amount is \$500 or more (or any other level prescribed by regulations).
- (2) Late payment interest must be calculated in accordance with the formula—

$$a = \frac{(b \times c)}{365}$$

where—

- a is the late payment interest
- b is the unpaid amount
- c is the base interest rate plus 4%.

Compare: 1992 No 141 s 44

130 Late payment interest reduced if instalment arrangement complied with

- (1) If an instalment arrangement applies to an unpaid amount, then any late payment interest that is payable on that unpaid amount

must be calculated under **section 129** as if item c in the formula in **section 129(2)** is the base interest rate plus 2%.

- (2) **Subsection (1)** applies—
- (a) on the day after the date on which the instalment arrangement starts: 5
- (b) until the earlier of—
- (i) the date on which the instalment arrangement ends; and
- (ii) the date on which the instalment arrangement is cancelled in accordance with **section 147**; and 10
- (iii) the date on which the Commissioner cancels the instalment arrangement under section 177B(6) of the Tax Administration Act 1994.
- (3) However, if an instalment that has become due under the instalment arrangement has not been paid in full and on time (the **unpaid instalment**), **subsection (1)** ceases to apply— 15
- (a) on the day after the date on which the instalment before the unpaid instalment was paid:
- (b) until the date on which the unpaid instalment and the instalment immediately following the unpaid instalment have been paid in full. 20
- (4) **Subsection (2)(b)** overrides **subsection (3)(b)**.

131 Late payment interest calculated daily, charged monthly, and compounded annually

- (1) Late payment interest is calculated each day after the due date of the unpaid amount until the unpaid amount and all late payment interest that is charged in relation to that amount are paid. 25
- (2) Late payment interest is charged on the last day of each month.
- (3) However, no interest is charged under **subsection (2)** for a month if the unpaid amount and all late payment interest that has been charged in relation to that amount are paid in full on or before the last day of that month. 30
- (4) On 31 March each year, a borrower's unpaid amount is increased by the amount of the outstanding late payment interest. 35
- (5) In this section, **outstanding late payment interest** means all late payment interest charged in relation to an unpaid amount

on or after 1 April that remains unpaid on 31 March the following year.

132 Initial notification that late payment interest is payable

- (1) The Commissioner must, as soon as practicable after a borrower becomes liable to pay late payment interest, notify that borrower in writing. 5
- (2) The notification must specify—
- (a) the unpaid amount; and
 - (b) that the borrower is liable to pay late payment interest on the unpaid amount in accordance with this subpart; and 10
 - (c) the amount of late payment interest (if any) that has been charged on the unpaid amount under **section 131(2)** as at the date of the notification; and
 - (d) the date on which the borrower will next be charged with late payment interest under **section 131(2)**. 15

Compare: 1992 No 141 ss 43(1), 45

133 Ongoing notification requirements regarding late payment interest

- (1) The Commissioner must, as soon as practicable after a borrower has been charged with late payment interest under **section 131(2)**, notify the borrower in writing— 20
- (a) of the unpaid amount on which the late payment interest has been charged; and
 - (b) that the borrower has been charged with late payment interest on that unpaid amount; and 25
 - (c) of the amount of that interest; and
 - (d) of the date on which the borrower will next be charged with late payment interest under **section 131(2)**.
- (2) The Commissioner must, as soon as practicable after a borrower's unpaid amount is increased by the amount of the outstanding late payment interest in accordance with **section 131(4)**, notify the borrower in writing— 30
- (a) that the borrower's unpaid amount has been increased by the amount of the outstanding late payment interest; and 35
 - (b) of the new total of the borrower's unpaid amount; and

- (c) that the new total of the borrower's unpaid amount is itself subject to late payment interest.
- (3) The Commissioner may notify a borrower in writing of the borrower's outstanding obligations, unpaid amount, and late payment interest at any other time the Commissioner chooses. 5
Compare: 1992 No 141 ss 43(1), 45

Loan interest charged for all borrowers

125 Loan interest charged for all borrowers

- (1) A borrower is liable to pay loan interest on his or her loan balance for each day that the borrower has a loan balance. 10
- (2) Loan interest must be calculated in accordance with the formula—

$$a = \frac{(b \times c)}{365}$$

where—

- a is the loan interest
- b is the borrower's loan balance on the relevant day 15
- c is the base interest rate.

126 Loan interest calculated daily and charged and compounded annually

- (1) Loan interest is calculated each day that a borrower has a loan balance. 20
- (2) Loan interest is charged and added to a borrower's loan balance on the last day of each year.

127 Notification that loan interest has compounded

- (1) The Commissioner must, as soon as practicable after loan interest has been added to a borrower's loan balance in accordance with **section 126(2)**, notify the borrower in writing— 25
- (a) that loan interest has been added to the borrower's loan balance; and
- (b) of the new total of the borrower's loan balance; and
- (c) that the new total of the borrower's loan balance is itself subject to loan interest. 30

- (2) The Commissioner may notify a borrower in writing of the borrower's loan balance and loan interest at any other time the Commissioner chooses.

Compare: 1992 No 141 s 43(1)

128 Full interest write-off for New Zealand-based borrowers 5

The amount of loan interest calculated on a borrower's loan balance must be reduced to zero for each day that the borrower is New Zealand-based.

Compare: 1992 No 141 ss 38AA, 38AK

129 Loan interest written off for quick repayment of consolidated loan balance 10

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

(a) was an overseas-based borrower; and

(b) would subsequently have been treated as being New Zealand-based except that he or she ceased to be a borrower because of **paragraph (c)**; and 15

(c) fully repaid his or her consolidated loan balance before the end of the period of 183 consecutive days under which the borrower would have been treated as being New Zealand-based. 20

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

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

(b) ending on the day on which the person's consolidated loan balance was fully repaid. 25

Compare: 1992 No 141 s 38AM

Late payment interest

130 Late payment interest charged on unpaid amount

- (1) A borrower is liable to pay late payment interest on each unpaid amount if that unpaid amount is \$334 or more (or any other level prescribed by regulations). 30

- (2) Late payment interest is calculated, charged, and added to a borrower's unpaid amount as follows:

(a) 0.843% of the unpaid amount on the day after its due date; and 35

- (b) 0.843% of the unpaid amount as at each day that falls 1 month after the day on which late payment interest is imposed under **paragraph (a)** or under this paragraph.

Compare: 1992 No 141 s 44

131 Notification of late payment interest 5

The Commissioner must, as soon as practicable after charging late payment interest, give the borrower charged with that interest written notice of the amount of that interest.

Compare: 1992 No 141 s 45

132 Monthly late payment interest written off if instalment arrangement complied with 10

(1) This section applies if—

(a) a borrower is liable to pay late payment interest on an unpaid amount under **section 130**; and

(b) the borrower has entered into an instalment arrangement in relation to the unpaid amount in accordance with **section 146**. 15

(2) The unpaid amount continues to be subject to late payment interest despite the instalment arrangement.

(3) However, the borrower's unpaid amount is reduced by the amount of all late payment interest that accrued on the unpaid amount under **section 130(2)(b)** during the period of the instalment arrangement if— 20

(a) the instalment arrangement ends; and

(b) the borrower met his or her obligations under the instalment arrangement. 25

Matters of general application to interest

134 No interest on consolidated loan balance in credit

No interest is payable on—

(a) a consolidated loan balance that is in credit: 30

(b) an excess repayment:

(c) a payment that is made under this Act before its due date.

Compare: 1992 No 141 s 42

135 Commissioner's power to correct interest when charged in error

- (1) All amounts of interest charged must be taken to be correct unless a borrower establishes by proceedings under Part 8A of the Tax Administration Act 1994 that he or she should not have been charged with the amount of interest that was charged. 5
- (2) However, the Commissioner may amend an amount of interest charged if this is necessary to correct an error.
- (3) If an amount of interest charged is corrected, the Commissioner must notify the relevant borrower in writing as soon as practicable after the amendment. 10

Compare: 1992 No 141 s 43(2)–(4)

Subpart 2—Relief

*Different types of relief***136 Power of Commissioner in relation to small amounts** 15

- (1) The Commissioner may refrain from—
- (a) issuing a notice of assessment in relation to a repayment obligation that is payable by a borrower for a tax year if the amount payable is ~~\$20 or less~~ less than \$20; or
- (b) issuing a notice of assessment if the total amount of a borrower's remaining repayments for a tax year is ~~\$20 or less~~ less than \$20; or
- (c) collecting a repayment obligation that is payable by a borrower for a tax year if the amount payable is ~~\$20 or less~~ less than \$20; or 25
- (ca) collecting 1 or more remaining repayments that are payable by a borrower for a tax year if the total amount of the borrower's remaining repayments payable for the tax year is less than \$20; or
- (d) collecting, and may write-off, any amount that is payable by an employer or PAYE intermediary for any period under this Act if the amount payable is \$20 or less. 30
- ~~(2) The Commissioner may refrain from collecting payment of an unpaid amount if that unpaid amount is less than \$500.~~ 35

- (2) The Commissioner may refrain from collecting payment of a repayment obligation (or part of a repayment obligation) if that repayment obligation (or part of a repayment obligation)—
 (a) is more than \$20 but less than \$334; and
 (b) has not been paid by the due date (as that term is defined in **section 4A(2)**). 5
- (3) Any amount that the Commissioner refrains from collecting under **subsection (1)(c) or (2)** is not written off, and remains part of the borrower's loan balance:—
 (a) under **subsection (1)(c) or (ca)** is not written off, and remains part of the borrower's loan balance: 10
 (b) under **subsection (2)** is not written off, and is added to the borrower's loan balance.
- (4) This section applies despite anything to the contrary in this Act. 15
 Compare: 1992 No 141 ss 51(2)–(5), 51A

137 Application for different types of relief for borrower

- (1) A borrower, or a person on a borrower's behalf, may apply for 1 or more of the following:
 (a) relief from late payment interest (*see* **section 138**): 20
 (b) hardship relief for the current tax year, any prior tax year, or the next tax year (*see* **section 139**):
 (c) financial relief by entry into an instalment arrangement (*see* **section 146**).
- (2) An application under **subsection (1)(a)** must be made by notifying the Commissioner in a manner acceptable to the Commissioner. 25
- (3) An application under **subsection (1)(b)**—
 (a) must be made by notifying the Commissioner in a manner acceptable to the Commissioner: 30
 (b) that relates to hardship relief for the next tax year must be made on or before 31 March in the tax year that immediately precedes the tax year for which relief is sought.
- (4) An application under **subsection (1)(c)** must be made in accordance with **section 146(1)**. 35
 Compare: 1992 No 141 s 54

*Relief from late payment interest***138 Commissioner may grant relief from late payment interest**

- (1) **Subsection (2)** applies—
- (a) if a borrower has been charged with late payment interest; and 5
 - (b) regardless of whether that late payment interest has been paid, either in whole or in part; and
 - (c) if an application is made under **section 137(1)(a)** for relief from late payment interest.
- (2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the late payment interest as the Commissioner considers equitable. 10
- ~~(3) If all or part of the late payment interest is cancelled,—~~
- ~~(a) the borrower's consolidated loan balance and, if the late payment interest has been compounded under **section 131(4)**, unpaid amount are decreased by the amount of the cancelled late payment interest; and 15~~
 - ~~(b) the Commissioner must refund any payment made in excess of the remaining amount of late payment interest payable (if any) by the borrower in accordance with **sections 193 and 194**. 20~~
- (3) The Commissioner must refund any late payment interest that has been paid and is cancelled (see **sections 193 and 194**). 25
- Compare: 1992 No 141 s 53

*Hardship relief***139 Hardship relief for any tax year**

- (1) If an application is made under **section 137(1)(b)** for hardship relief, the Commissioner may, for any period the Commissioner considers equitable, decrease a borrower's repayment obligation if the Commissioner— 30
- (a) is satisfied that payment of that repayment obligation is causing, or would cause, serious hardship to the borrower; or
 - (b) considers that there are other special reasons that make it fair and reasonable to do so. 35

- (2) However, ~~despite **section 192**~~, the Commissioner must not refund any amount that was deducted or paid to meet a repayment obligation for a tax year prior to the current tax year other than the tax year that immediately precedes the current tax year. 5

Compare: 1992 No 141 ss 55, 55A, 55B

140 Special deduction rate certificate for hardship relief

- (1) **Subsection (2)** applies if—
- (a) the Commissioner decreases the repayment obligation of a borrower under **section 139**; and 10
 - (b) the borrower derives salary or wages.
- (2) The Commissioner may issue a special deduction rate certificate that—
- (a) specifies a special deduction rate that reflects the Commissioner's decision under **section 139**; and 15
 - (b) specifies the period for which the special deduction rate is to apply to the borrower; and
 - (c) ~~requires the borrower's employer to make salary or wage deductions at the special deduction rate.~~
 - (c) requires the borrower's employer or PAYE intermediary to make deductions from the borrower's salary or wages at the special deduction rate. 20
- (3) The issue of a special deduction rate certificate may form part of or all of the means by which a borrower's repayment obligation is decreased under **section 139**. 25

Compare: 1992 No 141 ss 20A(2), 55B

141 Issue and application of special deduction rate certificate

- (1) If the Commissioner issues a special deduction rate certificate under **section 140**, the Commissioner must give a copy of the certificate to the borrower. 30
- (2) The special deduction rate certificate revokes all other special deduction rate certificates previously issued in relation to the borrower under **section 39, 94, or 140**.

Compare: 1992 No 141 s 20A(5), (6)

- 142 Time when special deduction rate ceases to apply**
- The special deduction rate applies until the earlier of—
- (a) the end of the period specified in the special deduction rate certificate; or
 - (b) the date on which the Commissioner notifies the employer in writing otherwise; or 5
 - (c) the date on which the borrower notifies the employer otherwise.
- Compare: 1992 No 141 s 20A(4)
- 143 Effect of Commissioner’s decision under section 139** 10
- An amount that, as a result of a decision under **section 139**, the Commissioner refunds to, or does not collect from, a borrower—
- (a) is not written off; and
 - (b) remains part of the borrower’s loan balance; and 15
 - (c) is not an unpaid amount.
- Compare: 1992 No 141 s 55C
- 144 Borrowers must notify Commissioner of change of circumstances**
- A borrower who applies for hardship relief under **section 137(1)(b)** must notify the Commissioner, and provide details, as soon as practicable if there is a change in the borrower’s circumstances that—
- (a) means that any information supplied to the Commissioner under **section 137** is incorrect or inaccurate; or 20
 - (b) may affect whether or not a borrower would have been, or will continue to be, granted hardship relief under **section 139**. 25
- Compare: 1992 No 141 s 55D(1)
- 145 Commissioner may review grant of hardship relief** 30
- (1) The Commissioner may review any decision he or she made to grant hardship relief to a borrower.
 - (2) If for any reason the Commissioner considers that the circumstances for the grant of that hardship relief have changed, the Commissioner may do either or both of the following: 35

- (a) require the borrower to take any action that is required to reverse the effects of the hardship relief that was granted to the borrower:
- (b) reinstate all or part of the repayment obligation that would have applied to the borrower if hardship relief had not been granted to the borrower, and require payment of any amount that would have been due during the relevant tax year. 5

Compare: 1992 No 141 s 55D(2), (3)

Instalment arrangements

10

146 Application for instalment arrangement

- (1) An application for entry into an instalment arrangement—
 - (a) may be made at any time in relation to an unpaid amount ~~and any un-compounded late payment interest~~; and
 - (b) must be made in accordance with section 177(1)(b) of the Tax Administration Act 1994. 15
- (2) Sections 177(1)(b) and (3) to (5), 177A, 177B, and 177CA of the Tax Administration Act 1994 apply to an application under **subsection (1)** and to an instalment arrangement granted as a result of that application, as far as applicable and with all necessary modifications, as if— 20
 - (a) every reference to a taxpayer included a borrower; and
 - (b) every reference to tax included an unpaid amount ~~and un-compounded late payment interest~~.

147 Instalment arrangement cancelled if non-compliance

25

- (1) An instalment arrangement is ~~cancelled if 2 instalments that were due under the instalment arrangement are not paid in full and on time.~~
- (2) Cancellation under **subsection (1)** takes effect— 30
 - (a) ~~on the day after the due date of the second unpaid instalment; and~~
 - (b) ~~whether or not the first unpaid instalment was subsequently paid on or before the due date of the second unpaid instalment.~~

Subpart 3—Penalties and offences

*Late filing penalties***148 Late filing penalty for certain declarations**

- (1) If a borrower does not complete and provide a declaration on time, the Commissioner may— 5
- (a) notify the borrower in writing that a late filing penalty will be imposed if the declaration is not completed and filed within 30 days of the date of the notification; or
 - (b) give public notice that a late filing penalty will be imposed on borrowers who do not complete and file the declaration within 30 days of the date of the notice. 10
- (2) A borrower is liable to pay a late filing penalty if—
- (a) the Commissioner notified the borrower or gave public notice in accordance with **subsection (1)**; and
 - (b) the declaration is not completed and filed within 30 days of the date of the notification or notice. 15
- (3) The late filing penalty for a borrower with net income—
- (a) below \$100,000 is \$50;
 - (b) between \$100,000 and \$1,000,000 (both figures inclusive) is \$250; 20
 - (c) above \$1,000,000 is \$500.
- (4) A borrower is not liable to pay a late filing penalty under both this section and under section 139A of the Tax Administration Act 1994 for the same declaration.
- (5) In this section, **declaration** means— 25
- (a) a declaration of pre-taxed income;
 - (b) a notification of a borrower's annual gross income and annual total deductions under **section 106**.

Compare: 1994 No 166 s 139A

149 Due dates for payment of late filing penalty

A borrower who is liable to pay a late filing penalty must pay that penalty on or before the later of the following dates:

- (a) the date that is 60 days after the date of the notification or notice given to the borrower under **section 148(1)**;
- (b) if the borrower does not have an extension of time to file a return of income under section 37 of the Tax Administration Act 1994, the date in column B of the table 35

in Part A of Schedule 3 of the Income Tax Act 2007 that corresponds to the month of the borrower's balance date:

- (c) if the borrower does have an extension of time to file a return of income under section 37 of the Tax Administration Act 1994, the date in column F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that corresponds to the month of the borrower's balance date. 5

Compare: 1994 No 166 s 142

Student loan shortfall penalties 10

150 Definitions relating to student loan shortfall penalties

In this section and **sections 151 to 154**,—

incorrect tax position has the meaning given to it in **section 151(b)**

repayment obligation shortfall, for a tax year, means the difference between the effect of— 15

- (a) a borrower's income tax position on his or her other income repayment obligation for the tax year; and
 (b) the correct tax position on that repayment obligation for the tax year 20

shortfall penalty means a penalty imposed under any of sections 141A to 141E of the Tax Administration Act 1994 for taking an incorrect tax position or for doing or failing to do anything specified or described in those sections.

151 Student loan shortfall penalties may be imposed on certain borrowers 25

Section 152 applies to a borrower if—

- (a) the borrower is liable to pay a shortfall penalty; and
 (b) the incorrect tax position, action, or omission that resulted in the shortfall penalty (the **incorrect tax position**)— 30
 (i) created a shortfall in the income tax paid or payable by the borrower; and
 (ii) resulted in the borrower having a repayment obligation shortfall. 35

152 Commissioner may impose student loan shortfall penalties

- (1) If this section applies to a borrower, the Commissioner may, at his or her discretion, impose a student loan shortfall penalty on the borrower.
- (2) The amount of a student loan shortfall penalty is calculated in accordance with the formula—

$$a = b \times c$$

where—

- a is the amount of the student loan shortfall penalty
- b is the amount of the repayment obligation shortfall
- c is the final percentage imposed under the Tax Administration Act 1994 for the shortfall penalty after adjustment, if any, under section 141FB, 141G, 141H, 141I, 141J, or 141K of the Tax Administration Act 1994, as applicable.

Compare: 1992 No 141 s 85

153 Notification of student loan shortfall penalty

- (1) If the Commissioner imposes a student loan shortfall penalty on a borrower, the Commissioner must notify the borrower in writing.
- (2) The notification must specify—
- (a) the amount of the student loan shortfall penalty and the reasons for its imposition; and
 - (b) the date on or before which the student loan shortfall penalty must be paid (which must be 30 days or more after the date of the notification); and
 - (c) the amount of the repayment obligation shortfall that remains due and payable and that that amount is subject to late payment interest.
- (3) The borrower must pay the student loan shortfall penalty on or before the date specified in the notification.

154 Student loan shortfall penalty reduced or removed to reflect change to shortfall penalty

- (1) **Subsection (2)** applies if—
- (a) a borrower challenges a shortfall penalty; and

- (b) as a result, the shortfall penalty is reduced or removed; and
 - (c) the shortfall penalty was the basis for the Commissioner imposing a student loan shortfall penalty on the borrower under **section 152**. 5
- (2) The Commissioner must, as appropriate, reduce or remove the borrower's student loan shortfall penalty to reflect the decision that was made in relation to the shortfall penalty.

Offences

155 Certain offence provisions in Tax Administration Act 1994 apply to borrowers 10

- (1) The sections of the Tax Administration Act 1994 that apply to borrowers and their consolidated loan balances include—
- (a) section 143 (absolute liability offences):
 - (b) section 143A (knowledge offences): 15
 - (c) section 143B (evasion or similar offence):
 - (d) section 148 (aiding or abetting).
- (2) Sections 149 to 150A of the Tax Administration Act 1994 apply, as far as applicable and with all necessary modifications, for the purposes of the sections listed in **subsection (1)**, as if—
- (a) every reference to a taxpayer were a reference to a borrower; and
 - (b) every reference to income tax were a reference to a repayment obligation. 25

156 Offence to prejudice employees because of student loan repayment liability

- (1) An employer commits an offence against this Act if the employer—
- (a) refuses to employ, or to pay salary or wages to, another person because that person is a borrower; or 30
 - (b) dismisses, or threatens to dismiss, another person from his or her employment because that person is a borrower; or

- (c) terminates, or threatens to terminate, the payment of salary or wages to another person because that person is a borrower; or
 - (d) prejudices, or threatens to prejudice, another person in his or her employment or otherwise in the receipt of salary or wages because that person is a borrower; or 5
 - (e) intimidates or coerces, imposes any pecuniary or other penalty on, or takes any other disciplinary action in relation to another person because that person is a borrower.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,000. 10
- (3) If an employer is convicted of an offence against **subsection (1)**, the Court may order the payment of compensation to the borrower for loss or damage suffered as a result of the offence. 15
- Compare: 1992 No 141 s 81

157 Proceedings to be taken summarily

A proceeding for an offence against **section 156** must be taken by way of summary prosecution before a District Court Judge upon the information of the Commissioner.

Compare: 1992 No 141 s 82

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158 Information may charge several offences

- (1) An information may charge the defendant with any number of offences against **section 156** if those offences are founded on the same set of facts, or form or are part of a series of offences of the same or similar character. 25
- (2) If an information charges more than 1 offence,—
- (a) particulars of each offence charged must be set out separately in the information; and
 - (b) all of those charges must be heard together, unless the court, either before or at any time during the hearing, considers it just that any charge should be heard separately and makes an order to that effect. 30

Compare: 1992 No 141 s 83

159 Information may be laid within 10 years

- (1) An information for an offence against **section 156** may be laid at any time within 10 years after the end of the tax year in which the offence was committed.
- (2) **Subsection (1)** applies despite anything in the Summary Proceedings Act 1957 or in any other Act. 5

Compare: 1992 No 141 s 84

Subpart 4—Borrower’s right to object to
loan manager about details of loan advances

160 Borrowers may object to details of loan advances 10

- (1) A borrower may object to the details of a loan advance made or charged to the borrower stated in—
- (a) the information provided or made available to the borrower under **section 13**; or
- (b) the statement of loan advances given to the borrower under **section 15**. 15
- (1) A borrower may object to the details of a loan advance made or charged to the borrower set out in a notification given to the borrower in accordance with **section 12A**.
- (2) However, a borrower may object only if the borrower reasonably believes that those details are incorrect. 20
- (3) An objection under **subsection (1)** must—
- (a) state the reasons for the objection; and
- (b) be made by notifying the loan manager in writing (*see **section 205***); and 25
- (ba) include a copy of the notification given to the borrower; and
- (c) for an objection that concerns the details of a loan advance stated in a statement of loan advances, be received by the loan manager on or before the date stated in that statement the notification in accordance with **section 15(2)(d) 12A(2)(e)**.
- (4) However, the loan manager may extend the time allowed under **subsection (3)(c)**. 30

Compare: 1992 No 141 s 6ss 6, 10

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161 Loan manager must consider objections

- (1) The loan manager must consider all objections made in accordance with **section 160**.
- (2) The loan manager must, as soon as practicable,—
- (a) notify the objector in writing of the loan manager’s decision in respect of the objection, and of the reasons for that decision; and 5
- (b) notify the Commissioner (in the manner determined by the Commissioner and the loan manager) of the loan manager’s decision in respect of the objection. 10

Compare: 1992 No 141 s 7

162 Power to require objection to be determined by chief executive

- (1) If an objection under **section 160** is not wholly allowed by the loan manager, the objector may, by formally notifying the chief executive, require that the objection be determined by the chief executive. 15
- (2) A notification under **subsection (1)** must be given within 21 days after the date on which the loan manager notifies the objector of the decision under **section 161(2)(a)**. 20
- ~~(3) **Subsection (2)** is subject to **section 164**.~~
- (3) However, the chief executive may extend the time allowed under **subsection (2)**.

Compare: 1992 No 141 s 8 ss 8, 10

163 Chief executive must consider objections required to be determined by chief executive 25

- (1) The chief executive must consider all objections that the chief executive is required to determine under **section 162**.
- (2) The chief executive must, as soon as practicable,—
- (a) notify the objector in writing of the chief executive’s decision in respect of the objection, and of the reasons for that decision; and 30
- (b) notify the loan manager in writing of the chief executive’s decision in respect of the objection, and of the reasons for that decision. 35

- (3) The loan manager must, as soon as practicable, notify the Commissioner (in the manner determined by the Commissioner and the loan manager) of the chief executive's decision in respect of the objection.

Compare: 1992 No 141 s 9

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164 Extension of time for objection

The chief executive may extend—

- (a) the time allowed under **section 15(2)(d)** for notifying an objection under **section 160**; or
- (b) the time allowed under **section 162(2)** for notifying that an objection is required to be considered by the chief executive under **section 162(1)**; or
- (c) both.

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Compare: 1992 No 141 s 10

165 Right to apply to Disputes Tribunal or District Court

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- (1) **Subsection (2)** applies if an objection under **section 160** that the chief executive is required to determine under **section 162** is not wholly allowed by the chief executive.

- (2) The objector may, within 30 days after the date on which the chief executive notifies the objector of the decision under **section 163(2)(a)**, either—

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- (a) apply to a Disputes Tribunal for determination of the dispute if the amount in dispute is within the financial jurisdiction of the Disputes Tribunal; or

- (b) apply to a District Court for determination of the dispute.

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- (3) A Referee of a Disputes Tribunal or a District Court Judge, as applicable, may extend the time allowed under **subsection (2)** for applying to a Disputes Tribunal or District Court.

- (4) No objection to which **section 160 or 162** applies may be heard and determined by a Disputes Tribunal or a District Court.

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- (5) **Subsection (4)** applies—

- (a) despite anything in the Disputes Tribunals Act 1988 or the District Courts Act 1947; but

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- (b) subject to **subsections (1) and (2)**.

Compare: 1992 No 141 s 11

166 Notification of Disputes Tribunal’s or District Court’s decision about objection

The loan manager must, as soon as practicable, notify the Commissioner (in the manner determined by the Commissioner and the loan manager) of a Disputes Tribunal’s or District Court’s decision in respect of an objection under **section 165**. 5

Subpart 5—Dispute procedures and rights to challenge

Dispute procedures 10

167 Part 4A of Tax Administration Act 1994 applies to disputes under this Act

- (1) The procedures in Part 4A of the Tax Administration Act 1994 apply, with all necessary modifications, to a dispute between a person and the Commissioner under this Act. 15
- (2) However, **subsection (1)** does not apply to an objection to the details of a loan advance made or charged to a borrower (*see section 160*).

Compare: 1992 No 141 s 69A

Rights to challenge 20

168 Dispute process must be completed before challenge is made

A person may challenge a matter under this subpart only after the dispute process applied by **section 167** has been concluded in relation to that matter. 25

Compare: 1992 No 141 s 69A

169 Challenge to details of consolidated loan balance

A borrower may challenge any information (other than the details of a loan advance made or charged to the borrower) provided to the borrower under **section 13** if the borrower reasonably believes that that information is incorrect. 30

170 Challenge to decision concerning treating borrowers as being physically in New Zealand

A borrower may challenge a decision by the Commissioner—

- (a) not to treat the borrower as being physically in New Zealand under **section 20(1)** on the ground that that decision is not fair and reasonable: 5
- (b) that a condition in any of **clauses 2 to 10 of Schedule 1** is not satisfied by the borrower on the ground that that decision is erroneous:
- (c) concerning the start and end dates for the period for which the borrower is treated as being physically in New Zealand under **section 22(b)(i)** on the ground that those dates are— 10
 - (i) not fair and reasonable; or
 - (ii) erroneous: 15
- (d) concerning the conditions that must apply or be met in order for the borrower to be treated as being physically in New Zealand under **section 22(b)(ii)** on the ground that those conditions are— 20
 - (i) not fair and reasonable; or
 - (ii) erroneous.

Compare: 1992 No 141 s 65A

170A Challenge to special deduction rate certificate for unused repayment threshold

- (1) A borrower may challenge a decision by the Commissioner not to issue a special deduction rate certificate in relation to the borrower under **section 39** on the ground that that decision is not fair and reasonable. 25
- (2) A borrower who has been issued with a special deduction rate certificate under **section 39** may challenge the certificate on the ground that it is erroneous. 30

171 Challenge to additional deduction rate notice

A borrower who has been issued with an additional deduction rate notice under **section 43(2)** may, on the ground that the notice is erroneous or excessive or has been issued in error, challenge the notice. 35

- 172 Challenge to determination of salary or wage deduction**
 An employer or PAYE intermediary who is required to make a salary or wage deduction under ~~section 34 or 33~~ may, on the ground that the determination is erroneous, challenge a determination made under **section 56(2)**. 5
 Compare: 1992 No 141 s 67
- 173 Challenge to decision regarding significant over-deduction**
 A borrower may challenge—
 (a) a determination by the Commissioner under **section 60** that a significant over-deduction was not made, on the 10
 ground that the determination is erroneous:
 (b) the amount of a significant over-deduction stated in a notice in accordance with ~~section 61(2)(b)(iii)~~ **61(2)(b)**, on the ground that the amount is erroneous.
- 173A Challenge to prohibition on applications or declarations** 15
A borrower who is prohibited under **section 63** from making an application under **section 36** or a declaration under **section 49** may challenge the prohibition on the ground that that decision is not fair and reasonable.
- 174 Challenge to assessments** 20
 A borrower whose repayment obligation has been assessed under **section 46, 70, 82, or 101** may, on the ground that the assessment is erroneous or excessive or has been issued in error, challenge the assessment.
 Compare: 1992 No 141 s 64 25
- 175 Challenge to interest charged**
 (1) A borrower who is charged with ~~overseas-based loan~~ interest may, on the ground that he or she should not have been charged with the amount of interest charged, challenge that interest.
 (2) A borrower who is charged with late payment interest may, on 30
 the ground that he or she should not have been charged with the amount of interest charged, challenge that interest.

- (3) Except as set out in **subsections (1) and (2)**, a right to challenge interest charged under this Act is not conferred by anything in—
- (a) this Act; or
 - (b) Parts 4A and 8A of the Tax Administration Act 1994; or
 - (c) a loan contract.
- Compare: 1992 No 141 ss 65, 65A(e), (f), 69B
- 176 Challenge to decision concerning relief**
- (1) A borrower may challenge a decision by the Commissioner, on the ground that the decision is not fair and reasonable, not to grant the borrower—
- (a) relief from late payment interest under **section 138**;
 - (b) hardship relief under **section 139**;
 - (c) entry into an instalment arrangement under **section 146**.
- (2) A borrower may challenge the relief provided to the borrower under **section 138, 139, or 146** on the ground that the relief is not fair and reasonable.
- Compare: 1992 No 141 s 66B
- 177 Challenge to late filing penalty**
- A borrower who is charged with a late filing penalty may challenge the penalty on the ground that it was imposed on the borrower in error.
- Compare: 1992 No 141 s 66
- 178 Challenge to student loan shortfall penalty**
- A borrower who has a student loan shortfall penalty imposed on him or her under **section 152** may challenge the student loan shortfall penalty on the ground that it was imposed on the borrower in error.
- Compare: 1992 No 141 s 68

179 Person who may make challenge

A challenge under this subpart may be made only by or on behalf of the person to whom the information, assessment, notice, ~~or~~ decision, or matter relates.

Compare: 1992 No 141 s 69

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180 Commissioner's decision on challenges

(1) After considering a challenge under this subpart, the Commissioner may—

(a) allow the challenge in full; or

(b) allow the challenge in part; or

(c) disallow the challenge.

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(2) The Commissioner must formally notify the person who made the challenge as soon as practicable after the Commissioner has made a decision about the challenge.

(3) This section applies despite anything to the contrary in Part 8A of the Tax Administration Act 1994.

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Part 5**Matters of general application and miscellaneous matters**

Subpart 1—Matters of general application

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181 Annual administration fee

~~(1) An annual administration fee of \$40 (or any other amount prescribed by regulations) must be charged each tax year by the Commissioner to a borrower who has a consolidated loan balance of \$20 or more on 31 March in that year.~~

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(1) If a borrower has a loan balance of \$20 or more on the close of 31 March in a tax year,—

(a) an annual administration fee of \$40 (or any other amount prescribed by regulations) must be charged by the Commissioner to that borrower for that tax year; and

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(b) that borrower's loan balance is increased by the amount of that fee on 1 April in the next tax year.

(2) However, no annual administration fee may be charged to a borrower for a tax year if that borrower is charged with a stu-

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dent loan establishment fee under **section 8 10D** in that tax year.

182 Tax year other than 12 months due to change in balance date

- (1) This section applies if a borrower— 5
- (a) derives pre-taxed income, other income, or both; and
 - (b) that income is for a period other than 12 months as a result of the borrower changing his or her balance date for the purposes of income tax.
- (2) For the purposes of calculating the borrower’s repayment obligations under **subparts 2 and 3 of Part 2**, the annual repayment threshold is calculated in accordance with the formula— 10

$$a = b \times \frac{c}{365}$$

where—

- a is the annual repayment threshold calculated in accordance with this section: 15
- b is the amount of the annual repayment threshold:
- c is the number of days in the period.

Compare: 1992 No 141 s 61

183 Limit on repayment obligation for pay period or tax year

- (1) If a borrower derives only salary or wages for a tax year, the borrower’s repayment obligation for a pay period in that tax year must not exceed the amount of the borrower’s loan balance on the last day of the month in which the pay period falls. 20
- (2) If a borrower derives pre-taxed income or other income for a tax year, the borrower’s pre-taxed repayment obligation or other income repayment obligation for that tax year must not exceed the amount of the borrower’s loan balance on the last day of that tax year. 25
- (3) **Section 103(2)** applies to overseas-based borrowers.
- (4) This section applies despite anything to the contrary in this Act. 30

Compare: 1992 No 141 s 14(3)

184 Payment date not otherwise specified

If this Act does not specify a date by which an amount payable under this Act is payable, the amount is due and payable 30 days after the date on which the borrower is notified in writing that the amount is due and payable.

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Compare: 1992 No 141 s 47

185 Recovery of un-compounded late payment interest and unpaid amount

(1) ~~The following are recoverable as a debt due to the Crown:~~

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~~(a) an unpaid amount;~~

~~(b) un-compounded late payment interest.~~

(1) An unpaid amount is recoverable as a debt due to the Crown.

(2) Sections 156 to 165 of the Tax Administration Act 1994, as far as they are applicable and with all necessary modifications, apply for the purposes of this Act, as if—

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(a) every reference in those provisions to income tax or tax were a reference to an unpaid amount ~~or un-compounded late payment interest~~; and

(b) every reference in those provisions to a taxpayer or a person were a reference to a borrower; and

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(c) the reference to an assessment in section 162 of the Tax Administration Act 1994 were a reference to an assessment made under **Part 2** of this Act; and

(d) every reference to “this Act” in sections 164 and 165 of the Tax Administration Act 1994 were a reference to the Student Loan Scheme Act **2010**.

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Compare: 1992 No 141 s 46

186 Date on which deductions and payments treated as being made and credited

(1) ~~A salary or wage deduction and an extra deduction is made on the date the deduction is made.~~

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(2) ~~A payment is made to the Commissioner on the date it is received by the Commissioner.~~

(3) ~~For the purpose of calculating overseas-based interest or late payment interest,=~~

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- (a) a salary or wage deduction and an extra deduction are credited on the 15th day of the month in which the deduction is made from the borrower's salary or wages; and
- (b) all other payments are credited on the date on which they are received by the Commissioner. 5
- (4) Other than for the purpose of calculating overseas-based interest or late payment interest,—
- (a) a salary or wage deduction and an extra deduction are credited on the last day of the month in which the deduction is made from the borrower's salary or wages; and 10
- (b) a payment made by a New Zealand-based borrower (excluding a salary or wage deduction or an extra deduction) for a tax year is credited at the time when the Commissioner assesses the borrower's pre-taxed repayment obligation or other income repayment obligation for that tax year; and 15
- (c) a payment made by an overseas-based borrower (excluding a salary or wage deduction or an extra deduction) is credited on the date it is received by the Commissioner. 20

Compare: 1992 No 141 ss 48, 49

187 Satisfaction of requirements to pay obligations and penalties 25

- (1) A specified repayment that is made for a borrower in a tax year satisfies (so far as it extends) each future obligation of the borrower that has a due date in that tax year in the order in which those obligations become due.
- (2) However,— 30
- (a) **subsection (1)** does not apply to a future obligation whose due date has passed at the time when the specified repayment is made; and
- (b) if an interim payment is due on the same date as any other type of future obligation, the interim payment is satisfied last; and 35
- (c) the Commissioner may, if the Commissioner considers that it is fair and reasonable to do so, treat a specified

repayment as satisfying a future obligation that has a due date in the tax year following the tax year in which the specified repayment was made.

(3) In this section,—

future obligation means—

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(a) an amount that must be paid by a borrower in accordance with a written notification under **section 47**;

(b) a remaining repayment;

(c) an interim payment;

(d) an instalment of an overseas-based borrower's repayment obligation for a tax year that must be paid in accordance with **section 104**;

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(e) a late filing penalty that has been imposed;

(f) a student loan shortfall penalty that has been imposed

identified payment means an extra deduction or a payment that is made to the Commissioner for a borrower, that is identified by the Commissioner as a deduction or a payment that is intended to be offset against—

15

(a) any uncompounded late payment interest that the borrower has; or

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(b) any unpaid amount owed by the borrower

specified repayment—

(a) means—

(i) an identified payment for a borrower, but only to the extent that it exceeds—

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(A) uncompounded late payment interest that the borrower has; and

(B) an unpaid amount owed by the borrower; and

(ii) any other payment made to the Commissioner for a borrower; and

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(iii) an extra deduction that is not an identified payment; and

(iv) a significant over-deduction that has not been refunded; but

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(b) except as set out in **paragraph (a)(i)**, does not include an identified payment; and

(c) except as set out in **paragraph (a)(iv)**, does not include a salary or wage deduction.

188 Order in which deductions and payments offset against borrower's consolidated loan balance

- (1) A salary or wage deduction, an extra deduction, or a payment that is made to the Commissioner for a borrower (other than an identified payment) must be offset against the borrower's consolidated loan balance as follows: 5
- (a) first, against any uncompounded overseas-based interest; and
 - (b) secondly, against the loan balance.
- (2) However, the total amount offset in accordance with **subsection (1)** for a tax year must not exceed the borrower's total obligations for that tax year. 10
- (3) If the total salary or wage deductions and extra deductions made, and payments made to the Commissioner, for a tax year (other than identified payments) exceed the borrower's total obligations for that tax year, the Commissioner must offset the remainder of those deductions and payments against the borrower's consolidated loan balance as follows: 15
- (a) first, against any uncompounded late payment interest; and 20
 - (b) secondly, against any unpaid amount; and
 - (c) thirdly, against any remaining uncompounded overseas-based interest; and
 - (d) fourthly, against any remaining loan balance.
- (4) In this section,— 25
- identified payment** has the meaning given to it in **section 187(3)**
- total obligations** means the total amount of—
- (a) a borrower's repayment obligations for a tax year; and
 - (b) any amount that must be paid by the borrower during the tax year in accordance with a written notification under **section 47**; and 30
 - (c) late filing penalties that must be paid by the borrower during the tax year; and
 - (d) student loan shortfall penalties that must be paid by the borrower during the tax year. 35

Compare: 1992 No 141 s 50

189 Order in which identified payments are offset against borrower's consolidated loan balance

(1) An identified payment that is made to the Commissioner for a borrower must be offset against the borrower's consolidated loan balance as follows: 5

(a) first, against any uncompounded late payment interest; and

(b) secondly, against any unpaid amount; and

(c) thirdly, against any uncompounded overseas-based interest; and 10

(d) fourthly, against the loan balance.

(2) In this section, **identified payment** has the meaning given to it in **section 187(3)**.

Compare: 1992 No 141 s 50

186 Order in which salary or wage deductions and payments offset against borrower's consolidated loan balance 15

A salary or wage deduction or payment received by the Commissioner in respect of a borrower's consolidated loan balance must be offset as follows:

(a) first, against any interest charged; and 20

(b) secondly, any remainder must be offset against any principal outstanding.

Compare: 1992 No 141 s 50

187 Date on which salary or wage deductions and payments treated as being made and credited 25

(1) A salary or wage deduction is made on the date the deduction is made.

(2) A payment is made to the Commissioner on the date it is received by the Commissioner.

(3) For the purposes of calculating loan interest and late payment interest, determining whether an annual administration fee is payable, and determining whether a borrower's consolidated loan balance is less than \$20 for the purposes of **section 191**,— 30

(a) a salary or wage deduction is credited on the 15th day of the month in which the deduction is made; and 35

- (b) all other payments are credited on the date on which they are received by the Commissioner.
- (4) Other than for the purposes set out in **subsection (3)**,—
- (a) a salary or wage deduction is credited on the last day of the month in which the deduction is made; and 5
- (b) a payment made by a New Zealand-based borrower (excluding a salary or wage deduction) for a tax year is credited at the time when the Commissioner assesses the borrower's pre-taxed repayment obligation or other income repayment obligation for that tax year; and 10
- (c) a payment made by an overseas-based borrower (excluding a salary or wage deduction) is credited on the date it is received by the Commissioner.
- Compare: 1992 No 141 ss 48, 49
- 190 Cancellation of interest if consolidated loan balance repaid early** 15
- (1) **Subsection (2)** applies if—
- (a) the Commissioner informs or notifies a borrower of the borrower's consolidated loan balance (the **notification**) on or before 31 March 2013; and 20
- (b) the borrower pays the consolidated loan balance stated in the notification in full within 30 days after the date of the notification.
- (2) The Commissioner must cancel any interest that is charged between the date of the notification and the date on which the payment is received. 25
- (3) A notification provided on or after 2 March 2012 under section 60A(1) of the Student Loan Scheme Act 1992 is treated as being a notification under **subsection (1)**.
- (4) This section is repealed on the close of 1 May 2013. 30
- Compare: 1992 No 141 s 60A
- 191 Write-off of consolidated loan balance**
- (1) A borrower's consolidated loan balance must be reduced to zero if—
- (a) the borrower dies; or 35

- (b) the Commissioner has reasonable grounds for believing that the borrower has died; or
- (c) the borrower's consolidated loan balance is less than \$20 on the last day of a tax year.
- (2) Subsection (1)(a) has effect from the day on which the borrower died. 5
- (3) Subsection (1)(b) has effect from the day on which the borrower is believed to have died.
- (4) Subsection (1)(c) has effect from the close of the last day of the relevant tax year. 10
- (5) If a borrower's consolidated loan balance is reduced to zero under subsection (1)(a) or (c), that action may not be reversed.
- (6) Subsection (5) applies despite anything to the contrary. 15
Compare: 1992 No 141 s 60
- 192 Associated matters unwound if position changed**
- (1) If there is a changed obligation, then—
- (a) an amount that was deducted or paid to meet the changed obligation must be refunded; and
- (b) any overseas-based interest, late payment interest, late filing penalty, student loan shortfall penalty, or other form of interest or penalty imposed in relation to the changed obligation must be removed; and 20
- (c) any relief granted under **subpart 2 of Part 4** in relation to the changed obligation must be removed; and 25
- (d) any other action taken in relation to the changed obligation must be reversed.
- (2) In this section, **changed obligation** means—
- (a) so much of a borrower's repayment obligation as is decreased or removed under this Act or by the Commissioner; 30
- (b) so much of any overseas-based interest, late payment interest, late filing penalty, student loan shortfall penalty, or other form of interest or penalty imposed on a borrower as is decreased or removed under this Act or by the Commissioner; 35

- (c) repayment obligations of an overseas-based borrower that subsequently cease to apply because of **section 17(3)**;
- (d) repayment obligations of a New Zealand-based borrower that subsequently cease to apply because of **section 18(3)**;

192 Commissioner may remedy incorrect application of Act

(1) The Commissioner may take whatever steps are necessary to reflect the manner in which this Act should have been applied to a borrower if—

- (a) this Act was incorrectly applied to the borrower; or
- (b) a change in the borrower's circumstances requires a change in the manner in which this Act should have applied to the borrower.

(2) The power in **subsection (1)** includes the power to reverse an action that was taken in relation to a borrower and take other actions, or require other actions to be taken, in its place.

193 Manner of making refunds

A refund that is made under this Act must be made in the manner required under section 184A of the Tax Administration Act 1994.

Compare: 1992 No 141 ss 55A(3), 56(2B), 57(2A), 58A(3)

194 Appropriation of refunds

A refund that is made under this Act may be made without further appropriation than this section.

Compare: 1992 No 141 s 59

195 Loan advances and other information may be altered

The Commissioner must, as soon as practicable,—

- (a) alter the details of a loan advance provided or made available to a borrower under **section 13** in accordance with the decision of—
 - (i) the loan manager under **section 161**; or
 - (ii) the chief executive under **section 163**; or

- (iii) a Referee of a Disputes Tribunal or a District Court Judge, as applicable, under **section 165**;
or
- (b) alter any information (other than the details of a loan advance made or charged to the borrower) provided or made available to a borrower under **section 13** in accordance with a decision of the Commissioner under **subpart 5 of Part 4**.

Compare: 1992 No 141 s 7(1)

196 ~~Return and assessment provisions~~ Provisions of Tax Administration Act 1994 and Income Tax Act 2007 to apply to this Act 10

Sections 21, 24B, 24F, 24H, 33, 34, 35, 36 to 39, 42 to 44, 79, 80, 92, 92A, 106 to 108, 108B to 111, 113, and 114 of the Tax Administration Act 1994 and ~~section LC 10~~ sections LC 10, RM 2, RM 4, and RM 6, and paragraph (b) of the definition of basic tax rate in section YA 1 of the Income Tax Act 2007 apply, as far as applicable and with all necessary modifications, for the purposes of this Act as if—

- (a) every reference to a taxpayer or a person were a reference to a borrower; and 20
- (b) every reference to the assessment and levy of income tax or tax were a reference to the assessment and levy of a repayment obligation; and
- (c) every reference to income tax were a reference to a repayment obligation; and 25
- (d) every reference to a return were a reference to, as applicable, a declaration of pre-taxed income or a notification of a borrower's annual gross income and annual total deductions under section 106. 30

Compare: 1992 No 141 s 16

Subpart 2—Miscellaneous matters

*Interaction with loan contracts and other enactments***197 This Act overrides loan contracts**

- (1) This Act applies despite anything to the contrary in any loan contract. 5
- (2) All loan contracts must be interpreted in a manner that is consistent with this Act.
- (3) If a loan contract cannot be interpreted in a manner that is consistent with this Act, then this Act prevails over the terms of the loan contract. 10

Compare: 1992 No 141 s 63

197A Commissioner may exercise rights in loan contracts to recall loans

- (1) The Commissioner may exercise any right or power in a loan contract to recall or demand repayment of all or any part of a loan advance or a loan balance. 15
- (2) To avoid doubt, the right or power may be exercised in the name of the Commissioner without any assignment by the lender. 20
- (3) This section applies—
- (a) whether or not the Commissioner is the lender under the loan contract or a person on whom the loan contract confers the right or power; and
- (b) despite **section 197** or anything in the loan contract or any other Act; and 25
- (c) whether the loan contract was signed before or after the date on which this section comes into force.

198 Loan contract enforceable against minor

A loan contract entered into by a borrower (whether before or after the commencement of this section) who is under 18 years of age must be treated, for the purposes of the Minors' Contracts Act 1969, as if the borrower were aged 18 years. 30

Compare: 1992 No 141 s 63A

199 Student loan contracts are not credit contracts

- (1) A loan contract is not—
- (a) a credit contract for the purposes of the Credit Contracts Act 1981;
 - (b) a credit contract or a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003. 5
- (2) No cause of action exists under the Credit Contracts Act 1981 or the Credit Contracts and Consumer Finance Act 2003 in relation to a loan contract. 10
- (3) This section applies—
- (a) to all loan contracts regardless of when they were entered into; and
 - (b) despite anything to the contrary.

Disclosure of information

15

200 Disclosure of information between authorised persons

- (1) No obligation as to secrecy or other restriction imposed by an enactment or otherwise on the disclosure of information prevents—
- (a) an authorised person from disclosing to another authorised person information required for the purpose of enabling the Commissioner to confirm the identity of a person who applies for a student loan; or 20
 - (b) an authorised person from disclosing to another authorised person information required for the purpose of enabling the Commissioner to correctly identify a borrower who has received or been charged with a loan advance; or 25
 - (c) the Commissioner from disclosing to the chief executive information that is necessary to investigate circumstances in which an authorised person considers— 30
 - (i) a student loan may have been improperly obtained; or
 - (ii) an attempt has been made to obtain a student loan by improper means. 35
- (2) For the purposes of **subsection (1)(c)**, the information that the Commissioner may disclose includes the following:

-
- (a) particulars of loan repayments made:
 - (b) the consolidated loan balance:
 - (c) particulars the Commissioner may possess as to the location of a borrower:
 - (d) whether a person specified by the chief executive is a taxpayer: 5
 - (e) for an address specified by the chief executive, the number of borrowers recorded as resident at that address:
 - (f) any other particulars that the Commissioner considers relevant to the purposes of **subsection (1)(c)**. 10
- (3) Information obtained under **subsection (1)** must not be disclosed except to an authorised person and for the purposes of that subsection.
- (4) Despite **subsection (3)**, no obligation as to secrecy or other restriction imposed by an enactment or otherwise on the disclosure of information prevents the persons specified in **paragraphs (a), (c), and (e)** of the definition of authorised person in **subsection (5)** from receiving information disclosed by an authorised person to another authorised person in accordance with **subsection (1)** for any purpose that relates to the administration of the student loan scheme. 15 20
- (5) In this section,—
- authorised person** means—
- (a) the Commissioner or an officer of the Inland Revenue Department who is authorised by the Commissioner to disclose and receive information under this section; or 25
 - (b) an employee of a tertiary institution who is authorised by the chief executive to disclose and receive information under this section; or
 - (c) the chief executive, or an officer of the specified department who is authorised by the chief executive to disclose and receive information under this section; or 30
 - (d) the Secretary of Education, or an officer of the Ministry of Education who is authorised by the Secretary of Education to disclose and receive information under this section; or 35
 - (e) the loan manager, or an employee of the loan manager who is authorised by the chief executive to disclose and receive information under this section

specified department means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964.

Compare: 1992 No 141 s 62

- 201 Disclosure of information between Inland Revenue Department and New Zealand Customs Service for information-matching purposes** 5
- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the New Zealand Customs Service for the purpose of establishing an information-matching programme to assist the Commissioner to verify— 10
- (a) whether borrowers are New Zealand-based or overseas-based: 15
- (b) whether borrowers are New Zealand residents for the purposes of this Act. 15
- (2) For the purpose of this section, the Commissioner may provide to the chief executive of the New Zealand Customs Service any of the following information that is held by the Inland Revenue Department: 20
- (a) a borrower's name or any other name by which a borrower is known: 20
- (b) a borrower's date of birth: 20
- (c) a borrower's tax file number. 20
- (3) The Commissioner and the chief executive of the New Zealand Customs Service may, for the purpose of this section, determine by written agreement between them— 25
- (a) the frequency with which information may be supplied; and 25
- (b) the form in which information may be supplied; and 30
- (c) the method by which information may be supplied. 30
- (4) **Subsection (2)** applies despite any obligation as to secrecy or other restriction imposed by any enactment or otherwise on the disclosure of information. 35
- Compare: 1992 No 141 s 62A 35

202 Power of Commissioner to access arrival or departure information

In accordance with, and for the purpose set out in, section 280I of the Customs and Excise Act 1996, the Commissioner may access any information-recording system used by the New Zealand Customs Service to store arrival or departure information. 5

Compare: 1992 No 141 s 62B

Informing and notifying under this Act

203 Meaning of inform 10

(1) A requirement in this Act for a person to **inform** another person (**person B**) is satisfied—

(a) by—

(i) providing the information free of charge on an Internet site that allows person B to access the information at all reasonable times; and 15

(ii) making the information available for inspection free of charge, and for purchase at a reasonable price, at each office of the Inland Revenue Department during the period from 8 am to 4.30 pm each working day; or 20

(b) by giving public notice.

(2) Despite **subsection (1)(b)**, public notice must not be given for the purposes of **section 13**.

204 Meaning of notify 25

(1) A requirement in this Act for a person to **notify** another person or for a matter to be notified is satisfied by a communication—

(a) that is printed, typewritten, or otherwise visibly represented, copied, or reproduced on paper and is given by personal delivery, post, or fax; or 30

(b) by telephone; or

(c) made orally in person in a manner acceptable to the Commissioner; or

(d) by an electronic means (except a fax), if the person complies with the Electronic Transactions Act 2002, including by ~~fax~~, email or the Internet; or 35

- (e) in any other manner acceptable to the Commissioner.
- (2) However, it does not include a communication on the Internet, or by other means, if the person for whom the communication is intended is not directly alerted to it in some manner.
- (3) A notification that is given by post is treated as having been given at the time the notification would have been delivered in the ordinary course of the post. 5
- (4) Despite **subsection (1)(d)** of this section ~~and section 16, section 6 of the Tax Administration Act 1994, and sections 16 and 20~~ of the Electronic Transactions Act 2002, the consent of a person is not required in order for information to be communicated in an electronic form. 10

205 **Meaning of notify a person in writing**

- (1) A requirement in this Act for a person to **notify a person in writing** or for a matter to be notified in writing is satisfied by a communication— 15
- (a) that is printed, typewritten, or otherwise visibly represented, copied, or reproduced on paper and is given by personal delivery, post, or fax; or
- (b) by an electronic means (except a fax), if the person complies with the Electronic Transactions Act 2002, including by ~~fax~~, email, or the Internet; or 20
- (c) in any other manner acceptable to the Commissioner.
- (2) However, it does not include a communication on the Internet, or by other means, if the person for whom the communication is intended is not directly alerted to it in some manner. 25
- (3) A notification in writing that is given by post is treated as having been given at the time the notification would have been delivered in the ordinary course of the post.
- (4) Despite **subsection (1)(b)** of this section ~~and section 16, section 6 of the Tax Administration Act 1994, and sections 16 and 20~~ of the Electronic Transactions Act 2002, the consent of a person is not required in order for information to be communicated in an electronic form. 30

206 Meaning of formally notify

- (1) A requirement in this Act for a person to **formally notify** another person or for a matter to be formally notified is satisfied by a communication that—
- (a) is printed, typewritten, or otherwise visibly represented, copied, or reproduced on paper; and 5
 - (b) is given by—
 - (i) personal delivery; or
 - (ii) post; or
 - (iii) fax. 10
- (2) However, it does not include a communication by email, the Internet, or other electronic means (except a facsimile fax).
- (3) A formal notification that is given by post is treated as having been given at the time the notification would have been delivered in the ordinary course of the post. 15

207 Notice requirements of Tax Administration Act 1994 do not apply

Sections 203 to 206 of this Act override sections 14 and 14B of the Tax Administration Act 1994.

Regulations 20**208 Regulations**

The Governor-General may ~~from time to time~~, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the amount of the annual repayment threshold, or a means by which it may be calculated or ascertained: 25
- (b) specifying charitable organisations for the purposes of the definition of charity in **section 4(1)**:
- (c) prescribing the repayment percentage, or a means by which it may be calculated or ascertained: 30
- (ca) specifying further information requirements in accordance with **section 10(2)(d), 10C(i), or 11(2)(a)(vi)**:
- (d) prescribing the amount of a student loan establishment fee charged under **section 8 10D**, or a means by which it may be calculated or ascertained: 35

- (e) ~~specifying further information requirements in accordance with **section 10(2)(d) or 11(2)(a)(vi)**:~~
- (e) prescribing the amount of a threshold or the amount of a repayment obligation that is to apply in place of those set out in **section 102(2) to (4)**: 5
- (f) prescribing the level of unpaid amount on which a borrower is liable to pay late payment interest under ~~**section 129(1), 130(1)**~~, or a means by which it may be calculated or ascertained:
- (g) prescribing the amount of an annual administration fee charged under **section 181**, or a means by which it may be calculated or ascertained: 10
- (h) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 15

Compare: 1992 No 141 s 87

209 Transitional regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations to—
 - (a) prescribe matters in respect of the transition of the student loan scheme from the Student Loan Scheme Act 1992 to this Act that may be in addition to or in place of the provisions of **Schedules 5 and 6**: 20
 - (b) make provision for a situation for which no or insufficient provision is made by or under this Act or any other Act referred to in this Act. 25
- (2) ~~The Minister must not recommend the making of regulations unless he or she is satisfied that to do so is necessary for the effective and efficient transition of the student loan scheme from the Student Loan Scheme Act 1992 to this Act.~~ 30
- (3) ~~Any regulations made under this section that are in force on 1 April 2015 are revoked at the close of that day.~~
- (2) The Minister must not recommend the making of regulations unless the Minister is satisfied that the regulations— 35
 - (a) are necessary or desirable for the orderly transition of the student loan scheme from the Student Loan Scheme Act 1992 to this Act; and
 - (b) are consistent with the purposes of this Act.

- (3) On the close of 1 April 2015,—
- (a) this section expires and is repealed; and
- (b) any regulations made under this section that are in force expire and are revoked.
- 210 Application of Regulations (Disallowance) Act 1989 and Acts and Regulations Publication Act 1989** 5
 Regulations made under **section 208 or 209** are regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.
- Savings and transitional provisions* 10
- 211 Transitional provisions concerning loan manager and loan advances**
- (1) This Act and the Student Loan Scheme Act 1992 are subject to the transitional provisions set out in **Schedule 5**.
- (2) This section and **Schedule 5** are repealed on 1 April 2012. 15
- 212 Early applications and issue of certificates for transition to this Act**
- (1) A borrower may—
- (a) make an application under **section 36, 93, or 137(1)(b)**; and 20
- (b) if applicable, notify his or her employer in writing (in accordance with **section 29(2)(b)**) that a special deduction rate applies to the borrower; and
- (c) request his or her employer or PAYE intermediary (in accordance with **section 33(1)(b) 33A**) to make extra borrower deductions; and 25
- (d) make a declaration in accordance with **sections 48A(2) and 49.**
- (2) The Commissioner may—
- (a) issue a special deduction rate certificate under **section 39, 94, or 140**; and 30
- (b) issue an additional deduction rate notice under **section 43(2)**; and
- (c) if applicable, follow the procedures in **section 44(1)**; and 35

- (d) issue a notice under **section 50(b)**.
- (3) This Act applies, for the purpose of giving effect to this section, as if it were in force from ~~1 October 2011~~ 1 March 2012.
- (4) However, a special deduction rate ~~or~~ an additional deduction rate notice, or a notice issued under **section 50(b)** that applies to a borrower under this section, or a request under **subsection (1)(c)**, does not have effect until the later of—
- (a) 1 April 2012; and
 - (b) any later date specified in the special deduction rate certificate, the additional deduction rate notice, the notice issued under **section 50(b)**, or the request under **subsection (1)(c)**.

213 Savings and transitional provisions

This Act is subject to the savings and transitional provisions set out in **Schedule 6**.

Consequential amendments and repeals

213A Amendments to this Act

This Act is amended in the manner set out in **Schedule 6A**.

214 **Amendments to Student Loan Scheme Act 1992 and Credit Contracts and Consumer Finance Act 2003**

The Acts specified in **Schedule 7** are amended in the manner set out in that schedule.

215 **Amendments to other Acts**

The Acts specified in **Schedule 8** are amended in the manner set out in that schedule.

216 **Amendments to other enactments**

The enactments specified in **Schedule 9** are amended in the manner set out in that schedule.

217 **Student Loan Scheme Act 1992 repealed**

The Student Loan Scheme Act 1992 (1992 No 141) is repealed.

**218 Student Loan Scheme (Charitable Organisations)
Regulations 2006 Regulations revoked**

(1AA) The Credit Contracts and Consumer Finance (Student Loan Contract Exemption) Regulations 2010 (SR 2010/341) are revoked.

5

(1) The Student Loan Scheme (Charitable Organisations) Regulations 2006 (SR 2006/68) are revoked.

(2) The Student Loan Scheme (Repayment Threshold) Regulations 2008 (SR 2008/450) are revoked.

Schedule 1**ss 20, 21(b)****Conditions to borrower being treated as
being physically in New Zealand****1 Definition**

In this schedule, **NZQA** means the New Zealand Qualifications Authority established under Part 20 of the Education Act 1989. 5

Compare: 1992 No 141 ss 38AJ(4), 38AJA(6)

2 Conditions to charity application

(1) A borrower who makes an application under **section 20(1)(b)** 10
must provide the Commissioner with evidence that the work
the borrower is doing as a volunteer or for token payment for
a charity is 1 or more of the following:

(a) work to relieve poverty, hunger, sickness, or the ravages 15
of war or natural disaster; or

(b) work to improve the economy of a country that is on the
Organisation for Economic Co-operation and Develop-
ment's list of countries receiving development assist-
ance; or

(c) work to raise the educational standards of a country that 20
is on the Organisation for Economic Co-operation and
Development's list of countries receiving development
assistance.

(2) The charity must be specified in regulations at the time the
work described in **clause 1** is carried out. 25

(3) The Commissioner may treat a borrower as being physically
in New Zealand under **section 20(1)(b)** for a maximum ag-
gregate period of up to 24 months.

Compare: 1992 No 141 ss 38AE(3)(a), 38AEA

3 Conditions to unexpected delay application 30

A borrower who makes an application under **section 20(1)(c)**
must—

(a) have been a New Zealand resident for the period to
which the application applies; and

(b) provide evidence— 35

- (i) of the borrower's intended return to New Zealand; and
 - (ii) that, if the borrower had returned to New Zealand as intended, the borrower would have been New Zealand-based; and 5
 - (c) provide evidence of the unexpected delay that resulted in the borrower not being able to return to New Zealand as intended; and
 - (d) provide evidence that the unexpected delay was due to an event or to circumstances beyond the reasonable control of the borrower, like (for example)— 10
 - (i) an airline strike, a personal illness, or the death of a family member:
 - (ii) a fire, flood, storm, earthquake, landslide, volcanic eruption, or other act of God: 15
 - (iii) an explosion or nuclear, biological, or chemical contamination:
 - (iv) sabotage, terrorism, or an act of war (whether declared or not). 20
- Compare: 1992 No 141 s 38AF 20

4 Conditions to unplanned personal absence application

A borrower who makes an application under **section 20(1)(d)** must—

- (a) have been a New Zealand resident for the period to which the application applies; and 25
 - (b) provide evidence of the duration of the borrower's unplanned personal absence from New Zealand; and
 - (c) provide evidence that the borrower's unplanned personal absence was due to an event or to circumstances beyond the reasonable planning and control of the borrower, like (for example)— 30
 - (i) the illness or death of a family member who is overseas:
 - (ii) the borrower's employer requiring the borrower to attend a conference overseas. 35
- Compare: 1992 No 141 s 38AG

5 Conditions to employment or occupation absence application

A borrower who makes an application under **section 20(1)(e)** must—

- (a) be a New Zealand resident for the period to which the application applies; and 5
- (b) have a permanent place of abode only in New Zealand; and
- (c) provide evidence that the borrower derives either—
 - (i) a PAYE income payment as defined in section RD 3(1) of the Income Tax Act 2007, having a source in New Zealand; or 10
 - (ii) income from a business that has a permanent establishment in New Zealand; and
- (d) provide evidence that the majority of the borrower's personal absences from New Zealand are because of the borrower's employment or occupation. 15

Compare: 1992 No 141 s 38AH

6 Conditions to marriage, civil union, or de facto application

- (1) A borrower who makes an application under **section 20(1)(f)** must— 20
 - (a) be a New Zealand resident for the period to which the application applies; and
 - (b) provide evidence of the borrower's relationship with his or her spouse, civil union partner, or de facto partner (**partner**); and 25
 - (c) provide evidence that the borrower's personal absence from New Zealand is because the borrower is accompanying his or her partner overseas; and
 - (d) provide evidence that the borrower's partner— 30
 - (i) is physically absent from New Zealand in the service in any capacity of the Government of New Zealand; or
 - (ii) satisfies the conditions in **clause 2, 5, 7, 8, or 9.** 35
- (2) The Commissioner may treat a borrower whose partner satisfies the conditions in **clause 2** (working as a volunteer or for token payment for a charity) as being physically in New

Zealand under **section 20(1)(f)** for a maximum aggregate period of up to 24 months.

Compare: 1992 No 141 ss 38AE(3)(b), 38AI

- 7 Condition to study at postgraduate or undergraduate level overseas application** 5
- (1) A borrower who makes an application under **section 20(1)(g)** must—
- (a) be undertaking study at postgraduate or undergraduate level; and
 - (b) provide the Commissioner with the following: 10
 - (i) evidence from the NZQA verifying that the borrower’s course is study at postgraduate or undergraduate level; and
 - (ii) evidence from the borrower’s overseas education provider verifying that the borrower is enrolled full-time in the course verified by the NZQA. 15
- (2) In this clause, **study at postgraduate or undergraduate level** means study that is assessed by the NZQA as being equivalent to level 7, 8, 9, or 10 on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989. 20
- Compare: 1992 No 141 s 38AJ(2), (4)
- 8 Condition to full-time overseas study under formal exchange programme or formal agreement application**
- (1) A borrower who makes an application under **section 20(1)(h)** must— 25
- (a) be undertaking study that—
 - (i) the borrower is enrolled in with a New Zealand tertiary education provider; and
 - (ii) if it is completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider; and 30
 - (iii) is assessed by the NZQA as being equivalent to level 7 or above on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989; and 35

- (iv) is full-time and undertaken overseas as part of either—
 - (A) a formal exchange programme approved by the New Zealand Government; or
 - (B) a formal agreement between a New Zealand tertiary education provider and an overseas tertiary provider; and
 - (b) provide the Commissioner with evidence from the borrower's New Zealand tertiary education provider verifying that the borrower's study meets the requirements of **paragraph (a)**.
- (2) In this clause, **overseas tertiary provider** means an institution or organisation that—
- (a) provides tertiary education or training; and
 - (b) is based in a country other than New Zealand; and
 - (c) is registered by an appropriate education authority in that country.

Compare: 1992 No 141 s 38AJA(2), (4), (6)

9 Condition to full-time overseas study application

A borrower who makes an application under **section 20(1)(i)** must—

- (a) be undertaking study that—
 - (i) the borrower is enrolled in with a New Zealand tertiary education provider; and
 - (ii) if it is completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider; and
 - (iii) is assessed by the NZQA as being equivalent to level 8 or above on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989; and
 - (iv) is full-time and undertaken overseas; and
 - (v) cannot be completed in New Zealand; and
- (b) provide the Commissioner with evidence from the borrower's New Zealand tertiary education provider veri-

fyng that the borrower's study meets the requirements of **paragraph (a)**.

Compare: 1992 No 141 s 38AJA(3), (4)

10 Conditions to Niue, Cook Islands, Tokelau, and Ross Dependency application 5

A borrower who makes an application under **section 20(1)(j)** must—

- (a) provide the Commissioner with evidence that he or she is physically in 1 or more of New Zealand, Niue, the Cook Islands, Tokelau, or the Ross Dependency for the period to which the application applies; and 10
- (b) pay his or her repayment obligation in full when, or before, it falls due during the period he or she is treated as being physically in New Zealand. 15

Compare: 1992 No 141 s 38AIA

Schedule 2

s 64

Application of PAYE rules for purposes
of section 64

- 1 PAYE rules apply to salary or wage deductions and ~~extra deductions~~** 5
- (1) The PAYE rules apply for the purposes of **section 64**, as far as applicable and with all necessary modifications, as if—
- (a) every reference to income tax or tax were a reference to a salary or wage deduction ~~or an extra deduction, as applicable~~; and 10
 - (b) every reference to an amount of tax for a PAYE income payment that is withheld and paid to the Commissioner were a reference to a salary or wage deduction ~~or an extra deduction, as applicable~~; and
 - (c) every reference to a taxpayer or a person were a reference to a borrower; and 15
 - (d) every reference to a tax code were a reference to, as applicable, the repayment code “SL” or “STC”, or the tax code ~~“SLADR”~~ “SLCIR” or “SLBOR”; and
 - (e) every reference to basic tax rates were a reference to the repayment percentage. 20
- (2) However,—
- (a) the following do not apply to salary or wage deductions ~~or extra deductions~~:
 - (i) sections BC 1, LA 6, RC 2(1), RC 6, RC 7, 25
RC 16, RC 17, RD 8 to RD 10, RD 13B, RD 17(2) and (3), and RD 18 to RD 20 of the Income Tax Act 2007;
 - (ii) sections 24K to 24M and 24O of the Tax Administration Act 1994; and 30
 - (b) a salary or wage deduction ~~and an extra deduction~~ must not be treated as part of, or included in, an amount of tax for a PAYE income payment that is withheld and paid to the Commissioner under the PAYE rules. 35
- Compare: 1992 No 141 s 25

Schedule 3

s 79

Application of provisional tax rules for purposes of section 79

- 1 Interim payments for pre-taxed income to be paid in same manner as provisional tax** 5
- (1) The provisional tax rules apply for the purposes of **section 79**, as far as applicable and with all necessary modifications, as if—
- (a) every reference to provisional tax were a reference to the amount of interim payments payable by a borrower; and 10
 - (b) every reference to a person, a person liable to pay provisional tax, or a provisional taxpayer were a reference to a borrower; and
 - (c) every reference to residual income tax were a reference to the amount of the pre-taxed repayment obligation; and 15
 - (d) every reference to income tax were a reference to a pre-taxed repayment obligation; and
 - (e) every reference to an instalment were a reference to an interim payment; and 20
 - (f) every reference to a return of income were a reference to a declaration of pre-taxed income; and
 - (g) every reference to \$2,500 or less (being the threshold below which a person is not required to make provisional tax payments during the year) were a reference to the \$1,000 threshold in **section 73(2)**; and 25
 - (h) every reference to section RC 10 or to an amount calculated under section RC 10 were a reference to **section 76** of this Act or to the amount of a borrower's interim payments calculated in accordance with **section 76** of this Act; and 30
 - (i) the reference in section RC 9(9) of the Income Tax Act 2007 to interest calculated under section 120KC of the Tax Administration Act 1994 were a reference to late payment interest calculated under **section 429 130** of this Act. 35
- (2) However,—

-
- (a) sections LB 2, RC 3, RC 4, RC 5(6) and (8), RC 7(6), RC 8, RC 11, ~~RC 12~~, RC 15 to RC 19, RC 24, RC 28 to RC 35, RC 37 to RC 39, RZ 3, and RZ 5B of the Income Tax Act 2007, and the definition of early-payment discount in section RC 40 of that Act do not apply to an interim payment; and 5
- (b) section RC 5(2) of the Income Tax Act 2007—
- (i) applies only if the borrower's pre-taxed repayment obligation for the second preceding tax year is \$1,000 or more; and 10
- (ii) applies as if the calculation in that section were a reference to the calculation in **section 76** of this Act; and
- (c) section RC 5(3) of the Income Tax Act 2007—
- (i) applies only if the borrower's pre-taxed repayment obligation for the second preceding tax year is \$1,000 or more; and 15
- (ii) for a declaration of pre-taxed income for the immediately preceding tax year, or an estimate of the pre-taxed repayment obligation, that is not filed by the due date for payment of the final interim payment, applies as if the borrower has filed a statement showing an estimate of the pre-taxed repayment obligation for that tax year equal to the total amount of interim payments paid by the borrower on or before that date. 20 25

Compare: 1992 No 141 s 28

Schedule 4

s 91

Application of provisional tax rules for purposes of section 91

- 1 Interim payments for other income to be paid in same manner as provisional tax** 5
- (1) The provisional tax rules apply for the purposes of **section 91**, as far as applicable and with all necessary modifications, as if—
- (a) every reference to provisional tax were a reference to the amount of interim payments payable by a borrower; and 10
 - (b) every reference to a person, a person liable to pay provisional tax, or a provisional taxpayer were a reference to a borrower; and
 - (c) every reference to residual income tax were a reference to the amount of the other income repayment obligation; and 15
 - (d) every reference to income tax were a reference to an other income repayment obligation; and
 - (e) every reference to an instalment were a reference to an interim payment; and 20
 - (f) every reference to section RC 10 or to an amount calculated under section RC 10 were a reference to **section 88** of this Act or to the amount of a borrower's interim payments calculated in accordance with **section 88** of this Act; and 25
 - (g) the reference in section RC 9(9) of the Income Tax Act 2007 to interest calculated under section 120KC of the Tax Administration Act 1994 were a reference to late payment interest calculated under **section 129 130** of this Act. 30
- (2) However,—
- (a) sections LB 2, RC 3, RC 4, RC 5(6) and (8), RC 7(6), RC 8, RC 11, ~~RC 12~~, RC 15 to RC 19, RC 24, RC 28 to RC 35, RC 37 to RC 39, RZ 3, and RZ 5B of the Income Tax Act 2007, and the definition of early-payment discount in section RC 40 of that Act, do not apply to an interim payment; and 35
 - (b) section RC 5(2) of the Income Tax Act 2007—

- (i) applies only if the borrower's other income repayment obligation for the second preceding tax year is \$1,000 or more; and
- (ii) applies as if the calculation in that section were a reference to the calculation in **section 88** of this Act. 5

Compare: 1992 No 141 s 28

Schedule 5

s 211

**Transitional provisions concerning loan
manager and loan advances**

- 1 Provisions of this Act apply in place of Part 1 of Student Loan Scheme Act 1992** 5
- (1) **Sections 9 to 15, Subpart 2 of Part 1, subpart 4 of Part 4, sections 167 to 169, 179, 180, 195, and 203 to 207**, and this schedule apply, and Part 1 of the Student Loan Scheme Act 1992 does not apply, if—
- (a) a person applies for a student loan between 31 December 2011 and 1 April 2012; or 10
- (b) a person becomes a borrower between 31 December 2011 and 1 April 2012; or
- (c) a loan advance is made or charged to a borrower between 31 December 2011 and 1 April 2012. 15
- (2) The Student Loan Scheme Act 1992 must be interpreted to give effect to **subclause (1)**.
- 2 No interest charged by loan manager**
- (1) The loan manager must not charge interest in relation to any loan advance made by the loan manager in accordance with this schedule. 20
- (2) **Subclause (1)** applies despite anything to the contrary in the Student Loan Scheme Act 1992.
- 3 Borrower liable to repay**
- (1) A borrower is liable to repay the total amount outstanding under a student loan in accordance with the Student Loan Scheme Act 1992 and the loan contract (*see* section 13(2) of the Student Loan Scheme Act 1992). 25
- (2) **Subclause (1)** applies despite anything to the contrary in this schedule. 30
-

Schedule 6

s 213

Savings and transitional provisions

Savings provisions

- 1 This Schedule applies despite repeal of Student Loan Scheme Act 1992 and anything to contrary** 5
- The provisions of this schedule apply despite—
- (a) ~~section 217~~;
- (a) **sections 217 and 218(1) and (2)**;
- (b) anything to the contrary in this Act.
- 2 Student Loan Scheme Act 1992 applies to tax years prior to 1 April 2012** 10
- (1) The Student Loan Scheme Act 1992 (and all relevant regulations made under that Act) continues in full effect to the extent necessary for the proper administration and completion of all matters under that Act relating to the tax year ending on 31 March 2012 and all earlier tax years. 15
- (2) All obligations or requirements in relation to a matter under the Student Loan Scheme Act 1992 relating to the tax year ending on 31 March 2012 or an earlier tax year continue to apply, even if that obligation or requirement arises on or after 1 April 2012. 20
- (3) Any action that is taken in relation to a matter under the Student Loan Scheme Act 1992 relating to the tax year ending on 31 March 2012 or an earlier tax year must be taken under the Student Loan Scheme Act 1992, even if that action is taken on or after 1 April 2012. 25

Transitional provisions

- 3 Commissioner may request information from loan manager**
- (1) The loan manager must provide the Commissioner with any information held by the loan manager about a borrower or a loan advance— 30
- (a) that the loan manager would have to notify the Commissioner of under **sections 40 to 42 10, 11, and 12**

- if those sections applied to the borrower or the loan advance; and
- (b) if the Commissioner requests that information.
- (2) A request under **subclause (1)** may relate to particular borrowers or loan advances, or to a class (however defined) of borrowers or loan advances. 5
- 4 Commissioner may write-off certain interest**
- (1) **Subclause (2)** applies to any interest imposed in relation to a borrower under the Student Loan Scheme Act 1992 before the borrower's loan balance is transferred to the Commissioner for collection in accordance with section 4 of that Act. 10
- (2) The Commissioner may, at his or her discretion, write-off the interest.
- 5 Transition of loan balances from Student Loan Scheme Act 1992 to this Act** 15
- (1) **Subclause (2)** applies to any amount (**specified amount A**) that—
- (a) must be paid or repaid in accordance with the Student Loan Scheme Act 1992 on or before 31 March 2012; and 20
- (b) has not been paid or repaid on or before the close of 31 March 2012; and
- (c) has not been decreased, reduced, or written off by the Commissioner.
- (2) On 1 April 2012, specified amount A must be treated as being part of a borrower's ~~outstanding obligations~~ unpaid amount for the purposes of this Act. 25
- (3) **Subclause (4)** applies to any amount (**specified amount B**) that,—
- (a) in accordance with this schedule, must be paid or repaid in accordance with the Student Loan Scheme Act 1992 on or after 1 April 2012; and 30
- (b) is not paid or repaid on or before its due date; and
- (c) is not decreased, reduced, or written off by the Commissioner. 35

- (4) At the time when this Act applies to it, specified amount B must be treated as being part of a borrower's ~~outstanding obligations~~ unpaid amount for the purposes of this Act.
- (5) At the time when this Act applies to it, any amount owed by a borrower under the Student Loan Scheme Act 1992 to which neither **subclause (2) nor (4)** applies must be treated as being part of a borrower's loan balance for the purposes of this Act. 5
- 6 Small amounts of unpaid and uncollected repayment obligations**
- (1) ~~Any amount that the Commissioner has refrained from collecting in accordance with section 51(3) of the Student Loan Scheme Act 1992—~~ 10
- (a) ~~is an unpaid amount under this Act; but~~
- (b) ~~is not subject to late payment interest.~~
- (1) The following are added to a borrower's loan balance under this Act: 15
- (a) any amount that the Commissioner has refrained from collecting from a borrower in accordance with section 51(3) of the Student Loan Scheme Act 1992 and that remains unpaid on the close of 31 March 2012; and 20
- (b) a default amount that is not subject to a penalty under section 52 of the Student Loan Scheme Act 1992 and that remains unpaid on the close of 31 March 2012.
- (2) This clause overrides **clause 5**.
- 7 New Zealand-based and overseas-based borrowers** 25
- (1) Every borrower who, on the close of 31 March 2012, is New Zealand-based under the Student Loan Scheme Act 1992 is treated as being New Zealand-based under this Act on 1 April 2012.
- (2) Every borrower who, on the close of 31 March 2012, is overseas based under the Student Loan Scheme Act 1992 is treated as being overseas-based under this Act on 1 April 2012. 30
- (3) Every day on which a borrower is personally present in New Zealand under the Student Loan Scheme Act 1992 is treated as a day on which the borrower is physically in New Zealand for the purposes of **sections 17 and 19** of this Act. 35

- (4) Every day on which a borrower is personally absent from New Zealand under the Student Loan Scheme Act 1992 is treated as a day on which the borrower is physically absent from New Zealand for the purposes of **section 18** of this Act.

8 Exemptions to the 183-day rule continue 5

- (1) This clause applies if—
- (a) the Commissioner has granted an exemption to the 183-day requirement to a borrower under section 38AE, 38AJ, or 38AJA of the Student Loan Scheme Act 1992 before 1 April 2012; and 10
 - (b) the end date for the period of that exemption continues past 1 April 2012, or the conditions for the continuation of that exemption continue to apply or to be met on the close of 31 March 2012.
- (2) The exemption continues until, as applicable,— 15
- (a) the end date for the period of that exemption specified by the Commissioner; or
 - (b) the conditions for the continuation of that exemption cease to apply or to be met.
- (3) The borrower is treated as being physically in New Zealand for the purposes of **sections 17 to 19** for the period that the exemption continues. 20

8A Overseas-based borrowers' repayment holidays

Every day on which a borrower has had a repayment holiday under Part 3 of the Student Loan Scheme Act 1992 is treated as a day on which the borrower has had a repayment holiday for the purposes of **section 99** of this Act. 25

9 Deduction rates and deduction rate certificates

- (1) If, at the close of 31 March 2012, a borrower has employment for which the repayment code “SL” applies to the borrower under section 18 of the Student Loan Scheme Act 1992, that repayment code continues to apply to that borrower in relation to that employment for the purposes of **section 29** of this Act. 30
- (2) A borrower who, at the close of 31 March 2012, has complied with section 18 of the Student Loan Scheme Act 1992 in rela- 35

- tion to an employer does not have to comply with **section 30** of this Act in relation to that employer.
- (3) An increased repayment deduction rate notice that has been issued under section 20A of the Student Loan Scheme Act 1992 and that continues to apply at the close of 31 March 2012— 5
- (a) continues to apply until the earlier of the date on which—
- (i) the deductions made from the borrower's salary or wages in accordance with the notice equal the amount specified in the notice in accordance with section 20A(2)(b) of the Student Loan Scheme Act 1992; or 10
- (ii) the Commissioner notifies the relevant employer otherwise; and
- (b) must be treated as if it were an additional deduction rate notice that has been issued by the Commissioner under **section 43(2)** of this Act. 15
- (4) A special repayment deduction rate certificate that has been issued under section 21 of the Student Loan Scheme Act 1992 and that continues to apply at the close of 31 March 2012— 20
- (a) continues to apply; and
- (b) must be treated as if it were, as applicable in the circumstances,—
- (i) a request by the borrower to make ~~extra borrower~~ deductions in accordance with ~~section 33(1)(b)~~ **33A** of this Act; or 25
- (ii) a special deduction rate certificate issued in relation to the borrower under—
- (A) **section 39** of this Act (special deduction rate certificate for unused repayment threshold); or 30
- (B) **section 94** of this Act (special deduction rate certificate for lower repayment obligation); or
- (C) **section 140** of this Act (special deduction rate certificate for hardship relief). 35

10 Pay period that spans 1 April 2012

If an employer or PAYE intermediary pays an amount to a borrower by way of salary or wages for a pay period that starts before, and ends after, 1 April 2012,—

- (a) the employer or PAYE intermediary must make a deduction from that amount for the entire pay period in accordance with **section 31(2)** of this Act; and 5
- (b) section 19 of the Student Loan Scheme Act 1992 does not apply to the employer or PAYE intermediary in relation to the pay period. 10

11 Instalment arrangements

(1) This clause applies if—

- (a) a borrower has entered into an instalment arrangement with the Commissioner on or before 31 March 2012 in relation to an amount (the **instalment amount**) that must be paid under the Student Loan Scheme Act 1992; and 15
- (b) some of the payments that are required under the instalment arrangement must be paid on or after 1 April 2012.

(2) If all of the payments that are required under the instalment arrangement are paid on or before their due date,— 20

- (a) all late payment penalties that apply to the instalment amount under the Student Loan Scheme Act 1992 must be written off by the Commissioner; and
- (b) all late payment interest that applies to the instalment amount under this Act must be written off by the Commissioner. 25

(3) If any of the payments that are required under the instalment arrangement are not paid on or before their due date, the following applies: 30

- (a) unpaid instalment amounts with a due date before 1 April 2012 are subject to the late payment penalties that apply to that amount under the Student Loan Scheme Act 1992 until the close of 31 March 2012; and
- (b) unpaid instalment amounts with a due date before 1 April 2012 that remain unpaid on or after that date are subject to late payment interest under this Act from 31 March 2012; and 35

- (c) unpaid instalment amounts with a due date on or after 1 April 2012 are subject to late payment interest under this Act.

11A No refunds for deductions or payments made before 1 April 2006

5

(1) No refund may be made under this Act or the Student Loan Scheme Act 1992 for any amount that was deducted or paid in excess (as set out in section 56(1)(a) to (e) or 57(1) of the Student Loan Scheme Act 1992) before 1 April 2006.

(2) **Subclause (1) applies despite anything to the contrary.**

10

11B Matters from Student Loan Scheme Act 1992 to be used in this Act when required

(1) This clause applies if—

(a) this Act requires something to be done (a **new Act requirement**); and

15

(b) the new Act requirement cannot be done without reference to an equivalent thing in, that arises from, or that was required to be done by the Student Loan Scheme Act 1992 (a **1992 Act requirement**).

(2) The new Act requirement must utilise the 1992 Act requirement—

20

(a) as if it were the thing that was required by, or referred to in, the new Act requirement; and

(b) with all necessary modifications; and

(c) despite any difference in terminology between this Act and the Student Loan Scheme Act 1992.

25

(3) For example, the other income payments that are due for the 2012–13 tax year under this Act must be determined—

(a) by reference to residual repayment obligations for the 2011–12 tax year under the Student Loan Scheme Act 1992; and

30

(b) as if references to other income repayment obligations in this Act were references to residual repayment obligations for the 2011–12 tax year under the Student Loan Scheme Act 1992.

35

12 Updated references

Unless the context otherwise requires, all references in an enactment or document (including a loan contract) to—

- (a) the Student Loan Scheme Act 1992 must be read as a reference to this Act; and 5
 - (b) the student loan scheme under the Student Loan Scheme Act 1992 must be read as a reference to the student loan scheme under this Act; and
 - (c) a student loan under the Student Loan Scheme Act 1992 must be read as a reference to a student loan under this Act; and 10
 - (d) a borrower under the Student Loan Scheme Act 1992 must be read as a reference to a borrower under this Act.
-

Schedule 6A
Amendments to this Act

s 213A

- 1** **New section 4A substituted**
Section 4A is repealed and the following section substituted:
- “4A** **Meaning of unpaid amount** 5
- “(1)** **In this Act, unpaid amount, in relation to a borrower, means**
the aggregate amount of so much of each of the following as
has not been paid on or before the due date and has not been
decreased, reduced, or written off by the Commissioner:
- “(a)** **a remaining repayment:** 10
- “(b)** **an interim payment:**
- “(c)** **an overseas-based repayment obligation:**
- “(d)** **a consolidated loan balance that is payable as a result of**
a demand made under a loan contract:
- “(e)** **any part of a loan advance or a loan balance that the** 15
Commissioner has recalled or demanded repayment of
under section 197A of this Act or section 63N of the
Student Loan Scheme Act 1992:
- “(f)** **an amount that must be paid by a borrower in accord-**
ance with a written notification under section 47: 20
- “(g)** **a late filing penalty:**
- “(h)** **a student loan shortfall penalty:**
- “(i)** **late payment interest that has been added to a bor-**
rower’s unpaid amount under section 132(2).
- “(2)** **However, an interim payment is an unpaid amount to the extent** 25
only that the interim payment (determined at the end of the tax
year) that should have been payable on its due date exceeds the
payment that was paid on or before that date.
- “(3)** **In determining an unpaid amount,—**
- “(a)** **remaining repayments calculated under sections** 30
74(4) and 86(4) for the tax year replace the interim
payments that were payable for that year; and
- “(b)** **those remaining repayments must be treated as having**
been unpaid from the day after the due date of the in-
terim payments; and 35
- “(c)** **the interim payments must be disregarded.”**

- 2 **Overseas-based borrower’s standard and Commissioner deductions satisfy overseas-based repayment obligation**
Section 109(4) is amended by omitting “**section 186**” and substituting “**sections 186 to 186D**”.
- 3 **Heading and new sections 125 to 128 substituted** 5
The heading above **section 125** and **sections 125 to 129** are repealed and the following heading and sections substituted:
“Loan interest charged for borrowers who are overseas-based
“125 Loan interest charged for borrowers who are overseas-based 10
“(1) A borrower is liable to pay loan interest on his or her loan balance for each day that the borrower is overseas-based.
“(2) Loan interest must be calculated in accordance with the formula— 15
- $$\underline{a} = \frac{(b \times c)}{365}$$
- where—
a is the loan interest
b is the borrower’s loan balance on the relevant day
c is the base interest rate.
- “126 Loan interest calculated daily and charged and compounded monthly 20
“(1) Loan interest is calculated each day that a borrower is overseas-based and has a loan balance.
“(2) Loan interest is charged and added to the borrower’s loan balance on the last day of each month. 25
“(3) However, no interest is charged or added under subsection (2) for a month if the loan balance is paid in full on or before the last day of that month.
- “127 Notification that loan interest has compounded
If loan interest is added to a borrower’s loan balance in accordance with **section 126(2)**, the Commissioner must, at least 30

once in the following 12 months, notify the borrower in writing of—

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

“(b) the borrower’s loan balance on the opening and closing dates; and 5

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

“Compare: 1992 No 141 s 43(1)

“128 Loan interest written off for quick repayment of consolidated loan balance 10

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

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

“(b) would subsequently have been treated as being New Zealand-based except that he or she ceased to be a borrower because of **paragraph (c)**; and 15

“(c) fully repaid his or her consolidated loan balance before the end of the period of 183 consecutive days under which the borrower would have been treated as being New Zealand-based. 20

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

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

“(b) ending on the day on which the person’s consolidated loan balance was fully repaid. 25

“Compare: 1992 No 141 s 38AM”.

4 Heading and new sections 130 to 132B substituted

The heading above **section 130** and **sections 130 to 132** are repealed and the following heading and sections substituted:

“Late payment interest 30

“130 Late payment interest charged on unpaid amount

“(1) A borrower is liable to pay late payment interest on his or her unpaid amount if that unpaid amount is \$500 or more (or any other level prescribed by regulations).

“(2) Late payment interest must be calculated in accordance with the formula— 35

$$a = \frac{(b \times c)}{365}$$

where—

- a is the late payment interest
b is the unpaid amount
c is the base interest rate plus 4%.

“Compare: 1992 No 141 s 44

5

“131 Late payment interest reduced if instalment arrangement complied with

“(1) This section applies if—

“(a) a borrower is liable to pay late payment interest on an unpaid amount under **section 130**; and

10

“(b) the borrower has entered into an instalment arrangement in relation to the unpaid amount in accordance with **section 146**.

“(2) For each month that the borrower meets his or her obligations under the instalment arrangement, any late payment interest that the borrower is liable to pay on the unpaid amount for that month must be calculated as if item c in the formula in **section 130(2)** is the base interest rate plus 2%.

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“(3) However, **subsection (2)** applies only to the days in a month during which an instalment arrangement applies.

20

“132 Late payment interest calculated daily and charged and compounded monthly

“(1) Late payment interest is calculated each day after the due date of an unpaid amount until the unpaid amount is paid in full.

“(2) Late payment interest is charged and added to a borrower’s unpaid amount on the last day of each month.

25

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

“132A Initial notification that late payment interest is payable

“(1) The Commissioner must, as soon as practicable after a borrower becomes liable to pay late payment interest, notify that borrower in writing.

“(2) The notification must specify— 5

“(a) the unpaid amount; and

“(b) that the borrower is liable to pay late payment interest on the unpaid amount in accordance with this subpart; and

“(c) the amount of late payment interest (if any) that has been added to the unpaid amount under **section 132(2) as at the date of the notification; and** 10

“(d) the date on which late payment interest will next be added to the unpaid amount under **section 132(2).**

“Compare: 1992 No 141 ss 43(1), 45 15

“132B Ongoing notification requirements regarding late payment interest

“(1) The Commissioner must, as soon as practicable after late payment interest is added to a borrower’s unpaid amount under **section 132(2), notify the borrower in writing—** 20

“(a) of the unpaid amount on which the late payment interest has been charged; and

“(b) that the borrower has been charged with late payment interest on that unpaid amount; and

“(c) of the amount of that interest; and 25

“(d) that the unpaid amount has been increased by the amount of that interest; and

“(e) of the new total of the borrower’s unpaid amount; and

“(f) that the new total of the borrower’s unpaid amount is itself subject to late payment interest; and 30

“(g) of the date on which late payment interest will next be added to the borrower’s unpaid amount under **section 132(2).**

“(2) The Commissioner may notify the borrower in writing of the borrower’s unpaid amount and late payment interest at any other time the Commissioner chooses. 35

“Compare: 1992 No 141 ss 43(1), 45”.

5 Power of Commissioner in relation to small amounts

Section 136 is amended by repealing subsection (2) and substituting the following subsection:

“(2) The Commissioner may refrain from collecting payment of an unpaid amount if that unpaid amount is less than \$500.” 5

6 New section 138 substituted

Section 138 is repealed and the following section substituted:

138 Commissioner may grant relief from late payment interest

“(1) **Subsection (2)** applies—

“(a) if a borrower has been charged with late payment interest; and 10

“(b) regardless of whether that late payment interest has been paid, either in whole or in part; and

“(c) if an application is made under **section 137(1)(a)** for relief from late payment interest. 15

“(2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the late payment interest as the Commissioner considers equitable.

“(3) If late payment interest is cancelled,— 20

“(a) the borrower’s consolidated loan balance is decreased by the amount of the cancelled late payment interest; and

“(b) if the late payment interest has been added to the borrower’s unpaid amount under **section 132(2)**, the borrower’s unpaid amount is decreased by the amount of the cancelled late payment interest; and 25

“(c) any payment made in excess of the remaining amount of late payment interest payable (if any) by the borrower (an **excess payment**) must be offset against the borrower’s consolidated loan balance as follows: 30

“(i) first, against any unpaid amount; and

“(ii) secondly, against the loan balance; and

“(d) the Commissioner must refund any remaining excess payment to the borrower (*see sections 193 and 194*). 35

“Compare: 1992 No 141 s 53”.

- 7 **New sections 186 to 186D substituted**
Section 186 is repealed and the following sections are substituted:
- “186 Definition used in sections 186A to 186D**
In **sections 186A to 186D**, **current year obligations** means 5
each of the following that has a due date in or for the tax year
in which the payment was received by the Commissioner:
- “(a) an amount that must be paid by a borrower in accordance with a written notification under **section 47**:
“(b) a remaining repayment: 10
“(c) an interim payment:
“(d) an instalment of an overseas-based borrower’s repayment obligation for a tax year that must be paid in accordance with **section 104 or 107(1)(d)**:
“(e) a late filing penalty: 15
“(f) a student loan shortfall penalty.
- “186A Order in which salary or wage deduction offset against borrower’s consolidated loan balance**
- “(1) A standard deduction received by the Commissioner in respect of a borrower must be offset against the borrower’s loan balance. 20
- “(2) A Commissioner deduction for the purposes set out in **section 43(1)(a)** received by the Commissioner in respect of a borrower must be offset against the borrower’s loan balance.
- “(3) A Commissioner deduction for the purposes set out in **section 43(1)(b)** received by the Commissioner in respect of a borrower must be offset as follows: 25
“(a) first, against any unpaid amount the borrower has; and
“(b) secondly, any remainder must be offset against the borrower’s current year obligations; and 30
“(c) thirdly, any remainder must be offset against the borrower’s loan balance.
- “(4) A borrower deduction received by the Commissioner in respect of a borrower must be offset as follows:
“(a) first, against any unpaid amount the borrower has; and 35
“(b) secondly, any remainder must be offset against the borrower’s current year obligations; and

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

“Compare: 1992 No 141 s 50

“186B Order in which payments offset against borrower’s consolidated loan balance

5

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

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

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

10

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

“Compare: 1992 No 141 s 50

“186C Exception to sections 186A and 186B if instalment arrangement entered into

15

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

“(a) are made by, or on behalf of, a borrower who has entered into an instalment arrangement in accordance with **section 146**; but

20

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

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

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

25

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

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

30

“(3) This section overrides **sections 186A and 186B**.

“186D Manner in which salary or wage deductions and payments are offset

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

35

- “(2) A salary or wage deduction or payment that is offset against current year obligations must—
- “(a) be offset against each of the borrower’s current year obligations in the order in which those obligations become due, from the earliest to the latest; and 5
- “(b) if a remaining repayment and an interim payment are due on the same date, be offset against the remaining repayment before being offset against the interim payment; and
- “(c) be credited to the borrower’s loan balance. 10
- “(3) A salary or wage deduction or payment that is offset against a loan balance must be credited to the borrower’s loan balance.
- “Compare: 1992 No 141 s 50”.
- 8** **New section 191 substituted**
- Section 191** is repealed and the following section substituted: 15
- “191 Write-off of consolidated loan balance**
- “(1) A borrower’s consolidated loan balance must be reduced to zero if—
- “(a) the borrower dies; or
- “(b) the Commissioner has reasonable grounds for believing that the borrower has died. 20
- “(2) The Commissioner may reduce a borrower’s consolidated loan balance to zero if that balance is less than \$20.
- “(3) **Subsection (1)(a)** has effect from the day on which the borrower died. 25
- “(4) **Subsection (1)(b)** has effect from the day on which the borrower is believed to have died.
- “(5) **Subsection (2)** has effect from the day on which the Commissioner exercises his or her discretion to reduce the consolidated loan balance to zero. 30
- “(6) If a borrower’s consolidated loan balance is reduced to zero under **subsection (1)(a) or (2)**, that action may not be reversed.
- “(7) **Subsection (6)** applies despite anything to the contrary.
- “Compare: 1992 No 141 s 60”. 35

9 Section 212 repealed
Section 212 is repealed.

Schedule 7

s 214

**Amendments to Student Loan Scheme Act
1992 and Credit Contracts and Consumer
Finance Act 2003**

| | |
|---|----|
| Student Loan Scheme Act 1992 (1992 No 141) | 5 |
| <u>Section 45F(2): repeal and substitute:</u> | |
| <u>“(2) If a borrower’s loan balance will not be fully repaid as a result of being reduced by a 10% bonus, that bonus must be credited to the borrower’s loan balance with effect from—</u> | |
| <u>“(a) 1 April in the tax year that follows the tax year for which the excess repayments were made; or</u> | 10 |
| <u>“(b) any other date that the Commissioner considers appropriate if the borrower dies or is declared bankrupt.”</u> | |
| <u>Heading to section 57B: omit “1 April 2004” and substitute “31 March 2006”.</u> | 15 |
| <u>Section 57B: omit “1 April 2004” and substitute “31 March 2006”.</u> | |
| <u>New sections 63B to 63E 63N: insert after section 63A:</u> | |
| <u>“63B Initial disclosure</u> | |
| <u>The loan manager must provide a borrower with a copy of the borrower’s student loan contract before the day that is 6</u> | 20 |
| <u>working days after the day on which the contract is entered into.</u> | |
| <u>“Compare: SR 2010/341 r 5</u> | |
| <u>“63B63C Certain information must be disclosed in loan contract</u> | 25 |
| <u>“(1) Every loan contract entered into on or after the date on which this section comes into force must specify the following information that applies at the date the loan contract is entered into:</u> | |
| “(a) the repayment threshold: | |
| “(b) the total interest rate: | 30 |
| “(c) the repayment percentage: | |
| “(d) the amount of any student loan establishment fee: | |
| “(e) the amount of the annual administration fee charged under section 63D 63L : | |
| “(f) any other matters specified in regulations. | 35 |

Student Loan Scheme Act 1992 (1992 No 141)—continued

“(2) The Commissioner must inform borrowers in accordance with **section 63C 63D** if any of the information specified in accordance with **subsection (1)** changes.

“~~63C~~63D Method of informing borrowers

For the purposes of **section 63B(2) 63C(2)**, the Commissioner must inform a borrower—

“(a) by—

“(i) providing the information free of charge on an Internet site that allows the borrower to access the information at all reasonable times; and 10

“(ii) making the information available for inspection free of charge, and for purchase at a reasonable price, at each office of the Inland Revenue Department during the period from 8 am to 4.30 pm each working day; or 15

“(b) by giving public notice.

“63E Continuing disclosure of information

“(1) The loan manager or the Commissioner must disclose the information set out in **section 63F** to the borrower under a student loan contract. 20

“(2) The information must—

“(a) be disclosed at least once in each 6-month period following the day on which the contract is entered into; and

“(b) relate to the previous 6-month period. 25

“Compare: SR 2010/341 r 6

“63F Content of information disclosed

Each disclosure of information in accordance with **section 63E** must contain as much of the following information as is applicable to the borrower or the student loan contract: 30

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

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

Student Loan Scheme Act 1992 (1992 No 141)—continued

“(c) the date and amount, and a description, of each amount advanced to the borrower under the contract during the period covered by the disclosure; and

“(d) the date and amount of any interest charged to the borrower during the period covered by the disclosure; and 5

“(e) the total interest rate that applies during the period covered by the disclosure; and

“(f) the date and amount, and a description, of each fee charged to the borrower during the period covered by the disclosure; and 10

“(g) the date and amount, and a description, of each penalty charged to the borrower during the period covered by the disclosure.

“Compare: SR 2010/341 r 7

“63G Disclosure of changes to obligations under student loan contract 15

“(1) **Subsection (2)** applies if—

“(a) a change is made to a borrower’s obligations under a student loan contract; and

“(b) that change increases the borrower’s obligations under that contract in a more than minor way, including a change to— 20

“(i) the borrower’s repayment obligations; or

“(ii) the repayment percentage; or

“(iii) the total interest rate; and 25

“(c) that change is made—

“(i) without the borrower’s prior agreement; or

“(ii) by, or as a consequence of, an enactment.

“(2) Details of the change must be disclosed to the borrower within 7 months after the day on which the change is made. 30

“Compare: SR 2010/341 r 8

“63H Direct disclosure of information and changes

“(1) Disclosure under **sections 63E to 63G** must be made—

Student Loan Scheme Act 1992 (1992 No 141)—continued

- “(a) by means of information that is printed, typewritten, or otherwise visibly represented, copied, or reproduced on paper and is given by personal delivery, post, or fax; or
“(b) by an electronic means (except a fax), if the person making the disclosure complies with the Electronic Transactions Act 2002, including by email or the Internet (if the borrower for whom the disclosure is intended is directly alerted to it in some manner). 5
- “(2) Despite **subsection (1)(b)** of this section and section 16 of the Electronic Transactions Act 2002, the consent of a borrower is not required in order for disclosure to be made in an electronic form. 10
- “(3) However, **subsection (1)** does not apply if the loan manager or the Commissioner, as applicable, cannot reasonably locate the borrower. 15
“Compare: SR 2010/341 r 9
- “**63I Public disclosure of changes**
Disclosure under **section 63G** must also be made—
“(a) by providing the information free of charge on an Internet site that allows a borrower to access the information at all reasonable times; and 20
“(b) by giving public notice that the information is available on that Internet site.
“Compare: SR 2010/341 r 10
- “**63J Satisfaction of requirements to disclose** 25
If disclosure is made in accordance with **sections 63E to 63H**, the requirements to disclose under those sections are satisfied regardless of whether the borrower receives the information that was disclosed.
“Compare: SR 2010/341 r 11 30

Student Loan Scheme Act 1992 (1992 No 141)—continued**63K Cap on student loan establishment fees**

A student loan establishment fee charged by the loan manager to a borrower under a student loan contract must not exceed \$60.

Compare: SR 2010/341 r 12

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~~63D~~63L Annual administration fee

~~“(1) If a borrower has a loan balance of \$20 or more on the close of 31 March 2012,—~~

~~“(a) an annual administration fee of \$40 must be charged by the Commissioner to that borrower for the 1 April 2011 to 31 March 2012 tax year; and~~

~~“(b) that borrower’s loan balance is increased on 31 March 1 April 2012 by the amount of that fee.~~

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“(2) However, no fee may be charged under **subsection (1)** to a borrower if that borrower is charged with a student loan establishment fee during the period starting on 1 April 2011 and ending on 31 March 2012.

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~~63E~~63M Student loan contracts are not credit contracts

~~“(1) A loan contract is not—~~

~~“(a) a credit contract for the purposes of the Credit Contracts Act 1981;~~

~~“(b) a credit contract or a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003.~~

20

“(2) No cause of action exists under the Credit Contracts Act 1981 or the Credit Contracts and Consumer Finance Act 2003 in relation to a loan contract.

25

“(3) This section applies—

“(a) to all loan contracts regardless of when they were entered into; and

“(b) despite anything to the contrary.

30

Student Loan Scheme Act 1992 (1992 No 141)—continued**“63N Commissioner may exercise rights in loan contracts to recall loans**

“(1) The Commissioner may exercise any right or power in a loan contract to recall or demand repayment of all or any part of a loan balance. 5

“(2) To avoid doubt, the right or power may be exercised in the name of the Commissioner without any assignment by the lender.

“(3) This section applies—

“(a) whether or not the Commissioner is the lender under the loan contract or a person on whom the loan contract confers the right or power; and 10

“(b) despite **section 63 or anything in the loan contract or any other Act; and**

“(c) whether the loan contract was signed before or after the date on which this section comes into force.” 15

Section 87(1): insert after paragraph (bb):

“(bc) specifying further information requirements in accordance with **section 63B(1)(f) 63C(1)(f).”**

Credit Contracts and Consumer Finance Act 2003 (2003 No 52) 20

Section 15(1): insert after paragraph (c):

“(ca) a loan contract (as ~~that term~~ is defined in section 2(1) of the Student Loan Scheme Act 1992):”.

Schedule 8

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Amendments to other Acts

Accident Compensation Act 2001 (2001 No 49)

Section 123(2)(i): repeal and substitute:

- “(i) **subparts 1 to 3 and 5 of Part 2** or **section 185** of the Student Loan Scheme Act **2010**; or”.

Companies Act 1993 (1993 No 105)

Clause 1(2)(d) of Schedule 7: omit “section 25 of the Student Loan Scheme Act 1992” and substitute “**section 64** of the Student Loan Scheme Act **2010**”.

10

Corrections Act 2004 (2004 No 50)

Definition of **student loan** in section 180C(2): omit “section 2 of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”.

Credit Contracts and Consumer Finance Act 2003 (2003 No 52) 15

Section 15(1)(ca): omit “section 2(1) of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”.

Customs and Excise Act 1996 (1996 No 27)

Definition of **borrower** in section 280G: omit “section 2 of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”.

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Definition of **identifying information** in section 280G: omit “section 62A(2) of the Student Loan Scheme Act 1992” and substitute “**section 201(2)** of the Student Loan Scheme Act **2010**”.

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Heading to section 280H: omit “**Student Loan Scheme Act 1992**” and substitute “**Student Loan Scheme Act 2010**”.

Section 280H(1)(a) to (c): repeal and substitute:

- “(a) whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act **2010**;
- “(b) whether borrowers are New Zealand residents for the purposes of that Act.”

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Customs and Excise Act 1996 (1996 No 27)—*continued*

Heading to section 280I: omit “**Student Loan Scheme Act 1992**” and substitute “**Student Loan Scheme Act 2010**”.

Section 280I(1)(a) to (d): repeal and substitute:

- “(a) whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act **2010**: 5
- “(b) whether borrowers are New Zealand residents for the purposes of that Act:
- “(c) for the purposes of that Act, whether borrowers are in New Zealand.” 10

District Courts Act 1947 (1947 No 16)

Section 84I(2)(c)(iiia): omit “section 46 of the Student Loan Scheme Act 1992” and substitute “**section 185** of the Student Loan Scheme Act **2010**”.

Education Act 1989 (1989 No 80)

15

Definition of **student loan** and **student loan scheme** in section 226A(1): repeal and substitute:

“**student loan** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**

“**student loan scheme** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**”.

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Definition of **student loan** and **student loan scheme** in section 238B(1): repeal and substitute:

“**student loan** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**

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“**student loan scheme** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**”.

Definition of **student loan** in section 302: repeal and substitute:

“**student loan** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**”.

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Definition of **student loan information** in section 302: omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Education Act 1989 (1989 No 80)—*continued*

Section 307AC(2): omit “section 2A of the Student Loan Scheme Act 1992, the Student Loan Scheme Act 1992” and substitute “**section 6** of the Student Loan Scheme Act **2010**, the Student Loan Scheme Act **2010**”.

Electoral Act 1993 (1993 No 87)

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Section 263B(4)(a)(iii): omit “section 2 of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”.

Income Tax Act 2007 (2007 No 97)

Section MB 13(2)(g): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”. 10

Section MK 2(1)(d)(ii): repeal and substitute:

“(ii) work overseas as a volunteer or for token payment for a charitable organisation named in regulations made under the Student Loan Scheme Act **2010** and the work meets 1 or more of the requirements in **clause 2(1) of Schedule 1** of that Act.” 15

Section RH 3(2)(b)(i): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”. 20

Paragraph (f) of the definition of **employer monthly schedule** in section YA 1: omit “and student loan deductions made” and substitute “deductions made, and salary or wage deductions ~~and extra deductions~~ made under the Student Loan Scheme Act **2010**”.

Paragraph (f) of the definition of **PAYE income payment form** in section YA 1: omit “student loan payments” and substitute “salary or wage deductions ~~and extra deductions~~ made under the Student Loan Scheme Act **2010**”. 25

Insolvency Act 2006 (2006 No 55)

Definition of **student loan balance** in section 3: repeal and substitute:

“**student loan balance** means a consolidated loan balance, as that term is defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.

Section 274(2)(d): omit “section 25 of the Student Loan Scheme Act 1992” and substitute “**section 64** of the Student Loan Scheme Act **2010**”.

Judicature Act 1908 (1908 No 89)

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Rule 17.35(1)(d) of Schedule 2: omit “section 46 of the Student Loan Scheme Act 1992” and substitute “**section 185** of the Student Loan Scheme Act **2010**”.

KiwiSaver Act 2006 (2006 No 40)

Section 98(3)(c): repeal and substitute:

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“(c) the total salary or wage deductions ~~and extra deductions~~ made under the Student Loan Scheme Act **2010**; and”.

Prisoners’ and Victims’ Claims Act 2005 (2005 No 74)

Section 17(5): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

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Section 19(3): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Privacy Act 1993 (1993 No 28)

Item relating to the Student Loan Scheme Act 1992 in Schedule 3: omit and substitute:

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Student Loan Scheme Act **2010**

Section 201

Social Security Act 1964 (1964 No 136)

Section 84(1): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Tax Administration Act 1994 (1994 No 166)

Paragraph (a)(iii)(D) of the definition of **tax** in section 3(1): repeal and substitute:

“(D) a salary or wage deduction (as defined in **section 4(1)** of the Student Loan Scheme Act **2010**), or an amount recovered in accordance with **section 185** of that Act:”.

Paragraph (a)(x) of the definition of **tax** in section 3(1): repeal and substitute:

“(x) a pre-taxed repayment obligation, an other income repayment obligation, or an overseas-based repayment obligation (as those terms are defined in **section 4(1)** of the Student Loan Scheme Act **2010**):”.

Paragraph (e) of the definition of **tax** in section 3(1): omit “any interest charged on a loan balance (as that term is defined in the Student Loan Scheme Act 1992)” and substitute “any overseas-based interest charged on a loan balance (as those terms are defined in **section 4(1)** of the Student Loan Scheme Act **2010**):”.

Paragraph (c) of the definition of **tax** in section 3(1): repeal and substitute:

“(c) for the purposes of sections 6, 6A, and 6B, includes—
 “(i) revenue collected under, entitlements arising from, or amounts paid or payable under the Inland Revenue Acts; and
 “(ii) loan interest charged on a loan balance (as those terms are defined in **section 4(1)** of the Student Loan Scheme Act **2010**); and
 “(iii) contributions administered by the Commissioner under the KiwiSaver Act 2006:”.

Paragraph (ca)(ii) of the definition of **tax** in section 3(1): omit “section 2 of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”.

Paragraph (d)(iii)(D) of the definition of **tax** in section 3(1): repeal and substitute:

“(D) a salary or wage deduction (as defined in **section 4(1)** of the Student Loan Scheme

Tax Administration Act 1994 (1994 No 166)—continued

Act **2010**) or an amount recovered in accordance with **section 185** of that Act.”.

Paragraph (d)(ix) of the definition of **tax** in section 3(1): repeal and substitute:

“(ix) a pre-taxed repayment obligation, an other income repayment obligation, or an overseas-based repayment obligation (as those terms are defined in **section 4(1)** of the Student Loan Scheme Act **2010**)”.

Section 4A(3)(c): repeal and substitute: 10

“(c) salary or wage deductions ~~or extra deductions~~ under the Student Loan Scheme Act **2010**,—”.

Section 33A(1)(b)(ii): repeal.

Section 33A(1)(b)(viii): repeal.

Section 33A(1)(g): repeal. 15

Section 46(5B): omit “or student loan deductions made” and substitute “deductions made, or salary or wage deductions ~~or extra deductions~~ made under the Student Loan Scheme Act **2010**”.

Section 81(4)(g) and (gb): repeal and substitute:

“(g) communicating to an authorised person under **section 200** of the Student Loan Scheme Act **2010** any information specified in **subsection (1) or (2)** of that section in accordance with **subsection (1)** of that section:

“(gb) communicating to the chief executive of the New Zealand Customs Service under **section 201** of the Student Loan Scheme Act **2010** any information specified in **subsection (2)** of that section for the purpose set out in **subsection (1)** of that section.”. 25

Section 81(7): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”. 30

Section 120B(c): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Section 138S(1)(a): omit “Student Loan Scheme Act 1992” in each place where it appears and substitute in each case “Student Loan Scheme Act **2010**”. 35

Tax Administration Act 1994 (1994 No 166)—continued

Section 143A(5): insert after paragraph (d):

“(e) a salary or wage deduction ~~or extra deduction~~ made under the Student Loan Scheme Act **2010**.”

Section 143B: insert after subsection (2):

“(3) In this section, **tax** includes a repayment obligation as defined in **section 4(1)** of the Student Loan Scheme Act **2010**.” 5

Section 149(5): repeal and substitute:

“(5) If a shortfall penalty, other than under section 141ED, has been imposed on a taxpayer for taking an incorrect tax position, the Commissioner may not subsequently prosecute the taxpayer— 10
 “(a) under this Act for taking the incorrect tax position; or
 “(b) under the Student Loan Scheme Act **2010** for taking the incorrect tax position; or
 “(c) in relation to an obligation arising under the Student Loan Scheme Act **2010** for taking the incorrect tax position.” 15

Section 157A(1)(a)(iv): repeal and substitute:

“(iv) **section 185** of the Student Loan Scheme Act **2010**; or”

Section 184A(5)(f): repeal and substitute: 20

“(f) a repayment obligation, as defined in **section 4(1)** of the Student Loan Scheme Act **2010**, if the borrower has chosen to receive a refund under **section 123** of that Act.”

Item relating to the Student Loan Scheme Act 1992 in the Schedule: 25
 omit and substitute: “Student Loan Scheme Act **2010**”.

Schedule 9

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Amendments to other enactments

District Courts Rules 2009 (SR 2009/257)

Note 2(b) of form 67 in Schedule 1: omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

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Education (Early Childhood Services) Regulations 2008 (SR 2008/204)

Regulation 7(c): omit “student loan within the meaning of section 2(1) of the Student Loan Scheme Act 1992” and substitute “student loan, as defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.

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Regulation 8(c): omit “student loan within the meaning of section 2(1) of the Student Loan Scheme Act 1992” and substitute “student loan, as defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.

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Inland Revenue Department (Drafting) Order 1995 (SR 1995/286)

Clause 2(2)(a): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Sentencing (Orders of Reparation) Order 2006 (SR 2006/263)

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Item relating to the Student Loan Scheme Act 1992 in the Schedule: omit “**Student Loan Scheme Act 1992 (1992 No 141)**” and substitute “**Student Loan Scheme Act 2010 (2010 No 00)**”.

Item relating to the Student Loan Scheme Act 1992 in the Schedule: omit “Section 81(4)” and substitute “**Section ~~156(4)~~ 156(3)**”.

25

Student Allowances Regulations 1998 (SR 1998/277)

Paragraph (c)(vii) of the definition of **personal income** in regulation 2(1): omit “within the meaning of section 2 of the Student Loan Scheme Act 1992” and substitute “as defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.

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Paragraph (c)(v) of the definition of **spousal or partner’s income** in regulation 2(1): omit “within the meaning of section 2 of the Student

Student Loan Scheme Bill

Student Allowances Regulations 1998 (SR 1998/277)—*continued*

Loan Scheme Act 1992” and substitute “as defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.

Legislative history

| | |
|-----------------|---|
| 27 August 2010 | Introduction (Bill 198–1) |
| 14 October 2010 | First reading and referral to Finance and Expenditure Committee |
