

Taxation (Tax Administration and Remedial Matters) Bill

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

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

Introduction

This bill proposes the key amendments outlined below, and a number of remedial provisions, to strengthen existing tax policy:

- abolishing gift duty
- providing more flexibility as to the circumstances in which taxpayer information held by Inland Revenue can be released and the sharing of this information with other government agencies
- improving the tax disputes procedure
- increasing the flexibility of the tax pooling rules.

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

During the course of our consideration, the Minister introduced a Supplementary Order Paper (No 220) containing proposals to amend the portfolio investment entity (PIE) rules to remove the over-taxation of non-resident investment in PIEs. The changes proposed in the Supplementary Order Paper would mean that non-resident investors in PIEs would be taxed on their foreign-sourced and New Zealand-sourced income in roughly the same way as if they invested directly in the assets in which the PIE invests, which could significantly reduce the associated tax rates. To do this the Supplementary Order Paper proposes the introduction of two new categories of PIE: a “foreign investment zero rate PIE” and a “foreign investment variable rate PIE”. We resolved to consider the Supplementary Order Paper along with the bill, and recommend that the bill be amended to include its provisions, with some changes. The key changes we recommend to the provisions proposed in the Supplementary Order Paper are also set out in this commentary.

Gift duty abolition

This bill proposes to abolish gift duty from 1 October 2011. Gift duty raises the Government about \$1 million a year, but costs \$430,000 in administration, and costs the private sector an estimated \$70 million in compliance each year.

The committee is aware of the concern of some submitters that the abolition of gift duty (clause 110) could increase the use of trusts in New Zealand, and suggestions that this provision should be removed from the bill and the issue addressed once the Law Commission’s review of trust law is complete. We consider that gift duty is not the appropriate mechanism to deal with any inadequacies in New Zealand trust law. Any perceived protection that was provided through gift duty has shown itself to be incidental and ineffective. The outcome of this review is unlikely to bear upon the decision to abolish gift duty. We understand there is no evidence that the abolition of gift duty would lead to an increase in the number of trusts or the value of assets they hold.

Minority view on the issue of gift duty abolition

New Zealand Labour and Green Party members oppose this bill due to its proposal to abolish gift duty. These members do not believe that

“administration and remedial matters” legislation is the right type of legislation for the abolition of any direct taxation due to the potential impact on a large number of taxpayers. The abolition of gift duty is no exception.

New Zealand Labour and Green Party members also believe the analysis upon which the gift duty abolition proposal is based is fundamentally flawed because it does not adequately take into account the full range of potential tax avoidance opportunities. Trust structures are one subset of possibilities but these members do not accept that the analysis has been comprehensive. Accordingly the cost-benefit analysis upon which the bill rests must also be seen as fundamentally flawed, as no attempt has been made to quantify the counterfactual of avoidance risk pertaining to the full range of structures available. These members note that no sensitivity analysis has been provided. No options analysis has been provided. The policy process would not meet the standards expected under a thorough Regulatory Impact Statement.

Further, New Zealand Labour and Green Party members are concerned that the analysis does not address any of the social equity concerns raised by a number of submitters and Labour members on the committee.

New Zealand Labour and Green Party members believe, in the first instance, that any legislation proposing the abolition of gift duty should be delayed until the Law Commission’s review of trust law is complete. However, while realising that gifting to trusts is a significant component of the gifting regime, there are many other gifting opportunities that have been used to avoid either tax or other responsibilities.

New Zealand Labour and Green Party members also believe in a fair tax regime that promotes social and fiscal equity. Gift duty is part of a progressive tax system that does not favour or disadvantage any member of society.

New Zealand Labour supports all other aspects of this bill.

Information sharing with other agencies

This bill proposes changes to facilitate the sharing of tax information between Inland Revenue and other Government agencies, to allow more efficient use of information collected by Inland Revenue and

reduce the need for people to provide duplicate information to multiple agencies.

We recommend amending clause 59 (to insert proposed new section 81BA(1)(d)) to provide more explicit controls on the way information is shared under clause 59. This would require the Commissioner and a Government agency to enter into a memorandum of understanding before sharing information. This memorandum of understanding would set out how the information-sharing would work, and what safeguards would operate, alleviating our concerns with the bill as introduced and the concerns of the Privacy Commissioner.

We recommend an amendment to new section 81BA(1)(a) to change the threshold test for the provision of the information, or the collection and verification of the information by the requesting agency. As introduced the test for allowing sharing was whether separate collection by the requesting agency was “uneconomic”. We consider that this threshold is too high, and could be interpreted to allow information sharing only when the requesting agency could not afford to collect the information separately. The test was intended to allow sharing when it allowed cost efficiencies among other criteria, and should be amended to reflect this policy intention more closely.

Modifying secrecy rules for tax administration purposes

This bill would amend Part 4 of the Tax Administration Act 1994, giving the Commissioner of Inland Revenue greater discretion to release information about taxpayers for the purpose of administering the tax system more efficiently. In deciding whether to release the information, the Commissioner would have to consider the integrity of the tax system, the importance of compliance, the resources available, any personal or commercial impact of the communication, and the public availability of the information.

This would allow information relating to a taxpayer to be released where that taxpayer faced some impediment in communicating directly with Inland Revenue, and would like limited assistance from a support person, without giving the support person the more substantial access available via the nominated person or agent approach. This would make the tax system more accessible for people with constraints on their ability to communicate directly with the department.

We sought reassurance from Inland Revenue as to what controls would be established in regard to the release of information. We were informed that Inland Revenue is developing a standard practice statement, setting out how the new rules will be administered in different situations. In situations where the Commissioner proposes releasing information about a taxpayer into the public domain, he or she will be required to use best endeavours to give the taxpayer reasonable advance notice. We were also informed that Inland Revenue will comment on the operation of the new secrecy provision in its annual report, noting in particular any issues or complaints that have arisen.

Use of Commissioner's discretion

We recommend amendments to clause 58 to reinforce the requirement for the Commissioner to act within prevailing legal norms in exercising the discretion to release information, to use best endeavours to protect the integrity of the tax system, and to act reasonably. This would alleviate concerns about the implications of this discretion that were canvassed in our consideration of this bill.

We recommend deleting clause 58(4)(c), so that section 81(4)(j) of the Tax Administration Act would not be repealed. This section allows the Minister of Finance to authorise the communication of general information that does not reveal the identity of any taxpayer when such a disclosure is reasonable and practicable, and is in the public interest. The repeal of this section was proposed in the bill with the intention that such disclosures should be made by the Commissioner under proposed new section 81(1B). However, there are some situations in which section 81(4)(j) permits disclosures that would not be permitted by the new section 81(1B), which requires such disclosures to be related to a duty of the Commissioner. We therefore recommend retaining section 81(4)(j).

Tax disputes process

We are aware of the concern of some submitters that the changes to the tax disputes process proposed in the bill do not go far enough, and a belief that taxpayers should have the right to opt out of the disputes process initiated by the Commissioner. However, Inland Revenue has revised its systems for administering disputes, which are set out

in two standard practice statements. The Minister of Revenue has requested a review of these systems once they have been operating for two years, and if necessary further legislative measures could then be considered.

Challenge notices

We recommend the insertion of clause 67B to impose a four-year statutory time-limit on the issuing of a challenge notice by the Commissioner. If a challenge was not issued in time then the Commissioner would be deemed to accept the position set out by the taxpayer. The bill as introduced does not specify a timeframe for issuing challenge notices, which raises concerns under the New Zealand Bill of Rights Act 1990. We recommend that these provisions should cover only disputes that begin after the enactment of this bill.

Exceptional circumstances

We recommend an amendment to clause 64 to require the Commissioner to decide within one month whether to accept documents submitted after the deadline because of exceptional circumstances. If the Commissioner had not made this decision to accept such documents within one month the taxpayer could have this reviewed by the courts.

We recommend a further amendment to clause 64 to make it clear that the Commissioner's decision whether to accept documents in exceptional circumstances could be challenged before the Taxation Review Authority. This is to avoid the delay to the whole dispute that would be incurred in taking this discretionary decision through the disputes procedure or judicial review proceedings.

Tax pooling

Time limits

We recommend an amendment to clause 33(3) to extend the time limit for the transfer of tax pooling funds to 76 days for October, November, and December early balance date taxpayers. This is because the 75-day time limit proposed in the bill as introduced might be an issue for taxpayers in a leap year.

We recommend the insertion of clause 32D and an amendment to 33(3) to extend the removal of the time limit for “own funds” to apply to a member of the same group of companies. Companies in the same group operate as a single economic entity, and often make one deposit into their tax pooling account for the benefit of all group members.

Obligations that cannot be quantified

We recommend an amendment to clause 33(5) to make it clear that taxpayers who buy funds would be able to transfer only what they owe from their taxpayer pooling account to their taxpayer account but could not transfer further amounts in anticipation of income tax obligations that could not be quantified at the time of the transfer. This is to clarify that the provision represents an exception for people who use their own funds so that they can transfer the total amount of their deposit. This ability would not be extended to people who buy funds, who could transfer only the amount owed.

Voluntary disclosures

We recommend an amendment to clause 33(5), inserting proposed new sections RB17B(9) and (10), to allow a taxpayer to use tax pooling for income tax and resident withholding tax (RWT) when making a voluntary disclosure when no return has been filed. This amendment should relate only to income tax and RWT, because tax pooling cannot be used for other tax types unless an amended assessment has been made. If a taxpayer has not filed a non-income tax return then an amended assessment would not result from a voluntary disclosure, so tax pooling should not be available in these cases. The exception is proposed for RWT because Inland Revenue does not require an RWT payer to file a nil return if no RWT has been paid, whereas generally other tax types require a nil return.

Incorrectly requested transfers

We recommend the insertion of clause 35B, to allow the Commissioner to decline to process, amend, or reverse a tax pooling transfer that does not comply with the tax pooling rules. Inland Revenue currently does this, but we recommend setting this out explicitly in the tax pooling legislation for the avoidance of doubt.

Foreign investment PIE rules

Approved issuer levy

We recommend an amendment to clause 40B(3) relating to the income of non-resident investors from financial arrangements. This amendment would mean that the approved issuer levy (AIL) applied only to interest and not to the other gains on financial arrangements. This is because generally AIL is only imposed on interest payments to non-residents and not on changes in the value of financial arrangements, since withholding tax can not be applied to changes in value. This reflects the tax treatment that non-residents would have received had they received the interest directly.

Non-resident withholding tax

We recommend an amendment to clause 18D to allow foreign investment PIEs to withhold non-resident withholding tax from amounts of unimputed dividends that are paid to non-resident investors on or before the time at which the PIE is required to pay its tax liability. The provisions in the Supplementary Order Paper would require this payment to be made within two days of receipt. We believe this is not long enough, and PIEs should be given more time to distribute and withhold NRWT on unimputed dividends.

Land investment companies

We recommend the insertion of clause 16B to allow a foreign investment variable rate PIE to invest in land investment companies. The Supplementary Order Paper includes provisions prohibiting such investments. We recommend that a foreign investment PIE should be able to hold up to 20 percent of a land investment company that is resident in New Zealand or an entity that qualifies for PIE status. This is consistent with the principle that a PIE can generally own up to 20 percent of any entity invested in. We also recommend that a foreign investment PIE be allowed to hold up to 100 percent of a land investment company resident outside New Zealand. We note that this change does not affect the Overseas Investment Act, which continues to apply.

Wholesale fund income

We recommend the insertion of clause 15G, which would allow a retail PIE to treat the income from a wholesale PIE as if the retail PIE earned the income directly. This would prevent income earned from foreign investments made by the wholesale PIE in New Zealand being re-classified as New Zealand-sourced income when it was allocated to the retail PIE, for example. As some wholesale PIEs will find it difficult or undesirable to apply this “flow through” treatment of income, this treatment should be elective.

Exclusion from the source rules

Our recommended clause 18I (inserting proposed new section HM55C) differs from the Supplementary Order Paper in that we recommend extending the source rules so that income from a foreign investment PIE would not have a New Zealand source merely because a contract was made or performed in New Zealand, provided that the contract related to the PIE’s overseas investments. This would resolve an unintended consequence of this provision as introduced, that certain PIE income would be taxed contrary to the policy intention. The source rules are currently being evaluated in a review of non-resident investment in New Zealand limited partnerships, and more amendments to these rules are likely to result.

Structure of the PIE legislation

Many types of PIE now exist, and we are concerned about the way the PIE legislation is structured, with some over-arching rules applying to all PIEs. Modifications for specific types of PIE explain how the rules applying to them differ from the general rules. It can be unclear whether certain provisions apply to certain PIEs, and some provisions conflict. We believe that the diversity of PIEs has made the legislation complicated, almost inaccessible, and hard to understand.

We acknowledge that the structure of the PIE rules follows the general structure of the Income Tax Act 2007 and Inland Revenue’s drafting style. This approach is not to set out the rules for “PIE1” and then repeat them again for “PIE2”, and so on, as this would result in many pages of legislation. It is recognised that the rules are complicated and should ideally be made clearer, but we are aware of reluctance to

contemplate a separate set of rules for each PIE. We would like to see work done to simplify and clarify the PIE rules to make them easier to navigate and understand. We would like to see this issue referred to the Remedial Rewrite Advisory Panel for comment.

Appendix

Committee process

The Taxation (Tax Administration and Remedial Matters) Bill was referred to us on 7 December 2010. The closing date for submissions was 18 February 2011. We received and considered 26 submissions from interested groups and individuals. We heard 13 submissions.

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

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

Rahui Katene

Peseta Sam Lotu-Iiga

Hon Trevor Mallard (until 18 May 2011)

Stuart Nash

Dr Russel Norman

Michael Woodhouse (from 9 June 2011)

Hon Craig Foss was chairperson until 9 June 2011.

**Taxation (Tax Administration and
Remedial Matters) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted by a majority~~

~~text deleted unanimously~~

Hon Peter Dunne

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section. 5
- (2) **Sections 96 and 97** are treated as coming into force on 1 April 1997.
- (3) **Sections 82, 83, 84, 84B, 85C, and 87, 87B, and 87C** are treated as coming into force on 1 April 2005. 10
- ~~(4) Section 85 is treated as coming into force on 1 April 2007.~~
- (4) **Sections 85, 85B, and 85D** are treated as coming into force on 1 April 2007.
- (5) ~~Section 86 is~~ **Sections 86, 86B, and 86C** are treated as coming into force on 1 October 2007. 15
- (6) **Sections 3B, 5, 6, 7, 7B, 7D, 8, 9, 10, 10B, 10C, 11, 12, 13(1), (3), (4), and (6), 14, 14B, 15, 15B, 22B, 22C(1) and (3), 22D, 22E(1), (3), (7), (8), and (10), 22G(1), (3), (4), and (5), 22H(1), (2), (3), (6), and (8), 22I, 23, 24, 24B, 24C, 24D, 25, 27, 28, 28B, 29, 30, 30B, 30C, 31, 32, 32B, 32C, 36(1B), (1D), (2), (3B), and (4), 37, and 38, 39B, 41C, 57E, and 88B** are treated as coming into force on 1 April 2008. 20
- ~~(6B) Sections 7C(1) and (3), 10E(1), (3), and (5), 10G, 12B, 12C(1) and (3), 22E(4), (5), (6), (9), and (11), 22F, 22G(2)~~

- and (6), 22H(5), (7), and (9), and 36(1E), (1G), and (3C)
come into force on 30 June 2009.
- (6C) Sections 25B and 25C come into force on 5 January 2010.
- (7) Sections 15E, 15F(1) and (5), 16(1) and (2), 16G, and 47-19(1), (2), (3), and (4), 24F(1) and (3), and 36(1H) and (3D) are treated as coming into force on 1 April 2010.
- (7B) Section 109C comes into force on 1 July 2010.
- (7C) Section 40(3B) is treated as coming into force on 1 October 2010.
- (8) Section 13(2) and (5) is are treated as coming into force on the day of introduction for the Taxation (Tax Administration and Remedial Matters) Bill.
- (9) Sections 7E, 7F, 7G, 21, 24G, 39, 40(1), (2), (3), and (4), 41B, and 88, 109(1)(b), (1)(c), (2), and (3), 109B, 109D, 109E, 109F, 109G, 109I, and 109J(2) and (3) are treated as coming into force on 1 April 2011.
- (9B) Sections 22C(2), 22E(2) and (12), and 22H(4) and (10) come into force on 1 July 2011.
- (10) Section 110 comes into force on 1 October 2011.
- (11) Sections 4B(3) and (5), 18, 49, 20, 24F(2) and (4), 36(3) and (5), and 41 come into force on 1 April 2012.
- (12) Sections 7C(2) and (4), 10E(2), (4), and (6), and 12C(2) and (4) come into force on 30 June 2013.

Part 1

Amendments to Income Tax Act 2007

- 3 Income Tax Act 2007**
Sections 4 to 41C amend the Income Tax Act 2007.
- 3B Available capital distribution amount**
- (1) In section CD 44(7)(b), “no part is income” is replaced by “no part is assessable income”.
- (2) In section CD 44, in the list of defined terms, “assessable income” is inserted.
- (3) **Subsection (1)** applies for the 2008–09 and later income years.

3C Attributed income of investors in multi-rate PIEs

In section CP 1(1), “section HM 36 (Calculating amounts attributed to investors)” is replaced by “sections HM 35, **HM 35C**, and HM 36 (which relate to the attribution of amounts to investors)”.

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4 Dividend within New Zealand wholly-owned group

(1) In section CW 10(1)(e), “subsections (2)” is replaced by “subsections (3)”.

(2) Section CW 10(2) is repealed.

(3) **Subsections (1) and (2)** apply to dividends derived by a company on or after the first day of the company’s 2010–11 income year.

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4B Attributed income of certain investors in multi-rate PIEs

(1) After section CX 56(1), the following is inserted:

“When this section also applies

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“(1B) This section also applies when a foreign investment PIE attributes income to an investor who is, for the calculation period in which the amount is attributed,—

“(a) a notified foreign investor other than a person referred to in **section HM 55D(5B):**

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“(b) a transitional resident who has chosen a prescribed investor rate referred to in **schedule 6, table 1, row 10 (Prescribed rates: PIE investments and retirement scheme contributions):**

“(c) a transitional resident when the calculation period falls in the tax year in which the person becomes or ceases to be a transitional resident:

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“(d) an investor in the PIE when the calculation period falls in the tax year in which the person either becomes or ceases to be resident in New Zealand.”

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(2) In section CX 56(2)(b), “(Prescribed rates: PIE investments and retirement scheme contributions)” is omitted.

(3) In section CX 56(2)(b), “as applicable.” is replaced by “as applicable:” and the following is added:

“(c) a person to whom **section HM 57B (Prescribed investor rates for new residents) applies chooses not to**

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- apply the section to determine their prescribed investor rate for a resident year.”
- (4) In section CX 56, in the list of defined terms, “foreign investment PIE”, “notified foreign investor”, “resident in New Zealand”, “tax year”, and “transitional resident” are inserted. 5
- (5) **Subsection (3)** applies for the 2012–13 and later income years.
- (6) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 10
- 4C Distributions to investors in multi-rate PIEs**
- (1) In section CX 56B, the following is inserted after the section heading:
“Excluded income”.
- (2) In section CX 56B, the following is inserted as subsection (2): 15
“Treatment as non-resident passive income
“(2) Despite subsection (1), an amount paid by a foreign investment PIE to a notified foreign investor in the PIE is not excluded income under this section to the extent to which it is treated under **section HM 44B** (NRWT calculation option) as non-resident passive income.” 20
- (3) In section CX 56B, in the list of defined terms, “foreign investment PIE”, “non-resident passive income”, and “notified foreign investor” are inserted.
- (4) **Subsection (2)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 25
- 5 Taxes, other than GST, and penalties**
The cross heading before section DB 1 is replaced by “*Taxes and other amounts*”. 30
- 6 New section DB 3B**
- (1) After section DB 3, the following is inserted:

“DB 3B Use of money interest

“Deduction

- “(1) A person is allowed a deduction for an amount of interest they are liable to pay under Part 7 of the Tax Administration Act 1994. 5

“Timing of deduction

- “(2) ~~Interest to which this section applies~~ The deduction is allocated under section EF 5 (Use of money interest payable by person).

“Link with subpart DA

- ~~“(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 10~~

- “(3) This section supplements the general permission and overrides the capital limitation, the private limitation, and the employment limitation. The other general limitations still apply.

“Defined in this Act: amount, capital limitation, deduction, employment limitation, general limitation, general permission, private limitation” . 15

- (2) **Subsection (1)** applies—

- (a) for the 2010–11 and later income years; and
(b) ~~for the 2009–10 income year, other than for a person who has furnished a return of income for the income year before the date of introduction of the Taxation (Tax Administration and Remedial Matters) Act 2010 who has not treated an amount of interest imposed under Part 7 of the Tax Administration Act 1994 as a deduction in the return; and 20~~

- (c) ~~for the 2008–09 income year, only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction in a return of income that they have furnished on or before the date of introduction of the Taxation (Tax Administration and Remedial Matters) Act 2010. 25~~

- (b) for the 2009–10 income year,—
(i) for a person who has not furnished a return of income for the income year on or before 24 November 2010; or 30
(ii) for a person who has furnished a return of income on or before 24 November 2010, only in relation to an amount of interest imposed under Part 7 of 35

the Tax Administration Act 1994 that the person has treated as a deduction in the return or in a notice of proposed adjustment issued before that date:

- (c) for the 2008–09 income year, only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction— 5
- (i) in a return of income that they have furnished on or before 24 November 2010: 10
- (ii) in a notice of proposed adjustment that is issued on or before 24 November 2010.

6B New section DB 4B

After section DB 4, the following is inserted:

“DB 4B Fees to purchase funds in tax pooling accounts 15

“Deduction

- “(1) A person is allowed a deduction for expenditure incurred in purchasing an amount held in a tax pooling account to pay a liability for provisional tax, terminal tax, or an increase in an assessment of tax as described in sections RP 17 to RP 21 (which relate to tax pooling intermediaries). 20

“Timing of deduction

- “(2) The deduction is allocated to the income year in which the amount is transferred into the person’s tax account by the Commissioner to satisfy the person’s obligation to pay the tax. 25

“Link with subpart DA

- “(3) This section supplements the general permission and overrides the private limitation, the employment limitation, and the withholding tax limitation. The other general limitations still apply. 30

“Defined in this Act: amount, assessment, Commissioner, deduction, employment limitation, general permission, income year, intermediary, pay, private limitation, provisional tax, tax account with the Commissioner, tax pooling account, terminal tax, withholding tax limitation”.

6C Cost of revenue account property

- (1) In section DB 23(2), the subsection heading is replaced by “*No deduction*”.
- (2) In section DB 23(2)(b), “section CX 55 (Proceeds from disposal of investment shares)” is replaced by “section CX 55, CX 56B, or CX 56C (which relate to portfolio investment income)”.

6D New section DB 54B

- (1) After section DB 54, the following is inserted:

“DB 54B Expenditure incurred by foreign investment PIEs 10

“When this section applies

- “(1) This section applies when a foreign investment PIE incurs expenditure or loss in deriving income attributable to a notified foreign investor in the PIE.

“No deduction

- “(2) The PIE is denied a deduction for the amount of the expenditure or loss.

“Relationship with section DB 7

- “(3) This section overrides section DB 7 (Interest: most companies need no nexus with income). 20

“Link with subpart DA

- “(4) This section overrides the general permission.

“Defined in this Act: amount, deduction, foreign investment PIE, general permission, income, loss, notified foreign investor”.

- (2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 25

7 Disposal of petroleum mining asset to associate

- (1) In section DT 9(1)(b), “section EJ 12 or EJ 12B (which relate to petroleum development expenditure)” is replaced by “section EJ 15 (Disposal of petroleum mining asset)”. 30
- (2) Section DT 9(2), other than the heading, is replaced by the following:

“(2) The miner is denied a deduction for the amount that section EJ 16(2) prevents from being allocated to the income year in which the miner disposes of the asset.”

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

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7B Association rebates

(1) In section DV 19(1)(a), “mutual transaction” is replaced by “mutual transaction with a member”.

(2) In section DV 19(4), “those mutual transactions” is replaced by “those mutual transactions with members”.

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(3) In section DV 19(6),—

(a) in paragraph (a), “the mutual transactions” is replaced by “mutual transactions with members”;

(b) in paragraph (b), “assessable income” is replaced by “assessable income referred to in paragraph (a)”.

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

7C New section DZ 19

(1) After section DZ 18, the following is inserted:

“DZ 19 Attributed CFC loss carried back under section EZ 32C

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For the purposes of subpart DN (Attributed losses from foreign equity), an amount of net loss carried back to an income year under **section EZ 32C(12)** (Treatment in section EX 20C of currency effects on CFC’s borrowing) for a CFC is treated as being an attributed CFC loss from the CFC in the income year.

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“Defined in this Act: attributed CFC loss, CFC, income year, net loss”.

(2) **Section DZ 19** is repealed.

(3) **Subsection (1)** applies for income years beginning—

(a) on or after 1 July 2009; and

(b) before 1 July 2013.

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(4) **Subsection (2)** applies for income years beginning on or after 1 July 2013.

7D Valuation under herd scheme

(1) In section EC 16(3), “section DB 49(5)” is replaced by “section DB 49(3)”.

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

7E Use of money interest payable by Commissioner

- (1) In section EF 4(1), “This subsection is overridden by subsections (2) and (3).” is omitted. 5

- (2) Section EF 4(2) to (4) are repealed.

- (3) In section EF 4, in the list of defined terms, “assessment”, “notice”, and “tax year” are omitted.

- (4) **Subsections (1) and (2)** apply for the 2011–12 and later income years. 10

7F Use of money interest payable by person

- (1) Section EF 5(1), other than the heading, is replaced by the following:

- “(1) A deduction for interest payable by a person to the Commissioner under Part 7 of the Tax Administration Act 1994 is allocated to the income year in which the person pays the interest.” 15

- (2) Section EF 5(2) to (5) are repealed.

- (3) In section EF 5, the list of defined terms is replaced by “Commissioner, deduction, income year, pay”.

- (4) **Subsections (1) and (2)** apply for the 2011–12 and later income years. 20

7G Section EF 6 repealed

- (1) Section EF 6 is repealed.

- (2) **Subsection (1)** applies for the 2011–12 and later income years. 25

8 What is included when spreading methods used

- (1) In section EW 15(1)(a)(ii), “or the modified fair value method in section EW 15G” is added after “EW 15D”.

- (2) In section EW 15(1)(b)(ii), “or the modified fair value method in section EW 15G” is added after “EW 15D”. 30

9 IFRS financial reporting method

Section EW 15D(2B)(b) is replaced by the following:

- “(b) the person uses for the other financial arrangement a method that is neither of the following:
- “(i) the IFRS financial reporting method:
 - “(ii) the method required under *Determination G29: Agreements for sale and purchase of property de-* 5
nominated in foreign currency: exchange rate to
determine the acquisition price and method for
spreading income and expenditure.”

10 When calculation of base price adjustment required

In section EW 29(13), in the words before the paragraphs, “at 10
the date of a change for the financial arrangement, where that
change involves a change” is replaced by “for the first income
year for which a changed method is used for the financial ar-
rangement, where the change in method is”.

10B Base price adjustment formula

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- (1) In section EW 31(4), “under section DB 11 (Negative base 20
price adjustment)” is replaced by “under sections DB 6 to DB
8 (which relate to deductions for interest) or, if none of those
sections applies, under section DB 11 (Negative base price
adjustment)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income 25
years.

10C Consideration when party changes from fair value 30 method

- (1) In section EW 46B(1)(b), “at the date of the change” is re- 25
placed by “at the end of the first income year for which the
replacement method is used for the financial arrangement”.
- (2) In section EW 46B(2), “on the date of the change” is replaced 30
by “at the end of the first income year for which the replace-
ment method is used for the financial arrangement”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later in-
come years.

10D Attributable CFC amount

- (1) In section EX 20B(3)(n), “subsection (11).” is replaced by “subsection (11):”, and the following is added:
- “(o) attributed PIE income that, for a CFC, is not excluded income under section CX 56 (Attributed income of certain investors in multi-rate PIEs).” 5
- (2) In section EX 20B, in the list of defined terms, “attributed PIE income” and “excluded income” are inserted.

10E Net attributable CFC income or loss

- (1) In section EX 20C(2), the formula is replaced by “attributable CFC – (limited funding costs × fraction) – other deductions – later losses.” 10
- (2) In section EX 20C(2), the formula is replaced by “attributable CFC – (limited funding costs × fraction) – other deductions.”
- (3) After section EX 20C(9), the following is inserted: 15
- “*Later losses*
- “(9B) **Later losses** is the total amount of adjustments to the accounting period under **section EZ 32C** (Treatment in section EX 20C of currency effects on CFC’s borrowing) for an accounting period and financial arrangements for which that section applies.” 20
- (4) **Section EX 20C(9B)** is repealed.
- (5) **Subsections (1) and (3)** apply for income years beginning—
- (a) on or after 1 July 2009; and
- (b) before 1 July 2013. 25
- (6) **Subsections (2) and (4)** apply for income years beginning on or after 1 July 2013.

10F Non-attributing active CFC: test based on accounting standards

- After section EX 21E(8)(d), the following is added: 30
- “(e) attributed PIE income that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(o).”

10G Limits on choice of calculation methods

(1) Section EX 46(10)(a) is replaced by the following:

“(a) a fixed-rate share:”.

(2) **Subsection (1)**—

(a) applies for income years beginning on or after 1 July 2009, except if **paragraph (b)** applies:

(b) does not apply for a person and an income year in relation to a tax position taken by the person—

(i) in a return of income filed before the date of Royal assent to the Taxation (Tax Administration and Remedial Matters) Act **2010**; and

(ii) relating to the calculation of FIF income or loss from shares; and

(iii) relying on **section EX 46(10)(a)** as it was before the replacement made by **subsection (1)**.

11 Fair dividend rate method: usual method

(1) Section EX 52(13)(c) is replaced by the following:

“(c) **average cost** is—

“(i) if no share reorganisation occurs in the income year, the total amount of expenditure that the person incurs in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the shareholding increase in the interest for each acquisition or increase; or

“(ii) if a share reorganisation occurs in the income year, the amount calculated under section EX 54 for the year.”

(2) **Subsection (1)** applies for income years beginning on or after 1 April 2008.

12 Fair dividend rate method and cost method: when periods affected by share reorganisations

(1) In section EX 54(1)(b), “EX 52(8)” is replaced by “EX 52(8), EX 52(12)”.

(2) **Subsection (1)** applies for income years beginning on or after 1 April 2008.

12B Additional FIF income or loss if CFC owns FIF

(1) After section EX 58(6), the following is added:

“Exclusion for insurance CFC meeting requirements of
determination

“(7) The CFC’s FIF income or loss does not include income from 5
an income interest of less than 10% in a FIF if the CFC meets
the requirements of a determination made by the Commis-
sioner under section 91AAQ of the Tax Administration Act
1994.”

(2) **Subsection (1) applies for income years beginning on or after 10**
1 July 2009.

12C New section EZ 32C

(1) After section EZ 32, the following is inserted:

“EZ 32C Treatment in section EX 20C of currency effects on 15
CFC’s borrowing

“When this section applies

“(1) This section applies for a person for an accounting period (the 20
current period) and a CFC when—

“(a) the CFC is not an entity that carries on a business of 20
banking or insurance and is not controlled by such an
entity; and

“(b) the main activity of the CFC in the period described 25
in **subsection (9)** (the **offset period**) is borrowing to
invest in shares in a foreign company controlled by the
CFC; and

“(c) the CFC is a party to financial arrangements (the **fund-**
ing arrangements) for each of which—

“(i) the financial arrangement is a liability of the CFC 30
providing funds to the CFC; and

“(ii) when the financial arrangement is entered, none 35
of the parties to the financial arrangement, the
person, and the associated persons, has a reason-
able expectation that the CFC will have more
income than expenditure under the financial ar-
rangement; and

“(d) as a result of changes in currency exchange rates, the
CFC has an amount (a **loan currency amount**) of loss

- (treated as a negative amount) or gain (treated as a positive amount) from a funding arrangement for the current period; and
- “(e) the CFC has a loan currency amount from a funding arrangement for an accounting period— 5
- “(i) other than the current period; and
- “(ii) in the offset period for the current period; and
- “(f) for either accounting period, a loan currency amount is included in the calculation for the funding arrangement of the amount of expenditure that contributes to the item limited funding costs in the formula in section EX 20C(2) (Net attributable CFC income or loss); and 10
- “(g) for the relevant accounting period, the contribution of the item limited funding costs to the CFC’s net attributable CFC income or net attributable CFC loss is reduced because the item fraction in that formula is less than 1; and 15
- “(h) the person chooses in a return of income to have this section apply to the income year corresponding to the accounting period or to an earlier income year. 20
- “Included loan currency amount for funding arrangement and current period*
- “(2) For a funding arrangement having a loan currency amount for an accounting period (the **currency movement period**) in the offset period that is included in the calculation of an item, other than later losses, in the formula in section EX 20C(2), an amount (the **included currency amount**) relating to the currency movement period is calculated for the item, the funding arrangement, and the current period using the formula— 25
- $$\text{currency contribution} \times \text{fraction} - \text{earlier adjustments.}$$
- “Definition of items in formula 30*
- “(3) In the formula in **subsection (2)**,—
- “(a) **currency contribution** is the loan currency amount contributed to the item for the funding arrangement and the currency movement period:
- “(b) **fraction** is— 35
- “(i) 1, if the loan currency amount is included in the calculation of the item attributable CFC; or

- “(ii) the value for the funding arrangement and the currency movement period of the item fraction in the formula in section EX 20C(2), to the extent that the loan currency amount is included in the calculation of the item limited funding costs; or 5
- “(iii) the fraction of the loan currency amount that is included in the item other deductions, to the extent that the loan currency amount is included in the calculation of that item:
- “(c) **earlier adjustments** is the total amount of adjustments (treated as positive amounts) to the included currency amount for the funding arrangement and the currency movement period, each resulting from the application of **subsection (7)** for an accounting period that is not the current period and is in the offset period. 10 15
- “Conditions for adjustment of included currency amounts*
- “(4) For the current period, **subsection (7)** applies to decrease included currency amounts that are zero or negative and relate to funding arrangements and currency movement periods in the offset period if, for the offset period and the funding arrangements of the CFC, the total of the included currency amounts— 20
- “(a) is greater than zero; and
- “(b) is greater than the total of the loan currency amounts.
- “Total amount of adjustments for included currency amounts* 25
- “(5) For the current period, **subsection (7)** decreases included currency amounts referred to in **subsection (4)** by a total amount (the **total current adjustment**) equal to the lowest of the following:
- “(a) the total, for the offset period and the funding arrangements, of the included currency amounts: 30
- “(b) the amount obtained for the offset period and the funding arrangements by subtracting the total of the loan currency amounts from the total of the included currency amounts: 35
- “(c) the total of the amounts calculated, for each accounting period in the offset period and each funding arrangement, using the formula—

loan contribution × fraction – earlier adjustments.

“Definition of items in formula

“(6) In the formula in **subsection (5)(c)**,—

“(a) **loan contribution** is the amount included in the calculation of an item, other than later losses, in the formula in section EX 20C(2) for the funding arrangement and the accounting period: 5

“(b) **fraction** is—

“(i) 1, if the amount is included in the calculation of the item attributable CFC; or

“(ii) the value for the funding arrangement and the accounting period of the item fraction in the formula in section EX 20C(2), to the extent that the amount is included in the calculation of the item limited funding costs; or 10

“(iii) the fraction of the amount that is included in the item other deductions, to the extent that the amount is included in the calculation of that item: 15

“(c) **earlier adjustments** is the total amount of adjustments (treated as positive amounts) to the amount for the funding arrangement and the accounting period, each resulting from the application of **subsection (7)** for an accounting period that is not the current period and is in the offset period. 20

“Adjustment of included currency amount for funding arrangement and period” 25

“(7) The amount of the total current adjustment is—

“(a) applied first to the current period and then, in the order of earliest to latest, to the other accounting periods in the offset period:

“(b) reduced, for each accounting period, by an amount corresponding to the total amount subtracted under **paragraph (d)** for the accounting period, with the result being the amount (the **available current adjustment**) available to be applied to the next accounting period referred to in **paragraph (a)**: 30

“(c) applied for funding arrangements having, for an accounting period,— 35

- “(i) a negative loan currency amount that contributed an amount of expenditure to the item limited funding costs in the formula in section EX 20C(2); and 5
- “(ii) an included currency amount that is negative or zero and from which the loan currency amount can be obtained by subtracting a positive amount (the **difference**): 10
- “(d) applied for each such funding arrangement, for the accounting period, by subtracting from the included currency amount for the funding arrangement an amount calculated using the formula—
- $$\frac{\text{difference} \times \frac{\text{available}}{\text{total differences}}}{}$$
- “*Definition of items in formula* 15
- “(8) In the formula in **subsection (7)(d)**,—
- “(a) **difference** is the amount of the difference for the funding arrangement and the accounting period:
- “(b) **available** is the lesser of the available current adjustment for the accounting period and the total amount of differences for the accounting period: 20
- “(c) **total differences** is the total amount of differences for the accounting period.
- “*Requirements for accounting periods in which adjustments made* 25
- “(9) For a current period for a CFC, adjustments may be made under **subsection (7)** for a funding arrangement and an accounting period if the following requirements are met:
- “(a) the accounting period is the current period or 1 of the 4 accounting periods immediately before the current period; and 30
- “(b) the accounting period begins on or after 1 July 2009; and
- “(c) the CFC is resident under section YD 3 (Country of residence of foreign companies) in the same country or territory for the period (the **continuity period**) consisting of the current period, the accounting period, and the ac- 35

- counting periods between the accounting period and the current period; and
- “(d) a group of persons exists that has, for the CFC and the continuity period,—
- “(i) voting interests of 49% or more in total; and
- “(ii) market value interests of 49% or more in total.
- “Amount of adjustment included in item later losses in section EX 20C*
- “(10) For the purposes of **section EX 20C(9B)**, the amount of an adjustment under **subsection (7)** for a CFC’s funding arrangement and an accounting period is included in the item later losses for the funding arrangement and the accounting period.
- “Amount of adjustment is expenditure of CFC under funding arrangement*
- “(11) For the purposes of section EW 31 (Base price adjustment formula), the amount of an adjustment under **subsection (7)** for a CFC’s funding arrangement and an accounting period is expenditure incurred by the CFC under the funding arrangement in the accounting period to the extent that the included currency amount corresponding to the adjustment is not, in the absence of this subsection, included in expenditure incurred under the funding arrangement in the accounting period.
- “Carrying back loss amounts arising from adjustments*
- “(12) If adjustments for a CFC under **subsection (7)** for an accounting period result in a net loss, or an increase in the net loss, of the person for the corresponding income year, the person—
- “(a) may use under **section DZ 19** (Attributed CFC loss carried back under section EZ 32C) the amount of the net loss, or of the increase, to offset net income—
- “(i) for an earlier income year in the offset period; and
- “(ii) that has not previously been offset under this subsection; and
- “(iii) to the extent given by **subsection (13)**; and
- “(b) must not use in the corresponding income year the amount of net loss carried back to the earlier income year.

“Limit on loss amounts carried back

- “(13) The total amount of net loss carried back under **subsection (12)** to an earlier income year must not exceed the amount, calculated for the earlier income year in the absence of adjustments under **subsection (7)** and offsets under **subsection (12)**, that is the lesser of— 5
- “(a) the net income, or the increase in net income, of the person for the earlier income year produced by including foreign currency amounts in the calculation of net attributable CFC income or loss from CFCs; and 10
- “(b) the net income, or the increase in net income, of the person for the earlier income year produced by including net attributable CFC income or loss from funding arrangements of CFCs. 15

“No interest if tax payment excessive because of offset under subsection (12)

- “(14) An amount of tax paid by a person for an income year is not overpaid tax for the purposes of Part 7 of the Tax Administration Act 1994 to the extent that the amount— 20
- “(a) exceeds the income tax liability of the person for the income year because of the use under **subsection (12)** of net loss from a later income year to offset net income; and 25
- “(b) is paid before the offset occurs.
- “Defined in this Act: accounting period, associated person, attributable CFC amount, CFC, financial arrangement, income year, market value interest, net attributable CFC income, net attributable CFC loss, net income, net loss, return of income, voting interest”. 30

- (2) **Section EZ 32C** is repealed.
- (3) **Subsection (1)** applies for income years beginning—
- (a) on or after 1 July 2009; and
- (b) before 1 July 2013. 35
- (4) **Subsection (2)** applies for income years beginning on or after 1 July 2013.

13 Apportionment of interest by excess debt entity

- (1) In section FE 6(3)(a)(i), “sections FE 14(2)” is replaced by “sections FE 3”.
- (2) Section FE 6(3)(ac)(ii) to (iv) are replaced by the following:

- “(ii) the amount (the **group finance cost**) that is the total amount for the New Zealand group found by calculating for each member of the New Zealand group the total amount (the **member finance cost**) of the items total deduction and FRD for the member, if the group finance cost is \$1,000,000 or less and subparagraph (i) does not apply; or
- “(iii) the amount found by multiplying the amount by which \$2,000,000 exceeds the group finance cost by the ratio obtained by dividing the member finance cost for the excess debt entity by the group finance cost, if the group finance cost is more than \$1,000,000 and less than \$2,000,000 and subparagraph (i) does not apply; or
- “(iv) zero, if the group finance cost is \$2,000,000 or more and subparagraph (i) does not apply.”.
- (3) After section FE 6(3), the following is added:
- “Alternative calculation
- “(4) If a company that is in the same wholly-owned group of companies as the excess debt entity has a deduction for interest under any of sections DB 6 to DB 8, the company may choose to be treated as deriving the income that the excess debt entity would otherwise, under subsection (2), be treated as deriving for the income year. The amount of income is not calculated using the formula in subsection (2) but is limited as set out in subsection (5).
- “Limitation on election amount
- “(5) The amount of income for which the company may make the election under subsection (4) must not be more than the total amount of deductions that the company has for interest for the income year, having taken into account any other income that the company chooses to treat itself as deriving under subsection (4).”
- (4) In section FE 6, in the list of defined terms, “wholly owned group of companies” is added.
- (5) Subsection (2) does not apply to a person and an income year in relation to a tax position taken by the person—

- (a) in a return of income filed before the date on which the Taxation (Tax Administration and Remedial Matters) Bill is reported to the House by the select committee considering the bill; and 5
 - (b) relating to the apportionment of interest expenditure; and 10
 - (c) relying on **section FE 6(3)(ac)** as it was before the replacement made by **subsection (2)**.
 - (6) **Subsection (3)** applies for the 2008–09 and later income years.
- 14 Calculation of debt percentages** 15
 - (1) In section FE 12(1), “A natural person” is replaced by “A natural person or an excess debt entity”.
 - (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 14B Leases for inadequate rent** 20
 - (1) In section GC 5(1), “section applies” is replaced by “section applies in relation to leases of real and personal property”.
 - (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 15 Further eligibility requirements relating to investments** 25
 - (1) After section HL 10(2)(b)(vii), the following is added:

“(viii) an amount of income under section CW 4 (Annuities under life insurance policies) or CX 40 (Superannuation fund deriving amount from life insurance policy).” 30
 - (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 15B Portfolio entity tax liability and tax credits of portfolio tax rate entity for period**
 - (1) After section HL 21(12), the following is added:

- “Determining investors’ prescribed investor rate
- “(13) For the purposes of determining the item **rate** in subsection (9), the taxable income of the investor does not include an amount that—
- “(a) arises because their portfolio investor rate is lower than their prescribed investor rate; and
- “(b) is treated as taxable income because section CX 56 (Portfolio investor allocated income and distributions of income by portfolio investment entities) does not apply.”
- (2) In section HL 21, in the list of defined terms, “prescribed investor rate”, and “taxable income” are inserted.
- (3) **Subsection (1)** applies for the 2008–09 and later income years.

15C Outline of subpart and relationship with other Parts

- (1) After section HM 1(2)(i), the following is inserted:
- “(ib) **section DB 54B** (Expenditure incurred by foreign investment PIEs):”.
- (2) After section HM 1(2), the following is inserted:
- “Outline of provisions related to particular PIEs
- “(2B) Certain PIEs either have special rules related to their activities or are affected by some particular rules. These are set out below:
- “(a) for a listed PIE, see the following:
- “(i) section CX 56C (Distributions to investors by listed PIEs):
- “(ii) section EZ 63 (Disposal and acquisition upon entry):
- “(iii) section HM 2(3), which relates to listed PIEs becoming multi-rate PIEs:
- “(iv) section HM 18, which describes how an unlisted company becomes a listed PIE:
- “(v) section HM 19, which relates to distributions of listed PIEs:
- “(vi) section HM 21(4), for a transitional provision for investors in listed PIEs:

- “(vii) section HM 28, for the consequences when a listed PIE does not meet a distributional requirement: 5
- “(viii) sections MB 1(5) and MB 11 which relate to family scheme income:
- “(b) for a life fund PIE, see the following:
- “(i) section CX 55 (Proceeds from disposal of investment shares): 10
- “(ii) section DR 1(2) (Policyholder base allowable deduction of life insurer):
- “(iii) section EY 1(2) (What this subpart does):
- “(iv) section EY 2(6) (Policyholder base):
- “(v) section HM 4, which is about who can be an investor: 15
- “(vi) section HM 10, which excludes entities other than life fund PIEs carrying on a business of life insurance:
- “(vii) section HM 17, for an additional entry rule for PIEs other than life fund PIEs: 20
- “(viii) section HM 19, for an additional entry rule for listed PIEs other than life fund PIEs:
- “(ix) section HM 26, for an exit rule for entities other than life fund PIEs starting a life insurance business: 25
- “(x) section OB 35B (ICA debit for transfer from tax pooling account for policyholder base liability):
- “(xi) section OP 33B (Consolidated ICA debit for transfer from tax pooling account for policyholder base liability): 30
- “(c) for a foreign investment PIE, see the following:
- “(i) **section CX 56** (Attributed income of certain investors in multi-rate PIEs):
- “(ii) **section CX 56B** (Distributions to investors in multi-rate PIEs): 35
- “(iii) **section DB 54B** (Expenditure incurred by foreign investment PIEs):
- “(iv) **section HM 6B**, for the optional look-through treatment of income derived from other PIEs:

- “(v) **section HM 19B**, for the particular requirements for foreign investment zero-rate PIEs:
- “(vi) **section HM 19C**, for the particular requirements for foreign investment variable-rate PIEs: 5
- “(vii) **section HM 35C**, which is about the determination of the income tax liability of a foreign investment PIE and the calculation of attributed PIE income for a notified foreign investor: 10
- “(viii) **sections HM 41(4) and HM 44(1B)**, for restrictions on the calculation method available to foreign investment PIEs:
- “(ix) **section HM 44B**, for an additional calculation method for foreign investment PIEs: 15
- “(x) **section HM 47**, which is about the calculation of the tax liability or tax credit of a foreign investment PIE:
- “(xi) **sections HM 55C to HM 55H**, for the special requirements for foreign investment PIEs and their investors: 20
- “(xii) **section HM 71B**, for the election mechanism for foreign investment PIEs:
- “(xiii) **schedule 6, tables 1 and 1B**, for the prescribed tax rates for certain non-resident investors in foreign investment PIEs and the rates applying to certain sources of income attributed to investors: 25
- “(xiv) **section 28D** of the Tax Administration Act 1994, for the information required from notified foreign investors.” 30

15D What is a portfolio investment entity?

- (1) In section HM 2(2)(d), “life fund PIE.” is replaced by “life fund PIE.” and the following is added:
- “(e) a foreign investment PIE that is either a foreign investment zero-rate PIE or a foreign investment variable-rate PIE.” 35
- (2) After section HM 2(3), the following is added:

- “Foreign investment PIEs
- “(4) The provisions of the PIE rules as they relate to multi-rate PIEs apply in the same manner to foreign investment PIEs, unless a provision expressly states otherwise.”
- (3) In section HM 2, in the list of defined terms, “foreign investment PIE”, “foreign investment variable-rate PIE”, and “foreign investment zero-rate PIE” are inserted. 5
- (4) **Subsections (1) and (2)** apply for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 10
- 15E What is an investor class?**
- (1) In section HM 5(4)(b), “notified tax rates” is replaced by “notified investor rates”.
- (2) In section HM 5, in the list of defined terms,—
- (a) “notified tax rate” is omitted; 15
- (b) “notified investor rate” is inserted.
- (3) **Subsection (1)** applies for the 2010–11 and later income years.
- 15F Intended effects for multi-rate PIEs and investors**
- (1) In section HM 6(1)(a), “or other persons” is omitted. 20
- (2) After section HM 6(1)(a), the following is inserted:
- “(ab) in relation to proceeds of the investments that are attributable to notified foreign investors in a foreign investment PIE, the PIE has a tax liability—
- “(i) calculated using a tax rate that is appropriate having regard to the income source and investment type; and 25
- “(ii) resembling the tax liability of the investor if they were to make the investment directly.”.
- (3) Section HM 6(2)(a) is replaced by the following: 30
- “(a) the investor has no tax liability on income arising from proceeds for which the PIE has a tax liability, unless—
- “(i) the investor has given the PIE a rate that is lower than the correct rate;
- “(ii) the investor has been treated by a foreign investment PIE as a notified foreign investor for a 35

period in which they do not in fact meet the requirements of **section HM 55D** for notified foreign investor status.”.

- (4) In section HM 6, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted. 5
- (5) **Subsection (1)** applies for the 2010–11 and later income years.
- (6) **Subsections (2) and (3)** apply for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 10

15G New section HM 6B

- (1) After section HM 6, the following is inserted:

“HM 6B Optional look-through rules for PIEs

“When this section applies

- “(1) This section applies when— 15
- “(a) a PIE (a **retail PIE**) derives an amount of attributed PIE income from another PIE (a **wholesale PIE**); and
- “(b) the retail PIE has sufficient information about the income derived by the wholesale PIE to enable it to account for the amount and to discharge its tax obligations in relation to the amount. 20

“Look-through treatment

- “(2) The retail PIE may choose to apply a look-through approach to the amount, treating the amount as if it were not received by the wholesale PIE but derived directly from the person who paid the amount to the wholesale PIE. 25

“Foreign investment PIEs

- “(3) When a retail PIE that is a foreign investment variable-rate PIE derives an amount allowable under **section HM 55G** from a wholesale PIE that meets the requirements of **section HM 19B(1)**, the retail PIE may treat the amount as a foreign-sourced amount. 30

“Defined in this Act: amount, attributed PIE income, foreign investment variable-rate PIE, foreign investment zero-rate PIE, foreign-sourced amount, income, pay, PIE”. 35

- (2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.

15H Requirements

In section HM 7(c), “section HM 71” is replaced by “section HM 71 or **HM 71B**”.

15I Residence in New Zealand

- (1) In section HM 8, after the section heading, “*Requirements*” is inserted as a subsection heading.

- (2) In section HM 8, the following is added: 10
“*Foreign investment zero-rate PIEs*”

- “(2) **Section HM 19B(2)** modifies this section.”

15J Investment types

- (1) In section HM 11, after the section heading, “*Types*” is inserted as a subsection heading. 15

- (2) In section HM 11, the following is added:

“*Foreign investment zero-rate PIEs*”

- “(2) **Section HM 19B(2)** overrides this section.”

- (3) In section HM 11, the following is added:

“*Foreign investment variable-rate PIEs*” 20

- “(3) **Section HM 19C(1)** overrides subsection (1)(a).”

- (4) **Subsection (3)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.

16 Income sources 25

- (1) In section HM 12, in the section heading, “**sources**” is replaced by “**types**”.

- (2) In section HM 12(b)(viii), “superannuation fund.” is replaced by “superannuation fund:” and the following is added:

“(ix) an amount of income under section CW 4 (Annuities under life insurance policies) or CX 40 (Superannuation fund deriving amount from life insurance policy).” 30

- (2B) In section HM 12, after the section heading, “*Nature of income*” is inserted as a subsection heading.
- (2C) In section HM 12, the following is added:
“*Foreign investment zero-rate PIEs*
 “(2) **Section HM 19B(2)** overrides this section.” 5
- (2D) In section HM 12, the following is added:
“*Foreign investment variable-rate PIEs*
 “(3) **Section HM 19C(2)** overrides subsection (1)(a) and (b)(v).”
 (3) **Subsections (1) and (2)** apply for the 2010–11 and later income years. 10
- (4) **Subsection (2D)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.
- 16B Maximum shareholdings in investments**
- (1) After section HM 13(5), the following is inserted: 15
“*Certain investments of foreign investment PIEs*
 “(6) Despite the exclusion in subsection (1)(a) and (c), if a foreign investment variable-rate PIE has an investment in a land investment company resident in New Zealand or in an entity that qualifies for PIE status, the investment must— 20
“(a) carry voting interests in the company or entity, as applicable, of no more than 20%; or
“(b) have a market value of no more than 20% of all interests in the entity, if the entity is a unit trust.
“*Exceeding threshold* 25
- “(7) **Section HM 55H(3) and (4)** apply in the case of a breach of **subsection (6).**”
- (2) In section HM 13, in the list of defined terms “foreign investment PIE” and “resident in New Zealand” are inserted.
- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 30
- 16C Minimum number of investors**
- (1) In section HM 14(2), the subsection heading is replaced by “*Requirements for listed PIEs*”. 35

- (2) In section HM 14(2), “If the entity is a company listed” is replaced by “For listed PIEs, if the entity is a company listed”.

16D New section HM 19B

After section HM 19, the following is inserted:

“HM 19B Modified rules for foreign investment zero-rate PIEs 5

“Income

- “(1) Despite section HM 12, the income derived by a foreign investment zero-rate PIE must consist of no amount other than—

“(a) a foreign-sourced amount;

“(b) an amount allowable under **section HM 55G**, as measured under **section HM 55H**. 10

“Residence

- “(2) A foreign investment zero-rate PIE is resident in New Zealand for the purposes of section HM 8 if it—

“(a) is a unit trust to which the Unit Trusts Act 1960 applies; and 15

“(b) has a trustee who is resident in New Zealand.

“Defined in this Act: amount, foreign investment zero-rate PIE, foreign-sourced amount, income, resident in New Zealand, trustee, unit trust”.

16E New section HM 19C

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- (1) Before section HM 20, the following is inserted:

“HM 19C Modified rules for foreign investment variable-rate PIEs

“Investment types

- “(1) Despite section HM 11(a) and (d), no investment of a foreign investment variable-rate PIE may include an interest in land in New Zealand or a right or option in relation to land in New Zealand. 25

“Income sources

- “(2) Despite section HM 12(a) and (b)(v), the income derived by a foreign investment variable-rate PIE must not include an amount derived from— 30

“(a) an interest in land in New Zealand;

“(b) the disposal of an interest in land in New Zealand.

“Defined in this Act: amount, foreign investment variable-rate PIE, interest, land, New Zealand”. 35

- (2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.

16F Exceptions for certain investors

- (1) Section HM 21(1), other than the heading, is replaced by the following: 5

“(1) The rule for a minimum number of investors in section HM 14(1) does not apply if—

“(a) an investor class of the entity includes at least 1 investor listed in schedule 29, part A (Portfolio investment entities: listed investors): 10

“(b) the only income that the investor derives is exempt income under section CW 41 or CW 42 (which relate to charities).”

- (2) Section HM 21(2), other than the heading, is replaced by the following: 15

“(2) The rule for maximum investor interests in section HM 15(1) does not apply if the investor is—

“(a) listed in schedule 29, part A or B:

“(b) a person whose only income is exempt income under section CW 41 or CW 42.” 20

- (3) In section HM 21, in the list of defined terms, “exempt income” and “income” are inserted.

16G When entity no longer meets investment or investor requirements 25

- (1) In section HM 25(2),—

(a) in paragraph (a), “the last day of the first quarter” is replaced by “the first day of the second quarter”:

(b) in paragraph (b), “the last day of the second quarter” is replaced by “the first day of the third quarter”. 30

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

16H Rules for multi-rate PIEs

- (1) In section HM 31(1)(a), “the investor’s tax rate” is replaced by “the investor’s tax rates”. 35

- (2) After section HM 31(1), the following is inserted:
“Foreign investment PIEs
 “(1B) For the provisions relating to the treatment of notified foreign
investors in foreign investment PIEs, see sections HM 2(4),
HM 33, HM 35C, HM 44B, HM 47(2B), (4), and (6), HM 51, 5
HM 53, HM 55C to HM 55H, HM 60, HM 61(2), HM 64(4),
and HM 65(5).”
- (3) In section HM 31, in the list of defined terms, “foreign invest-
ment PIE” and “notified foreign investor” are inserted.
- 16I Rules for and treatment of investors in multi-rate PIEs** 10
- (1) After section HM 32(2), the following is added:
“Notified foreign investors
 “(3) An investor in a foreign investment PIE who notifies the PIE
under section HM 55D(2) of their wish to become a notified
foreign investor meets the requirements of subsection (1).” 15
- (2) In section HM 32, in the list of defined terms, “foreign invest-
ment PIE” and “notified foreign investor” are inserted.
- 16J Proxies for PIE investors**
- (1) After section HM 33(2)(b), the following is inserted:
“(bb) for a foreign investment PIE and a notified foreign in- 20
vestor, the investor were a notified foreign investor in
the proxy; and”.
- (2) After section HM 33(3)(d), the following is inserted:
“(db) for a foreign investment PIE, collect information re-
quired from the notified foreign investors and act gener- 25
ally on behalf of the PIE in relation to its notified foreign
investors; and”.
- (3) In section HM 33, in the list of defined terms, “foreign invest-
ment PIE” and “notified foreign investor” are inserted.
- (4) **Subsections (1) and (2)** apply for the 2012–13 and later in- 30
come years for a foreign investment variable-rate PIE and a
notified foreign investor in the PIE.
- 16K New section HM 35C**
- (1) After section HM 35B, the following is inserted:

“HM 35C Determining amounts for notified foreign investors*“When this section applies*

- “(1) This section applies for the purposes of sections HM 35 to HM 47 when a foreign investment PIE determines its income tax liability and calculates an amount of attributed PIE income for a notified foreign investor in the PIE. 5

“Single class of investors

- “(2) For the purposes of the calculations, the PIE must treat its notified foreign investors as a single notional investor class.

“Taxable amounts

- “(3) In section HM 35(5), in relation to an investor class that is made up of notified foreign investors, the taxable amount for an attribution period is equal to the assessable income of the PIE for the period for each particular income source and investment type of income of the class. 10
15

“Attributed amounts

- “(4) For the purposes of section HM 36, in the calculation of an amount attributed to a notified foreign investor,—

- “(a) the item **loss** in the formula in subsection (2) is treated as zero: 20
- “(b) the item **expenses** in the formula in subsection (2) is treated as zero:
- “(c) the item **credits for fees** in the formula in subsection (2) is treated as zero:
- “(d) if the result given by the formula is negative, the result is treated as zero. 25

“Defined in this Act: amount, assessable income, attributed PIE income, attribution period, foreign investment PIE, income tax liability, investor class, notified foreign investor, taxable amount”.

- (2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 30

17 Calculating amounts attributed to investors

- (1) In section HM 36(3)(c)(i), “ongoing management and administration” is replaced by “ongoing management or ongoing administration”. 35

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

(1) In section HM 36(1), “and an investor class” is omitted.

(2) In section HM 36(3)(e), subparagraph (i) is replaced by the following:

“(i) fees for management or administration services paid from or charged to the account of the investor as a member of the investor class when the services are ongoing for the investor class.”

(3) In section HM 36, in the list of defined terms, “pay” is inserted.

18 **When superannuation fund investor has conditional entitlement**

(1) Section HM 38(3)(b) is replaced by the following:

“(b) the person and the employer have agreed that the person will have an unconditional entitlement to the interest at the end of a vesting period that—

“(i) starts on the date when a contribution to the fund is made; and

“(ii) ends on the date when the employee becomes unconditionally entitled to the investor interest to which the contribution relates; and

“(bb) the vesting period is within 5 years of its end as described in **paragraph (b)(ii)**; and”.

(2) **Subsection (1)** applies for the 2012–13 and later income years.

18B **Options for calculation and payment of tax**

(1) After section HM 41(3), the following is added:

“Foreign investment PIEs

“(4) Despite subsection (1)(c), a multi-rate PIE that chooses under **section HM 71B** to become a foreign investment PIE must not use the provisional tax calculation option in section HM 44 to calculate its income tax liability.”

(2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.

18C Provisional tax calculation option

(1) After section HM 44(1), the following is inserted:

“When this section does not apply

“(1B) Despite subsection (1), a multi-rate PIE that chooses under **section HM 71B** to become a foreign investment PIE must not apply this section to calculate and pay its income tax liability.” 5

(2) In section HM 44, in the list of defined terms, “foreign investment PIE” is inserted.

18D New section HM 44B

(1) After section HM 44, the following is inserted: 10

“HM 44B NRWT calculation option

“When this section applies

“(1) This section applies when—

“(a) a foreign investment PIE—

“(i) derives a dividend that is not fully imputed from a company resident in New Zealand; and 15

“(ii) pays an amount that represents some or all of the amount of the dividend to a notified foreign investor in the PIE by the date on which the PIE is required to pay its income tax liability under section HM 42 or HM 43, as applicable; and 20

“(b) the PIE chooses to calculate and pay the tax liability in relation to the amount under subpart RF (Withholding tax on non-resident passive income). 25

“Excluding amount from calculation

“(2) In determining the net amount for notified foreign investors under sections HM 35 and HM 36, to the extent to which the amount represents an unimputed portion of the dividend, the amount is not included in—

“(a) the item **assessable income** in section HM 35(3): 30

“(b) the item **income** in section HM 36(3).

“Non-resident passive income

“(3) The NRWT rules apply to the amount paid to the extent to which the amount represents an unimputed portion of the dividend. 35

“Relationship with section CX 56B

“(4) Despite section CX 56B (Distributions to investors in multi-rate PIEs), the amount is not excluded income of the notified foreign investor.

“Defined in this Act: amount, company, dividend, excluded income, foreign investment PIE, imputation credit, income tax liability, multi-rate PIE, non-resident passive income, notified foreign investor, NRWT rules, pay, resident in New Zealand”.

(2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.

18E Voluntary payments

(1) In section HM 45(1) “and an investor reduces their investor interest in an investor class of the PIE” is omitted.

(2) In section HM 45(3)(a)(ii), “the month of the reduction” is replaced by “the month in which the tax liability for the investor referred to in subsection (2) is calculated”.

(3) In section HM 45, in the list of defined terms, “tax year” is inserted.

18F Calculation of tax liability or tax credit of multi-rate PIEs

(1) After section HM 47(2), the following is inserted:

“Notified foreign investors

“(2B) For the purposes of subsection (2), for a notified foreign investor in a foreign investment PIE, the amount of the PIE’s tax liability for each investor is the sum of the amounts calculated using the formula in subsection (3) for the amount attributed to the investor for each particular income source and investment type.”

(2) After section HM 47(4)(a)(i), the following is inserted:

“(ib) the tax rates applying under **schedule 6, table 1B** (Prescribed rates: PIE investments and retirement scheme contributions) for an amount attributed to a notified foreign investor in relation to each income source and investment type; or”.

(3) After section HM 47(5), the following is added:

“Negative result and foreign investment PIEs

- “(6) If the result of the formula in subsection (3) is negative and the multi-rate PIE has chosen under **section HM 71B** to become a foreign investment PIE, no tax credit arises in relation to an amount attributed to an investor in the PIE who is, at the time of attribution, a notified foreign investor.” 5
- (4) In section HM 47, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.
- (5) **Subsections (1) to (3)** apply for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 10

18G Use of foreign tax credits by PIEs

- (1) In section HM 51(1)(b), “zero-rated.” is replaced by “zero-rated:” and the following is added:
- “(c) a notified foreign investor in a foreign investment PIE.” 15
- (2) In section HM 51, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.
- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 20

18H Use of tax credits other than foreign tax credits by PIEs

- (1) In section HM 53(1)(b)(ii), “zero-rated.” is replaced by “zero-rated:” and the following is added:
- “(iii) a notified foreign investor in a foreign investment PIE, in relation to a credit that is an imputation credit.” 25
- (2) In section HM 53, in the list of defined terms, “foreign investment PIE”, “imputation credit”, and “notified foreign investor” are inserted.
- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 30

18I New heading and sections HM 55C to HM 55H

- (1) After section HM 55, the following heading and sections are inserted: 35

“Special rules for foreign investment PIEs

“HM 55C Modified source rules

“Business in New Zealand

- “(1) Despite section YD 4(2) (Classes of income treated as having New Zealand source), income attributed to a notified foreign investor by a foreign investment PIE is not treated as having a source in New Zealand merely because the business of the PIE is carried on in New Zealand.** 5

“Contracts made or performed in New Zealand

- “(2) Despite section YD 4(3), income attributed to a notified foreign investor by a foreign investment PIE is not treated as having a source in New Zealand merely because the income is derived from a contract made or performed in New Zealand but only to the extent to which the income relates to the PIE’s investments outside New Zealand.** 10 15

“Defined in this Act: business, foreign investment PIE, income, New Zealand, notified foreign investor

“HM 55D Requirements for investors in foreign investment PIEs

“What this section does 20

- “(1) This section applies to determine the treatment of a non-resident person who is an investor in a multi-rate PIE that chooses under **section HM 71B** to become a foreign investment PIE. This section overrides section HM 32(1).**

“Notification 25

- “(2) If the person meets the requirements of **subsections (3) and (4)**, they may notify the PIE that they wish to be treated as a notified foreign investor.**

“Status requirements

- “(3) The person must not be—** 30
- “(a) resident in New Zealand; or**
- “(b) a CFC; or**
- “(bb) a FIF for which the item ‘income interest’ in section EX 50(4) (Attributable FIF income method), for a person who is a New Zealand resident and the FIF, is 10% or more; or** 35

“(c) a non-resident trustee of a trust; or

“(d) a resident trustee of a foreign trust.

“Information requirements

“(4) The person must provide the PIE with the information set out in **section 28D(1)** of the Tax Administration Act 1994.

5

“Non-residents’ rates

“(5) If the person does not meet the requirements of **subsections (3) and (4)**, the PIE must treat them as a non-resident person to whom **schedule 6, table 1, row 2** (Prescribed rates: PIE investments and retirement scheme contributions) applies.

10

“PIE relying on notification

“(5B) Despite **subsection (5)**, the PIE may rely on the notification given by a person and treat them as a notified foreign investor in the following circumstances:

“(a) the person notifies the PIE that they wish to be treated as a notified foreign investor, but they have misrepresented their eligibility for notified foreign investor status:

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“(b) the person is a notified foreign investor but becomes resident in New Zealand and does not advise the PIE of the change in status:

20

“(c) the person has notified the PIE that they are a notified foreign investor but do not in fact meet the requirements for that status.

“When status may be disregarded

“(6) The Commissioner may advise a PIE to disregard notification by an investor under **subsection (2)** if the Commissioner considers on reasonable grounds that the person does not meet or no longer meets the requirements of **subsections (3) and (4)**. As soon as reasonably practicable after receiving the advice, the PIE must treat the investor as a non-resident person described in **subsection (5)**.

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30

“Cancelling status

“(7) A notified foreign investor who wishes to have their notified foreign investor status cancelled, must notify the PIE. The status may be cancelled at any time.

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“Transitional residents

- “(8) Despite **subsection (3)(a)**, a transitional resident who is an investor in a foreign investment zero-rate PIE may choose the prescribed investor rate set out in **schedule 6, table 1, row 10**.

5

“Defined in this Act: CFC, Commissioner, excluded income, FIF, foreign investment PIE, foreign trust, income interest, multi-rate PIE, non-resident, notified foreign investor, notify, resident in New Zealand, transitional resident, trustee

“HM 55E Changes in status of investors in foreign investment PIEs

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“When this section applies

- “(1) This section applies when—

“(a) a person who is a notified foreign investor in a foreign investment PIE—

15

“(i) becomes resident in New Zealand in a tax year;
or

“(ii) cancels their notified foreign investor status in a tax year under **section HM 55D(7)**:

“(b) a person who is an investor in a foreign investment PIE and who is resident in New Zealand becomes non-resident in a tax year and chooses under **section HM 55D(2)** to have notified foreign investor status.

20

“Time for changing treatment

- “(2) The PIE must change the treatment of the person as soon as reasonably practicable. But, at the latest, the change must be made from the start of the following tax year.

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“Defined in this Act: foreign investment PIE, non-resident, notified foreign investor, resident in New Zealand, tax year

“HM 55F Treatment of income attributed to notified foreign investors

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“What this section does

- “(1) This section applies for a foreign investment PIE for the purposes of the calculations that must be made under sections **HM 36** and **HM 47** in relation to the income attributed to a notified foreign investor in the PIE or the income tax liability of the PIE.

35

“Foreign investment zero-rate PIEs

- “(2) A foreign investment zero-rate PIE must apply a prescribed investor rate of 0% under **schedule 6, table 1, row 9** (Prescribed rates: PIE investments and retirement scheme contributions) to all amounts attributed to the investor. 5

“Foreign investment variable-rate PIEs

- “(3) A foreign investment variable-rate PIE must, for all amounts attributed to the investor,—
- “(a) identify the income source of each amount; and
 - “(ab) identify the investment type of each amount that is not a foreign-sourced amount; and 10
 - “(b) apply the relevant prescribed investor rate set out in **schedule 6, table 1B** to the amount.

“Defined in this Act: amount, foreign investment PIE, foreign investment variable rate PIE, foreign investment zero-rate PIE, income, income tax liability, notified foreign investor, prescribed investor rate 15

“**HM 55G Allowable amounts and thresholds for income with New Zealand source**

For the purposes of **sections HM 19B and HM 55H, and schedule 6** (Prescribed rates: PIE investments and retirement scheme contributions) and for a foreign investment zero-rate PIE, the allowable amounts of income that have a source in New Zealand and the thresholds applying to the amounts are— 20

- “(a) interest income from financial arrangements with no term or a term of 90 days or less, for which the total value of the financial arrangements must not be more than 5% of the total value of the PIE’s investments, determined without reference to an amount described in **paragraph (bb)**; 25
- “(b) a dividend paid by a company resident in New Zealand, if the total value of all the shares held by the PIE in companies resident in New Zealand is not more than 1% of the total value of the PIE’s investments; 30
- “(bb) income from a derivative instrument or other non-interest bearing financial arrangement that is related to the PIE’s foreign investments; 35

“(c) attributed PIE income from a foreign investment zero-rate PIE or a PIE that meets the requirements of section HM 19B(1).

“Defined in this Act: amount, attributed PIE income, company, dividend, financial arrangement, foreign investment zero-rate PIE, foreign-sourced amount, income, interest, multi-rate PIE, New Zealand, resident in New Zealand

5

“HM 55H Treatment when certain requirements for foreign investment PIEs not met

“Income sources

“(1A) A foreign investment zero-rate PIE that derives an amount of income other than a foreign-sourced amount or an amount allowable under **section HM 55G** is treated from the date on which the income is derived as a foreign investment variable-rate PIE.

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“When thresholds exceeded: PIE applying zero rates

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“(1) **Subsection (2)** applies for an income year and a foreign investment zero-rate PIE when—

“(b) on the last day of a quarter (the **first quarter**), a threshold set out in **section HM 55G(a) and (b)** for allowable amounts of income is exceeded; and

20

“(c) the failure is not remedied by the last day of the next quarter (the **second quarter**).

“Variable rates

“(2) The PIE is treated from the first day of the third quarter as a foreign investment variable-rate PIE, and must apply to each amount of income the variable investor rates under **schedule 6, table 1B** for all income sources and investment types.

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“When requirements not met: PIE applying variable rates

“(3) **Subsection (4)** applies for an income year and a foreign investment variable-rate PIE when—

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“(b) on the last day of the first quarter, the PIE does not meet the requirements of—

“(i) **section HM 13(6)**;

“(ii) **section HM 19C**;

“(iii) **section HM 55F(3)**

35

“(c) the failure is not remedied by the last day of the second quarter.

“Multi-rate PIE

- “(4) The PIE is treated from the first day of the third quarter as a multi-rate PIE that is not a foreign investment PIE.

“Transitional rule

- “(5) For the purposes of **subsections (1A) and (2)**, if a breach occurs and is not remedied before 1 April 2012, the PIE is treated as a multi-rate PIE that is not a foreign investment PIE.

“Defined in this Act: amount, foreign investment PIE, foreign investment variable rate PIE, foreign investment zero-rate PIE, income, income year, multi-rate PIE, quarter”.

- (2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.

19 Prescribed investor rates: schedular rates

- (1) In section HM 56, “*Rates set out in schedule*” is inserted after the section heading as a subsection heading.

- (1B) In section HM 56(1), “table 1” is replaced by “**tables 1 and 1B**”.

- (2) In section HM 56, the following is inserted as subsection (2):

“When amount not included in taxable income

- “(2) In the determination of a person’s prescribed investor rate under subsection (1), the person’s taxable income does not include an amount that—

“(a) arises because their notified investor rate is lower than their prescribed investor rate; and

“(b) is treated as taxable income because section CX 56 (Attributed income of certain investors in multi-rate PIEs) does not apply.”

- (3) In section HM 56, in the list of defined terms, “amount”, “notified investor rate”, and “taxable income” are inserted.

- (4) **Subsections (1), (2), and (3)** apply for the ~~2012–13~~ 2010–11 and later income years.

20 New section HM 57B

- ~~(1) After section HM 57, the following is inserted:~~

~~HM 57B~~ Prescribed investor rates for new residents

~~“When this section applies~~

- ~~“(1) This section applies for the purposes of section BD 1(5) (In-~~
~~come, exempt income, excluded income, non-residents’ for-~~
~~foreign-sourced income, and assessable income) when a person~~ 5
~~becomes a New Zealand resident in an income year.~~

~~“Prescribed investor rates~~

- ~~“(2) In the determination of the person’s prescribed investor rate~~
~~under schedule 6, table 1 (Prescribed rates: investments and~~
~~retirement scheme contributions) for the income year or a later~~ 10
~~income year, the person is treated as having been resident for~~
~~the income year in which they become resident and for the~~
~~immediately preceding 2 income years.~~

~~“Defined in this Act: income year, New Zealand resident, prescribed investor~~
~~rate”.~~ 15

- (1) After section HM 57, the following is inserted:

HM 57B Prescribed investor rates for new residents

“When this section applies

- “(1) This section applies for the purposes of determining a person’s
prescribed investor rate under schedule 6, table 1 (Prescribed 20
rates: investments and retirement scheme contributions) when
the person becomes a New Zealand resident.

“Determining rate

- “(2) Despite section BD 1(5)(c) (Income, exempt income, excluded
income, non-residents’ foreign-sourced income, and assess- 25
able income), the person must include the total amount of their
non-residents’ foreign-sourced income in their assessable in-
come.

“Choosing not to apply this section

- “(3) The person may choose not to apply this section for either the 30
income year in which they become a New Zealand resident
or the following income year (the **resident years**) or for both
resident years, if they reasonably expect that their taxable in-
come in the relevant resident year will be significantly lower
than their total income from all sources for the income year 35
before the first resident year.

“Relationship with section CW 27

“(4) Section CW 27 (Certain income derived by transitional resident) is ignored for the purposes of this section.

“Defined in this Act: amount, assessable income, income, income year, New Zealand resident, non-residents’ foreign-sourced income, prescribed investor rate, taxable income”.

5

(2) **Subsection (1)** applies for the 2012–13 and later income years.

20B Notified investor rates

(1) In section HM 60(1), “an investor” is replaced by “an investor other than a notified foreign investor”.

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(2) In section HM 60, in the list of defined terms, “notified foreign investor” is inserted.

20C Certain exiting investors zero-rated

(1) In section HM 61, after the section heading, “*When tax rate zero*” is inserted as a subsection heading.

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(2) In section HM 61, the following is added as subsection (2):

“Notified foreign investors

“(2) This section does not apply if the exiting investor is a notified foreign investor in a foreign investment PIE.”

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(3) In section HM 61, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.

(4) **Subsection (2)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.

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20D Use of investor classes’ losses

(1) After section HM 64(3), the following is added:

“Foreign investment PIEs

“(4) This section does not apply in relation to an investor who is a notified foreign investor in a foreign investment PIE.”

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(2) In section HM 64, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.

20E Use of land losses of investor classes

(1) After section HM 65(4), the following is added:

- “Foreign investment PIEs*
- “(5) This section does not apply in relation to an investor who is a notified foreign investor in a foreign investment PIE.”
- (2) In section HM 65, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted. 5
- 20F New section HM 71B**
- (1) After section HM 71, the following is inserted:
- “HM 71B Choosing to become foreign investment PIE**
- “What this section applies to*
- “(1) This section applies to an entity that— 10
- “(a) is, or is eligible to become, a multi-rate PIE; and*
- “(b) has, or intends to have, investors who are not resident in New Zealand; and*
- “(c) does not calculate its income tax liability using the provisional tax calculation option in section HM 44.* 15
- “Foreign investment zero-rate PIEs*
- “(2) The entity may choose to become a foreign investment zero-rate PIE if it meets the requirements of **section HM 19B**.
- “Foreign investment variable-rate PIEs*
- “(3) An entity may choose to become a foreign investment variable-rate PIE if it meets the requirements of **section HM 19C**. 20
- “Election to become foreign investment PIE*
- “(4) The entity makes the election by advising the Commissioner. If the entity is not an existing multi-rate PIE, the entity must notify the Commissioner under section 31B of the Tax Administration Act 1994. 25
- “Defined in this Act: Commissioner, foreign investment PIE, foreign investment variable-rate PIE, foreign investment zero-rate PIE, income tax liability, multi-rate PIE, notify, resident in New Zealand”.*
- (2) **Subsection (1) applies for the 2012–13 and later income** 30
- years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.**

20G When elections take effect

- (1) In section HM 72(1), “section HM 71 to become a PIE” is replaced by “section HM 71 or **HM 71B** to become a PIE or a foreign investment PIE, as applicable”.
- (2) In section HM 72, in the list of defined terms, “foreign investment PIE” is inserted. 5

21 New section HR 4B inserted

- (1) After section HR 4, the following is inserted:

“HR 4B Crown activities through New Zealand Superannuation Fund

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Amounts of income derived and expenditure incurred by the Crown in relation to the activities of its New Zealand Superannuation Fund are determined using the rules in this Act that apply to companies. This treatment applies to determine—

- “(a) how the amounts derived and incurred are quantified and timed: 15
- “(b) whether income is treated as exempt income or excluded income:
- “(c) any other matter concerning an activity of the Fund.

“Defined in this Act: amount, company, excluded income, exempt income, income, tax”.

- (2) **Subsection (1)** applies for the 2011–12 and later income years.

22 Common ownership: group of companies

- (1) In section IC 3(1), “none of which is a ~~portfolio tax rate entity~~ multi-rate PIE” is replaced by “none of which is a multi-rate PIE or a listed PIE”. 25

- (1B) Section IC 3(2B)(b) is replaced by the following:

“(b) the other companies in the group are—

- “(i) multi-rate PIEs: 30
- “(ii) land investment companies:
- “(iii) subsidiary companies that meet the requirements of section HM 7(a) and (d) (Requirements):
- “(iv) foreign PIE equivalents.”

- (2) After section IC 3(2B), the following is inserted: 35

“When listed PIEs included in group

“(2C) In relation to 2 or more companies of which 1 is a listed PIE, the companies are treated as a group of companies at a particular time or for a particular period if the PIE owns 100% of the voting interests in the other companies.” 5

(3) After section IC 3(2C), the following is inserted:

“When foreign investment PIEs included in group

“(2D) For the purposes of subsection (2B)(b), a multi-rate PIE that chooses under **section HM 71B** (Choosing to become foreign investment PIE) to become a foreign investment PIE, must not be part of a group of companies that includes a land investment company.” 10

(4) In section IC 3, in the list of defined terms, “foreign investment PIE”, “foreign PIE equivalent” and “listed PIE” are added.

22B Breach in income year in which tax loss component arises 15

(1) After section IP 4(2)(a), the following is inserted:

“(ab) the amount of the tax loss component is no more than the net income that company B derives in the common span; and”.

(2) After section IP 4(3), the following is added: 20

“Relationship with section IC 8

“(4) Despite **subsection (2)(ab)**, section IC 8 overrides this section in limiting the amount that may be used when the net income derived in the common span is more than the net income of company B for the income year.” 25

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

22C New section IQ 1A inserted and amended

(1) Before section IQ 1, the following is inserted:

“IQ 1A When this subpart applies 30

This subpart applies when, for a country or territory and a tax year, a person has—

“(a) an amount of attributed CFC net loss or FIF net loss—

“(i) for the tax year:

“(ii) carried forward from an earlier tax year: 35

“(b) an amount of attributed CFC income or FIF income calculated under the branch equivalent method and another person makes available to the person an amount of attributed CFC net loss or FIF net loss.

“Defined in this Act: attributed CFC net income, attributed CFC net loss, attributed FIF income method, branch equivalent method, company, FIF income, FIF net loss, group, tax year”.

(2) In section IQ 1A(b), “branch equivalent method” is replaced by “branch equivalent method or attributed FIF income method”.

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

22D General treatment

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

“(1) For an amount of a person’s attributed CFC net loss or FIF net loss to be carried forward to a tax year,—

“(a) the person, if a company, must meet the requirements of section IA 5 (Restrictions on companies’ loss balances carried forward); and

“(b) the amount must be used in the order required by section IA 9 (Ordering rules); and

“(c) the amount must be adjusted when required by section IA 10 (Amended assessments).”

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

22E Ring-fencing cap on attributed CFC net losses

(1) Before section IQ 2(1), the following is inserted:

“When this section applies

“(1A) This section applies if a person, for a tax year and a country or territory (the jurisdiction),—

“(a) derives an amount of attributed CFC income or FIF income calculated under the branch equivalent method; and

“(b) has an amount of attributed CFC net loss or FIF net loss—

“(i) carried forward to the tax year:

- “(ii) made available under section IQ 4 to the person by another company in the same group.”
- (2) In **section IQ 2(1A)(a)**, “branch equivalent method” is replaced by “attributable FIF income method”.
- (3) Section IQ 2(1), other than its heading, is replaced by the following: 5
- “(1) The total amount of attributed CFC net loss and FIF net loss, relating to a CFC or FIF that is resident in the jurisdiction when the loss arises, that is subtracted from the person’s net income for the tax year is— 10
- “(a) the total amount of attributed CFC income and FIF income calculated under the branch equivalent method that the person derives in the tax year in relation to a CFC or FIF that is resident in the jurisdiction, if that amount is less than or equal to the amount referred to in **paragraph (b)**; or 15
- “(b) the total amount of such attributed CFC net loss and FIF net loss that—
- “(i) the person carries forward to the tax year:
- “(ii) is made available in the tax year to the person by another company in the same group.” 20
- (4) **Section IQ 2(1)(a) and (b)** are replaced by the following:
- “(a) the total amount of attributed CFC income and FIF income, calculated under the attributable FIF income method or branch equivalent method, that the person derives in the tax year in relation to a CFC or FIF that is resident in the jurisdiction, if that amount is less than or equal to the amount referred to in **paragraph (b)**; or 25
- “(b) the total amount of such attributed CFC net loss and FIF net loss, available under **subsection (1B)**, (1C) or section IQ 3, that— 30
- “(i) the person carries forward to the tax year:
- “(ii) is made available in the tax year to the person by another company in the same group.”
- (5) Section IQ 2(1B) is replaced by the following: 35
- “Losses from year after transition*
- “(1B) If an amount of attributed CFC net loss or FIF net loss arises for a person in an income year for which section IQ 2B applies

- to the person, or is made available to the person by a company for which the loss arises in an income year for which section IQ 2B applies to the company, all of the attributed CFC net loss or FIF net loss is available for subtracting from the person's net income for the tax year." 5
- (6) In section IQ 2(1C),—
- (a) in the words before the paragraphs, "a person's attributed CFC net loss" is replaced by "an amount of attributed CFC net loss of a person, or made available to the person,": 10
- (b) in paragraph (a), "the amount available in the tax year for reducing" is replaced by "the amount of the attributed CFC net loss available in the tax year for subtracting from":
- (c) in paragraph (b), "that attributed CFC net loss that is not available to the person after the tax year is equal to" is replaced by "the attributed CFC net loss is reduced by". 15
- (7) Section IQ 2(2)(b) and (c) are replaced by the following:
- "(b) establishing their entitlement to make available, under sections IC 5 (Company B using company A's tax loss) or IQ 4, an amount of attributed CFC net loss or FIF net loss carried forward; or 20
- "(c) applying subsection (1) in relation to another attributed CFC net loss or FIF net loss."
- (8) In section IQ 2, in the list of defined terms, "company", "FIF net loss", and "income year" are inserted. 25
- (9) In section IQ 2, in the list of defined terms, "attributable FIF income" is inserted.
- (10) **Subsections (1), (3), and (7)** apply for the 2008–09 and later income years. 30
- (11) **Subsections (4), (5), and (6)** apply for income years beginning on or after 1 July 2009.
- (12) **Subsection (2)** applies for income years beginning on or after 1 July 2011.

22F Attributed CFC net loss from tax year before first affected year

(1) In section IQ 2B, the heading is replaced by “**Effect of attributed CFC net loss and FIF net loss from before first affected year**”.

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(2) Section IQ 2B(1)(c) is replaced by the following:

“(c) is carried forward to a tax year (the **conversion year**) in which this section applies to the person or is made available to the person for the conversion year by another company in the same group.”

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(3) In section IQ 2B(2)(b), after “attributed CFC net loss”, “or FIF net loss” is inserted.

(4) In section IQ 2B, in the list of defined terms, “company” and “FIF net loss” are inserted.

(5) **Subsections (2) and (3)** apply for income years beginning on or after 1 July 2009.

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22G Ring-fencing cap on FIF net losses

(1) Section IQ 3(1), other than the heading, is replaced by the following:

“(1) If a person’s FIF net loss is carried forward to a tax year or FIF net loss is made available to the person in the tax year, the FIF net loss may be subtracted, under section IQ 2, from the person’s net income for the tax year.”

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(2) **Section IQ 3(1)**, other than the heading, is replaced by the following:

25

“(1) If a person’s FIF net loss is carried forward to a tax year (the **current tax year**) or FIF net loss is made available to the person in the current tax year,—

“(a) FIF net loss relating to a tax year for which section IQ 2B applies to the person is available to be subtracted under section IQ 2 from the person’s net income for the current tax year; and

30

“(b) FIF net loss relating to a tax year for which section IQ 2B does not apply to the person—

“(i) is available to be subtracted from the person’s net income for the current tax year to the extent of the equivalent CFC loss under section IQ 2B; and

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- “(ii) is reduced in the current tax year by the converted BE loss under section IQ 2B.”
- (3) In section IQ 3(2), “Despite this section” is replaced by “Despite **subsection (1)** and section IQ 2”.
- (4) In section IQ 3(3), “maximum amount referred to in subsection (1)” is replaced by “amount that is available tax loss under **section IQ 2(1)**”. 5
- (5) **Subsections (1), (3), and (4)** apply for the 2008–09 and later income years.
- (6) **Subsection (2)** applies for income years beginning on or after 1 July 2009. 10
- 22H Group companies using attributed CFC net losses**
- (1) Section IQ 4(1), other than the heading, is replaced by the following:
- “(1) This section supplements the general rules relating to the grouping of net losses when, for a tax year (the **current tax year**), a company (**company A**) that is part of a group of companies has an amount— 15
- “(a) of attributed CFC net loss for the current tax year or carried forward from an earlier tax year, or FIF net loss for the current tax year or carried forward from an earlier tax year; and 20
- “(b) remaining after section IQ 2 is applied for the current tax year and before any amount is made available to another company under this section.” 25
- (2) Section IQ 4(2) is replaced by the following:
- “*Modifications to general rules for grouping net losses*
- “(2) For determining whether company A may make available an amount of attributed CFC net loss or FIF net loss to another company (**company B**) in the group of companies, the general rules relating to the grouping of net losses are modified as follows: 30
- “(a) the group of companies must be a wholly-owned group of companies; and
- “(b) subpart IC (Grouping tax losses) and section GB 4 (Arrangements for grouping tax losses: companies) apply 35

- as if an amount of attributed CFC net loss or FIF net loss were a tax loss component; and
- “(c) **subsection (3)** overrides sections IC 5(1)(d) and IC 8 (which impose limits on the amount of transferred tax loss): 5
- “(d) section IA 3(2) (Using tax losses in tax year) and sub-part IP (Meeting requirements for part-years) do not apply.”
- (3) Section IQ 4(3), other than the heading, is replaced by the following: 10
- “(3) The amount of attributed CFC net loss or FIF net loss that company A may make available to company B in the tax year is limited by the following:
- “(a) the total amount made available by company A to group companies must not exceed the amount referred to in **subsection (1)**; and 15
- “(b) the resulting reduction in company B’s net income in the tax year must not exceed the total amount that company B derives in the tax year of attributed CFC income from CFCs, or FIF income calculated under the branch equivalent method from FIFs, resident in the country or territory (the **jurisdiction**) in which the loss arose, reduced by the total of the following: 20
- “(i) the total amount of the attributed CFC income or FIF income taken into account in calculating a deduction of company B under section DN 4 or DN 8 (which relate to ring-fencing caps on deductions): 25
- “(ii) the total amount of attributed CFC net loss or FIF net loss that company B derives in the tax year from CFCs or FIFs resident in the jurisdiction: 30
- “(iii) the total amount of attributed CFC net loss or FIF net loss, from CFCs or FIFs resident in the jurisdiction, that company B carries forward to the tax year: 35
- “(iv) the total amount of attributed CFC net loss or FIF net loss, from CFCs or FIFs resident in the jurisdiction, that is made available to company B

for the tax year under this section by a company
other than company A.”

(4) In **section IQ 4(3)(b)**, in the words before the paragraphs,
“branch equivalent” is replaced by “attributable FIF income”.

(5) In **section IQ 4(3)(b)(iii)**, “tax year” is replaced by “tax year
and is available tax loss for company B”. 5

(6) In section IQ 4, in the list of defined terms, “FIF net loss” is
inserted.

(7) In section IQ 4, in the list of defined terms, “available tax loss”
is inserted. 10

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

(9) **Subsection (5)** applies for income years beginning on or after
1 July 2009.

(10) **Subsection (4)** applies for income years beginning on or after
1 July 2011. 15

22I Section IQ 5 repealed

(1) Section IQ 5 is repealed.

(2) **Subsection (1)** applies for the 2008–09 and later income
years. 20

23 What this subpart does

(1) In section LJ 1(2)(a), “not derived from New Zealand” is re-
placed by “sourced from outside New Zealand”.

(2) In section LJ 1, in the list of defined terms, “derived from New
Zealand” is omitted. 25

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

24 Calculation of New Zealand tax

(1) Section LJ 5(1) to (4B) are replaced by the following:

“What this section does

“(1) This section provides the rules that a person must use to cal-
culate the amount of New Zealand tax for an income year in
relation to each segment of foreign-sourced income of the per-
son that is allocated to the income year.” 30

“Calculation for single segment

- “(2) If the person has a notional income tax liability of more than zero, the amount of New Zealand tax for the income year relating to the allocated segment is calculated using the following formula, the result of which can not be less than zero: 5

$$\frac{(\text{segment} - \text{person's deductions})}{\text{person's net income}} \times \text{notional liability.}$$

“Definition of items in formula

- “(3) In the formula in **subsection (2)**,—
- “(a) **segment** is the amount of the segment of foreign-sourced income for the income year:
- “(b) **person's deductions** is the amount of the person's deduction for the tax year corresponding to the income year that is attributable to the segment of foreign-sourced income: 10
- “(c) **person's net income** is the person's net income for the tax year corresponding to the income year under section BD 4(1) to (3) (Net income and net loss): 15
- “(d) **notional liability** is the person's notional income tax liability for the income year under subsection (5).

“When subsection (4B) applies

- “(4) **Subsection (4B)** applies for the income year when the total amount of New Zealand tax for all segments of foreign-sourced income of the person calculated under **subsection (2)** is more than the notional income tax liability. 20

“Modification to results of formula for single segment

- “(4B) Each amount of New Zealand tax calculated under **subsection (2)** in relation to each segment of foreign-sourced income is adjusted by multiplying the amount by the following ratio: 25

$$\frac{\text{person's notional income tax liability}}{\text{NZ tax.}}$$

“Definition of item in formula

- “(4C) In the formula in **subsection (4B)**, **NZ tax** is the amount given by adding together the result of the calculation under **subsection (2)**, for each segment of assessable income from 30

all sources, including assessable income sourced in New Zealand.”

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

24B Repaid foreign tax: effect on income tax liability 5

- (1) Section LJ 7(4), other than the heading, is replaced by the following:

“(4) In subsection (3), the date for payment is 30 days after the later of—

- “(a) the date on which the person receives the refund: 10
“(b) the date of the notice of assessment in relation to which the person has used the credit.”

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

24C Repaid foreign tax: effect on FDP liability 15

- (1) Section LJ 8(5), other than the heading, is replaced by the following:

“(5) In subsection (4), the date for payment is 30 days after the later of—

- “(a) the date on which the person or the company receives the refund: 20
“(b) the date for payment of FDP to the Commissioner in relation to the foreign dividend received for which the recalculation is required.”

- (2) **Subsection (1)** applies for the 2008–09 and later income years. 25

24D Tax credits relating to attributed CFC income

- (1) Section LK 1(8) is replaced by the following:

“Date for payment

“(8) In subsection (7)(a), the date for payment is 30 days after the later of— 30

- “(a) the date on which the person who paid the tax receives the refund:
“(b) the date of the notice of assessment in relation to which the person has used the credit.” 35

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

24E Tax credits for multi-rate PIEs

- (1) After section LS 1(2)(a)(ii), the following is inserted:

“(iii) a notified foreign investor in a foreign investment PIE in relation to an imputation credit attached to a dividend derived by the PIE:”.

- (2) In section LS 1, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.

- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE.

24F Tax credits for investors in multi-rate PIEs

- (1) Section LS 2(1)(c) is replaced by the following:

“(c) the income is not excluded income of the investor because—

“(i) the test in section CX 56(1)(b) (Attributed income of certain investors in multi-rate PIEs) is not met; or

“(ii) section CX 56(2)(b) applies.”

- (2) In **section LS 2(1)(c)(ii)**, “section CX 56(2)(b)” is replaced by “section CX 56(2)(b) or (c)”.

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

- (4) **Subsection (2)** applies for the 2012–13 and later income years.

24G Family scheme income from amounts derived by dependent children

- (1) In section MB 11(1), the words before the paragraphs are replaced by “This section applies for the purpose of determining the amount that represents the family scheme income of a person for an income year when the person is a principal caregiver of a dependent child and the dependent child derives in the income year an amount that is—”.

- (2) Section MB 11(2) is replaced by the following:

- “Amount included in family scheme income
- “(2) If the total of amounts derived by the dependent child in the income year and referred to in subsection (1) is more than \$500, the family scheme income of the person for the income year includes an amount calculated using the formula— 5
- $$\frac{\text{child's amounts} - \$500}{\text{principal caregivers.}}$$
- “Definitions of items in formula
- “(3) In the formula—
- “(a) **child’s amounts** is the total of amounts—
- “(i) derived by the dependent child in the income year; and 10
- “(ii) referred to in subsection (1):
- “(b) **principal caregivers** is the number of people who are each a principal caregiver of the child.”
- (3) In section MB 11, in the list of defined terms, insert “principal caregiver”. 15
- 25 Third requirement: residence**
- (1) In section MC 5(2)(a), “is” is replaced by “has been” in each place where it appears.
- (2) In section MC 5(3), “resident” is replaced by “a New Zealand resident”. 20
- (2B) In section MC 5, in the list of defined terms, “resident” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 25B Fifth requirement: full-time earner** 25
- In section MD 9(3)(c), “section RD 5(6)(b)(ii), (iii), or (iv)” is replaced by “section RD 5(6)(bb), (bc), or (bd)”.
- 25C Meaning of employment for this subpart**
- In section ME 2(1)(a), “section RD 5(3) and (6)(b) and (c)” is replaced by “section RD 5(3) and (6)(b), (bb), (bc), (bd), and (c)”. 30

26 Payment of tax credits

In section MK 3(5)(b), “the fund provider asks for the payment to be made to provider B because” is omitted.

27 ICA payment of tax

- (1) In section OB 4(1), “provisional tax paid” is replaced by “provisional tax paid or an amount treated under section RC 32(5)(b) (Wholly-owned groups of companies) as a payment of provisional tax”. 5
- (2) Section OB 4(4), other than the heading, is replaced by the following: 10

“(4) The credit date is—

 - “(a) for an amount of income tax or provisional tax paid other than an amount referred to in **paragraph (b)**, the day the tax is paid:
 - “(b) for an amount treated under section RC 32(5)(b) as a payment of provisional tax, the day on which notice of the allocation of the tax is given to the Commissioner.” 15
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

28 Reduction of further income tax

- (1) Section OB 67(2) is replaced by the following: 20

“Reduction applying for consecutive tax years
- “(2) In relation to 2 tax years that are consecutive, the liability for further income tax at the end of the second tax year is reduced by the amount calculated using the formula— 25

debit balance at end of second year – first year adjustment.

“Definition of items in formula

- “(2B) In the formula in **subsection (2)**,—
- “(a) **debit balance at end of second year** is the amount of the debit balance in the company’s imputation credit account at the end of the second tax year: 30
- “(b) **first year adjustment** is the amount—
 - “(i) of the first year’s debit balance in the company’s imputation credit account less the credits made to the account during the second tax year; and

- “(ii) that cannot be less than zero.”
- (2) In section OB 67(5), “the formula” is replaced by “the formula in subsection (4)”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 5

28B Co-operative companies’ notional distributions that are dividends

- (1) In section OB 80(2), the formula is replaced by the following:
- $$\frac{\text{credit attached}}{\text{tax rate}} - \text{credit attached.}$$
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 10

29 BETA payment of income tax

- (1) Section OE 7(3B), other than the heading, is replaced by the following:
- “(3B) Despite subsection (3) and section OP 101(2) (Consolidated BETA payment of income tax), the amount of BETA debits applied under elections under subsection (3) and section OP 101(2) relating to the attributed CFC income referred to in subsection (3) must be no more than the amount calculated under section OE 6(1) for the company that has the attributed CFC income, treating the item debit balances as zero.” 15 20
- (2) Section OE 7(4) is repealed.
- (3) In section OE 7(5), “subsection (4)” is replaced by “subsection (3), as limited by subsection (3B),”.
- (4) Section OE 7(6) is replaced by the following:
- “*Excess amount treated as tax loss component* 25
- “(6) If a company chooses under subsections (3) and (3B) to apply a debit amount that exceeds the total income tax liability for the attributed CFC income referred to in subsection (3), the excess amount is treated as an amount of tax loss component of the company having the attributed income calculated using the formula— 30

debit applied – tax liability

tax rate.

- (5) Section OE 7(7) is replaced by the following:

“Definition of items in formula

- “(7) In the formula,—

“(a) **debit applied** is the amount of the debit balance applied by the company under an election under subsections (3) 5 and (3B):

“(b) **tax liability** is the total income tax liability for the attributed CFC income:

“(c) **tax rate** is the basic rate of income tax set out in—

“(i) schedule 1, part A, clause 2 (Basic tax rates: 10 income tax, ESCT, RSCT, RWT, and attributed fringe benefits), if the company is not a Maori authority; or

“(ii) schedule 1, part A, clause 7, if the company is a Maori authority.” 15

- (6) **Subsections (1) to (5)** apply for the 2008–09 and later income years.

30 Section OE 8 repealed

- (1) Section OE 8 is repealed.

- (2) **Subsection (1)** applies for the 2008–09 and later income 20 years.

30B New section OK 6B

- (1) After section OK 6, the following is inserted:

“OK 6B MACA attributed PIE income with imputation credit

“Credit

- “(1) A Maori authority that is an investor in a multi-rate PIE has a Maori authority credit for the amount of an imputation credit attributed to it under section HM 54 (Use of tax credits other than foreign tax credits by investors). 25

“Table reference

“(2) The Maori authority credit in **subsection (1)** is referred to in table O17: Maori authority credits, **row 6B** (attributed PIE income with imputation credit).

“Credit date

5

“(3) The credit date is the day the amount is attributed.

“Defined in this Act: amount, attributed PIE income, imputation credit, multi-rate PIE”.

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

10

30C Table O17: Maori authority credits

(1) In table O17, after row 6, the following is inserted:

<u>6B</u>	<u>Attributed PIE income with imputation credit</u>	<u>day of attribution</u>	<u>section OK</u> <u>6B</u>
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(2) **Subsection (1)** applies for the 2008–09 and later income years.

31 Consolidated BETA payment of income tax

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(1) Section OP 101(1), other than the heading, is replaced by the following:

“(1) This section applies when, for a consolidated BETA group,—

“(a) attributed CFC income is derived by—

“(i) the consolidated BETA group, and there is a debit balance in the branch equivalent tax account of the consolidated BETA group, of a member of the consolidated BETA group, or of a BETA company (a **BETA group company**) that would be part of the same group of companies as the consolidated BETA group if the consolidated BETA group were a single company: 20 25

“(ii) a BETA group company, and there is a debit balance in the branch equivalent tax account of the consolidated BETA group; and 30

“(b) the debits producing the debit balance arise from FDP that has been paid—

“(i) directly:

“(ii) by reducing a tax loss:

- “(iii) to reduce an FDP liability under section RG 7
(Reduction of payments for conduit tax relief).”
- (2) Section OP 101(2), other than the heading, is replaced by the
following:
- “(2) A company that is allowed under **subsection (6)** to make an 5
election under this subsection may choose to apply some or
all of the debit balance in the branch equivalent tax account
to satisfy an income tax liability arising from attributed CFC
income of the consolidated BETA group or the BETA group
company.” 10
- (3) Section OP 101(2B), other than the heading, is replaced by the
following:
- “(2B) Despite **subsection (2)** and section OE 7(3) (BETA payment
of income tax), the amount of BETA debits applied under elec- 15
tions under **subsection (2)** and section OE 7(3) relating to
the attributed CFC income referred to in **subsection (2)** must
be no more than the amount calculated under section OE 6(1)
(BETA payment of income tax on foreign income) for the com-
pany that has the attributed CFC income or under section OP 20
100(1) for the consolidated BETA group, in both cases treat-
ing the item debit balances as zero.”
- (4) Section OP 101(3) is repealed.
- (5) In section OP 101(4), “subsection (3)” is replaced by “**sub-
section (2)**, as limited by **subsection (2B)**,”.
- (6) After section OP 101(4), the following is inserted: 25
“*Excess amount treated as tax loss component*”
- “(4B) If a company chooses under **subsections (2) and (2B)** to
apply a debit amount that exceeds the total income tax liability
for the attributed CFC income referred to in subsection (1), the
excess amount is treated as an amount of tax loss component— 30
“(a) of the BETA group company, if it has the attributed CFC
income, or of the consolidated BETA group, otherwise;
and
“(b) calculated using the formula—
$$\frac{\text{debit applied} - \text{tax liability}}{\text{tax rate.}}$$

“Definition of items in formula

“(4C) In the formula,—

“(a) **debit applied** is the amount of the debit balance applied by the company under an election under **subsections (2) and (2B)**: 5

“(b) **tax liability** is the total income tax liability for the attributed CFC income:

“(c) **tax rate** is the basic rate of income tax set out in—

“(i) schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits), if the company is not a Maori authority; or 10

“(ii) schedule 1, part A, clause 7, if the company is a Maori authority.”

(7) Section OP 101(5) is repealed. 15

(8) Section OP 101(6), other than the heading, is replaced by the following:

“(6) An election under **subsection (2)** may be made as follows:

“(a) if the income tax liability of the consolidated BETA group is to be satisfied, the election may be made by— 20

“(i) the nominated company, if the debit balance is in the branch equivalent tax account of the consolidated BETA group:

“(ii) a company that is a member of the consolidated BETA group, if the debit balance is in the branch equivalent tax account of that company: 25

“(iii) a BETA group company, if the debit balance is in the branch equivalent tax account of that BETA group company:

“(b) if the income tax liability of a BETA group company is to be satisfied, the election may be made by the nominated company of the consolidated BETA group.” 30

(9) Section OP 101(7), other than the heading, is replaced by the following:

“(7) An election under **subsection (2)**, limited by **subsection (2B)**, is made by recording in the branch equivalent tax account a credit equal to the amount of the debit balance for which the election is made.” 35

- (10) **Subsections (1) to (9)** apply for the 2008–09 and later income years.

32 Section OP 102 repealed

- (1) Section OP 102 is repealed.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5

32B ASCA lost excess available subscribed capital

- (1) Section OZ 5(1)(d) is replaced by the following:
- “(d) the amount of the available subscribed capital, calculated on a per unit basis, is greater than the proceeds from the redemption for the unit.” 10
- (2) In section OZ 5, in the compare note, “MJ 5(1)” is added.
- (3) **Subsection (1)** applies for the 2008–09 and later income years.

32C Salary or wages 15

- (1) Section RD 5(6)(c) is replaced by the following:
- “(c) a basic grant and independent circumstances grant made under regulations made under section 193 of the Education Act 1964, section 303 of the Education Act 1989, or an enactment substituted for those sections.” 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

32D Tax pooling intermediaries

- (1) In section RP 17, after the section heading the following is inserted: 25
- “*Meeting person A’s obligations*”.
- (2) In section RP 17, the following is added as subsection (2):
- “*Person A and group companies*
- “(2) For the purposes of this section, if person A is a company in a group of companies, person A also includes the other companies that are in the group at the time— 30
- “(a) an amount is deposited in a tax pooling account under section RP 18; and

- “(b) as applicable,—
 “(i) is used or transferred under section RP 17B:
 “(ii) is transferred under section RP 19.”
- (3) In section RP 17, in the list of defined terms, “amount”, “com-
pany”, and “group of companies” are inserted. 5
- 33 Tax pooling accounts and their use**
- (1) After section RP 17B(3)(a), the following is inserted:
- “(ab) also arises when a person has—
- “(i) before taking any action under **subparagraph (ii)**, filed a return required to be provided for a 10
 tax type listed in **subsection (8)**; and
- “(ii) has made a voluntary disclosure in relation to the
 return:
- “(ac) also arises when—
- “(i) before any assessment or adjustment under **sub-** 15
 paragraph (ii) is made, the person has filed a re-
 turn required to be provided for a tax type listed
 in **subsection (8)**; and
- “(ii) the Commissioner makes an assessment or
 adjustment increasing an amount previously 20
 payable:”.
- (2) In section RP 17B(3)(c), “previous assessment” is replaced
 by “previous assessment or the amount that was previously
 payable under **paragraph (ab) or (ac)**, as applicable”.
- (3) Section RP 17B(4) is replaced by the following: 25
 “*Transfers for provisional tax or terminal tax*
- “(4) A person who chooses to use funds in a tax pooling account
 to satisfy an obligation for provisional tax or terminal tax for
 a tax year may ask the tax pooling intermediary to arrange the
 transfer of an amount to their tax account with the Commis- 30
 sioner as follows:
- “(a) ~~within 75 days from their terminal tax date for the tax~~
 ~~year unless **paragraph (b)** applies:~~
- “(b) ~~if the amount is to be transferred from funds deposited~~
 ~~by them in the tax pooling account under section RP 18 35~~
 ~~and their return filing requirements have been met, at~~
 ~~any time:~~

- “(a) on or before the date that is 75 days after their terminal tax date for the tax year unless **paragraph (b) or (c)** applies:
- “(b) on or before the date that is 76 days after their terminal tax date for the tax year if— 5
- “(i) the person’s balance date falls at the end of October, November, or December; and
- “(ii) the corresponding income year is a leap year:
- “(c) if the amount is to be transferred from funds deposited on the person’s behalf in the tax pooling account under section RP 18 and the person’s return filing requirements have been met, at any time. 10
- “Group companies
- “(4B) For the purposes of **subsection (4)(c)**, if the person is part of a group of companies, the person includes the other companies in the group at the time at which a deposit to the tax pooling account is made, or funds purchased or used, as applicable.” 15
- (4) In section RP 17B(5), “under subsection (3)(a)” is replaced by “as described in subsection (3)(a) to **(ac)**”.
- (5) After section RP 17B(6), the following is added: 20
- “Maximum amount of transfer*
- “(7) The maximum amount that a person may ask a tax pooling intermediary to transfer to meet an obligation to pay tax is—
- “(a) for a transfer under **subsection (4)(a) or (b)**, the amount payable: 25
- “(b) for a transfer under **subsection (4)(b)(c)**, the amount of the funds deposited by the person under section RP 18:
- “(c) for a transfer under subsection (5), the increased amount of tax payable: 30
- “(d) for a transfer under subsection (6), the amount of deferrable tax payable.
- “Extended meaning for increased amount of tax and deferrable tax*
- “(8) For the purposes of sections RP 17 to RP 21, an increased amount of tax or deferrable tax includes an amount relating to— 35

- “(a) tax paid or payable under the PAYE rules, ESCT rules, RSCT rules, RWT rules, or NRWT rules:
- “(b) income tax, GST, FBT, further income tax, and imputation penalty tax payable under section 140B of the Tax Administration Act 1994. 5
- “When subsection (10) applies*
- “(9) **Subsection (10)** applies when—
- “(a) a person is liable for an increased amount of tax that relates to income tax or resident withholding tax; and
- “(b) **subsection (3)(ab)(ii)** applies in relation to the amount; and 10
- “(c) the person has not filed the return of income required by **subsection (3)(ab)(i)** before the voluntary disclosure is made.
- “Commissioner’s discretion to allow use of funds* 15
- “(10) On application by the person, the Commissioner may agree in writing that they may use funds in a tax pooling account for the increased amount of tax if the Commissioner is satisfied that—
- “(a) the increased amount arises as a result of an event or circumstance beyond the person’s control; and 20
- “(b) the person has a reasonable justification or excuse for not filing the return by the required date; and
- “(c) the person has an otherwise good compliance history for the 2 income years before the income year in which the voluntary disclosure referred to in **subsection (3)(ab)(ii)** is made. 25
- “Review*
- “(11) After the expiry of 1 year, but before the expiry of 2 years, after the commencement of **subsection (10)**, the Commissioner must— 30
- “(a) review the operation of **subsections (9) and (10)**; and
- “(b) assess the impact of these subsections; and
- “(c) consider whether any amendments to the law are necessary or desirable and, in particular, whether these subsections are needed; and 35
- “(d) report the findings to the Minister of Revenue.”

- (6) In section RP 17B, in the list of defined terms, “balance date”, “corresponding income year”, “income tax”, and “return of income” are inserted.

34 Transfers from tax pooling accounts

Section RP 19(3), other than the heading, is replaced by the following: 5

- “(3) The credit date for an amount transferred to a person’s tax account is—

- “(a) for a transfer under **section RP 17B(4)(a) or (b)**, the relevant instalment date set out in schedule 3, part A 10
(Payment of provisional tax and terminal tax):
- “(b) for a transfer under **section RP 17B(4)(b)(c)**, the date on which the person deposited the funds in a tax pooling account:
- “(c) for a request made within the 60-day period referred to 15
in section RP 17B(5) or (6), a date nominated that is no earlier than the original due date for the relevant period:
- “(d) in any other case, the date on which the Commissioner receives the request for the transfer.”

35 New section RP 19B inserted 20

After section RP 19, the following is inserted:

“RP 19B Transfers for certain expected tax liabilities

“Who this section applies to

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

- “(a) expects to have an income tax or provisional tax liability 25
for a tax year; and
- “(b) has acquired funds in a tax pooling account other than by depositing them on their own account; and
- “(c) has not yet filed a return of income in relation to the liability for the tax year. 30

“Using funds

- “(2) The person may choose to use the funds towards the payment of the liability for the tax year on meeting all the requirements of this section.

“Requirements at time of making request

- “(3) At the time of making the request, the person must— 35

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	“(a) for an income tax liability, have met all their return filing requirements for earlier tax years:	
	“(b) for a provisional tax liability, have met all their obligations under the provisional tax rules for the tax year.	
	“ <i>Effective date of transfer</i>	5
“(4)	The effective date that the person nominates for the transfer of funds must correspond to the relevant instalment date set out in schedule 3, part A (Payment of provisional tax and terminal tax).	
	“ <i>Refunds</i>	10
“(5)	If, as a result of a transfer under this section, excess tax arises for the person, the amount of excess tax is treated as follows:	
	“(a) first, the amount is transferred to meet a liability for the person, as applicable, for—	
	“(i) provisional tax or terminal tax under section RP 17B(4)(a) or (b) :	15
	“(ii) an increased amount of tax under section RP 17B(5):	
	“(iii) an obligation to pay deferrable tax under section RP 17B(6):	20
	“(b) second, the amount is transferred with an effective date that is no earlier than the date on which the Commissioner received the later request:	
	“(c) third, the amount is refunded to the person.	
	“ <i>Relationship with section RP 17B</i>	25
“(6)	<u>This section overrides section RP 17B(7)(a).</u>	
	“Defined in this Act: amount, Commissioner, instalment date, provisional tax, provisional tax rules, return of income, tax pooling account, tax year, terminal tax”.	
35B	<u>Refusals to transfer amounts</u>	30
(1)	<u>The section heading to section RP 20 is replaced by “Declining, amending, or reversing transfers”.</u>	
(2)	<u>After section RP 20(2), the following is inserted:</u>	
	“ <i>Non-compliance</i>	
“(2B)	<u>If the Commissioner considers that the request does not comply with sections RP 17 to RP 21, the Commissioner may—</u>	35
	“(a) <u>decline to process the request:</u>	

- “(b) amend the request:
“(c) reverse the transfer.”

36 Definitions

(1) This section amends section YA 1.

(1B) In the definition of **available tax loss**, after paragraph (b), the following paragraphs are added: 5

“(c) an attributed CFC net loss or FIF net loss carried forward that, under subpart IQ (Attributed controlled foreign company net losses and foreign investment fund net losses), is required to be subtracted from the net income: 10

“(d) the amount of another company’s attributed CFC net loss or FIF net loss that, under subpart IQ, is subtracted from the net income”.

(1C) In the definition of **balance date**, “subpart RC (Provisional tax)” is replaced by “subpart RC (Provisional tax), section RP 17B (Tax pooling accounts and their use)”. 15

(1D) In the definition of **employee**, after paragraph (a), the following is inserted:

“(ab) for the purposes of the FBT rules, includes a shareholder-employee who has chosen under section RD 3(3) to treat amounts paid to them in the income year in their capacity as employee as income other than from a PAYE income payment.”. 20

(1E) In the definition of **fixed-rate share**, in paragraph (h)(iii), “payable” is replaced by “payable:” and the following is added: 25

“(i) in **section EX 46(10)(a)** and subpart FE (Interest apportionment on thin capitalisation), means a share meeting the requirements of paragraph (f)(i) and (iii)”. 30

(1F) The following is inserted in its appropriate alphabetical order:

“**foreign investment PIE** means a multi-rate PIE that—

“(a) meets the requirements of **sections HM 55C to HM 55H** (which relate to the particular requirements for and treatment of foreign investment PIEs); and 35

- “(b) chooses under **section HM 71B** (Choosing to become a foreign investment PIE) to become a foreign investment zero-rate PIE or a foreign investment variable-rate PIE
“foreign investment variable-rate PIE means a foreign investment PIE that— 5
- “(a) meets the requirements of **section HM 19C** (Requirements for foreign investment variable-rate PIEs); and
“(b) chooses under **section HM 71B** (Choosing to become a foreign investment PIE) to become a foreign investment variable-rate PIE” 10
- “foreign investment zero-rate PIE means a foreign investment PIE that—
“(a) meets the requirements of **section HM 19B** (Requirements for foreign investment variable-rate PIEs); and
“(b) chooses under **section HM 71B** (Choosing to become a foreign investment PIE) to become a foreign investment zero-rate PIE”. 15
- (1G) In the definitions of **jurisdictional attributed income**, **jurisdictional BE income**, **jurisdictional income ratio**, and **resident group member**, “Attributed CFC net loss from tax year before first affected year” is replaced by “Effect of attributed CFC net loss and some FIF net loss from before first affected year” in each place where it appears. 20
- (1H) In the definition of **land investment company**, paragraph (c), “sources” is replaced by “types”. 25
- (2) In the definition of **major shareholder**, paragraphs (c) and (d), “at least 10% of the voting rights of the company” is replaced by “at least 10% of the voting and market value interests in the company” in each place where it appears.
- (2B) The following are inserted in their appropriate alphabetical order: 30
- “**notified foreign investor** means an investor in a foreign investment PIE who—
“(a) meets the requirements of **sections HM 55D(3) and (4)** (Requirements for investors in foreign investment PIEs); and 35
“(b) notifies the PIE under **section HM 55D(2)** that they wish to be treated as a notified foreign investor”.

- (2C) In the definition of **PIE rules**,—
- (a) in paragraph (a)(v), “and DB 54” is replaced by “to **DB 54B**”:
 - (b) after paragraph (a)(v), the following is inserted:
“(vb) **section EX 20B(3)(o)** (Attributable CFC 5
amount):
 - (c) in paragraph (a)(viii), “IC 3(2B)” is replaced by
“IC 3(2B) to **(2D)**”:
 - (d) in paragraph (b), “28B” is replaced by “28B, **28D**”.
- (3) In the definition of **prescribed investor rate**, “retirement 10
scheme contributions)” is replaced by “retirement scheme
contributions), modified as necessary by **section HM 56(2)**
(Prescribed investor rates: schedular rates) or **HM 57B** (Pre-
scribed investor rates for new residents)”.
- (3B) **Subsection (1D)** does not apply in relation to a tax position 15
taken by a person—
- (a) in the period from 1 April 2008 to 30 November 2010;
and
 - (b) in relation to the payment of fringe benefit tax; and
 - (c) relying on section RD 3(2) to (4) in the absence of the 20
amendment made by **subsection (1D)**.
- (3C) **Subsections (1E) and (1G)** apply for income years begin- 25
ning on or after 1 July 2009.
- (3D) **Subsection (1H)** applies for the 2010–11 and later income 25
years.
- (4) **Subsection (2)** applies for the 2008–09 and later income
years.
- (5) **Subsection (3)** applies for the 2012–13 and later income
years.
- 37 No look-through rule for companies in certain cases 30**
- (1) In section YC 11(3), “market value interest would” is replaced
by “market value interest in the issuing company would”.
 - (2) **Subsection (1)** applies for the 2008–09 and later income
years.

38 Directors' knowledge of failure to meet requirements of continuity provision

- (1) In section YC 15(1)(b), the words before the subparagraphs are replaced by “the failure, but for that concessionary application, to meet the requirements would have occurred in the absence of transactions of the following types:”.
- (2) In section YC 15(1)(b)(iii), “unit trust;” and is replaced by “unit trust:” and the following is added:
- “(iv) the sale of shares in a company other than in the ordinary course of trading on a recognised exchange between persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 5%, calculated before the application of section YC 4 as modified by section YC 11:
- “(v) transfers, between a company and the company's shareholders, of shares in the company that in total for the company's income year would be a direct voting interest or direct market value interest of less than 5% if held by a single person; and”.
- (3) In section YC 15(1)(b)(iv), “sale” is replaced by “transfer”.
- (4) Section YC 15(1)(b)(v) is replaced by the following:
- “(v) the issue, redemption, or cancellation by a company, or the transfer to or from the company, or the transfer to an employee of the company from a trustee of a trust with no beneficiary other than the company and the company's employees, of shares in the company, or options over shares in the company, that in total for the company's income year would be a direct voting interest or direct market value interest of less than 5% if held by a single person; and”.
- (5) **Subsections (1) and ~~(2)~~, (2), (3), and (4)** apply for the 2008–09 and later income years.

39 New section YD 3B

(1) After section YD 3, the following is inserted:

“YD 3B Crown

For the purposes of this Act and for the avoidance of doubt,
Her Majesty the Queen in right of New Zealand is regarded as 5
resident in New Zealand.

“Defined in this Act: New Zealand, resident in New Zealand”.

(2) **Subsection (1)** applies for the 2011–12 and later income
years.

39B New section YZ 3

10

(1) After section YZ 2, the following is added:

“YZ 3 Saving effect of section DF 5 of Income Tax Act 1994

“When this section applies

“(1) This section applies when a person—

“(a) has made a payment to which section DC 1 (Lump sum 15
payments on retirement) would otherwise apply in the
absence of this section; and

“(b) has allocated the deduction for the payment to an in-
come year relying on the wording used in section DF 5
(Retiring allowances payable to employees) of the In- 20
come Tax Act 1994; and

“(c) has taken the tax position for the allocation on or before
22 February 2011.

“Savings provision

“(2) Despite the express wording used in section DC 1, section DF 25
5 continues to apply for the person in relation to the tax pos-
ition in the same manner as it applied immediately before the
repeal of the Income Tax Act 1994 by the Income Tax Act
2004.

“Defined in this Act: deduction, income year, pay”.

30

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

**40 Schedule 1—Basic tax rates: income tax, ESCT, RSCT,
RWT, and attributed fringe benefits**

(1) In schedule 1, part A, clause 1, “clauses 2 to 8” is replaced by 35
“clauses 2 to **9**”.

- (2) In schedule 1, part A, clause 2, “clauses 3 to 8” is replaced by “clauses 3 to **9**”.
- (3) After schedule 1, part A, clause 8, the following is added:
- “9 Taxable income: New Zealand Superannuation Fund**
The basic rate of income tax on each dollar of taxable income derived by the Crown through the New Zealand Superannuation Fund is the rate applying to companies set out in clause 2.”
- (3B) In schedule 1, part D, table 4, row 1, “0.38” is replaced by “0.33”.
- (4) **Subsections (1), (2), and (3)** apply for the 2011–12 and later income years.

40B Schedule 6—Prescribed rates: PIE investments and retirement scheme contributions

- (1) Schedule 6, table 1, row 2 is replaced by the following:

<u>Row</u>	<u>Conditions</u>	<u>Prescribed rate</u>
<u>2</u>	<u>For a non-resident person other than a person described in row 7B or 9.</u>	<u>0.280</u>

- (2) In schedule 6, table 1, the following are inserted in their correct order in the table:

<u>Row</u>	<u>Conditions</u>	<u>Prescribed rate</u>
<u>7B</u>	<u>For a non-resident person who is a notified foreign investor in a foreign investment variable-rate PIE, see table 1B for the applicable rate for the amount of income.</u>	<u>variable</u>
<u>9</u>	<u>For a non-resident person who is a notified foreign investor in a foreign investment zero-rate PIE.</u>	<u>0.000</u>
<u>10</u>	<u>For a transitional resident who is an investor in a foreign investment zero-rate PIE.</u>	<u>0.000</u>

- (3) After schedule 6, clause 1, table 1, the following is inserted:
- “1B Foreign investment variable-rate PIEs and notified foreign investors**

“A foreign investment variable-rate PIE must apply the prescribed investor rates set out in **table 1B** in relation to income attributed to notified foreign investors in the PIE.

Table 1B

<u>Row</u>	<u>Amounts</u>	<u>Prescribed rate</u>
<u>1</u>	<u>To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who does not reside in a country with which New Zealand has a double tax agreement.</u>	<u>0.3000</u>
<u>2</u>	<u>An amount other than an amount referred to in rows 1, and 3 to 5, that has a source in New Zealand.</u>	<u>0.2800</u>
<u>3</u>	<u>To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who resides in a country with which New Zealand has a double tax agreement.</u>	<u>0.1500</u>
<u>4</u>	<u>Interest derived under a financial arrangement, being an amount referred to in the definition of interest, paragraph (a) or (b) that has a source in New Zealand and is calculated under subpart EW.</u>	<u>0.0144</u>
<u>5</u>	<u>A fully imputed dividend derived from a company resident in New Zealand.</u>	<u>0.0000</u>
<u>6</u>	<u>A foreign-sourced amount.</u>	<u>0.0000</u>
<u>7</u>	<u>An amount derived under a financial arrangement that has a source in New Zealand other than an amount of interest referred to in row 4.</u>	<u>0.0000</u>

(4) **Subsections (1) to (3)** apply for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE. 5

41 Schedule 32—Recipients of charitable or other public benefit gifts

(1) In schedule 32,—

- (a) after the entry for “International Christian Aid (ICA)”, 10
an entry for “Jasmine Charitable Trust No 2” is inserted:

Part 1 cl 41B	Taxation (Tax Administration and Remedial Matters) Bill	
	(b) after the entry for “New Zealand Disaster Assistance Response Team Trust”, an entry for “New Zealand Good Samaritan Heart Mission to Samoa Trust” is inserted:	
	(c) after the entry for “New Zealand Sports Foundation (Incorporated)”, an entry for “NZ-Iraqi Relief Charitable Trust” is inserted:	5
	(d) after the entry for “Register of Engineers for Disaster Relief New Zealand”, an entry for “RNZWCS Limited” is inserted:	10
	(e) before the entry for “Sampoerna Foundation Limited”, an entry for “Ruel Foundation” is inserted:	
	(f) after the entry for “The Band Aid Box”, an entry for “The Cambodia Charitable Trust” is inserted:	
	(g) after the entry for “The Sir Walter Nash Vietnam Appeal”, an entry for “The Unions Aotearoa International Development Trust” is inserted.	15
(2)	Subsection (1) applies for the 2012–13 and later tax years.	
41B	<u>Schedule 39—Items for purposes of definition of special excluded depreciable property</u>	20
(1)	<u>In schedule 39, “Fish processing buildings” and “Tannery buildings affected by acid” are added to the list in the schedule.</u>	
(2)	<u>Subsection (1)</u> applies for the 2011–12 and later income years.	25
41C	<u>Minor textual amendments to Income Tax Act 2007</u>	
(1)	<u>The Income Tax Act 2007 is amended by making the minor textual amendments set out in schedule 1.</u>	
(2)	<u>Subsection (1)</u> applies for the 2008–09 and later income years.	30

	Part 2	
	Amendments to Tax Administration Act 1994	
42	Tax Administration Act 1994	
	Sections 43 to 80 amend the Tax Administration Act 1994.	35

43 Interpretation

- (1) This section amends section 3(1).
- (2) The definitions of **book and document** and **book or document** are repealed.
- (3) In the definition of **challenge**, the following is inserted after paragraph (a):
“**(ab)** to commence proceedings under **section 89K(46)** challenging a refusal to issue a notice; or”.
- (4) The following definition is inserted, in alphabetical order:
“**challenge notice** means a notice issued by the Commissioner ~~stating that a challenge may proceed, and that the Commissioner will not be issuing an amended assessment in accordance with section 89P~~”.
- (5) The following definition is inserted, in alphabetical order:
“**document** means—
“**(a)** a thing that is used to hold, in or on the thing and in any form, items of information;
“**(b)** an item of information held in or on a thing referred to in **paragraph (a)**;
“**(c)** a device associated with a thing referred to in **paragraph (a)** and required for the expression, in any form, of an item of information held in or on the thing”.
- (6) In the definition of **day of determination of final liability**, paragraph (b)(ii) is repealed.
- (7) In the definition of **disputable decision**, paragraph (b)(iv) is replaced by the following:
“**(iv)** to issue a Commissioner’s notice of proposed adjustment under section 89B, a Commissioner’s disclosure notice or statement of position under **section 89M**, or a challenge notice”.
- (8) The following definition is inserted, in alphabetical order:
“**duty of the Commissioner** is defined in **section 81(8)** for the purposes of **section 81**”.
- (9) The following definition is inserted, in alphabetical order:
“**Inland Revenue officer** is defined in **section 81(8)** for the purposes of **section 81**”.

(9B) After paragraph (a)(xiii) of the definition of **tax** the following is added:

“(xiv) a fee described in **section 226C**:”.

(9C) **Subsections (4) and (7)** apply for a dispute initiated by a taxpayer issuing a notice of proposed adjustment after the enactment of the Taxation (Tax Administration and Remedial Matters) Act **2011**. 5

(10) **Subsection (6)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 10

44 Commissioner may access premises to obtain information
In section 16(1),—

- (a) “books and documents” is replaced by “documents” in each place where it appears: 15
- (b) “books or documents” is replaced by “documents”.

45 Power to remove and copy documents

- (1) In section 16B(1), “books or documents” is replaced by “documents”. 20
- (2) In section 16B(2), “books or documents” is replaced by “documents” in each place where it appears.
- (3) In section 16B(3), “book or document” is replaced by “document”.
- (4) In section 16B(4), “book or document” is replaced by “document” in each place where it appears. 25

46 Power to remove and retain documents for inspection

- (1) In section 16C(1), “books or documents” is replaced by “documents”. 30
- (2) In section 16C(2), “books or documents” is replaced by “documents” in each place where it appears.
- (3) In section 16C(5), “book or document” is replaced by “document” in each place where it appears.

- (4) In section 16C(6), “Books or documents” is replaced by “Documents”.
- (5) In section 16C(7),—
 - (a) “books or documents” is replaced by “documents”; and
 - (b) “book or document” is replaced by “document”. 5
- 47 Information to be furnished on request of Commissioner**
 - (1) In section 17(1), “books and documents” is replaced by “documents”.
 - (2) In section 17(1B), “book or document” is replaced by “document” in each place where it appears. 10
 - (3) In section 17(1D), “books and documents” is replaced by “documents” in each place where it appears.
 - (4) In section 17(3),—
 - (a) “books or documents” is replaced by “documents”; and
 - (b) “books and documents” is replaced by “documents”. 15
 - (5) In section 17(4), “books or documents” is replaced by “documents” in each place where it appears.
 - (6) In section 17(6), “books or documents” is replaced by “documents”.
- 48 Court orders for production of information or return 20**

In section 17A(15), in the definition of **information**, “book or document” is replaced by “document”.
- 49 Inquiry by Commissioner**

In section 19(1), “books and documents” is replaced by “documents”. 25
- 50 Privilege for confidential communication between legal practitioners and their clients**
 - (1) In section 20(1), “book or document” is replaced by “document”.
 - (2) In section 20(2), “book or document” is replaced by “document”. 30
 - (3) In section 20(3), “book or document” is replaced by “document”.

- (4) In section 20(4), “book or document” is replaced by “document”.
- (5) In section 20(5), “book or document” is replaced by “document” in each place where it appears.
- (6) In section 20(6), “information, books, and documents” is replaced by “information and documents”. 5

51 No requirement to disclose tax advice document

- (1) In section 20B(1), “book or document” is replaced by “document”.
- (2) In section 20B(2), “book or document” is replaced by “document” in each place where it appears. 10
- (3) In section 20B(3), “book or document” is replaced by “document” in each place where it appears.

52 Treatment of book or document

- (1) In the heading to section 20C, “**book or document**” is replaced by “**document**”. 15
- (2) In section 20C(1), “book or document” is replaced by “document”.
- (3) In section 20C(2), “book or document” is replaced by “document” in each place where it appears. 20
- (4) In section 20C(3), “book or document” is replaced by “document” in each place where it appears.
- (5) In section 20C(4), “book or document” is replaced by “document” in each place where it appears.

53 Claim that book or document is tax advice document 25

- (1) In the heading to section 20D, “**book or document**” is replaced by “**document**”.
- (2) In section 20D(1), “book or document” is replaced by “document”.
- (3) In section 20D(2), “book or document” is replaced by “document” in each place where it appears. 30
- (4) In section 20D(3), “book or document” is replaced by “document” in each place where it appears.

- (5) In section 20D(4), “book or document” is replaced by “document”.
 - (6) In section 20D(5), “book or document” is replaced by “document”.
- 54 Book or document or part of book or document included in tax advice document** 5
- (1) The heading to section 20E is replaced by “**Document or part of document included in tax advice document**”.
 - (2) In section 20E, “book or document” is replaced by “document” in each place where it appears. 10
- 55 Person must disclose tax contextual information from tax advice document**
- (1) In section 20F(1), “book or document” is replaced by “document”.
 - (2) In section 20F(2), “book or document” is replaced by “document”. 15
- 56 Challenge to claim that book or document is tax advice document**
- (1) In the heading to section 20G, “**book or document**” is replaced by “**document**”. 20
 - (2) In section 20G(1), “book or document” is replaced by “document” in each place where it appears.
 - (3) In section 20G(2), “book or document” is replaced by “document”.
- 57 Information requisitions in relation to offshore payments** 25
- In section 21(8), in the definition of **information requisition** or **requisition**, paragraph (b), “books or documents” is replaced by “documents”.
- 57B New section 28D**
- After section 28C, the following is inserted: 30

“28D Information required from notified foreign investors

“(1) In order to become a notified foreign investor in a foreign investment PIE, a non-resident person must provide the PIE with the following information:

- “(a) their full name:** 5
- “(b) their date of birth, if applicable:**
- “(c) their home address in the country or territory where they reside for tax purposes:**
- “(d) the country code as prescribed by the Commissioner for the country or territory where they reside for tax purposes:** 10
- “(e) the equivalent of their tax file number in the country or territory where they reside for tax purposes, or a declaration if they are unable to provide this number:**
- “(f) their tax file number in New Zealand, if applicable.** 15

“(2) The Commissioner may add to or change the list of information requirements set out in **subsection (1) from time to time.”**

57C Notification requirements for PIEs

In section 31B(1),— 20

- (a) “section HM 71” is replaced by “section HM 71 or **HM 71B**”:**
- (b) “a PIE” is replaced by “a PIE or a foreign investment PIE, as applicable”.**

57D Notification requirements for multi-rate PIEs

25

(1) After section 31C(2), the following is inserted:

“(2B) **Subsection (2C) applies when a PIE that calculates and pays tax using the quarterly calculation option makes a voluntary payment of tax under section HM 45 of that Act in relation to an exiting investor.**

30

“(2C) Despite subsection (2), the PIE may provide the notice referred to in subsection (2) by 30 June after the end tax year, as if it were a notice described in subsection (3).”

(2) In section 31C(5), “of that Act.” is replaced by “of that Act. However, this subsection does not apply in relation to a foreign investment PIE and a notified foreign investor.”

35

- (3) After section 31C(6), the following is added:
- “(7) A foreign investment PIE must ask a person who is a notified foreign investor in the PIE at least once a year to confirm that—
- “(a) their status requirements under **section HM 55D(3)** of the Income Tax Act 2007 are met; and
- “(b) their information details required under **section 28D(1)** are unchanged.
- “(8) If the PIE receives no response to its request under **subsection (7)**, they may continue to treat the investor as a notified foreign investor, if that is their existing treatment.”
- 57E Effect of giving notice of entitlement**
- (1) In section 80KF(1), “section 80KN” is replaced by “section 80KI”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 58 Officers to maintain secrecy**
- (1) Section 81(1) is replaced by the following:
- “(1) An Inland Revenue officer must maintain, and must assist in maintaining, the secrecy of all matters relating to the legislation described in **subsection (1C)**, and the officer must not communicate any such matter, except for the purpose of carrying into effect that legislation or under **subsection (1B)**.
- “(1B) Despite **subsection (1)**, an Inland Revenue officer may communicate a matter if—
- “(a) the communication is for the purpose of executing or performing a duty of the Commissioner, or for the purpose of supporting the execution or performance of such a duty; and
- “(b) the Commissioner considers that such communication is reasonable ~~(whether or not it is necessary)~~ with regard to the relevant purpose described in **paragraph (a)**, and with regard to the following:
- “(i) the integrity of the tax system the Commissioner’s obligation at all times to use best

- endeavours to protect the integrity of the tax system; and
- “(ii) the importance of promoting compliance by taxpayers, especially voluntary compliance; and
 - “(iii) any personal or commercial impact of the communication; and 5
 - “(iv) the resources available to the Commissioner; and
 - “(v) the public availability of the information.
- “(1C) For the purposes of **subsection (1)**, the legislation is—
- “(a) the Inland Revenue Acts, or another Act that is or was administered by or in Inland Revenue: 10
 - “(b) the Accident Compensation Act 2001, the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Accident Insurance Act 1998, the Accident Rehabilitation and Compensation Insurance Act 1992, or the Accident Compensation Act 1982: 15
 - “(c) the New Zealand Superannuation Act 1974:
 - “(d) any Act that imposes taxes or duties payable to the Crown.
- “(1D) For the purposes of **subsection (1)**, before an Inland Revenue officer performs their first official duty as an officer, they must make a declaration of secrecy and fidelity in the form prescribed by the Commissioner. 20
- “(1E) The declaration may be made before—
- “(a) the Commissioner; or 25
 - “(b) an officer of Inland Revenue; or
 - “(c) a person authorised by or under the Oaths and Declarations Act 1957 to take statutory declarations.
- “(1F) An Inland Revenue officer who has made a declaration of secrecy or fidelity under an earlier taxation secrecy or fidelity section corresponding to this one, or who was treated as making such a declaration, is treated as having made a declaration to maintain secrecy and fidelity under this section.” 30
- (2) Section 81(2) is repealed.
- (3) In section 81(3),— 35
- (a) “subsection (1)” is replaced by “subsections (1) and **(1B)**”:
 - (b) “book or document” is replaced by “document”.

- (4) In section 81(4),—
- (a) in the words before the paragraphs, “subsection (1) or subsection (3)” is replaced by “subsection (1), **(1B)** or (3)”:
 - (b) in paragraphs (b) and (c), “book or document” is replaced by “document” in each place where it appears: 5
 - ~~(c) paragraph (j) is repeated:~~
 - (d) in paragraph (l), “book, document, or information” is replaced by “document or information” in each place where it appears. 10
- (5) After section 81(7), the following is added:
- “(8) In this section,—
- “(a) **Inland Revenue officer**,—
 - “(i) means a person who is employed in the service of Inland Revenue; and 15
 - “(ii) includes—
 - “(A) a person employed in the service of the Government of an overseas country or territory who is for the time being attached or seconded to Inland Revenue: 20
 - “(B) a person formerly employed in the service of Inland Revenue:
 - “(b) **duty of the Commissioner** includes a power of the Commissioner and also a function of the Commissioner, as well as anything done within the law to— 25
 - “(i) administer the tax system:
 - “(ii) implement the tax system:
 - “(iii) improve, research, or reform the tax system.”
- 59 New section 81BA inserted** 30
- After section 81, the following is inserted:
- “81BA Government agency communication**
- “(1) Despite **section 81**, the Commissioner may communicate information held by the Inland Revenue Department to another government agency if it is reasonable and practicable for the Commissioner to retrieve the information, and— 35
- “(a) the government agency is lawfully able to collect the information, but the provision, collection, and verifica-

- tion of the information to or by the government agency is ~~uneconomic~~inefficient; and
- “(b) the government agency and the nature, type, or class of the information are specified in an Order in Council made under **subsection (2)**; and 5
- “(c) the communication of the information complies with the conditions specified in an Order in Council made under **subsection (2)**; and
- “(d) the Commissioner and the government agency have entered into a memorandum that states the purpose of the communication of the information, the use that may be made of the information, and the arrangements for the control, security, subsequent disclosure, and accuracy of the information, including access to it by taxpayers, as well as providing for the monitoring of the arrangements by the Privacy Commissioner or otherwise. 10 15
- “(2) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister of Revenue, specify the following, for the purposes of **subsection (1)**: 20
- “(a) a government agency to whom the Commissioner may communicate information, and the nature, type, or class of the information that may be communicated to that government agency:
- “(b) the conditions that a government agency specified under **paragraph (a)** and the Commissioner must comply with for the communication of the information specified under **paragraph (a)**, including a date from which or in relation to which the communication may take place. 25
- “(3) Before recommending the making of an Order in Council under **subsection (2)**, the Minister of Revenue must— 30
- “(a) decide that the communication of the information under the proposed Order in Council will not unduly inhibit the provision of further information to Inland Revenue in the future; and 35
- “(b) consult—
- “(i) the Privacy Commissioner; and
- “(ii) the government agency that may be affected by the proposed Order in Council; and

- “(iii) any organisation considered by the Minister of Revenue to represent the interests likely to be substantially affected by the proposed Order in Council; and
- “(c) take the results of the consultation under **paragraph (b)** into account. 5
- “(4) After the expiry of 5 years, but before the expiry of 6 years, after the commencement of **subsection (2)**, the Commissioner must—
- “(a) review the operation of this section; and 10
- “(b) assess the impact of this section, in consultation with the Privacy Commissioner; and
- “(c) consider whether any amendments to the law are necessary or desirable and, in particular, whether this section is needed; and 15
- “(d) report the findings to the Minister of Revenue.
- “(5) The Minister of Revenue must present a copy of a report provided under **subsection (4)** to the House of Representatives as soon as practicable after receiving it.
- “(6) The communication of information under this section is not subject to the Privacy Act 1993.” 20
- 60 Other persons to maintain secrecy**
- In section 86(2), “book or document” is replaced by “document”.
- 61 Further secrecy requirements** 25
- In section 87(2), “book or document” is replaced by “document”.
- 62 Notices of proposed adjustment required to be issued by Commissioner**
- After section 89C(1), the following is inserted: 30
- “(lb) the assessment extinguishes all or part of a taxpayer’s tax loss in accordance with section 177C(5); or”.
- 63 Section 89E repealed**
- (1) Section 89E is repealed.

- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent.

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63B Deemed acceptance

- (1) After section 89H(3), the following is added:

“(4) If the Commissioner fails to issue a challenge notice in accordance with **section 89P**, the Commissioner is deemed to accept an adjustment proposed by the disputant or the disputant’s statement of position, and section 89J applies.”

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- (2) **Subsection (1)** applies for a dispute initiated by a taxpayer issuing a notice of proposed adjustment after the enactment of the Taxation (Tax Administration and Remedial Matters) Act **2011**.

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63C Where Commissioner accepts adjustment proposed by disputant

- (1) In section 89J(2), “may issue a notice of assessment or an amended assessment that does not include or take” is replaced by “does not have to issue a notice of assessment or an amended assessment that includes or takes”.

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- (2) **Subsection (1)** applies for a dispute initiated by a taxpayer issuing a notice of proposed adjustment after the enactment of the Taxation (Tax Administration and Remedial Matters) Act **2011**.

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64 Late actions deemed to occur within response period

- (1) Section 89K(1)(a) is replaced by the following:

“(a) the Commissioner—

“(i) considers that an exceptional circumstance has prevented a disputant from doing one or more of the actions described in **subsection (1B)**; or

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“(ii) considers that the disputant has a demonstrable intention to enter into or continue the disputes process at the time the disputant fails in doing 1

or more of the actions described in **subsection (1B)**; and”.

- (2) In section 89K(1)(b)(i)(A), “paragraph (a)(i)” is replaced by
“**subsection (1B)(a)**”.
- (3) In section 89K(1)(b)(ii)(A), “paragraph (a)(ii)” is replaced by 5
“**subsection (1B)(b)**”.
- (4) After section 89K(1), the following is inserted:
“(1B) For the purposes of **subsection (1)(a)**, the actions are
 - “(a) rejecting, within the applicable response period, an ad-
justment contained in a notice of proposed adjustment 10
issued by the Commissioner:
 - “(b) issuing, within the applicable response period, a notice
of proposed adjustment under section 89D or 89DA in
respect of a disputable decision:
 - “(c) issuing, within the applicable response period, a state- 15
ment of position.”
- (5) After section 89K(3), the following is added:
“(4) If the Commissioner decides to not issue a notice in favour
of the disputant under subsection (1), the Commissioner must
issue a notice of that decision (the **refusal notice**) within 1 20
month of the disputant sending the relevant notice or statement
under subsection (1)(b).
- “(5) If the Commissioner fails to issue a refusal notice in accord-
ance with **subsection (4)**, then, for the purposes of **subsec-
tion (6)**, the Commissioner is treated as issuing such a notice 25
on the day that is 1 month after the disputant sends the relevant
notice or statement under subsection (1)(b).
- “(6) The disputant may challenge the Commissioner’s refusal no-
tice by filing proceedings, in accordance with the Taxation Re-
view Authorities Regulations 1998, within 2 months of the no- 30
tice’s issue. For the purposes of this subsection, the Taxation
Review Authorities Act 1994, and the Taxation Review Au-
thorities Regulations 1998, the refusal notice is treated as a
notice of disputable decision and the challenge is treated as a
challenge under Part 8A. 35
- “(4) ~~If the Commissioner refuses (the **refusal**) to issue a notice in
favour of the disputant under **subsection (1)**, the disputant
is entitled to challenge the refusal by filing proceedings, in~~

accordance with the Taxation Review Authority Regulations 1994, within the response period that arises if the Commissioner's refusal is treated as a notice of disputable decision."

65 Application to High Court
Section 89L(3)(b) is repealed.

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65 Application to High Court

(1) After section 89L(1), the following is inserted:

"(1B) The Commissioner may apply to the High Court for an order allowing the Commissioner to issue a challenge notice past the 4 years provided in **section 89P(1)** if—

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"(a) the Commissioner considers that an exceptional circumstance applies or has prevented the Commissioner from issuing the challenge notice within the 4 years; and

"(b) the Commissioner applies within the 4 years."

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(2) After section 89L(2), the following is inserted:

"(2B) The High Court may—

"(a) make an order for the purposes of **subsection (1B)** on such terms as the Court deems fit; or

"(b) decline to make an order."

20

(3) In section 89L(3), "subsection (1)" is replaced by "subsection (1) or **(1B)**".

(4) Section 89L(3)(b) is repealed.

(5) **Subsections (1), (2), and (3)** apply for a dispute initiated by a taxpayer issuing a notice of proposed adjustment after the enactment of the Taxation (Tax Administration and Remedial Matters) Act **2011**.

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66 Disclosure notices

After section 89M(6), the following is inserted:

"(6BA) The Commissioner must issue a statement of position, described in subsection (4), in response to the disputant's statement of position, if the Commissioner is not required to issue a statement of position when issuing a disclosure notice."

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67 Completing the disputes process

- (1) Section 89N(1)(vii) is repealed.
- (2) In section 89N(2), in the words before the paragraphs, “the Commissioner may not amend an assessment” is replaced by “the Commissioner may not amend an assessment nor issue a challenge notice for the purposes of **section 138B(3)(b)**”.
- (3) Section 89N(2)(b) is replaced by the following:
 - “(b) whichever is the later of—
 - “(i) the Commissioner issuing a statement of position;
 - “(ii) the Commissioner considering a statement of position issued by the disputant.”
- (4) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent.

67B New section 89P

- (1) After section 89O, the following is inserted:

“89P Challenge notice for taxpayer-initiated disputes
- “(1) The Commissioner must issue a challenge notice to a disputant within 4 years of the disputant issuing a notice of proposed adjustment, unless—
 - “(a) **section 89L(2B)(a)** applies;
 - “(b) **section 89J(2)** applies.
- “(2) Despite **subsection (1)**, the Commissioner does not have to issue a challenge notice to the extent to which the dispute has ended.
- “(3) A challenge notice may not be issued before the Commissioner issues a statement of position, unless 1 or more of section 89N(1)(c)(i) to (ix) applies.
- “(4) A challenge notice must state that—
 - “(a) the Commissioner will not be issuing an amended assessment that includes or takes into account the adjustment proposed by the disputant; and
 - “(b) a challenge may proceed.”

- (2) **Subsection (1)** applies for a dispute initiated by a taxpayer issuing a notice of proposed adjustment after the enactment of the Taxation (Tax Administration and Remedial Matters) Act **2011**.

68 Time bar for amendment of income tax assessment 5

After section 108(2), the following is added:

- “(2B) A period equal to the number of days in the period described in this subsection is added to the 4 years under subsection 108(1), if a taxpayer successfully challenges a Commissioner’s refusal under **section 89K(4)**. The relevant period— 10
- “(a) starts on the day of the refusal:
- “(b) finishes on the day on which ~~the~~that challenge is finally judged successful by the relevant Taxation Review Authority or court, or the day on which the Commissioner concedes.” 15

69 Time bar for amending GST assessment

After section 108A(3), the following is added:

- “(3B) A period equal to the number of days in the period described in this subsection is added to the 4 years under subsection 108A(1), if a taxpayer successfully challenges a Commissioner’s refusal under **section 89K(4)**. The relevant period— 20
- “(a) starts on the day of the refusal:
- “(b) finishes on the day on which ~~the~~that challenge is finally judged successful by the relevant Taxation Review Authority or court, or the day on which the Commissioner concedes.” 25

70 When disputant entitled to challenge assessment

- (1) Section 138B(3) is replaced by the following:
- “(3) Subject to **subsection (4)**, a disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if— 30
- “(a) the assessment was the subject of an adjustment proposed by the disputant which the Commissioner has rejected by written notice within the applicable response period; and 35

- “(b) the Commissioner has issued a challenge notice to the disputant; and
 - “(c) the disputant files the proceedings, in accordance with the Taxation Review ~~Authority Regulations 1994~~ Authorities Regulations 1998 (or any regulations made in substitution for those regulations) or High Court Rules within the response period that would arise if the challenge notice were a disputable decision 2 months. 5
- “(4) Despite **subsection (3)**, the disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if— 10
- “(a) the assessment was the subject of an adjustment (the **adjustment**) notified to the Commissioner in writing specifying the adjustment and sufficient details to identify how the adjustment meets **paragraph (c)**; and 15
 - “(b) the Commissioner has issued a challenge notice to the disputant; and
 - “(c) the adjustment—
 - “(i) is in relation to a matter for which the material facts and relevant law are identical to those for another assessment for the taxpayer, for another period, that is at the time of proposing the adjustment the subject of court proceedings; or 20
 - “(ii) corrects a tax position taken by the taxpayer or an associated person as a consequence or result of an incorrect tax position taken by another taxpayer and, at the time of proposing the adjustment, the incorrect tax position taken by the other taxpayer is the subject of, or was the subject of, court proceedings ~~the Commissioner has made, or is able to make, an assessment for that other taxpayer for the correct amount of tax payable by that other taxpayer;~~ and 25 30
 - “(d) the disputant files the proceedings, in accordance with the Taxation Review ~~Authority Regulations 1994~~ Authorities Regulations 1998 (or any regulations made in substitution for those regulations) or High Court Rules within the response period that would arise if the challenge notice were a disputable decision 2 months.” 35

- (2) **Subsection (1)** applies for a dispute initiated by a taxpayer issuing a notice of proposed adjustment after the enactment of the Taxation (Tax Administration and Remedial Matters) Act **2011**.

71 Certain rights of challenge not conferred 5
In section 138E(1)(e)(iv), “89M” is replaced by “89L, 89M, 89N(1)(c)(viii) and (3)”.

72 Effect of disclosure notice: exclusion of evidence

- (1) In the heading to section 138G, “: exclusion of evidence” is omitted. 10
- (2) Section 138G(1) is replaced by the following:
- “(1) Unless **subsection (2)** applies, if the Commissioner issues a disclosure notice to a disputant, and the disputant challenges the disputable decision, the Commissioner and the disputant may raise in the challenge only the issues and the propositions of law that are disclosed in the Commissioner’s and disputant’s statements of position.” 15
- (3) In section 138G(2),—
- (a) in the words before the paragraphs, “new facts and evidence, and” is omitted: 20
- (b) in paragraph (a), “discovered those facts or evidence; or” is omitted:
- (c) in paragraph (b), “the admission of those facts or evidence or” is omitted.
- (4) **Subsections (1) to (3)** apply for a dispute or challenge, in relation to which a disclosure notice is issued on or after the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 25

73 Proceedings may be transferred to different hearing authorities 30

- (1) Section 138N(2) is replaced by the following:
- “(2) If a disputant commences a challenge in a Taxation Review Authority, the Commissioner may apply to the High Court to have the challenge transferred to the High Court.”

- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 5
- 74 Section 138O repealed**
- (1) Section 138O is repealed.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 10
- 75 Absolute liability offences**
- (1) In section 143(1)(a), “books and documents” is replaced by “documents”. 15
- (2) In section 143(1B), “books and documents” is replaced by “documents”.
- 76 Knowledge offences**
- In section 143A(1)(a), “books and documents” is replaced by “documents”. 20
- 77 Evasion or similar offence**
- In section 143B(1)(a), “books and documents” is replaced by “documents”.
- 78 Evidence in proceedings for failure to furnish returns or information** 25
- In section 150D,—
- (a) “books or documents” is replaced by “documents”;
- (b) “books, or documents” is replaced by “documents” in each place where it appears.
- 79 Deduction of tax from payments due to defaulters** 30
- In section 157(10), in the definition of **amount payable**, paragraph (c), after the paragraphs, “uplift the money;—” is re-

placed by “uplift the money:”, and the following is added as paragraph (cb),—

“(cb) where the person is a tax pooling intermediary, money that is paid to the Commissioner, on the date the Commissioner receives the payment;—”.

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79B Procedure in District Court where defendant absent from New Zealand

In section 159, “summons” is replaced by “notice of claim” in each place in which it appears.

79C New section 184AA

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(1) After section 184, the following is inserted:

“184AA Refund of tax: deductible amounts of interest

“(1) This section applies when a person is allowed a deduction under **section DB 3B** of the Income Tax Act 2007, **section DB 3B** of the Income Tax Act 2004, or **section DB 2** of the

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Income Tax Act 1994.

“(2) The time limits for refunds under the provisions referred to in **subsection (3)** do not apply for the purposes of the amendments made by **sections 83 and 97** of the Taxation (Tax Administration and Remedial Matters) Act **2011** relating to the deductibility of interest imposed under Part 7.

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“(3) The provisions are, as applicable,—

“(a) sections RM 2 to RM 6 of the Income Tax Act 2007;

“(b) sections MD 1 and MD 2 of the Income Tax Act 2004;

“(c) sections MD 1 and MD 2 of the Income Tax Act 1994.”

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(2) **Subsection (1) applies for the 1997–98 and later income years but only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction—**

(a) in a return of income that they have furnished on or before 24 November 2010;

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(b) in a notice of proposed adjustment that is issued on or before 24 November 2010.

80 New section 226C added

After section 226B, the following is added:

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“226C Secure credit or debit card payments and fees

- “(1) The Commissioner may offer to taxpayers the service of paying an amount to the Commissioner by secure internet credit or debit card transfer or secure telephone credit or debit card transfer. 5
- “(2) The Commissioner may charge the taxpayer, at the time that the taxpayer uses the service, a fee for the service. The fee, if it is charged, must be paid on top of the amount, and as part of the same payment (using the same service).
- “(3) The fee for the service is 1.42% of the amount. 10
- “(4) Despite **subsection (3)**, the Governor-General may from time to time, by Order in Council, change the fee, with effect from a date specified in the Order in Council.”

Part 3

**Remedial matters and abolition of gift
duty 15**

Amendments to Income Tax Act 2004

81 Income Tax Act 2004

Sections 82 to 87C amend the Income Tax Act 2004.

82 Taxes, other than GST, and penalties 20

The cross heading before section DB 1 is replaced by “***Taxes and other amounts***”.

83 New section DB 3B

- (1) After section DB 3, the following is inserted:

“DB 3B Use of money interest 25

“Deduction

- “(1) A person is allowed a deduction for an amount of interest they are liable to pay under Part 7 of the Tax Administration Act 1994.

“Timing of deduction 30

- “(2) ~~Interest to which this section applies~~ The deduction is allocated under section EF 5 (Use of money interest payable by person).

“Link with subpart DA

~~“(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.~~

“(3) This section supplements the general permission and overrides the capital limitation, the private limitation, and the employment limitation. The other general limitations still apply. 5

“Defined in this Act: amount, capital limitation, deduction, employment limitation, general limitation, general permission, private limitation”.

~~(2) **Subsection (1)** applies for the 2005–06 and later income years but only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction in a return of income that they have furnished on or before the date of introduction of the Taxation (Tax Administration and Remedial Matters) Act 2010.~~ 10

(2) **Subsection (1)** applies for the 2005–06 and later income years but only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction— 15

(a) in a return of income that they have furnished on or before 24 November 2010; 20

(b) in a notice of proposed adjustment that is issued on or before 24 November 2010.

84 Disposal of petroleum mining asset to associate

(1) In section DT 9(1)(b), “section EJ 11 (Petroleum development expenditure)” is replaced by “section EJ 14 (Disposal of petroleum mining asset to associate)”. 25

(2) Section DT 9(2), other than the heading, is replaced by the following:

“(2) The miner is denied a deduction for the amount that section EJ 15(2) (Partnership interests and disposal of part of asset) prevents from being allocated to the income year in which the miner disposes of the asset.” 30

(3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.

84B Valuation under herd scheme

(1) In section EC 16(3), “section DB 40(5)” is replaced by “section DB 40(3)”.

(2) **Subsection (1)** applies for the 2005–06 and later income years.

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85 What is included when spreading methods used

(1) In section EW 15(1)(a)(ii), “or the equity-free fair value method in section EW 15E” is added after “EW 15C”.

(2) In section EW 15(1)(b)(ii), “or the equity-free fair value method in section EW 15E” is added after “EW 15C”.

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(3) **Subsections (1) and (2)** apply for—

(a) the 2007–08 and later income years, if **paragraphs (b) and (c)** do not apply; or

(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or

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(c) the 2008–09 and later income years, if a person’s 2008–09 income starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

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85B IFRS method

(1) Section EW 15C(2B)(b) is replaced by the following:

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“(b) the person uses for the other financial arrangement a method that is neither of the following:

“(i) the IFRS method:

“(ii) the method required under *Determination G29: Agreements for sale and purchase of property denominated in foreign currency: exchange rate to determine the acquisition price and method for spreading income and expenditure.*”

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(2) **Subsection (1)**—

(a) applies for the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or

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- (b) applies for the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or 5
- (c) does not apply if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 10

85C Base price adjustment formula

- (1) In section EW 31(4), “under section DB 9 (Negative base price adjustment)” is replaced by “under sections DB 6 to DB 8 (which relate to deductions for interest) or, if none of those sections applies, under section DB 9 (Negative base price adjustment)”. 15
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

85D Consideration when change from fair value method under IFRS method 20

- (1) In section EW 48B(1)(b), “at the date of the change” is replaced by “at the end of the first income year for which the replacement method is used for the financial arrangement”.
- (2) In section EW 48B(2), “on the date of the change” is replaced by “at the end of the first income year for which the replacement method is used for the financial arrangement”. 25

86 Further eligibility requirements relating to investments

After section HL 10(2)(b)(vii), the following is added:

- “(viii) an amount of income under section CW 4 (Annuities under life insurance policies) or CX 34 (Superannuation fund deriving amount from life insurance policy).” 30

86B Portfolio entity tax liability and rebates of portfolio tax rate entity for period

- (1) After section HL 20(12), the following is added:
“Determining investors’ prescribed investor rate
“(13) For the purposes of determining the item **rate** in subsection (9), the taxable income of the investor does not include an amount that—
“(a) arises because their portfolio investor rate is lower than their prescribed investor rate; and
“(b) is treated as taxable income because section CX 44D (Portfolio investor allocated income and distributions of income by portfolio investment entities) does not apply.”
(2) In section HL 20, in the list of defined terms, “prescribed investor rate”, and “taxable income” are inserted.

86C Credits arising to Maori authority credit account

- (1) After section MK 4(1)(e), the following is inserted:
“(eb) the amount of an imputation credit attributed to it during the imputation year under section HL 27(7)(b):”.
(2) After section MK 4(2)(c), the following is inserted:
“(cb) in the case of a credit referred to in **subsection (1)(eb)**, on the day the amount is attributed:”.

87 Modifications to measurement of voting and market value interests in case of continuity provisions

- (1) Section OD 5(8)(b) is replaced by the following:
“(b) the failure, but for that concessionary application, to meet the requirements would have occurred in the absence of transactions of the following types:
“(i) the sale of shares in a company in the ordinary course of trading on a recognised exchange between persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 10%, calculated before the application of sections OD 3(3)(d) and OD 4(3)(d):

- “(ii) the redemption or other cancellation of shares in a company which is a unit trust that falls within any of paragraphs (a), (b), and (c) of the definition of the term **widely-held trust** in section OB 1, held by persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 10% calculated before the application of sections OD 3(3)(d) and OD 4(3)(d): 5
- “(iii) the redemption or other cancellation of shares in a company which is a unit trust that falls within any of paragraphs (a), (b), and (c) of the definition of the term **widely-held trust** in section OB 1, which were acquired by the manager or trustee of the unit trust in the ordinary course of the manager’s or trustee’s activities in respect of the unit trust from persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 10% calculated before the application of sections OD 3(3)(d) and OD 4(3)(d): 10 15 20
- “(iv) the ~~sale~~transfer of shares in a company other than in the ordinary course of trading on a recognised exchange between persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 5%, calculated before the application of sections OD 3(3)(d) and OD 4(3)(d): 25
- ~~“(v) transfers, between a company and the company’s shareholders, of shares in the company that in total for the company’s income year would be a direct voting interest or direct market value interest of less than 5% if held by a single person; and~~ 30
- “(v) the issue, redemption, or cancellation by a company, or the transfer to or from the company, or the transfer to an employee of the company from a trustee of a trust with no beneficiary other than the company and the company’s employees, of shares in the company, or options over shares in 35

the company, that in total for the company's in-
come year would be a direct voting interest or di-
rect market value interest of less than 5% if held
by a single person; and"

- (2) **Subsection (1)** applies for the 2005–06 and later income 5
years.

87B New section YA 5C

- (1) After section YA 5B, the following is added:

"YA 5C Saving effect of section DF 5 of Income Tax Act 1994

"When this section applies

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- "(1) This section applies when a person—

"(a) has made a payment to which section DC 1 (Lump sum
payments on retirement) would otherwise apply in the
absence of this section; and

"(b) has allocated the deduction for the payment to an in- 15
come year relying on the wording used in section DF 5
(Retiring allowances payable to employees) of the In-
come Tax Act 1994; and

"(c) has taken the tax position for the allocation before 22
February 2011.

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"Savings provision

- "(2) Despite the express wording used in section DC 1, section DF 25
5 continues to apply for the person in relation to the tax po-
sition in the same manner as it applied immediately before the
repeal of the Income Tax Act 1994 by the Income Tax Act
2004.

"Defined in this Act: deduction, income year, pay"

- (2) **Subsection (1)** applies for the 2005–06 and later income
years.

87C Schedule 22A—Identified policy changes

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- (1) In schedule 22A, after the entry for "DB 7(6)", the following
is inserted:

DC 1

A deduction related to lump sum payments on
retirement is allocated to the income year in which
payment is made.

- (2) **Subsection (1)** applies for the 2005–06 and later income years.

*Amendment to New Zealand Superannuation
and Retirement Income Act 2001*

- 88 Section 76 of New Zealand Superannuation and Retirement Income Act 2001 repealed** 5
- (1) Section 76 of the New Zealand Superannuation and Retirement Income Act 2001 is repealed.
- (2) The repeal of section 76 of the New Zealand Superannuation and Retirement Income Act 2001 does not result in the liquidation or creation of any entity or person. 10
- (3) **Subsection (1)** applies for the 2011–12 and later income years.

Amendments to KiwiSaver Act 2006

- 88B Section 4 of KiwiSaver Act 2006 amended** 15
- In section 4 of the KiwiSaver Act 2006, the definition of salary or wages,—**
- (a) **in paragraph (a)(i), “and (6)(c)” is replaced by “(6)(c), and (8)”;** and
- (b) **paragraph (a)(ib) is repealed.** 20
- 89 New section 81B of KiwiSaver Act 2006 inserted**
- After section 81 of the KiwiSaver Act 2006, the following is inserted:
- “81B Residual refunds**
- If the Commissioner can not process an amount held in the holding account in accordance with this Act, or the amount is in excess of what this Act or a Revenue Act requires to be in the holding account, then the Commissioner may refund the amount to the person that the Commissioner considers has the best claim to it.” 25 30

*Amendments to Taxation Review Authorities Act
1994*

- 90 Taxation Review Authorities Act 1994**
Sections 91 to 94 amend the Taxation Review Authorities Act 1994. 5
- 91 General jurisdiction of Authorities**
(1) Section 13A(b)(ii) is repealed.
(2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 10
- 92 Section 13B repealed**
(1) Section 13B is repealed.
(2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 15
- 93 An Authority to be a commission of inquiry** 20
In section 15(2), “book or document” is replaced by “document”.
- 93B Evidence in proceedings before an authority**
(1) Section 17(2A) is replaced by the following:
“(2A) Unless **subsection (2B)** applies, if the Commissioner issues a disclosure notice to a disputant, and the disputant challenges the disputable decision, the Commissioner and the disputant may raise in the challenge only the issues and the propositions of law that are disclosed in the Commissioner’s and disputant’s statements of position.” 25
(2) In section 17(2B),—
(a) in the words before the paragraphs, “new facts and evidence, and” is omitted: 30

- (b) in paragraph (a), “discover those facts or evidence; or” is omitted:
- (c) in paragraph (b), “facts or evidence or” is omitted.
- (3) **Subsections (1) and (2)** apply for a dispute or challenge, in relation to which a disclosure notice is issued on or after the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 5

94 Challenges appealed to High Court

- (1) Section 26A(2) is replaced by the following:
- “(2) The determination by an Authority of a challenge may not be appealed to the High Court if the determination was made by the Authority under a tax law that provides for the Authority’s determination to be final.” 10
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 15

Amendments to Income Tax Act 1994

- 95 **Income Tax Act 1994** 20
Sections 96 and 97 amend the Income Tax Act 1994.

96 Certain deductions not allowed

The subpart heading before section DB 1 is replaced by “Subpart B—Taxes, levies, and other amounts”.

97 New section DB 2 25

- (1) After section DB 1, the following is added:
- “DB 2 Deduction for use of money interest**
- “(1) Despite section DB 1, a person is allowed a deduction for an amount of interest they are liable to pay under Part 7 of the Tax Administration Act 1994. 30
- “(2) ~~Interest to which this section applies~~ The deduction is allocated under section ED 6(1) and (3) or ED 7, as applicable.”

- (2) **Subsection (4)** applies for the 1997–98 and later income years but only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction in a return of income that they have furnished on or before the date of introduction of the Taxation (Tax Administration and Remedial Matters) Act 2010. 5
- (2) **Subsection (1)** applies for the 1997–98 and later income years but only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction— 10
- (a) in a return of income that they have furnished on or before 24 November 2010;
- (b) in a notice of proposed adjustment that is issued on or before 24 November 2010.
- Amendments to Taxation Review Authorities Regulations 1998* 15
- 98 **Taxation Review Authorities Regulations 1998**
Sections 99 to 108 amend the Taxation Review Authorities Regulations 1998.
- 99 **Interpretation** 20
- (1) In regulation 2, in the definition of **notice of claim**, “or small claims jurisdiction” is omitted.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act 2010 receives Royal assent. 25
- 100 **Application of District Court Rules 1992**
- (1) In the heading to regulation 4, “1992” is replaced by “2009”.
- (2) In regulation 4, “1992” is replaced by “2009”. 30
- 101 **Proceedings generally**
- (1) In regulation 5, “both the general jurisdiction and the small claims jurisdiction” is replaced by “the general jurisdiction”.

- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent.

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102 Form

- (1) In regulation 7, “either the general jurisdiction or the small claims jurisdiction” is replaced by “the general jurisdiction”.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent.

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103 Notice of defence

- (1) Regulation 11(2) is replaced by the following:
- “(2) The notice of defence must be filed and served by the Commissioner within 25 working days of the service of the notice of claim.”
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent.

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104 Interlocutory applications

- (1) Regulation 12(2) is revoked.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent.

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105 Part 3 revoked

- (1) Part 3 is revoked.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent.

isdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act 2010 receives Royal assent.

106 Requirement for directions hearings

- (1) Regulation 27(2) is revoked. 5
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act 2010 receives Royal assent. 10

107 Time for directions hearing

- (1) Regulation 28(b) is revoked.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act 2010 receives Royal assent. 15

108 Schedule

- (1) In the schedule, in form 1, on the first page, “*Jurisdiction [specify general or small claims]*” is omitted. 20
- (2) In the schedule, in form 1, clause 3 “*facts, evidence, issues,*” is replaced by “*issues*”.
- (3) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act 2010 receives Royal assent. 25
- (4) **Subsection (2)** applies for a dispute or challenge, in relation to which a disclosure notice is issued on or after the day that the Taxation (Tax Administration and Remedial Matters) Act 2010 receives Royal assent. 30

*Amendment to Goods and Services Tax Act 1985***109A Goods and Services Tax Act 1985**

Sections 109 to 109J amend the Goods and Services Tax Act 1985.

109 Interpretation

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~~In section 2(1) of the Goods and Services Tax Act 1985, the definition of **document** is replaced by the following:~~

~~“**document** means a document as defined in the Tax Administration Act 1994”.~~

109 Interpretation

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(1) In section 2(1),—

(a) the definition of **document is replaced by the following:**
“**document** means a document as defined in the Tax Administration Act 1994”;

(b) in the definition of **land, “21E, 21G(5), 21H(3),” is omitted:**

(c) in the definition of **principal place of residence, “and in sections 5(15), 11(1)(mb), and 78F,” is omitted.**

(2) Subsection (1)(b) applies to supplies made on or after 1 April 2011. However, subsection (1)(b) does not apply if a person has taken a tax position—

(a) for an adjustment period that ends before the date of Royal assent of this Act;

(b) in relation to the use of land to which section 21E applies:

(c) relying on the definition of **land in section 2(1) as it was before the amendment made by subsection (1)(b).**

(3) Subsection (1)(c) applies to supplies made on or after 1 April 2011. However, subsection (1)(c) does not apply if a person takes a tax position—

(a) in relation to a supply—

(i) made on or before the date of Royal assent of this Act; and

(ii) to which section 11(1)(mb) and 78F apply:

- (b) relying on the definition of **principal place of residence**
in section 2(1) as it was before the amendment made by
subsection (1)(c).

109B Meaning of term supply

- (1) Section 5(15) is replaced by the following: 5
- “(15) When either of the following supplies are included in a supply,
they are deemed to be a separate supply from the supply of any
other real property that is included in the supply:
- “(a) a supply of a principal place of residence:
- “(b) a supply referred to in section 14(1)(d).” 10
- (2) **Subsection (1)** applies to supplies made on or after 1 April
2011.

109C Value of supply of goods and services

- (1) Section 10(2)(b) is replaced by the following:
- “(b) to the extent that the consideration for the supply is not 15
consideration in money,—
- “(i) the open market value of that consideration, if
subparagraph (ii) does not apply; or
- “(ii) the value of the consideration agreed by the sup-
plier and the recipient, if **subsection (2B)** ap- 20
plies.”
- (2) After section 10(2), the following is inserted:
- “(2B) The value of consideration for a supply of goods and services
is determined under **subsection (2)(b)(ii)** if—
- “(a) the supply is of a right to receive a specified number of 25
emissions units at a future date; and
- “(b) the supplier and recipient are not associated persons;
and
- “(c) each of the supplier and recipient, in the transaction of
which the supply is a part,— 30
- “(i) makes a taxable supply; and
- “(ii) acquires a taxable supply for use in making tax-
able supplies.”

109D Zero-rating of goods

- (1) In section 11(8C), “after that date” is replaced by “on or after that date”.
- (2) **Subsection (1)** applies to supplies made on or after 1 April 2011.

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109E Adjustments when person becomes registered after acquiring goods and services

- (1) In section 21B, in the heading “**person**” is replaced by “**person or partnership**”.
- (2) In section 21B(1)(b), “the person” is replaced by “the person or, if the person is a member of a partnership, the partnership”.
- (3) In section 21B(2) and (3), “the person” is replaced by “the person or partnership, as applicable,” in each place where it appears.
- (4) **Subsections (1) to (3)** apply to supplies made on or after 1 April 2011.

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109F Treatment on disposal

- (1) In section 21F(3),—
- (a) “For the purposes of the formula” is replaced by “For the purposes of the formula in subsection (2)”:
- (b) in paragraph (a), “section 2(1)” is replaced by “section 2(1), unless **subsection (7)** applies to the disposal”.
- (2) After section 21F(3), the following is inserted:
- “(4) Despite subsection (2), if the acquisition referred to in subsection (1)(a) relates to a supply that is charged at the rate of 0% under section 11(1)(mb), on a disposal referred to in subsection (1)(b), the person must make a final adjustment of an amount calculated using the formula—

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$$\frac{\text{tax fraction}}{\times} \quad \frac{\text{consideration}}{\times} \quad (1 - \text{previous use}).$$

- “(5) For the purposes of the formula in **subsection (4)**,—
- “(a) **tax fraction** is the meaning given in section 2(1), unless **subsection (7)** applies to the disposal:
- “(b) **consideration** is the amount of consideration received, or treated as received, for the supply:

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- “(c) **previous use** is the percentage intended use or the previous actual use in the period before the period in which the disposal occurs.
- “(6) The amount given by the formula in **subsection (4)** must not be more than the amount of output tax that is accounted for by the person under section 20(3J)(a)(iii), taking into account any later adjustments made under the apportionment rules in sections 21 to 21H. 5
- “(7) In the formulas in subsections (2) and **(4)**, on the disposal of the goods or services, if the supply is charged at the rate of 0%, the item **tax fraction** is treated as 15%.” 10
- (3) **Subsections (1) and (2)** apply to supplies made on or after 1 April 2011.

109G New section 21HB

- (1) After section 21H, the following is inserted: 15
- “21HB Transitional rule related to treatment of dwellings**
- “(1) This section applies when goods or services acquired or produced before 1 April 2011 were not acquired or produced for the principal purpose of making taxable supplies but, because of the changes made by section 4(3) and (4) of the Taxation (GST and Remedial Matters) Act 2010 to the definitions of **commercial dwelling** and **dwelling**, the goods or services are treated from 1 April 2011 as being used for making taxable supplies. For the purposes of this section, the person must be a person registered under section 51(1) before or after 1 April 2011. 20 25
- “(2) Input tax in relation to the acquisition referred to in **subsection (3)** may be deducted under section 20(3C) to the extent to which a deduction has not been made under the old apportionment rules. 30
- “(3) The person must treat the goods or services as acquired on 1 April 2011 at the original cost of the supply.”
- (2) **Subsection (1)** applies to supplies made on or after 1 April 2011.

109H Group of companies

In section 55(1)(a)(iii), “multi-rate PIE; and” is replaced by “multi-rate PIE:” and the following is added:

“(iv) would be a group of companies or part of a group of companies but for 1 or more of the companies being a listed PIE; and”. 5

109I Keeping of records

(1) In section 75(3B)(c), “land” is replaced by “the land”.

(2) After section 75(3B), the following is inserted:

“(3C) **Subsections (3D) and (3E)** apply when a supply that wholly or partly consists of land is made to a person who is, for the purposes of the supply, an agent acting on behalf of an undisclosed principal. 10

“(3D) The requirements of subsection (3B)(a) and (b) are met if the supplier maintains sufficient records to enable the particulars of the name, address, and registration number of the agent to be ascertained. 15

“(3E) The agent must maintain sufficient records in relation to the undisclosed principal to enable the name, address, and registration number of the principal to be ascertained.” 20

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

109J Liability in relation to supplies of land

(1) After section 78F(2), the following is added:

“(2B) For the purposes of subsection (2)(a), a recipient who is a registered person, or who expects to be a registered person, must provide their registration number to the supplier at or before the date of settlement.” 25

(2) After section 78F(5), the following is inserted:

“(6) When a supply is made to a person who is, for the purposes of the supply, an agent acting on behalf of an undisclosed principal, the requirements of subsection (2) are met if the agent provides a statement in writing to the supplier as to whether, at the date of settlement, the principal as recipient— 30

“(a) is, or expects to be, a registered person; and 35

- “(b) is acquiring the goods or services with the intention of using them for making taxable supplies; and
“(c) does not intend to use the land as a principal place of residence for them or a person associated with them under section 2A(1)(c). 5
- “(7) When a supply is made to a person who is, for the purposes of the supply, an agent acting on behalf of an undisclosed principal, the agent must provide their registration number to the supplier at or before the date of settlement.”
- (3) **Subsection (2)** applies to supplies made on or after 1 April 2011. 10

Abolition of gift duty

110 Estate and Gift Duties Act 1968

- (1) No gift duty is payable under the Estate and Gift Duties Act 1968 in relation to a gift made on or after 1 October 2011. 15
- (2) In section 2(2) of the Estate and Gift Duties Act 1968, in the definition of **gift**, “disposition of property” is replaced by “disposition of property before 1 October 2011”.
- (3) In section 61 of the Estate and Gift Duties Act 1968, “made after the commencement of this Act” is replaced by “made after the commencement of this Act and before 1 October 2011”. 20

Schedule **s 41C**
Minor textual amendments to Income Tax
Act 2007

Table of amendments

<u>Provision</u>	<u>Amendment</u>
<u>CD 32(2)</u>	Replace “CE 1(1)(c)” with “CE 1(1B)”.
<u>DB 17</u>	Omit “portfolio investment-linked life fund” from the list of defined terms.
<u>DF 4(3)</u>	Replace “ <i>Definitions</i> ” in subsection heading with “ <i>Definition</i> ”.
<u>EE 55(1)</u>	Insert “ <i>Meaning</i> ” as a subsection heading to subsection (1).
<u>EW 15F</u>	Insert “NZIAS 39” in the list of defined terms.
<u>EW 15I</u>	Insert “NZIAS 32” in the list of defined terms.
<u>EW 31(7)</u>	Replace the second sentence in subsection (7) with the following: “For the purposes of this subsection, the following are ignored: (a) non-contingent fees, if the relevant method is not the IFRS financial reporting method in section EW 15D: (b) non-integral fees, if the relevant method is the IFRS financial reporting method in section EW 15D.”
<u>EX 55(8)(e)</u>	Replace “tax that a person is allowed as a credit under section” with “amount that the person is allowed as a credit under section LE 1 (Tax credits for imputation credits) or”.
<u>EY 43(5B) and (5C)</u>	Insert the following after section EY 43(5): “ <i>FDR adjustment</i> (5B) FDR adjustment is the amount set out in section EY 43B to the extent to which it applies. “ <i>PILF adjustment</i> (5C) PILF adjustment is the amount set out in section EY 43C to the extent to which it applies.”
<u>FM 39(3)</u>	Replace “FM 40 and 41” with “FM 40 and FM 41”.

**Taxation (Tax Administration and
Remedial Matters) Bill**

Schedule

<u>Provision</u>	<u>Amendment</u>
<u>FN 9(2)</u>	<u>Replace “If the companies part” with “If the companies that are part”.</u>
<u>GB 17(1)(b)</u>	<u>Replace “right, goods or” with “right, goods, or”.</u>
<u>HC 26(4)</u>	<u>Replace “section 143A(1)(b)” with “section 143A(1)(b) of that Act”.</u>
<u>HC 31(1)(a) and (b)</u>	<u>Replace “section” with “see section” in each place where it appears.</u>
<u>HD 20B(1)</u>	<u>Insert “<i>Who this section applies to</i>” as a subsection heading to subsection (1).</u>
<u>HD 20B(2)</u>	<u>Insert “<i>Person treated as agent</i>” as a subsection heading to subsection (2).</u>
<u>Subpart HR</u>	<u>Repeal crossheading before repealed section HR 1 (Partnerships and joint ventures).</u>
<u>LA 7</u>	<u>Omit “family scheme income” from the list of defined terms.</u>
<u>LZ 1(1)</u>	<u>Replace “existing for purposes” with “existing for the purposes”.</u>
<u>OA 7(2)(c)</u>	<u>Replace “for CTR” with “for a CTR”.</u>
<u>OA 7(2)(d)</u>	<u>Replace “for branch” with “for a branch”.</u>
<u>OB 78</u>	<u>Omit “Maori Authority” from the list of defined terms.</u>
<u>OC 39, table O4</u>	<u>In row 10, column 3, replace “credit date under” with “credit date”.</u>
<u>OP 22(2)</u>	<u>Replace “referred to table” with “referred to in table”.</u>
<u>OP 96</u>	<u>Insert “Inland Revenue Acts” in the list of defined terms.</u>
<u>OP 101, compare note</u>	<u>Replace “MF 10(3), MF 10(4)–(6)” with “MF 10(3), (4)–(6)”.</u>
<u>RA 15</u>	<u>Insert “RSCT” in the list of defined terms.</u>
<u>RD 1</u>	<u>Insert “RSCT rules” in the list of defined terms.</u>

Schedule **Taxation (Tax Administration and Remedial Matters) Bill**

<u>Provision</u>	<u>Amendment</u>
<u>RD 5(8)</u>	<u>Replace “CE 1(1)(c)” with “CE 1(1B)”.</u>
<u>RD 6(1)(a)</u>	<u>Replace “CE 1(1)(c)” with “CE 1(1B)”.</u>
<u>RD 23(4)</u>	<u>Replace “or section CW 19” with “or CW 19”.</u>
<u>YA 1, charitable purpose (b)(i)</u>	<u>Replace “(Maori)” with “(the Maori)”.</u>
<u>YA 1, monthly instalment plan</u>	<u>Replace “under Accident” with “under the Accident”.</u>
<u>YA 1, partnership share</u>	<u>Replace “in respect of” with “the partnership”.</u>
<u>YA 1, PAYE income payment form</u>	<u>Replace “Part 3, subpart 1 of the KiwiSaver Act 2006” with “the KiwiSaver Act 2006, Part 3, subpart 1”.</u>
<u>YA 1, public authority (b)</u>	<u>Add “; and”.</u>
<u>YA 1, resident in Australia</u>	<u>Replace “of that provision” with “of that section”.</u>
<u>YA 1, subsidy claim form (b)</u>	<u>Replace “in respect of” with “in relation to”.</u>
<u>YA 1, subsidy claim form (f)</u>	<u>Replace “in respect of” with “for”.</u>
<u>Schedule 5, clause 3(a)</u>	<u>Omit “(Depreciation)”.</u>
<u>Schedule 20, part G, clause 6(a)</u>	<u>Omit “(Expenditure of forestry business)”.</u>
<u>Schedule 26, part B, clause 3(f)</u>	<u>Replace “in respect of” with “for”.</u>
<u>Schedule 26, part B, clause 11(a)</u>	<u>Replace “in respect of” with “in relation to”.</u>
<u>Schedule 26, part B, clause 11(b)</u>	<u>Replace “in respect of” with “in relation to” in each place where it appears.</u>

**Taxation (Tax Administration and
Remedial Matters) Bill**

Schedule

<u>Provision</u>	<u>Amendment</u>
<u>Schedule 49</u>	<u>In the Goods and Services Tax Act 1985, section 2, definition of income year (and following), add “in each place where it appears”.</u>
<u>Schedule 49</u>	<u>In the Goods and Services Tax Act 1985, section 20A(1), replace “definition” with “definitions” and add “in each place where it appears”.</u>
<u>Schedule 49</u>	<u>In the Injury Prevention, Rehabilitation, and Compensation Act 2001, section 6, definition of private domestic worker, replace “NC 16” with “section NC 16”.</u>
<u>Schedule 49</u>	<u>In the Injury Prevention, Rehabilitation, and Compensation Act 2001, section 11(1)(h)(iii), replace “FF 17” with “section FF 17”.</u>
<u>Schedule 49</u>	<u>In the Insolvency Act 2006, section 274(5)(b) to (d), add “in each place where it appears”.</u>
<u>Schedule 49</u>	<u>In the National Provident Fund Restructuring Amendment Act 1997, schedule 2, clause 8(c), replace “under OA 6(2)” with “under section OA 6(2)”.</u>
<u>Schedule 49</u>	<u>In the Te Arawa Lakes Settlement Act 2006, section 84(2), add “in each place where it appears”.</u>
<u>Schedule 49</u>	<u>In the Hawke’s Bay Regional Council (Surplus Funds Distribution) Empowering Act 1999, section 5(2), replace “OB 60 and 61” with “OB 60 and OB 61”.</u>
<u>Schedule 49</u>	<u>In the Taxation (Abated Interim Payments of Part KD Credit) Regulations 2002, regulation 1, replace “replaced” with “is replaced”.</u>
<u>Schedule 50</u>	<u>In section 61, add “in each place where it appears”.</u>

**Taxation (Tax Administration and
Remedial Matters) Bill**

Legislative history

23 November 2010

Introduction (Bill 257–1)

7 December 2010

First reading and referral to Finance and
Expenditure Committee
