Taxation (Annual Rates for 2020–21, Feasibility Expenditure, 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 (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The bill is an omnibus bill, which seeks to amend the following legislation:

- Income Tax Act 2007
- Tax Administration Act 1994
- Goods and Services Tax Act 1985
- Student Loan Scheme Act 2011
- KiwiSaver Act 2006
- Companies Act 1993
- Land Transfer Act 2017
- Social Security Act 2018
- Accident Compensation Act 2001
- Taxation (Disclosure of Information to Approved Credit Reporting Agencies) Regulations 2017
- Public and Community Housing Management (Prescribed Elements of Calculation Mechanism) Regulations 2018.

The bill has three main purposes. First, the bill seeks to improve the current tax settings by ensuring that the current tax rules are working as intended.

The bill also seeks to modernise the tax settings regarding the Inland Revenue Department's administration of KiwiSaver and Working for Families.

Finally, the bill would set the annual rates of income tax for the 2020-21 tax year.

The New Zealand National Party differing view

National Party members believe that New Zealand taxpayers have been subject to bracket creep for many years. Bracket creep occurs when inflation pushes wage and salary earners into higher tax brackets, even though they are in reality no better off financially. National members believe tax bracket thresholds should be subject to adjustment for inflation.

Because this change is not factored into the annual rates for 2020-21, the National Party cannot support this bill.

Supplementary Order Paper 510

The Government has introduced Supplementary Order Paper (SOP) 510 alongside the bill. The SOP proposes the addition of two other measures to the bill. The first measure seeks to modernise the Unclaimed Money Act 1971. The second measure would provide a temporary increase to the individual income tax write-off threshold for automatically calculated tax assessments.

We have examined the SOP alongside the bill. We have included recommendations for improvements to the SOP in this commentary. Because the SOP has been incorporated into the bill, any recommended amendments to the provisions in the SOP would be made to the bill.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have considered several issues, such as the retrospectivity of numerous provisions, and we are satisfied that our concerns have been addressed.

Proposed amendments

In this commentary we discuss the main changes we recommend to the bill and SOP 510. We have organised our comments by topic, rather than by following the order of the clauses as they appear in the bill.

Our recommendations cover the following topics:

- Feasibility expenditure
- Land
- Purchase price allocation
- Unclaimed monies
- Other policy changes
- Remedial measures

- Miscellaneous matters.

We do not cover minor or technical changes. Some of our proposed amendments (such as some amendments to clause 40) are simply to ensure that the wording of the bill is clear.

Feasibility expenditure

The clawback provision should not incentivise taxpayers to prematurely abandon projects before reinstating them

The bill states that feasibility expenditure on a project can be deducted if a taxpayer abandons the project before it is completed (clause 16, new sections DB 66 and DB 67)). However, if that project is later reinstated, the bill contains a provision that would reverse the previously claimed deductions (clause 11, new section CH 13(1)). The provision stipulates that deductions for previously abandoned expenditure on feasibility studies would be "clawed" back as taxable income.

We are concerned that this could incentivise taxpayers to unnecessarily abandon projects. The amount of tax paid after the reinstatement of a project could be less than what would have otherwise been paid if that project was initially completed. If the amount of tax paid after abandoning a project was lower, a taxpayer would receive a more favourable tax outcome by prematurely abandoning and then reinstating a project.

We recommend amending clause 11, new section CH 13(1). Our amendment would ensure that all the deductions relating to the abandoned property made under this provision need to be clawed back if the property is reinstated (or if the expenditure is used to create, complete, or acquire a similar property). Therefore, taxpayers would not receive a favourable tax outcome by prematurely abandoning and then reinstating a project instead of initially completing it.

Clawing back all expenditure claimed would not undermine the policy intent of the bill. The bill would still contain provisions that would result in a wide range of costs being deductible for tax purposes.

The clawback provision should include a time limit

The clawback provision in the bill does not include a time limit. As a result, taxpayers would need to retain records indefinitely to account for the amount of clawback in the event that a project was reinstated. Some submitters expressed concern that taxpayers would often lack the information needed to determine their tax position in such an event.

We recognise the benefits of providing certainty to taxpayers regarding their tax obligations. Therefore, we recommend amending clause 11, new section CH 13, by inserting into the provision a 7-year time limit on the clawback provision.

A 7-year time limit would be consistent with the general requirement of retaining business records for 7 years. Taxpayers are required to keep the necessary business records for 7 years after the final deduction for unsuccessful feasibility expenditure.

Therefore, we consider that the clawback period should align with the standard 7-year business record retention period.

We do not expect that aligning the clawback period with the standard 7-year business record retention period would result in additional compliance costs for taxpayers.

Our amendment would help provide taxpayers with certainty as to what their record-keeping obligations are for previously abandoned projects.

Tax deductions for project abandonment should not apply on expenditure after a project has been completed

The bill would allow qualifying deductions to be spread out, in equal proportions, over a 5-year period (clause 16, new section DB 66(2)). The 5-year period would start from when a project was initially abandoned.

We are concerned, however, that clause 16, new section DB 66(2) would risk allowing deductions of expenditure that could not then be clawed back. This could occur when deductible expenditure was spread across a 5-year period that took it beyond the period in which the feasibility clawback applies.

For example, a project could be abandoned in its first year. If the abandoned project was later completed in its third year, the clawback provision would be applied on deductible expenditure from years 1 to 3 of the project. However, because the bill allows deductions to be spread out over a 5-year period, in the given example expenditure that has been spread to years 4 and 5 would not be subject to the clawback provision.

We propose amending clause 16, new section DB 66(2). Our amendment would clarify that no further deductions would apply after the clawback provision is applied. Therefore, in the above example, deductions would not apply to expenditure in years 4 and 5. This amendment would ensure that a taxpayer would be bought back to the position they would be in if they had not abandoned the project.

Deductions for separately identifiable assets and goodwill

The policy intent of clause 16, new sections DB 66 and DB 67, is to reduce tax barriers to business investment. Therefore, the drafting of new sections DB 66 and DB 67 is intentionally wide.

However, we are concerned that these provisions may unintentionally provide deductions for expenditure on separately identifiable assets and goodwill that would otherwise not be deductible.

We recommend amending clause 16 by including a list of expenditure that would not be deductible (clause 16, new section DB 66(1B). Any other relevant expenditure that is not on the list would qualify for tax deductions. Our recommended amendment would provide additional clarity to taxpayers as to what is, and what is not, deductible under the proposal.

Because this list would be exhaustive, the policy intent of reducing tax barriers would still be achieved.

Land

Group of persons–clarify "significant involvement or control"

Clauses 5, 6, and 7 of the bill refer to "groups of persons". For the actions of a person to be covered by those provisions, another person must exhibit "significant involvement in" or "control of" that person (clause 5, section CB 16A(2C)(b), clause 6, section CB 16(5)(b), and clause 7, section CB 19(2C)(b)).

However, the terms "significant" and "control" are imprecise. It is not clear what level of involvement, or what level of control, would be required to satisfy the provisions.

We recommend amending clause 5, section CB 16A(2C)(b), clause 6, section CB 16(5)(b), and clause 7, section CB 19(2C)(b). Our amendments would clarify, for the avoidance of doubt, that if a person or group is able to direct the activities of another group, then they would have significant involvement in, or control of, the activities of that group.

The use of the term "dwelling" in the Income Tax Act 2007

The Income Tax Act 2007 uses the term "dwelling" in various provisions. The provisions help determine whether residential land or buildings are subject to various taxes or rules. These include, for example, the bright-line test, residential land withholding tax, and residential rental loss ring-fencing rules.

We are concerned that the meaning of the term "dwelling" could create confusion when determining whether various provisions of the Income Tax Act apply. The term "dwelling" implies that people are living in or regularly using the relevant property. The policy intention of the relevant provisions in the Income Tax Act is to capture all residential properties, whether they are occupied or not. Therefore, the term "dwelling" as currently defined can imply that unoccupied residential property is not subject to the relevant provisions of the Income Tax Act.

We propose inserting into the bill a clarification to the term "dwelling" (clause 58(7B), section YA 1. This would help to make it clear that residential property, regardless of whether it is occupied or not, is subject to the relevant provisions in the Income Tax Act.

This clarification of using the term "dwelling" fixes an oversight in the original drafting of the Income Tax Act. It was never intended that an unoccupied property could be outside the scope of the Act. Therefore, we recommend that our amendment should be retrospective to the introduction of the bright-line test, 1 October 2015.

Information sharing between LINZ and Statistics New Zealand

Currently, Land Information New Zealand (LINZ) is able to share information collected on the Land Transfer Tax Statement (LTTS) directly with Inland Revenue. The information shared is used by Inland Revenue to help in administering the tax system.

The information in the LTTS is also used to prepare quarterly releases on property transfers. These releases contain information on the citizenship, visa status, or tax residency of people and companies involved in property transfers.

The role of preparing these reports moved from LINZ to Statistics New Zealand in May 2018. Currently, LINZ is only able to share the data collected from the LTTS with Inland Revenue in accordance with the relevant provisions in the Land Transfer Act. Inland Revenue on-shares the LTTS information with Statistics New Zealand. This process lacks transparency and results in double handling of information.

We recommend changes to the Land Transfer Act to amend the LTTS provisions. Our amendments would allow LINZ to share the information collected from the LTTS directly with Statistics New Zealand.

The Office of the Privacy Commissioner has been consulted on the proposed change. The Office did not have any concerns regarding the proposed information sharing arrangement.

Purchase price allocation

Clause 40, new sections GC 20 and 21, would amend the tax rules governing purchase price allocation.

The bill proposes that parties must adopt the same allocation, either by agreement, or if agreement is not reached, by applying a unilateral allocation. A significant feature of the new regime is that the vendor, if both parties cannot agree to an allocation, is able to unilaterally determine the allocation.

Inland Revenue should educate taxpayers about the new rules regarding purchase price allocations

Inland Revenue intends to take a proactive approach to educating taxpayers and tax agents about the new purchase price allocation rules.

We are supportive of Inland Revenue taking a proactive approach to education. The new regime is a big change from the previous arrangement, and is more likely to be successfully implemented if Inland Revenue educates taxpayers. Smaller taxpayers in particular would benefit from an education campaign.

Inland Revenue would also advocate for the standard forms often used in sale and purchase agreements to reference the new rules.

Commencement date of the new purchase price allocation regime

The purchase price allocation amendments are currently drafted to apply from 1 April 2021. However, to allow more time for advisors and taxpayers to be educated on the new rules, we recommend a 1 July 2021 commencement date. Delaying the commencement date would also allow the Auckland District Law Society and Real Estate Institute of New Zealand to update their standard sale and purchase forms. These forms would play an important role in flagging the new rules for taxpayers.

We note that this recommendation involves several consequential date changes to existing market value provisions identified in the bill.

The new regime for purchase price allocations should be kept under review

We recognise that the proposals contained in the bill represent a substantial departure from the current rules regarding purchase price allocations. The proposed rules are detailed and complex, and the consequences of not knowing of their existence, misunderstanding them, or ignoring them, are not pleasant. This would be especially true for purchasers.

Currently, there are few restrictions on either the vendor or the purchaser. Each party to a transaction is able to choose their own allocation, provided that both parties use the same value for trading stock, and apply market value to other assets.

We believe that the new regime should be kept under review. We encourage the Minister of Revenue to consider, within the next 6 to 12 months, whether the new approach is working as intended, and without unduly increasing the burden (both administrative and monetary) on taxpayers. We would expect any necessary adjustments to be proposed promptly.

We have, however, proposed several changes to the new regime. We expect that these changes would make the regime substantially better for taxpayers than what is proposed in the bill as introduced.

The required level of allocation is unclear

Clause 40, which sets out the rules for purchase price allocations, refers to "an item of depreciable property" (clause 40, new sections GC 20(3), GC 21(6) and (8)(a)).

The policy intent of the bill is to enable parties to allocate values to groups of assets so that they do not have to allocate an amount to every individual item in a sale.

However, submitters were concerned that the language used in the bill does not make this policy intent sufficiently clear. By referring to "items" of property, clause 40 of the bill suggests that parties would have to agree an allocation for every item of depreciable property.

We recommend amending the bill to clarify that allocation is to categories of asset, rather than individual items (clause 40, new section GC 20(1)(a) and new section GC 21(1)(a)).

Tax book value floor on vendor's unilateral allocation

In the event of a vendor making a unilateral allocation because the parties could not agree to one, that vendor would be prohibited from allocating an amount that is lower than the vendor's tax book value (clause 40, new section GC 21(8)).

However, we heard from submitters that, in a distressed sale, the proposal to create a tax book value "floor" does not reflect commercial reality. There are many transactions where the actual market value of taxable property being sold is less than its tax book value.

The vendor can avoid this issue by agreeing prices with the purchaser. However, under the bill as introduced, it would not be possible to make an allocation at no less than the tax book values even if the sum of those book values is less than the purchase price.

We recommend amending the rule. Under our amendment, any excess of the aggregate tax book value above the purchase price would be applied first to reduce the amount allocated to non-taxable property, and second–once that amount is zero–to reduce the amount allocated to each class of taxable property *pro rata*.

Amortisable improvements rule

The bill stipulates that improvements to purchased property, that have been amortised under new sections DO 4, DO 12, or DP 3, must be allocated their diminished value (clause 40, new section GC 21(9)).

Some submitters were concerned that the provision would prevent parties to a transaction allocating improvements a different value. They maintain that a party should be able to allocate a different value to an improvement if that value better reflects the true market value of the improvement.

We accept this argument. We recommend removing clause 40, new section GC 21(9), from the bill.

We believe that removing this section would not interfere with the policy intention of the bill. In tax law, a purchaser is only allowed to amortise from the diminished value. Removing this proposed provision would not change that. Therefore, it would not be problematic for the parties to allocate a different value to an improvement in order to better reflect its true market value.

Allocation timeframes

The bill as introduced stipulates that a vendor has 2 months to advise the purchaser of their allocation after a change of ownership (clause 40, new section GC 21(2)).

Submitters were of the view that the 2 month timeframe would be too short. We therefore recommend extending the timeframe to 3 months.

We also recommend an additional change to this provision. If the vendor does not notify an allocation within three months, and the responsibility falls to the purchaser, the purchaser would have three months to notify the vendor of a binding allocation. In effect, that could be up to 6 months after the settlement.

After a 6-month period, the Commissioner would have discretion to intervene as they see fit. Parties could still notify the Commissioner of an allocation, and the Commissioner may choose whether to accept that allocation. If the Commissioner does not accept a late allocation, the Commissioner could impose their own allocation.

Purchaser deductions for when the purchaser does not make/notify an allocation

The bill sets out rules for when a purchaser does not make an allocation, or if they do not notify the Commissioner of one. If no allocation is made, the purchaser would be

treated as if they had purchased the property for "nil consideration" (clause 40, new section GC 21(7)).

Some submitters were concerned that the purchaser would then be denied the opportunity to take a deduction. Were this the case, we believe that this rule would be overly punitive. The purchaser may not be able to make an allocation due to reasons beyond their control. (For example, the vendor may no longer exist due to liquidation following a business sale.) Further, an unwitting purchaser may be taxed on gross sale proceeds when they, in turn, sell.

Some submitters were also concerned by the purchaser's acquisition not being symmetrical with the vendor's. In the absence of an allocated amount, those submitters were concerned that the purchaser's acquisition for nil would not be symmetrical with the vendor.

We note, however, that the original policy intent behind this provision was not to deny the purchaser the opportunity to make a deduction, simply to defer the opportunity. Rather than being denied the opportunity entirely, the purchaser would be entitled to claim, in their next tax return filed after they notify an allocation, the deduction they were previously denied. In the interim, there would not be symmetry between what the vendor and the purchaser could claim. However, because the purchaser's opportunity to claim a deduction would only be deferred, the final result would be symmetry between the parties.

We believe the provision would provide sufficient incentive to prompt purchasers to make and notify allocations, which is consistent with the policy intent.

We recommend amending clause 40, new section GC 21(7)-(10), by clarifying that the purpose of the provision is to provide that provisions defer, rather than deny, deductions.

However, for consistency, we believe that the deduction deferral rule should not override the *de minimis* exception (clause 40, section GC 21(5)). Parties to low-value transactions concerning assets other than residential property (less than $1 million) should not be subject to the purchase price allocation rules.

We recommend amending clause 40, new section GC 21(7)-(10), to explicitly state this.

The purchase price allocation regime would not apply to most residential land transactions

We recommend the purchase price allocation regime not apply to transactions where the only purchased property is residential land, together with its chattels, and the total purchase price is worth less than $7.5 million (clause 40, new section GC 21(2)(b)). It was never intended that the regime apply to most transactions for residential land; the tax treatment of this property means there is much less scope for revenue manipulation in residential transactions than in other transactions.

We believe the threshold of $7.5 million is sufficiently high, so the exemption would cover most transactions for residential land in New Zealand.

Market value and Commissioner challenge

The term "respective market values" is unclear

Clause 40 of the bill refers to "respective market values" (new section GC 21(2), (3), and (4)(b)). We believe this term is too ambiguous. It is not sufficiently clear, for example, whether respective market values allows for a discounted purchase price and subsequent allocation.

We recommend amending clause 40. Our amendment would replace references to "respective market values" with "relative market values".

The term "relative market values" would enable flexibility. For example, discounted asset values would be permitted. This includes, for example, situations where the parties to a transaction place either a premium or a discount on the transfer of the assets as a bundle.

Interaction of proposed rules with existing market value provisions unclear

There are various provisions in the Income Tax Act which stipulate that assets must be disposed of at market value. For example, depreciable property, carbon units, revenue account property, and trading stock must all be disposed of at market value.

The two sets of rules (the existing market value provisions and the proposed purchase price allocation rules of the bill) would co-exist. Vendors and purchasers must use market value at both an individual asset and asset class level.

However, we recommend amending the bill to clarify that the total amount allocated to the assets within a class must equal the amount allocated to that class under new sections GC 20 or 21 (as applicable). This would be relevant if a vendor was making a unilateral allocation under new section GC 21, and was being required to use tax book values as a minimum, even if they consider the market value of property to be lower.

De minimis/safe harbour thresholds

Low-value depreciable property threshold incorrectly based on tax book value

Clause 40 sets a threshold amount for low-value depreciable property. The bill as introduced incorrectly refers to the threshold amount as the "adjusted tax value" of purchased property being $10,000 or less (clause 40, new sections GC 20(3)(c) and GC 21(6)(c)). A value allocation based on the adjusted tax value could potentially substantially understate a vendor's true taxable income.

We recommend replacing the references to "adjusted tax value". Our amendment would instead base the threshold amount on the original cost of the property. Any property that had an original cost of less than $10,000 would qualify for the low-value safe harbour.

Low-value depreciable property threshold should also apply to purchaser

As introduced, the safe harbour for low-value depreciable property in proposed section GC 21(6) does not appear to apply to a purchaser's allocation. For balance and simplicity, we believe it should apply to the purchaser's allocation. We recommend amending clause 40 accordingly.

Unilateral allocations should be worded as optional and not mandatory

Clause 40, new section GC 21(2) and (3), sets out the rules for making a unilateral allocation. The bill as introduced states that parties "must" take certain actions. The original policy intent of the provision is to establish an optional unilateral allocation process. The use of the word "must" in the provision is inconsistent with that intent.

We propose replacing the word "must" in clause 40, new section GC 21(2) and (3) with the word "may". Our recommended amendment would make it clear that the parties can agree to an allocation at any time before the first tax return for the transaction is filed.

Unclaimed monies

The Minister of Revenue released Supplementary Order Paper (SOP) 510 on 26 June 2020. The SOP proposes various amendments to the bill that seek to modernise the Unclaimed Money Act 1971.

The amendments seek to enable more efficient administration of the unclaimed money regime, both for holders of unclaimed money, such as banks, and Inland Revenue.

A transitional period would apply for some holders of unclaimed money

Money that becomes unclaimed immediately after the date of Royal assent would be subject to the reforms to the Unclaimed Money Act.

We are concerned that some taxpayers may be unprepared to comply with the new rules. Some holders of unclaimed monies may require more time to update their systems to comply with the new rules.

We believe it would be appropriate to introduce a transitional provision. Holders of unclaimed money who require further time to update their systems would be accommodated. Those holders would need to apply to the Commissioner, and would be granted a period of up to two years in order to implement the necessary changes. Holders able to comply with the new rules from the date of Royal assent could do so immediately from this date. The Commissioner would work with holders during their transitional periods to ensure that the new or updated systems were appropriate.

Retention of an alternative use proviso for amounts under $100

The SOP would remove a provision in the Unclaimed Money Act that allows holders of unclaimed money to use sums under $100 for other purposes. Those purposes could be for the benefit of the holder.

We heard from submitters that some companies may need the ability to apply unclaimed monies to another purpose so that they can be wound up. For example, some institutions donate unclaimed monies to charity.

We believe that the alternative use proviso in the Unclaimed Money Act should be retained. Because the sums of money involved are so small, we see no benefit requiring such sums to be paid to Inland Revenue.

Our amendment would enable holders of unclaimed sums under $100 to use the unclaimed money for other purposes.

Institutional approach to "account activity"

The proposed changes to the Unclaimed Money Act stipulate that money would not be deemed unclaimed if the owner of that money had interacted with their accounts within a 5-year period. However, the SOP is not clear on whether activity on other accounts a customer may hold with the same bank would constitute account activity.

Some submitters were concerned that money held in a customer's account may be erroneously deemed unclaimed money, despite it being clear that the customer has not abandoned it. If a customer is clearly active and interacting with other accounts they hold with the institution, it is a stretch to say they have abandoned the money in any of those accounts.

This could be a particular problem for accounts such as compounding term deposit accounts. Accounts such as those are designed for the goal of long-term savings. By design, such accounts are often untouched for long periods of time.

We recommend that the regime adopt an institutional approach when determining whether a customer is active or not. If a customer is interacting with any of the accounts they hold with an institution, the 5-year deeming period would not begin. Consequently, money held in an inactive account in these circumstances would not be considered abandoned.

Our recommendation does not require a specific amendment to the bill. Rather, Inland Revenue would provide guidance on this matter through a Tax Information Bulletin.

Term deposits that automatically roll over

The SOP would insert new section 100D, which would replace section 4 of the Unclaimed Money Act. Due to the operation of clause 84, new section 100D(4)(2)(c), some submitters are concerned that term deposits that automatically roll over would be unintentionally caught by the definition of unclaimed money. Because of our above recommendation about taking an institutional approach to account activity, this would only affect customers who had just one account at an institution.

Guidance on "reasonable efforts"

The SOP states that the holder of unclaimed money, such as a bank, must make reasonable efforts to locate the owner of the unclaimed money (new clause 100D, section 4(6)).

The intention of this provision is not to increase compliance costs for holders of unclaimed money. We expect that most holders would have met this requirement by the time the 5-year deeming period had expired. We recommend that Inland Revenue should clarify what constitutes a "reasonable effort".

In most cases, it would be sufficient for holders to use their best judgement regarding what constitutes a reasonable effort. For this reason, we are reluctant to amend the bill to stipulate any formal criteria that would need to be satisfied. Rather, we recommend that further guidance on what constitutes a reasonable effort be provided in a Tax Information Bulletin.

Data collection requirements on holders of unclaimed money

The SOP stipulates that the holder of unclaimed money must provide to the Commissioner certain information that relates to the owner of that money (new clause 100D, section 4(7)).

The intention behind this provision is not to impose new costs on the holders of unclaimed money. Rather, the intention is to encourage holders to provide any relevant information they do have to Inland Revenue. This would assist it in locating the owner of that money.

Publication of unclaimed money data

Inland Revenue intends to implement measures with the aim of making it easier for owners of unclaimed money to find and claim funds. However, restrictions in the Tax Administration Act on what financial information can be published could prevent it from doing so.

For example, Inland Revenue would be restricted from publishing information that would help the owners of unclaimed money to find and claim funds. Currently, it can only publish the names of owners of unclaimed money and the amounts received.

We recommend inserting a specific exclusion from the confidentiality of information provisions in the Tax Administration Act (clause 83E, Schedule 7, Part A, section 13C). This would permit the publication of information to help in reuniting owners with their money.

Allowing the use of unclaimed money to offset an Inland Revenue liability

Where a taxpayer has other liabilities due to Inland Revenue they should be able, if they choose, to request that any unclaimed money owed to them be offset against that liability.

We recommend a provision be added to the bill to allow taxpayers to voluntarily request the Commissioner to transfer any unclaimed money owing to the taxpayer to a tax liability owned by the taxpayer (clause 83B, new section 173V). Such transfer would occur at the date requested.

Alignment of the KiwiSaver Act with the proposed reforms

The KiwiSaver Act sets rules that determine what happens with KiwiSaver contributions which the Commissioner is unable to process. Most commonly, the Commissioner is unable to process a contribution if they do not know where to deposit it.

We propose amending the KiwiSaver Act so as to replace the current deeming periods with the new period of 5 years. This would align it with the reforms proposed in the SOP.

The reforms to the Unclaimed Money Act would reduce the 6 and 25 year deeming periods to a uniform period of 5 years. The 5-year period would apply regardless of the product that the money is held in. For example, the 5-year period would apply to on-call bank accounts, as well as to term deposits.

Our amendment would ensure consistency regarding rules around unclaimed money across different financial products and services, including KiwiSaver. We believe this amendment is consistent with the policy intent of the SOP.

In addition, we recommend a further change to the KiwiSaver Act. Section 83 of the KiwiSaver Act stipulates that any money that the Commissioner is unable to administer will become unclaimed money once it has been in the Commissioner's possession for a period of no less than 6 years.

Where it is not possible to associate an employee or employer contribution with a customer, the date the money is in the Commissioner's possession should be deemed to be the last day of the month for which the Commissioner has employment income information.

Flexible filing and payment regime

We recommend amending the proposal in the SOP to enable holders of unclaimed money to file the money with Inland Revenue on a quarterly basis. Those holders would be able to apply to the Commissioner for a longer period not exceeding 6 months to file. Our amendment would allow holders to comply with the regime in a manner that suits their operational needs.

As mentioned above, the policy intent of the SOP is to simplify the rules and processes around unclaimed money. Making the regime easier to comply with helps the SOP achieve its policy intent.

Definition of unclaimed money

The SOP defines unclaimed money by referring to "an amount" held by the third party (clause 84, new section 100D(4)(1)). We believe that the use of this could extend the application of the regime to other stores of value, such as investment vehicles.

The policy intention is that the unclaimed money regime should only apply to money. It is not intended that the rules established by the SOP should apply to anything else.

Therefore, we recommend amending the bill so that the relevant provisions refer to the use of "money", rather than "an amount" (various references amended in clauses 100D, 100E, and 100H).

Other policy changes

The GST treatment of mobile roaming services

Currently, outbound mobile roaming services used by a New Zealand resident travelling overseas are either zero-rated or not subject to GST. Inbound roaming services used by a non-resident travelling in New Zealand may be subject to GST at a rate of 15 percent. However, a special rule means inbound roaming services are generally not subject to GST.

The proposal in the bill is to change the GST treatment of roaming services. The bill proposes that telecommunication services supplied to a person's mobile device while they are outside their country of residence would be subject to New Zealand GST.

New Zealand's existing rules are inconsistent with best practice. The proposed treatment in the bill is the same as that used in the UK and the EU, which is generally thought of as best practice. Under the status quo, neither outbound nor inbound roaming services are generally subject to New Zealand GST. This is inconsistent with the New Zealand Government's long-standing position on GST, which is that it should be broad-based with very few exceptions. Most of us also expect that taxing outbound services would minimise compliance costs, in comparison to taxing inbound services.

However, the current New Zealand GST treatment is the same as Australia's treatment. If the bill changes New Zealand's GST treatment of mobile roaming services, New Zealand would be inconsistent with Australia.

The New Zealand National Party differing view

National Party members are against the proposal in the bill. The National Party disagrees with the proposal, and is concerned that our treatment would be inconsistent with Australia's. Without border restrictions, Australia is the most visited destination for New Zealand tourists and business travellers. Given the current state of COVID-19 within countries outside of New Zealand and Australia, it is likely that travel between New Zealand and Australia will recover substantially earlier than elsewhere. Those members are concerned that the bill would subject New Zealanders travelling in Australia to paying New Zealand GST.

National Party members are also concerned that the bill's proposal would result in costly upgrades for the telecommunications industry for it to be compliant with the new rules.

Finally, the revenue that could be obtained from the bill's proposal would apparently be minimal in the short-to-medium term. National Party members believe that the proposal would therefore not be worth the costs involved, both for businesses and travellers.

National Party members do not believe that our existing rules are inconsistent with either best practice or the treatment of other goods and services provided overseas. Mobile roaming charges should continue to be zero-rated as they are exported services consumed by New Zealanders overseas. Applying GST to such services breaches the principles of the Goods and Services Tax Act.

Income tax treatment of leases subject to NZ IFRS

The bill as introduced stipulates that a taxpayer, once they have elected to follow NZ IFRS 16 (New Zealand Equivalent to International Financial Reporting Standards 16 – Leases) for tax, must continue using that standard for all future leases. We consider this requirement to be overly restrictive.

We recommend amending Section EJ 10B(1) in clause 23(1). Our amendment would enable taxpayers to choose whether to follow NZ IFRS for tax on each eligible lease. Our amendment would allow taxpayers to follow NZ IFRS for tax on an individual lease, while continuing to follow the standard rules for other leases.

However, once a taxpayer has chosen to follow NZ IFRS on a particular lease, they must continue to follow this treatment for the duration of that particular lease.

Adjustments for low-value assets and short-term leases

The bill as introduced stipulates that certain NZ IFRS 16 adjustments must be reversed for tax purposes. We heard from submitters that, for some taxpayers, this would minimise the benefits of following NZ IFRS 16.

We recommend that there should be a distinction made in the bill for short-term, low-value leases. We do not consider that a party to a short-term, low-value lease should be required to reverse NZ IFRS 16 adjustments.

Our recommendation would result in taxpayers not having to make adjustments for impairments, revaluations, make-good provisions, and direct costs for an NZ IFRS 16 lease. This would lower compliance costs for qualifying taxpayers who are following NZ IFRS 16.

We recommend a lease should be considered short-term if its duration is for 4 years or less. A low-value lease would be those worth less than $100,000. To qualify for this concession the lease would have to be both short-term and low-value as this is where the timing impact of not making adjustments is minimised.

We recognise that any distinction between short- and long-term, or low- and high-value, is relatively arbitrary. However, we expect that this would include most personal property leases businesses enter into.

Scope of the proposed provision of GST credit notes should be broadened

The bill as introduced would enable a credit note to be issued when GST had been inadvertently charged on a supply of goods or services (clause 90, section 25(1)). However, the provision is limited in that it only applies in situations where GST has been applied on zero-rated supply (where the tax rate should have been 0 percent), or on supply that is exempt from GST.

We believe that the intended policy outcome would be better achieved by a more general provision. We propose specifying that a credit note could be issued for any supply of goods or services where an incorrect GST treatment was applied to the supply.

We recommend amendments to clause 90 to achieve this.

We also recommend consequential amendments to simplify the legislation as some existing specific provisions in section 25(1) of the Goods and Services Tax Act would become redundant as a result of the new general provision.

Mycoplasma bovis tax issue

Generally rewording proposed section EZ 4B(1)

The eligibility criteria in new section EZ 4B(1)(a)(i) does not accurately reflect the criteria for spreading. The current wording in the bill refers to mixed-age cows held "for the purposes of sale or exchange in the ordinary course of business". However, the spread is intended to cover only stock used for breeding.

We recommend amending the wording of new section EZ 4B(1)(a)(i) by clarifying that the provision refers to stock used for breeding.

Business cessation

The bill would allow qualifying taxpayers to allocate income for tax purposes evenly over a 6-year period. However, if a business ceased or an owner of that business died, any remaining spread income would be allocated to the year of cessation or death (clause 33, new section EZ 4B(4)).

Some submitters were concerned that this provision would apply to businesses where an owner had died, but the business nevertheless continued. Those businesses would be required to bring the unallocated spread income to account that year. This is despite that business previously qualifying for the assistance provided by the bill.

We recommend amending clause 33, new section EZ 4B(4). Our amendment would clarify that the crucial test would be whether the person stopped carrying on the business. For example, the death of a sole trader would mean that the person had ceased their business. Companies that continue, despite the death of an owner, would not be affected by this provision.

Amendment to spread formula term "*number*"

The bill contains a formula for determining the spread calculation (clause 33, new section EZ 4B(5) and expanded on in new sections EZ 4B(6) to (13)). The use of the term "number" in the formula is referring to the number of livestock that are eligible to be included in the spread calculation. The bill does not clarify whether additional livestock gained throughout the course of the cull year should be included as a part of the spread calculation.

We believe that factoring in adjustments for expanding herd numbers in that year would add substantial complication to the spread calculation. Furthermore, factoring

in expanding herd numbers is largely unnecessary; herd numbers across the country have been stable or contracting.

We recommend amending clause 33, new section EZ 4B(8)(b) by clarifying that "number" in that case refers to the number of livestock on hand at the beginning of the cull year and valued under either the national standard cost scheme or the cost price method.

Remedial measures

Mining development activity exclusion should be aligned with existing tax treatment

The bill would exclude mining development activities from benefiting from R&D (research and development) tax credits (clause 59, Schedule 21). We recommend several changes to this provision in the bill.

First, the bill as introduced focuses on petroleum and mining development activities. However, pre-existing definitions in the Tax Act focus on expenditure from mining or petroleum development, and not the activity itself.

We recommend amending this provision to exclude eligible expenditure. This would prevent a taxpayer from claiming a tax credit for any expenditure that is merely associated with petroleum and mining development activities.

The R&D tax credit exclusion should also cover exceptions for labour costs that contribute to core R&D and for prototypes. This would be parallel to the treatment of tangible depreciable property elsewhere in the Income Tax Act.

In addition, the bill refers to "listed industrial minerals" in defining what is covered by the exclusion. The list is currently in the Income Tax Act. The list is exclusive, and does not refer to minerals in a broader sense.

Therefore, miners of coal, which is not a listed industrial mineral, would not be covered by the exclusion. We recommend an amendment to the bill that would deem miners of "minerals" (as defined in the Income Tax Act), and geothermal energy, as "miners" for the purposes of this provision.

Finally, clause 5 of Schedule 21 Parts A and B of the Income Tax Act excludes "prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy". These specific exclusions would be covered by the new exclusion on petroleum and mining development. Therefore, the specific exclusions are no longer necessary and should be repealed.

External labour costs should be eligible for R&D tax credits

The bill would allow capitalised expenditure on employees to qualify for the R&D tax credit, where the expenditure relates to performing core R&D activities (clause 60(2)). However, the bill would exclude contracted labour costs on core R&D activities from being eligible for the tax credit.

Some submitters were concerned that excluding contracted labour would disadvantage businesses and industries that tend to rely more on external labour, such as businesses in asset-heavy industries. The amendment as drafted creates a bias against businesses in certain industries, and submitters fear that this bias would result in arbitrary outcomes.

We recommend expanding the scope of clause 60(2) by including contracted labour costs that relate to core R&D activities.

The original policy intent behind the exclusion was to avoid the problem of Inland Revenue having less visibility over contracted expenditure. However, we are confident that this risk can be addressed by introducing disclosure requirements. For example, Inland Revenue could require claimants to separate out their labour costs from their other costs when submitting an invoice. Our recommended amendment would assuage fears that external labour costs would be less transparent for tax purposes.

Discretion for companies with balance date changes

The bill as introduced amends timeframes for taxpayers to apply for criteria and methodologies approval (clause 76, section 68CC(1) of the Tax Administration Act). The timeframes in the bill are strict, with no allowance for flexibility.

The lack of flexibility would exclude taxpayers who are unable to apply for approval in a timely manner due to their balance date being brought forward.

We recommend amending the bill by enabling the Commissioner discretion to allow a different timeframe where appropriate.

The meaning of "acquire" in R&D expenditure exclusions

Clause 2, schedule 21B Part B of the Income Tax Act, lists types of expenditure that are ineligible for the tax credit. Any "expenditure or loss incurred in acquiring depreciable property" is ineligible.

The policy behind this provision is to exclude expenditure or loss incurred on obtaining depreciable property through any method other than making the property. However, "acquire", in the context of depreciable property, is defined in subpart YA 1 of the Income Tax Act to include "make".

Therefore, costs incurred in making depreciable property would be inadvertently excluded from being eligible for tax credits. We recommend amending clause 2 to clarify that "acquire" in this context does not include "make". Our amendment would ensure that taxpayers involved in making depreciable property could enjoy the benefits of tax credits.

The scope of the grant-related expenditure exclusion

Expenditure that is related to a grant made by the Crown or a local authority is excluded from receiving R&D tax credits (Schedule 21B, Part B, clause 21 of the Income Tax Act). The purpose of this exclusion is to prevent a person from claiming multiple forms of government R&D funding for the same expenditure.

By excluding any expenditure that is "otherwise related to" government grants, the Income Tax Act creates very wide exclusion criteria.

However, there are some situations in which a taxpayer may receive a government grant to perform R&D, but they may also use additional expenditure that is not funded by a grant. In those situations, the additional expenditure would be ineligible for the tax credit. This outcome would be contrary to the broader policy intent of the tax incentive, which is to incentivise and support businesses to increase their expenditure on R&D.

We therefore recommend inserting an amendment into the bill modifying clause 21 of Schedule 21B Part B. Our amendment would narrow the grant-related exclusion criteria. It would ensure that expenditure that is not funded by a government grant would be eligible for a tax credit, as intended by the policy.

Hybrid rules remedials

Submitters raised with us a number of concerns regarding apparent anomalies with hybrid and branch mismatch rules. To ensure the rules work fairly, and to meet the policy intent of the rules regarding hybrid remedials, we have recommended that several provisions be added to the bill.

To ensure the following recommended provisions apply appropriately, the amendments should all be retrospective to the application date of the provision. That is, they should all apply for income years beginning on or after 1 July 2018.

Taxpayers who have taken a tax position under the existing law would, if relevant, be able to request the Commissioner amend the assessment in order to take advantage of the recommended changes.

Our recommended amendments are:

Non-resident group members should be able to group surplus assessable income

The Income Tax Act stipulates that only New Zealand-resident companies may group their surplus assessable income (SAI) (section FH 12(10) of the Income Tax Act). Non-resident companies paying tax in New Zealand cannot.

Because of this limitation, the SAI of a non-resident company may go unused. Another non-resident in the same group would be denied New Zealand deductions, when the non-resident company's SAI could otherwise have been used to offset the denied deductions. Submitters were concerned that this could result in the over-taxation of the group as a whole.

We recommend inserting clause 37D, section FH 12(10). This would amend section FH 12(10) of the Income Tax Act by removing the requirement that companies eligible to group SAI must be resident in New Zealand.

The policy intent of the SAI grouping mechanism in the Income Tax Act is to ensure that the right economic outcome is reached for the group as a whole. Excluding non-resident companies that pay tax in New Zealand from grouping SAI with other group members is inconsistent with the policy intent of section FH 12(10). Instead, this

exclusion would result in the over-taxation of certain types of companies. An example would be a non-resident company that has a branch in New Zealand.

Payments made within a consolidated group should be included in SAI calculation

We recommend that the SAI calculation formula should be amended to include payments made within a New Zealand consolidated group, where certain conditions are satisfied (section FH 12(4)(c) of the Income Tax Act). A payment would need to be both excluded income and non-deductible in New Zealand, due to being paid between consolidated group members. The payment would also need to be taxable and non-deductible in the jurisdiction of a non-resident group parent of the consolidated group.

To achieve this, we recommend inserting clause 37D, section FH12(3) and (4), and clause 13C, section CX 60(1) and (1B) into the bill.

Hybrid financial instrument rule should not apply to income fully taxed in New Zealand

We recommend amending section FH 3 of the Income Tax Act so that the section does not apply to a payment taxed at a payee's full applicable rate in any country or territory. Although the section does not apply where a country or territory outside of New Zealand taxes a payment, it could still apply to deny a deduction where New Zealand taxes a payment received by the payee at the full applicable tax rate.

We recommend inserting clause 37B, section FH 3(2)(a) into the bill. Our amendment would ensure section FH 3 of the Act does not apply to a payment taxed at a payee's full applicable rate in any country or territory, including New Zealand.

Transfer pricing deemed arm's length amount–exception should be extended to deductions denied under the hybrid rules

We recommend amending section GC 8(2) of the Income Tax Act. The section currently applies where an amount would be deductible but for the application of the thin capitalisation rules. We recommend that the "arm's length" rule of section GC 8(2) should be extended to cover deductions denied under the hybrid rules.

To do this, we recommend inserting clause 38B, section GC 8(2)(b) into the bill.

Reverse hybrid rule should be clarified in how it applies to hybrid entities and branches

Under section FH 7 of the Income Tax Act, deductions may be denied to hybrid entities in circumstances where the relevant income is received, but is not taxable due to the application of exemptions (and not the non-recognition of income) in the recipient jurisdiction.

Section FH 7 of the Act is intended to deny a deduction for a payment where the payment is not taxable because of either a branch mismatch, or because the payment is made to a reverse hybrid.

To ensure the section is working as intended, we recommend inserting clause 37C, section FH 7(1)(b), (bb), (e), and (f) into the bill.

Thin capitalisation remedials

Scope of section FE 2(1)(d)(i)

Sections FE 6 and FE 7 of the Income Tax Act contain interest apportionment rules. Section FE 2(1)(d)(i) states that these rules may apply to a trust settled by a non-resident, or an associate of a non-resident.

The policy intent of section FE 2(1)(d)(i) of the Act was that it should cover settlements by a non-resident as well as any New Zealand resident associates of that non-resident. However, in effect this provision has a much wider coverage than what was intended. For example, it includes a trust settled by any New Zealand resident who is associated with a non-resident, unless that associate is specifically carved out.

We recommend narrowing this provision (section FE 2(1)(d)(i) of the Act) so that it only covers settlements by a non-resident, or an associate of that non-resident.

We would do this by inserting new section FE 2(1)(cc) in clause 34(1A) and repealing existing section FE 2(1)(d)(i) in clause 34(1AB).

"*Group world debt percentages*" *higher than 60 percent*

The "debt percentage" formula in the bill (clause 35, section FE 6(3B)) would result in a fraction greater than 1 if the "group world percentage" is greater than 60 percent. This would mean that a taxpayer could derive income that is greater than their total interest expenditure.

We recommend amending the formula so a taxpayer uses the higher of their "group world debt percentage" and the 60 percent threshold.

Migrating settlor of a trust

Clause 44, section HC 30, would amend the rules that apply to foreign trusts, when the settlor of a foreign trust becomes a New Zealand resident. The clause ensures that distributions of an amount from such a trust are made from a complying trust.

A complying trust in this provision is one for which the trustee has paid tax on the trustee income, when that income has been derived overseas. However, a complying trust may have made a capital gain. Capital gains are not taxable under the Income Tax Act, and so would not be taxed from the relevant trust.

We recommend inserting clause 44A, section HC 33, to refer to an "amount", instead of income. This would mean that the non-taxation of such a gain would not affect the complying trust status.

Restricted transfer pricing

Cross-border related borrowing with terms greater than 5 years

The Income Tax Act allows certain exotic features from third-party debt to be included in the pricing under the restricted transfer pricing rule (section GC 18).

We heard from submitters that the formula to determine this should be amended. The Act's requirement to calculate and adjust for the threshold fraction prohibits the ability to recognise third-party debt with a term longer than 5 years where a taxpayer only has one tranche of related party debt. Effectively, where there is only one tranche of related party debt, the taxpayer is never able to apply the threshold term.

We recommend an alternative approach should be added to the restricted transfer pricing rules. Our amendment would enable cross-border related borrowing to have a term of greater than 5 years without having to satisfy the threshold if two conditions are satisfied. First, the term would need to be less than the weighted average of all third-party debt. Second, the total cross-border related borrowing is less than four times the third-party debt.

Miscellaneous matters

Depreciation on non-residential buildings

Restrictions on depreciation rates for depreciable property transferred to an associate

The Income Tax Act (section EE 40) prevents someone who has purchased an asset from an associate from changing the asset's depreciation rate. This restriction is to ensure that a purchaser is unable to claim more depreciation for an asset than their associate would have been able to claim.

However, we accept that, where the depreciation rate has been changed in legislation, a purchaser should be able to alter the rate of depreciation to reflect the legislative change. Whether the vendor and purchaser are associates should not prevent a purchaser from doing this.

For example, non-residential buildings are depreciable at a rate of 1.5 percent or 2 percent from the 2020-21 financial year. Before this change the rate of depreciation was 0 percent.

As a result of section EE 40 of the Income Tax Act, a purchaser who has acquired a non-residential building from an associate would be restricted to a 0 percent depreciation rate. This is despite it clearly being Parliament's intention that a non-residential building should depreciate at a different rate.

We recommend amending clause 19, section EE 40. Our amendment would provide that the restriction on the allowable depreciation rate for depreciable property acquired from an associate does not apply where the rate has increased by statute.

Portfolio investment entity schedular income

Simplifying the PIE schedular income year-end adjustment calculation

The Income Tax Act includes a prescriptive formula that is used to calculate PIE (portfolio investment entity) schedular income (section HM 36B(2) and (3)).

We recommend replacing this formula with an outline of items that the Commissioner should take into account when calculating PIE schedular income adjustments.

Our amendment would enable the Commissioner to incorporate other relevant factors when making this calculation. An example would be attributed tax credits for the future benefit of the investor.

Limiting the removal of excluded income status for multi-rate PIE income

Before the introduction of the new year-end adjustment rules, income from multi-rate PIEs was largely considered to be excluded income for tax purposes. Therefore, this income did not flow through to a person's income tax return and assessment. However, the excluded income status was removed entirely. This was done to better incorporate the new year-end adjustment process into the already existing processes for year-end income tax. It may, however, have unintended flow-on consequences for loss offsets, and added complications for Working for Families tax credits, student loans, and child support.

To avoid those consequences, we recommend an amendment that would limit the removal of excluded income status. The removal of the excluded income status for multi-rate PIE income would only apply to the calculation of the PIE schedular tax adjustment.

Tax adjustments for under- and over-payments of tax on PIE income are included when calculating residual income tax

Currently, any PIE tax payable or refundable as a result of the year-end adjustment is initially included in the calculation of the person's tax due, then removed for the calculation of their residual income tax. This creates two different end-of-year amounts. This different treatment increases complexity for taxpayers and the Inland Revenue's systems.

To simplify the adjustment process, we recommend that the year-end adjustment rules should be changed so that any PIE adjustment is included in the person's final income tax calculation and therefore residual income. This would result in a single tax liability figure, which would be the basis for provisional tax the following year.

To do this, we recommend inserting clause 58 (12B) amending the definition of "residual income tax" in section YA1 into the bill.

Initial provisional tax liability definition

The COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020 increased the provisional tax threshold from $2,500 to $5,000.

In doing so, a change was made to the definition of "initial provisional tax liability" in section YA 1 of the Income Tax Act. A result of this change is that taxpayers who were over the old threshold, but under the new threshold, could become initial provisional taxpayers again.

Such treatment may be adverse to the affected taxpayers and was unintended. We therefore recommend an amendment to ensure the section correctly deals with the change in the provisional tax threshold for those taxpayers who, in the previous four years, had residual income tax of more than $2,500 but not more than $5,000.

Using passport numbers in the student loan customs information match

Inland Revenue undertakes an information match with the New Zealand Customs Service for the purpose of verifying whether a borrower is in New Zealand or overseas. Interest is payable on student loans for borrowers who are based overseas, and is not on the loans of New Zealand-based borrowers. Inland Revenue use this information to determine whether borrowers should be treated as New Zealand or overseas based.

The legislation governing the information match allows Inland Revenue to share the borrower's name, date of birth, and IRD number with Customs. We believe that adding the borrower's passport number to this information would help improve the accuracy of the match because passport numbers are a unique identifier used by Customs.

We therefore recommend adding clause 92B, section 208(2)(d) to the bill.

Tax treatment of distributions on wind-up of an approved unit trust

Bonus Bonds will be wound up, and in the year that it is wound up, Bonus Bonds will have to distribute income derived to beneficiaries. Under current law, income distributed by a trust that is derived in the same income year, or within a certain period after the end of the income year, is considered beneficiary income, and as such is taxed at the beneficiaries' marginal tax rates.

We recommend amending the bill by inserting section HC 6(2)(ab). Our amendment would ensure that all distributions by an approved unit trust (of which Bonus Bonds is the only one) would be treated as trustee income and taxed at 28% consistent with other income derived over the life of Bonus Bonds.

Temporary loss-carry-back remedial to enable loss grouping for groups that are not wholly owned

Section IZ 8 of the Income Tax Act contains temporary loss-carry-back rules. The rules allow a company with net losses in the 2019-20 or 2020-21 income years (the "loss year") to carry losses back to offset taxable income in the immediately preceding income year (the "profit year"). Special rules apply for companies that are part of wholly-owned corporate groups.

To be eligible for the loss-carry-back, a company that is not in a wholly-owned corporate group must have a net loss in the "loss year", and must also have taxable income in the "profit year".

While this rule works for most taxpayers, it is problematic for a company that is in a non-wholly-owned corporate group (that is a group where the companies have at least 66 percent, but less than 100 percent, common ownership) that is in loss in both the loss and profit years, but would like to use the loss-carry-back to effectively share its losses with a group member who has taxable income in the profit year. Under current rules, a company that has losses in both the loss and profit years cannot use the loss-carry-back even if it has a group member with taxable income in the profit year.

This is contrary to the policy intent of the COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act. The intention behind the Act is for a company that has 66 percent or more common ownership with another company to be able to carry back and offset its losses against the other company's taxable income in the profit year.

We recommend inserting clause 44E, section IZ8(1), (2), and (3) to the bill.

Appendix

Committee process

The Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill was referred to the Finance and Expenditure Committee of the 52nd Parliament on 24 June 2020. On 26 November 2020 the bill was reinstated with the Finance and Expenditure Committee of the 53rd Parliament.

The closing date for submissions on the bill was 12 August 2020. The Finance and Expenditure Committee of the 52nd Parliament received and considered 26 submissions from interested groups and individuals. It heard oral evidence from 11 submitters at a hearing in Wellington.

We received advice on the bill from the Inland Revenue Department and from our independent specialist tax advisor, Therese Turner. The Office of the Clerk provided advice on the bill's legislative quality.

Committee membership

Dr Duncan Webb (Chairperson)

Andrew Bayly

Barbara Edmonds

Ingrid Leary

Anna Lorck

Greg O'Connor

Damien Smith

Chlöe Swarbrick

Helen White

Nicola Willis

Hon Michael Woodhouse

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon David Parker

Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill

Government Bill

Contents

Part 3
Amendments to other enactments

Tax Administration Act 1994

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act **2020**.

2 Commencement

(1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.

(2) **Sections 14, 19(1) and (2), 37, 48, 49, 50, 51, 55, and 58(5B), (5E), (7), and (14)** come into force on 1 April 2008.

(3) **Section 42** comes into force on 1 April 2009.

(4) **Sections 30, 31, and 58(8)** come into force on 1 July 2010.

(4B) **Section 58(5F)** comes into force on 1 April 2011.

(5) **Sections 90(1B) and (31E) and 92** come into force on 1 April 2012.

(6) **Section 12** comes into force on 29 May 2012.

(7) **Section 58(2)** comes into force on 1 July 2012.

(8) **Sections 18, 28, 29, 32, 53, and 58(5)** come into force on 2 November 2012.

(9) **Section 38** comes into force on 1 April 2014.

(10) **Section 88** comes into force on 30 June 2014.

(10B) **Section 34** comes into force on 1 April 2015.

(10C) **Section 58(7B)** comes into force on 1 October 2015.

(11) **Section 52** comes into force on 1 July 2016.

(11B) **Section 90(1), (1C), and (1D)** come into force on 1 October 2016.

(11C) **Section 67(4)(d)** comes into force on 21 February 2017.

(12) **Sections 33 and 58(5C) and (5G)** comes into force on 1 April 2017.

(12B) **Section 11B** comes into force on 29 March 2018.

(13) **Section 63** comes into force on 23 May 2018.

(14) **Sections 35(2B) and (3B), 36, 37B, 37C, 37D, 38B, 38C, 39, and 57** come into force on 1 July 2018.

(15) **Sections 8, 15, 22, 23, 26, and 58(10), (11), and (12)** come into force on 1 January 2019.

(16) **Sections 82 and 101** come into force on 18 March 2019.

(17) **Sections 13C, 24, 25, 45, 58(5D), 59, 60, 79, 84(1B), and 93(3)** come into force on 1 April 2019.

(18) **Section 94** comes into force on 17 November 2019.

(19) **Sections 41 and 44, 44, and 44A** come into force on 23 March 2020.

(19B) **Section 102** comes into force on 25 March 2020.

(20) **Sections 4B, 9, 11, 13B, 15B, 16, 19(1A) and (1B), 21, 43, 44B, 44C, 44F, 44G, 44H, 56, 58(9B), (10B), (12B), and (15), 62, 67(3), 70, 71, 72, 73, 74, 75, 76(1A) and (2A), and 84(1), (1C), and (1D)** come into force on 1 April 2020.

(20B) **Section 44E** comes into force on 15 April 2020.

(21) **Section 90(2)** comes into force on ~~the date of introduction of the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill~~4 June 2020.

(21B) **Section 83D** comes into force on 1 March 2021.

(22) **Sections ~~17, 20, 27, 40, 58(6),~~ 67(4)(a) to (c), 68, 76(1) and (2), 80, and 83** come into force on 1 April 2021.

(22BA) **Sections 17, 20, 27, 40, 58(6) and (13B)** come into force on 1 July 2021.

(22B) **Section 92B** comes into force on 1 October 2021.

(23) **Sections 44D, 86, 87, 89, and 91** come into force on 1 April 2022.

~~(24) **Sections 58(3) and 93(2)** come into force on the day specified in the relevant notes exchanged by the Governments of Australia and New Zealand, as provided by clause 17 of the Arrangement between them on trans-Tasman retirement savings portability.~~

(24) **Sections 58(3) and 93(2)** come into force on the first of the following:

(a) the day that is 1 year after this Act receives the Royal assent:

(b) the day specified in the relevant notes exchanged by the Governments of Australia and New Zealand, as provided by clause 17 of the Arrangement between them on trans-Tasman retirement savings portability.

Part 1
Annual rates of income tax

3 Annual rates of income tax for 2020–21 tax year

Income tax imposed by section BB 1 (Imposition of income tax) of the Income Tax Act 2007 must, for the 2020–21 tax year, be paid at the basic rates specified in schedule 1 of that Act.

Part 2
Amendments to Income Tax Act 2007

4 Income Tax Act 2007

Sections 5 to 64 amend the Income Tax Act 2007 and **section 65** makes consequential amendments to other enactments.

4B Section BC 7 amended (Income tax liability of person with schedular income)

(1) In section BC 7(5), replace "who derives income under section CP 1 (Attributed income of investors in multi-rate PIEs) is calculated" with ", when the rate

of tax applied for the year is not equal to the investor's prescribed investor rate for the year, is calculated".

(2) In section BC 7, in the list of defined terms, insert "prescribed investor rate".

5 Section CB 16A amended (Main home exclusion for disposal within 5 years)

(1) In section CB 16A(1),—

(a) replace "a person who disposes of residential land" with "a person who disposes of residential land (**person A**)":

(b) replace "the person" with "person A" in each place.

(2) In section CB 16A(2),—

(a) replace "a person who disposes of residential land" with "person A":

(b) in paragraphs (a) and (b), replace "the person" with "person A" in each place.

(3) After section CB 16A(2), insert:

Regular patterns undertaken by groups of persons

(2B) For the purposes of **subsection (2)(b)**, in relation to residential land described in **subsection (1)**, person A includes a group of persons if the requirements of **subsection (2C)** are met.

Meaning of group of persons

(2C) For the purposes of **subsection (2B)**, a **group of persons**—

(a) means 2 or more persons when together all of the persons occupy, or have occupied, residential land described in **subsection (1)**; and

(b) ~~includes a trustee of a trust or another entity if a person referred to in **paragraph (a)** has significant involvement in, or control of, the activities of the trustee or other entity~~includes a person other than a natural person (the **non-natural person**), if another person referred to in **paragraph (a)** has significant involvement in, or control of, the activities of the non-natural person. For the avoidance of doubt, if the other person is able to direct, alone or as part of a group, the activities of the non-natural person, they have significant involvement in, or control of, the activities of the non-natural person.

(4) In section CB 16A, list of defined terms, insert "group of persons".

6 Section CB 16 amended (Residential exclusion from sections CB 6 to CB 11)

(1) In section CB 16(1),—

(a) in paragraph (a), replace "the person" with "the person (**person A**)":

(b) in paragraph (b)(i), (ii), and (iii), replace "the person" with "person A" in each place:

(c) in paragraph (b)(ii), replace "the person's" with "person A's" in each place.

(2) Replace section CB 16(3) with:

Exception

(3) The exclusion does not apply when—

(a) section CB 6(1) applies to the disposal; and

(b) person A has engaged in a regular pattern of acquiring and disposing of land described in **subsection (1)**.

Regular patterns undertaken by groups of persons

(4) For the purposes of **subsection (3)**, in relation to land described in **subsection (1)**, person A includes a group of persons if the requirements of **subsection (5)** are met.

Meaning of group of persons

(5) For the purposes of **subsection (4)**, a **group of persons**—

(a) means 2 or more persons when together all of the persons occupy, or have occupied, land described in **subsection (1)**; and

(b) ~~includes a trustee of a trust or another entity if a person referred to in **paragraph (a)** has significant involvement in, or control of, the activities of the trustee or other entity~~includes a person other than a natural person (the **non-natural person**), if another person referred to in **paragraph (a)** has significant involvement in, or control of, the activities of the non-natural person. For the avoidance of doubt, if the other person is able to direct, alone or as part of a group, the activities of the non-natural person, they have significant involvement in, or control of, the activities of the non-natural person.

(3) In section CB 16, list of defined terms, insert "group of persons".

7 Section CB 19 amended (Business exclusion from sections CB 6 to CB 11)

(1) In section CB 19(1),—

(a) replace "a disposal of land" with "a disposal of land by a person (**person A**)":

(b) in paragraph (b), replace "the person" with "person A".

(2) Replace section CB 19(2) with:

Exception

(2) The exclusion does not apply when—

(a) section CB 6(1) applies to the disposal; and

(b) person A has engaged in a regular pattern of acquiring and disposing of land described in subsection (1).

When regular patterns undertaken by groups of persons

(2B) For the purposes of **subsection (2)**, person A includes a group of persons if the requirements of **subsection (2C)** are met.

Meaning of group of persons

(2C) For the purposes of **subsection (2B)**, a **group of persons** means 2 or more persons if—

(a) the persons occupy premises mainly to carry on a substantial business from them as described in **subsection (1)(b)**, irrespective of the nature of any business carried on from the premises; and

(b) a person, whether or not they occupy premises as described in **subsection (1)(b)**, has significant involvement in, or control of, the activities of all persons referred to in **paragraph (a)** (the **occupiers**). For the avoidance of doubt, if the person is able to direct, alone or as part of a group, the activities of the occupiers, they have significant involvement in, or control of, the activities of the occupiers.

(3) In section CB 19, list of defined terms, insert "group of persons".

8 New heading and section CC 14 inserted

(1) After section CC 13, insert:

IFRS leases

CC 14 NZ IFRS 16 leases

When this section applies

(1) This section applies when a person has, under **section EJ 10B** (IFRS leases), an amount of income for their IFRS lease.

Amount, and timing, of income

(2) The person has income quantified and allocated under **section EJ 10B**.

Defined in this Act: amount, income, person

(2) **Subsection (1)** applies for income years starting on or after 1 January 2019.

9 Section CD 1 amended (Dividend)

(1) After the heading to section CD 1, insert "*Income*" as a subsection heading.

(2) In section CD 1, insert as subsection (2):

Timing of income: dividends other than non-cash dividends

(2) The income is allocated to the income year in which the person receives the dividend if the dividend is a dividend other than a non-cash dividend.

(3) In section CD 1, list of defined terms, insert "income year" and "non-cash dividend".

(4) **Subsections (1) and (2)** apply for the 2020–21 and later income years.

9B Section CD 43 amended (Available subscribed capital (ASC) amount)

In section CD 43(2)(b), replace "ignoring section HB 1 (Look-through companies are transparent)" with "ignoring section HB 1 (Look-through companies are transparent), and including consideration for the issue of shares by the company as a result of the application of section CE 6 (Trusts are nominees)".

10 Section CE 6 amended (Trusts are nominees)

(1) In section CE 6, words before the paragraphs, replace "employee share scheme" with "employee share scheme or an exempt ESS".

(2) In section CE 6, list of defined terms, insert "exempt ESS".

11 New heading and section CH 13 inserted

(1) After section CH 12, insert:

Feasibility expenditure clawback

CH 13 Feasibility expenditure clawback

When this section applies

(1) This section applies when a person—

(a) has deducted an amount under **section DB 66(2)** (Feasibility expenditure: spread deduction) for property in relation to which they abandoned further progress, with the result that the property was not completed, created, or acquired; and

(b) subsequently completes or creates the property, or acquires the property or similar property.

When this section does not apply

(1B) Despite **subsection (1)**, this section does not apply for an income year that is more than 7 years after the last income year for which a person has deducted an amount under **section DB 66(2)**.

Income

(2) The person has, in the income year in which they subsequently complete, create, or acquire the property or similar property, income equal to the amount of the total deductions under **section DB 66(2)** for the property~~, to the extent to which the deductions are directly for the property~~.

Defined in this Act: amount, deduction, income, income year, person

(2) **Subsection (1)** applies for the 2020–21 and later income years.

11B Section CW 26C amended (Meaning of exempt ESS)

In section CW 26C(7)(a)(ii), replace "employer" with "employee".

12 Section CW 55BB amended (Minors' income, to limited extent)

(1) After section CW 55BB(2)(a)(iii), insert:

(iiib) beneficiary income:

(2) In section CW 55BB, list of defined terms, insert "beneficiary income".

(3) **Subsection (1)** applies for the 2012–13 and later income years. However, **subsection (1)** does not apply if, before the date of introduction of the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill, a person files a return of income that ignores the application of **subsection (1)**.

13 Section CW 58 amended (Disposal of companies' own shares)

(1) In section CW 58, words before the paragraphs, replace "disposing of shares in the company" with "disposing of shares in the company, including if the company disposes of the shares as the result of the application of section CE 6 (Trusts are nominees),".

(2) In section CW 58(a), replace "acquired the shares" with "acquired the shares, including if the company acquired the shares as the result of the application of section CE 6".

13B Section CX 56 amended (Attributed income of certain investors in multi-rate PIEs)

(1) In section CX 56(1), delete ", other than an investor who is a natural person,".

(2) Repeal section CX 56(2)(d).

(3) After section CX 56(2), insert:

When this section also does not apply

(2B) This section also does not apply for the purposes of an adjustment under **section HM 36B** (Calculating PIE schedular adjustments for natural person investors) when a natural person who is resident in New Zealand—

(a) is an investor in a multi-rate PIE; and

(b) derives attributed PIE income from the PIE for an income year; and

(c) has a rate of tax applied to their attributed PIE income that is not equal to their prescribed investor rate for the income year; and

(d) has an amount of PIE schedular income for the income year.

13C Section CX 60 amended (Intra-group transactions)

(1) In section CX 60(1), replace "FM 8(3)" with "FM 8".

(2) Repeal section CX 60(1B).

(3) In section CX 60(2), delete "(Transactions between group companies: income)".

(4) **Subsections (1) to (3)** apply for the 2019–20 and later income years.

14 Section DB 23 amended (Cost of revenue account property)

(1) Replace section DB 23(3), other than the heading, with:

(3) Subsection (1) supplements the general permission and overrides the capital limitation and the private limitation. Subsection (2) overrides the general permission. The other general limitations still apply.

(2) In section DB 23, list of defined terms, insert "private limitation".

15 New heading and section DB 51C inserted

(1) After section DB 51B, insert:

IFRS leases

DB 51C NZ IFRS 16 leases

When this section applies

(1) This section applies when a person has, under **section EJ 10B** (IFRS leases), an amount of a deduction for their IFRS lease.

Amount and timing of deduction

(2) The person is allowed a deduction of the amount of the deduction quantified and allocated under **section EJ 10B**.

Defined in this Act: amount, deduction, person

(2) **Subsection (1)** applies for income years starting on or after 1 January 2019.

15B Section DB 53 amended (Attributed PIE losses of certain investors)

(1) Replace section DB 53(1)(b) with:

(b) the investor is—

(i) resident in New Zealand:

(ii) a trustee who has chosen a prescribed investor rate referred to in schedule 6, table 1, row 5 or 7.

(2) After section DB 53(2), insert:

When this section also applies

(2B) This section also applies for the purposes of an adjustment under **section HM 36B** (Calculating PIE schedular adjustments for natural person investors) when a natural person who is resident in New Zealand—

(a) is an investor in a multi-rate PIE; and

(b) in relation to an amount attributed to them by the PIE, has a rate of tax applied that is not equal to their prescribed investor rate for the income year; and

(c) has an amount of attributed PIE loss for the income year.

(3) In section DB 53, in the list of defined terms,—

(a) delete "zero-rated portfolio investor":

(b) insert "natural person", "prescribed investor rate", and "resident in New Zealand".

16 New heading and sections DB 66 and DB 67 inserted

(1) After section DB 65, insert:

Feasibility expenditure

DB 66 Feasibility expenditure: spread deduction

When this section applies

(1) This section applies ~~when~~for expenditure to the extent to which a person has—

(a) incurred expenditure for an income year after the 2019–20 income year~~the income year~~ in relation to making progress towards completing, creating, or acquiring property that, if it were to be completed, created, or acquired, ~~the property~~ would be—

(i) depreciable property for which the depreciation rate is more than 0%:

(ii) revenue account property; and

(b) abandoned further progress in relation to the property, with the result that it is not completed, created, or acquired; and

(c) no deduction in relation to the ~~property or~~ expenditure under any other provision.

When this section does not apply

(1B) Despite **subsection (1)** this section does not apply to the extent to which expenditure is in relation to property on the following list:

(a) land, unless it is fixed life intangible property:

(b) an excepted financial arrangement:

(c) intangible property or intellectual property, unless it is fixed life intangible property.

Deduction: spread forward

(2) The person is allowed a deduction for the expenditure described in **subsection (1)**, in equal proportions over a period of 5 income years starting in the income year in which they abandon further progress. However, a person is not allowed any remaining deduction portions for the income year in which they complete or create the relevant property, or acquire the relevant property or similar property, or for later years.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, depreciable property, excepted financial arrangement, financial arrangement, fixed life intangible property, general limitation, general permission, income year, intellectual property, land, person

DB 67 Feasibility expenditure: immediate deduction

When this section applies

(1) This section applies ~~when~~for expenditure to the extent to which a person has—

(a) incurred expenditure for ~~the income year~~an income year after the 2019–20 income year in relation to making progress towards completing, creating, or acquiring property that, if it were to be completed, created, or acquired, ~~the property~~ would be—

(i) depreciable property for which the depreciation rate is more than 0%:

(ii) revenue account property; and

(b) no deduction for the ~~property or~~ expenditure under any other provision.

When this section does not apply

(1B) Despite **subsection (1)** this section does not apply to expenditure that is in relation to property on the following list:

(a) land, but excluding fixed life intangible property:

(b) an excepted financial arrangement:

(c) intangible property or intellectual property, but excluding fixed life intangible property.

Deduction: immediate

(2) The person is allowed a deduction for the expenditure described in **subsection (1)**, if their total expenditure described in **subsection (1)** in relation to all property is $10,000 or less for the income year.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, depreciable property, excepted financial arrangement, financial arrangement, fixed life intangible property, general permission, general limitation, income year, intellectual property, land, person

(2) **Subsection (1)** applies for the 2020–21 and later income years.

17 Heading and section EB 24 repealed

(1) Repeal the heading before section EB 24 and section EB 24.

(2) **Subsection (1)** applies for agreements for the disposal and acquisition of property entered into on or after ~~1 April 2021~~1 July 2021.

18 Section ED 3 amended (Part-year tax calculations for transfers: general insurance OCR)

In section ED 3(3), replace "new life insurance rules" with "rules for life insurers".

19 Section EE 40 amended (Transfer of depreciable property on or after 24 September 1997)

(1A) After section EE 40(9), insert:

Statutory change: exception

(9B) Subsection (9) does not apply when person A may, due to a change of annual rate by a statute, apply an annual rate that is more than the annual rate that the associated person applied.

(1) In section EE 40(10), replace "Subsection (6)" with "Subsection (9)".

(1B) **Subsection (1A)** applies for the 2020–21 and later income years.

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

20 Section EE 45 amended (Consideration for purposes of section EE 44)

(1) Repeal section EE 45(10).

(2) **Subsection (1)** applies for agreements for the disposal and acquisition of property entered into on or after ~~1 April 2021~~1 July 2021.

21 Section EJ 3 amended (Spreading forward of fertiliser expenditure)

(1) Replace section EJ 3(5) with:

How elections made

(5) An election under this section is made as follows:

(a) a person makes an election under subsection (2) by taking a tax position on that basis in their return of income for the income year to which they choose to allocate some or all of the expenditure:

(b) a person makes an election under subsection (4),—

(i) paragraph (a), by taking a tax position on that basis in their return of income for the income year in which the person ceases to carry on the business:

(ii) paragraph (b), by notifying the Commissioner of the allocation within the time within which the person is required to file a return of income for the income year in which the person ceases to carry on the business.

Extension of time: elections under subsection (4)(b)

(5B) The Commissioner may extend the time limit imposed under **subsection (5)(b)(ii)** in any case or class of cases.

(2) After section EJ 3(6), insert:

Elections under subsection (2) irrevocable

(7) An election made under subsection (2) cannot be revoked.

(3) In section EJ 3, list of defined terms,—

(a) insert "notify" and "tax position":

(b) delete "notice".

(4) **Subsections (1) and (2)** apply for the 2020–21 and later income years.

22 Section EJ 10 amended (Personal property lease payments)

(1) After section EJ 10(1)(c), insert:

(d) is not an operating lease to which **section EJ 10B** applies.

(2) In section EJ 10, list of defined terms, insert "operating lease".

(3) **Subsections (1) and (2)** apply for income years starting on or after 1 January 2019.

23 New section EJ 10B inserted (IFRS leases)

(1) After section EJ 10, insert:

EJ 10B IFRS leases

When this section applies

(1) ~~This section, other than **subsection (5)**, applies~~ This section applies in relation to an ~~to a person's~~ operating lease of a personal property lease asset (the **IFRS lease**), if~~— as lessee, if—~~

(a) the person, as lessee, uses NZ IFRS 16 in their ~~accounts~~financial statements for the IFRS lease~~ or would use NZ IFRS 16 if that lease met the materiality thresholds for NZ IFRS 16~~; and

(b) the lessor for the IFRS lease is not associated with the person; and

(c) the person does not sublease the personal property lease asset to another person; and

(d) the person irrevocably chooses to use this section for~~ leases described in **paragraphs (a) to (c)**~~ the IFRS lease, as evidenced by a return of income made in accordance with this section.

Deduction: de minimis

(1B) If the initial right of use asset under NZ IFRS 16 is $100,000 or less and the remaining term of the IFRS lease under NZ IFRS 16 is 4 years or less initially and immediately after any extension starts, then the person, as lessee for the

IFRS lease is allowed, for an income year, a deduction for a positive amount, and has income for a negative amount, for the total amount recognised by the person through their profit and loss account for the IFRS lease for the income year, if the amount is in accordance with NZ IFRS 16.

Deduction: formula

(2) ~~The person, as lessee, is allowed a deduction for an income year for the IFRS lease equal to the amount calculated using the formula—~~If **subsection (1B)** does not apply, then the person, as lessee for the IFRS lease is allowed, for an income year, a deduction for a positive amount, and has income for a negative amount, for amounts calculated using the formula—

accounting ~~expenditure~~amount − add-back adjustment + impairment and revaluation adjustment − make-good and direct costs adjustment.

Definition of items in formula

(3) In the formula in **subsection (2)**,—

(a) **accounting ~~expenditure~~ amount** is the total amount recognised by the person through their profit and loss account for the IFRS lease for the income year, if the amount is in accordance with NZ IFRS 16:

(b) **add-back adjustment** is the total amount of the ~~relevant positive or negative~~ accounting measures in **subparagraphs (i) and (ii)**, used by the person in accordance with IFRS through their profit and loss account for the income year—

(i) impairment of the lease asset described in paragraph 33 of NZ IFRS 16 arising in the income year:

(ii) revaluation or impairment of the lease asset described in paragraph 35 of NZ IFRS 16 arising in the income year:

(c) **impairment and revaluation adjustment** is the total amount of the add-back adjustment for any income year under **paragraph (b)** spread proportionally on a daily basis over the remaining income years of the lease term:

(d) **make-good and direct costs adjustment** is the total amount of the ~~relevant positive or negative~~ accounting measures in **subparagraphs (i) and (ii)**, spread proportionally on a daily basis over the remaining income years of the lease term—

(i) make-good costs for the lease described in paragraph 24(d) of NZ IFRS 16:

(ii) direct costs for the lease described in paragraph 24(c) of NZ IFRS 16, if the person chooses to apply this subparagraph, as evidenced by a return of income made in accordance with this subparagraph.

Deduction: incurred

(4) The person, as lessee, is allowed a deduction for the IFRS lease for —

(a) make-good costs, described in **subsection (3)(d)(i)**, for the income year that they incur the costs:

(b) direct costs, described in **subsection (3)(d)(ii)**, for the income year that they incur the costs, if they have chosen to apply **subsection (3)(d)(ii)**.

Wash-up: income or deduction

(5) The person, as lessee, has a deduction for a positive amount, and has income for a negative amount,~~an amount of income or deduction~~ for the income year in which the IFRS lease ends or ~~ceases to be an IFRS lease under **subsection (1)**~~does not meet a requirement in **subsection (1)(a), (b) or (c)**, calculated using the formula—

IFRS deductions− IFRS income − expenditure.

Definition of items in formula

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

(a) **IFRS deductions** is the total amount deducted for the IFRS lease for all income years, including when the person has not applied this section:

(b) **IFRS income** is the total amount of income for the IFRS lease for all income years, including when the person has not applied this section:

(c) **expenditure** is the amount of expenditure for the IFRS lease for all income years, ignoring this section.

Transitional deduction: retrospective treatment spread forward

(7) If the person has applied NZ IFRS 16 retrospectively for the IFRS lease or has not applied this section for the IFRS lease while they have applied NZ IFRS 16 for it, then the person is allowed a deduction for a positive amount ~~or~~ and has income for a negative amount, spread in equal proportions over the income year and the following 4 income years, calculated using the formula—

retrospective accounting expenditure − retrospective tax adjustments − previous tax deductions.

Definition of items in formula

(8) In the formula in **subsection (7)**,—

(a) **retrospective accounting expenditure** is the total amount of expenditure or loss recognised under NZ IFRS 16 for the IFRS lease for the income years that the person has applied NZ IFRS 16 retrospectively for the IFRS lease or has not applied this section for the IFRS lease while they have applied NZ IFRS 16 for it, if the amount is in accordance with NZ IFRS 16:

(b) **retrospective tax adjustments** is the total amount of adjustments and deductions in **subsections (3)(b), (c), and (d) and (4)** for the income years that the person has applied NZ IFRS 16 retrospectively for the IFRS lease or has not applied this section for the IFRS lease while they

have applied NZ IFRS 16 for it, treating **subsections (3)(b), (c), and (d) and (4)** as applying for those income years:

(c) **previous tax deductions** is the total amount of deductions not in accordance with NZ IFRS 16 and not provided by this section, for the income years that the person has applied NZ IFRS 16 retrospectively for the IFRS lease or has not applied this section for the IFRS lease while they have applied NZ IFRS 16 for it.

Defined in this Act: amount, deduction, income, income year, NZ IFRS 16, operating lease, person, personal property lease asset

(2) **Subsection (1)** applies for income years starting on or after 1 January 2019.

24 Section EL 2 amended (Outline of subpart: specific provisions)

(1) In section EL 2(5), replace the words before paragraph (a) with "The following sections set out the properties to which the deduction allocation rule in section EL 4 does not apply:".

(2) **Subsection (1)** applies to the 2019–20 and later income years.

25 Section EL 3 amended (Definitions for this subpart)

(1) In section EL 3, definition of **residential rental property**,—

(a) in paragraph (b), replace "residential land." with "residential land; and":

(b) after paragraph (b), insert:

(c) does not include properties that are excluded from the application of section EL 4 by sections EL 9, EL 10, EL 11, EL 12, and EL 13.

(2) **Subsection (1)** applies to the 2019–20 and later income years.

26 Section EW 15I amended (Mandatory use of yield to maturity method for some arrangements)

(1) In section EW 15I(1)(b)(iib), replace "NZIAS 17" with "NZ IFRS 16".

(2) In section EW 15I, list of defined terms, replace "NZIAS 17" with "NZ IFRS 16".

27 Section EW 48 amended (Anti-avoidance provisions)

(1) In section EW 48(1)(c), replace "person)." with "person); or".

(2) After section EW 48(1)(c), insert:

(d) **Sections GC 20 and GC 21** (which relate to purchase price allocation).

(3) **Subsection (~~1~~2)** applies for agreements for the disposal and acquisition of property entered into on or after ~~1 April 2021~~1 July 2021.

28 Section EX 21 amended (Attributable CFC amount and net attributable CFC income or loss: calculation rules)

(1) In section EX 21(26), delete "the life insurance rules do not apply and".

(2) In section EX 21, list of defined terms, delete "life insurance rules".

29 Section EX 28 amended (Meaning of FIF)

(1) In section EX 28(c), replace "life insurance rules" with "rules for life insurers".

(2) In section EX 28, list of defined terms, delete "life insurance rules".

30 Section EY 5 amended (Part-year tax calculations)

In section EY 5(2), replace "in the new life insurance rules and in the rules they replace" with "in the rules for life insurers".

31 Section EY 7 amended (Meaning of claim)

(1) In the heading to section EY 7(1), replace "*life insurance rules*" with "*rules for life insurers*".

(2) In section EY 7(1), words before paragraph (a), replace "life insurance rules" with "rules for life insurers".

(3) In section EY 7, list of defined terms, delete "life insurance rules".

32 Section EY 11 amended (Superannuation schemes providing life insurance)

(1) In section EY 11(8), replace "life insurance rules" with "rules for life insurers".

(2) In section EY 11, list of defined terms, delete "life insurance rules".

33 New section EZ 4B inserted (Cattle destroyed because of *Mycoplasma bovis*: spreading)

(1) After section EZ 4, insert:

EZ 4B Cattle destroyed because of *Mycoplasma bovis*: spreading

When this section applies

(1) This section applies when—

(a) a person who owns or carries on a business has mixed-age cows on hand at the start of an income year (the **cull year**) before the 2028–29 income year that they—

(i) ~~hold for the purposes of sale or exchange~~use for breeding in the ordinary course of carrying on the business; and

(ii) valued under the national standard cost scheme or the cost price method in the previous income year; and

(b) in the cull year, some or all of the person's cattle (the **destroyed cattle**) are destroyed, because of *Mycoplasma bovis*, pursuant to—

(i) a power exercised under section 121 of the Biosecurity Act 1993:

(ii) a direction given under section 122 of that Act; and

(c) either,—

(i) if the cull year is before the 2019–20 income year, the number of mixed-age cows valued under the national standard cost scheme or the cost price method that the person has on hand at the end of the income year following the cull year is at least 75% of the number of mixed-age cows valued under the national standard cost scheme or the cost price method that the person had on hand at the start of the cull year; or

(ii) in any other case, the number of mixed-age cows valued under the national standard cost scheme or the cost price method that the person expects to have on hand at the end of the income year following the cull year is at least 75% of the number of mixed-age cows valued under the national standard cost scheme or the cost price method that the person had on hand at the start of the cull year.

Timing of income

(2) The person may choose to allocate the amount of income calculated using the formula in **subsection (5)** equally between the 6 income years following the cull year.

Timing of deduction

(3) When a person makes an election under **subsection (2)**, part of any deduction that the person is allowed for the value that their livestock valued under subpart EC (Valuation of livestock) had at the end of the income year before the cull year, as calculated under section EC 2 (Valuation of livestock), is allocated equally between the 6 income years following the cull year. The part must reflect the value, as calculated under that section at the end of the income year before the cull year using whichever of the national standard cost scheme or the cost price method the person used in the income year before the cull year, of the same number of each class of livestock to which the amount of income allocated under **subsection (2)** relates.

Business ceasing ~~or owner's death~~

(4) If the person stops owning or carrying on the business~~, or if the person is a natural person who owns the business and who dies,~~ in an income year (the **cessation year**) before the seventh income year following the cull year, to the extent to which it has not been allocated to income years before the cessation year,—

(a) the amount of income calculated using the formula in **subsection (5)** is allocated to the cessation year; and

(b) the part of any deduction allocated under **subsection (3)** is allocated to the cessation year.

First formula

(5) The formula referred to in **subsections (2) and (4)** is—

$$\Sigma(\text{number} \times (\text{sale proceeds} + \text{compensation}) \div \text{culled stock}).$$

Definition of items in formula

(6) The items in the formula in **subsection (5)** are defined in **subsections (7) to (11)**.

Σ

(7) **Σ** is the symbol for the summation of the amounts calculated using the formula in the brackets that follow that symbol for each of the following classes of each of the beef cattle and dairy cattle types of livestock:

(a) rising 1 year heifers:

(b) rising 2 year heifers:

(c) mixed-age cows:

(d) breeding bulls.

Number

(8) **Number**, for a class of livestock, is the number that is the lesser of the following 2 numbers, or the first number if they are the same:

(a) the number that is the greater of zero and the number calculated using the formula in **subsection (12)**:

(b) the number of livestock of that class that ~~are part of the destroyed cattle.~~—

(i) were breeding stock or stock that the person expected to be capable of, and intended to be used for, breeding upon reaching maturity; and

(ii) the person valued under the national standard cost scheme or the cost price method in the income year before the cull year.

Sale proceeds

(9) **Sale proceeds**, for a class of livestock, is the amount of income the person derives as consideration for the disposal of livestock of that class, including their carcasses, that are part of the destroyed cattle.

Compensation

(10) **Compensation**, for a class of livestock, is the amount of income the person derives that is compensation to which the person is entitled under section 162A of the Biosecurity Act 1993 and that the person receives by the end of the income year following the cull year, but only to the extent to which that compensation is for—

(a) any excess of the value of the destroyed cattle that belong to that class used in the calculation of that compensation over the amount of income described in **subsection (9)** for that class; and

(b) any excess of the cost of replacement cattle of the same class that the person acquires and intends be used for breeding over the amount of income that would, in the absence of this paragraph, be described in this subsection.

Culled stock

(11) **Culled stock**, for a class of livestock, is the number of livestock of that class that are part of the destroyed cattle.

Second formula

(12) The formula referred to in **subsection (8)** is—

valuation method breeding stock + culled stock – opening stock.

Definition of items in second formula

(13) In the formula in **subsection (12)**, for a class of livestock,—

(a) **valuation method breeding stock** is the number of livestock of that class that—

(i) were breeding stock or stock that the person expected to be capable of, and intended be used for, breeding upon reaching maturity; and

(ii) the person valued under the national standard cost scheme or the cost price method in the income year before the cull year:

(b) **culled stock** is the number of ~~the~~ livestock of that class that are part of the destroyed cattle:

(c) **opening stock** is the number of livestock of that class that the person had on hand at the start of the cull year.

How elections made

(14) A person makes an election under **subsection (2)** by notifying the Commissioner,—

(a) if the cull year is the 2020–21 income year or an earlier income year, by the date of filing their return of income for the 2020–21 income year; or

(b) in any other case, by the date of filing their return of income for the cull year.

Elections irrevocable

(15) An election made under **subsection (2)** cannot be revoked.

When election treated as never having been made

(16) A person who makes an election under **subsection (2)** is treated as never having made the election if the number of mixed-age cows valued under the

national standard cost scheme or the cost price method that the person has on hand at the end of the income year following the cull year is less than 75% of the number of mixed-age cows valued under the national standard cost scheme or the cost price method that the person had on hand at the start of the cull year.

Relationship with sections CG 6 and DB 49

(17) This section overrides sections CG 6 (Receipts from insurance, indemnity, or compensation for trading stock) and DB 49 (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Defined in this Act: amount, business, class, Commissioner, cost price, deduction, income, income year, national standard cost scheme, notify, return of income

(2) **Subsection (1)** applies for the 2017–18 and later income years.

34 Section FE 2 amended (When this subpart applies)

(1A) After section FE 2(1)(cc), insert::

(cd) the trustee of a trust on which a non-resident makes a settlement in or before the income year and for which 50% or more of the value of settlements made on the trust in or before the income year is from settlements made by the non-resident or by a person who is associated with the non-resident in the income year:

(1AB) Repeal section FE 2(1)(d)(i).

(1) Replace the heading to section FE 2(4) with "*Association between person and non-resident relative for subsection (1)*".

(1B) Repeal section FE 2(4)(b).

~~(2) After section FE 2(4), insert:~~

~~*Association between settlor of resident trust and non-resident company or non-resident trust for subsection (1)*~~

~~(4B) If a person who is a resident of New Zealand makes a settlement on a trust that is resident in New Zealand, the person is not associated as a consequence, for the purposes of subsection (1)(d)(i), with—~~

~~(a) a non-resident company in which the resident has an interest, if the company does not make a settlement on the resident trust:~~

~~(b) a non-resident trust on which the resident makes a settlement, if the non-resident trust does not make a settlement on the resident trust.~~

~~(3) **Subsection (2)** applies for income years beginning on or after the date on which this Act receives the Royal assent.~~

35 Section FE 6 amended (Apportionment of interest by excess debt entity)

(1) In the heading for section FE 6(2), replace "*Formula*" with "*General formula*".

(2) In section FE 6(2), replace "The excess debt entity" with "An excess debt entity having a worldwide group that is not given by section FE 31D".

(2B) In section FE 6(2), the formula, replace "(group debt percentage – threshold amount) ÷ group debt percentage" with "group debt factor".

(3) In section FE 6(3), after "formula", insert "in subsection (2)".

(3B) After section FE 6(3)(c), insert:

(cb) **group debt factor** is—

(i) 1, if the excess debt entity's New Zealand group has a debt percentage for the income year equal to zero; or

(ii) the amount calculated by subtracting from 1 the amount calculated by dividing the threshold amount in paragraph (e) for the excess debt entity by the group debt percentage in paragraph (d) for the excess debt entity:

(3C) Repeal section FE 6(3)(e)(iiib).

(4) After section FE 6(3), insert:

Formula for excess debt entities with worldwide group given by section FE 31D

(3B) An excess debt entity having a worldwide group that is given by section FE 31D is treated under section CH 9 as deriving in the income year an amount of income that is the greater of zero and the amount calculated for the income year using the formula—

(related interest – mismatch + FRD2) × (total debt – concession) ÷ total debt × ~~(group NZ debt percentage – 60%) ÷ (group NZ debt percentage – group world debt percentage)~~group debt comparison factor.

Definition of items in formula

(3C) In the formula in **subsection (3B)**,—

(a) **related interest** is the whole amount of the excess debt entity's interest, incurred under financial arrangements meeting the requirements of section FE 18(3B) for removal of a financial arrangement from the measurement of total group debt for the entity's worldwide group, that would be allowed, in the absence of subpart FH, as a deduction under any of sections DB 6 to DB 8 less—

(i) the total amount of deductions allowed for interest payable to a company that is a member of the entity's New Zealand group under sections FE 3 and FE 28 and not included in the amount given by **subparagraph (ii)**; and

(ii) the total amount of deductions allowed for interest payable under a financial arrangement excluded from the total group debt for the entity's New Zealand group under section FE 15:

(b) **mismatch** is the total of amounts denied as deductions in the income year under section FH 3 as unrecognised amounts under section FH 3(2) and as interest under sections FH 7 and FH 11:

(c) **FRD2** is the total amount of dividends paid by the excess debt entity for fixed-rate foreign equity or fixed-rate shares that—

(i) are issued by the entity; and

(ii) are held by a person resident in New Zealand who is not a company that is a member of the entity's New Zealand group; and

(iii) would be removed under section FE 18(3B) from the measurement of total group debt of the entity's worldwide group if that provision applied to fixed-rate foreign equity and fixed-rate shares:

(d) **total debt** is the total amount of the debt of the excess debt entity's New Zealand group for the income year as calculated under section FE 15, before allowing for a reduction under section FE 13:

(e) **concession** is any reduction allowed under section FE 13 in the total group debt of the excess debt entity's New Zealand group for the income year, averaged when section FE 8(1)(a) or (b) applies:

~~(f) **group NZ debt percentage** is the debt percentage of the excess debt entity's New Zealand group for the income year:~~

(f) **group debt comparison factor** is—

(i) 1, if the excess debt entity's New Zealand group or the excess debt entity's worldwide group has a debt percentage under section FE 12(3) equal to zero for the income year; or

(ii) the amount calculated using the formula in **subsection (3D)**, if **subparagraph (i)** does not apply.

~~(g) **group world debt percentage** is the debt percentage of the excess debt entity's worldwide group for the income year.~~

Formula for group debt comparison factor

(3D) The group debt comparison factor under **subsection (3C)(f)(ii)** for an excess debt entity and an income year is the amount calculated using the formula—

(New Zealand group debt percentage – threshold amount) ÷ (New Zealand group debt percentage – worldwide group debt percentage).

Definition of item in formula

(3E) In the formula in **subsection (3D)**, **threshold amount** is the amount that is the greater of 60% and the debt percentage of the excess debt entity's worldwide group for the income year.

(5) In section FE 6(4), replace "subsection (2)" with "subsection (2) or **(3B)**" in each place.

(6) Replace section FE 6(5), other than the heading, with:

(5) The amount of income for which the company may make the election under subsection (4), when added to any other income that the company chooses to treat itself as deriving under subsection (4), must not exceed—

(a) the total amount of deductions that the company has for interest in the income year, except if **paragraph (b)** applies; or

(b) the total amount of the company's interest, incurred under financial arrangements meeting the requirements of section FE 18(3B), if the excess debt entity has a worldwide group given by section FE 31D.

(7) In section FE 6, list of defined terms, insert "dividend", "resident in New Zealand", and "total worldwide debt".

36 Section FE 12 amended (Calculation of debt percentages)

(1) In section FE 12(2), after "section FE 5(1)(a)", insert "or (ab)".

(2) Replace section FE 12(3), other than the heading, with:

(3) A group has a debt percentage equal to zero, except if the amount of the item group assets given by subsection (3B)(b) exceeds the amount of the item non-debt liabilities given by subsection (3B)(c), when the group has a debt percentage calculated, on a consolidated basis for an income year or accounting year as applicable, using the formula—

group debt ÷ (group assets – non-debt liabilities).

37 Section FE 22 amended (Notional offshore investment)

In section FE 22(3)(b)(ii), replace "subparagraph (i):" with "subparagraph (i); or".

37B Section FH 3 amended (Payments under financial instruments producing deduction without income)

(1) In section FH 3(2)(a), delete "outside New Zealand".

(2) In section FH 3(2)(b), replace "tax law" with "taxation law".

(3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2018.

37C Section FH 7 amended (Payments to person outside New Zealand producing deduction without income)

(1) Replace section FH 7(1)(b) with:

(b) under the taxation law of the payee jurisdiction, the amount is treated as being—

(i) received by the payee in a country or territory outside the payee jurisdiction:

(ii) income of a person who is not the payee; and

(bb) if the amount does not meet the requirements of **paragraph (b)(i)** and meets the requirements of **paragraph (b)(ii)** by being treated as the income of a person who is not the payee, the person is in the same control group as the payer or the amount is a payment under a structured arrangement; and

(2) Replace section FH 7(1)(e) with:

(e) if the amount meets the requirements of **paragraph (b)(i)**, an equivalent payment by the payer would have been subject to taxation as income of the payee under the taxation law of the payee jurisdiction if the equivalent payment were treated as being received by the payee in the payee jurisdiction; and

(f) if the amount meets the requirements of **paragraphs (b)(ii) and (bb)**, an equivalent payment by the payer would have been subject to taxation as income of the person who is treated as deriving the income under the taxation law of the payee jurisdiction if the equivalent payment were treated as being received by the person in the country or territory where that person is resident.

(3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2018.

37D Section FH 12 amended (Offset of mismatch amounts against surplus assessable income)

(1) In section FH 12(3), the formula, replace "exempt" with "deductionless".

(2) In section FH 12(4)(c), words before subparagraph (i), replace "**exempt**" with "**deductionless**".

(3) In section FH 12(4)(c)(i), after "group)", insert "or excluded income under section CX 60 (Intra-group transactions)".

(4) In section FH 12(10), words before paragraph (a), delete "resident in New Zealand" where it appears.

(5) **Subsections (1) to (4)** apply for income years beginning on or after 1 July 2018.

38 Section GB 20 amended (Arrangements involving petroleum and mineral mining)

In section GB 20(1)(a)(ii), replace "**expenditure**):" with "**expenditure**); or".

38B Section GC 8 amended (Insufficient amount receivable by person)

(1) In section GC 8(2)(a), replace "arrangement" with "transfer pricing arrangement".

(2) Replace section GC 8(2)(b) with:

(b) the increase under **subsection (1)** in the amount receivable by the taxpayer—

(i) produces an increase in the amount that is a deduction of the other party, or would be a deduction of the other party in the absence of sections FH 5, FH 8, and FH 9 (which deny deductions arising from some mismatch situations); or

(ii) if the transfer pricing arrangement is an interest-free loan, would produce an increase in the income of the borrower under subpart FE (Interest apportionment on thin capitalisation) or an increase in the amount that would be a deduction of the borrower in the absence of subpart FH (Hybrid and branch mismatches of deductions and income from multi-jurisdictional arrangements); and

38C Section GC 16 amended (Credit rating of borrower: other than insuring or lending person)

(1) In section GC 16(3)(c), after "40% or more", insert "or has a debt percentage equal to zero".

(2) In section GC 16(4)(b), after "40% or more", insert ", or has a debt percentage equal to zero,".

(3) Replace section GC 16(10)(ab) with:

(ab) if no member of the borrower's worldwide group under subpart FE has long-term senior unsecured debt, the credit rating of the member of the borrower's worldwide group with the highest credit rating, which may be determined without considering the credit ratings of members that are reasonably considered to be unlikely to have the highest credit rating, reduced by,—

(i) if the member has a credit rating lower than BBB+, 1 notch:

(ii) if the member has a credit rating of BBB+ or higher, 2 notches:

39 Section GC 18 amended (Loan features disregarded by rules for transfer pricing arrangements)

(1A) Replace section GC 18(4), other than the heading, with:

(4) A term of more than 5 years for a cross-border related borrowing (the **borrowing**) may be adjusted under subsection (8) if—

(a) the borrower is referred to as an insuring or lending person in section GC 15(2)(a), (b), or (c), or is associated with such a person, and the exception in subsection (10) does not apply:

(b) the borrower is not referred to as an insuring or lending person in section GC 15(2)(a), (b), or (c), and is not associated with such a person and, for the borrowing, either or both—

(i) the term of the borrowing is more than the period that is the weighted average of the terms of the financial arrangements included in the total group debt of the borrower's worldwide group under subpart FE (Interest apportionment on thin capitalisation):

(ii) the amount of the borrowing is more than the amount that is 4 times the total value of the financial arrangements included in the total group debt of the borrower's worldwide group under subpart FE.

(1AB) In section GC 18(5)(a)(i), delete "(Interest apportionment on thin capitalisation)".

(1) In section GC 18(5)(a)(ii), replace "associated persons" with "associated persons excluding cross-border related borrowing".

(2) In section GC 18(5)(b)(ii), replace "associated persons" with "associated persons excluding cross-border related borrowing".

(3) In section GC 18(7)(c)(ii), replace "associated persons" with "associated persons excluding cross-border related borrowing".

(4) In section GC 18(8)(a)(ii), replace "total value of loans" with "total value of loans that are cross-border related borrowing or are" in each place.

(5) In section GC 18(8)(a)(ii), replace "associated persons and having" with "associated persons, and having".

(6) In section GC 18(8)(b), in the words before the paragraphs, replace "total value of loans" with "total value of loans that are cross-border related borrowing or are".

(7) In section GC 18(8)(b), in the words before the paragraphs, replace "associated persons and having" with "associated persons, and having".

(8) In section GC 18(8)(b)(i), replace "total value of loans" with "total value of loans that are cross-border related borrowing or are".

(9) In section GC 18(8)(b)(iii), replace "associated persons" with "associated persons excluding cross-border related borrowing".

(10) In section GC 18(9)(a)(ii), replace "associated persons" with "associated persons excluding cross-border related borrowing".

(11) In section GC 18(9)(b), in the words before the paragraphs, replace "associated persons" with "associated persons or that are cross-border related borrowing".

(12) In section GC 18(9)(b)(iii), replace "associated persons" with "associated persons excluding cross-border related borrowing".

(13) **Subsections (1) to (12)** apply for returns of income filed on or after the introduction of the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill.

40 New heading and sections GC 20 and GC 21 inserted

(1) After section GC 19, insert:

Purchase price allocation

~~GC 20 Effect of agreed purchase price allocation~~

~~*When this section applies*~~

~~(1)~~ ~~This section applies when—~~

~~(a)~~ ~~a person (**person A**) disposes of, to another person (**person B**), property (the **purchased property**) to which income or deduction provisions of this Act apply along with other property to which other income or deduction provisions of this Act apply or don't apply at all; and~~

~~(b)~~ ~~person A and person B have agreed, and recorded in a document, the amount (the **agreed amount**) allocated to the purchase price of the purchased property before the earlier of—~~

~~(i)~~ ~~the day person A files a return of income in relation to their tax position for the purchased property:~~

~~(ii)~~ ~~the day person B files a return of income in relation to their tax position for the purchased property.~~

~~*Agreed amount enforced, at market*~~

~~(2)~~ ~~The purchased property—~~

~~(a)~~ ~~is treated as disposed of and acquired for the agreed amount; or~~

~~(b)~~ ~~may be treated by the Commissioner as disposed of and acquired for an amount that reflects its respective market value in relation to the other property disposed of under **subsection (1)(a)**, if the Commissioner considers the agreed amount does not reflect that value.~~

~~*Exception: low value depreciable property*~~

~~(3)~~ ~~**Subsection (2)(b)** does not apply to purchased property that is an item of depreciable property that, together with other materially identical property disposed of under **subsection (1)(a)**, has been allocated consideration of less than $1 million, if—~~

~~(a)~~ ~~the agreed amount for the purchased property is equal to or less than the original cost of the purchased property for person A; and~~

~~(b)~~ ~~the agreed amount for the purchased property is equal to or greater than its adjusted tax value reduced by the amount of depreciation loss person A would have for the property in the year of disposal for the period before the change in ownership of the property (the **part-year period**) using the relevant depreciation method for the part-year period, pro-rata; and~~

~~(c)~~ ~~the adjusted tax value for the purchased property is $10,000 or less.~~

~~Defined in this Act: adjusted tax value, Commissioner, deduction, depreciable property, depreciation loss, dispose, financial arrangement, income, return of income, revenue account property, tax position~~

GC 21 Purchase price allocation required

When this section applies

(1) This section applies when—

(a) a person (**person A**) disposes of, to another person (**person B**), property (the **purchased property**) to which income or deduction provisions of this Act apply along with other property to which other income or deduction provisions of this Act apply or don't apply at all; and

(b) person A and person B have not agreed, and recorded in a document, the amount allocated to the purchase price of the purchased property before the earlier of—

(i) the day person A files a return of income in relation to their tax position for the purchased property:

(ii) the day person B files a return of income in relation to their tax position for the purchased property.

Allocated amount: person A

(2) Person A must notify both the Commissioner and person B of the amount (the **allocated amount**) allocated by person A to the purchase price of the purchased property within 2 months of the change in ownership of the purchased property. The allocated amount must reflect the purchased property's respective market value in relation to the other property disposed of under **subsection (1)(a)**.

Allocated amount: person B

(3) If person A fails to comply with **subsection (2)**, person B must notify the Commissioner and person A of the amount (the **allocated amount**) allocated by person B to the purchase price of the purchased property. The allocated amount must reflect the purchased property's respective market value in relation to the other property disposed of under **subsection (1)(a)**.

Allocated amount enforced, at market

(4) The purchased property—

(a) is treated as disposed of and acquired for the allocated amount under **subsection (2) or (3)** as the case may be; or

(b) may be treated by the Commissioner as disposed of and acquired for an amount that reflects its respective market value in relation to the other property disposed under **subsection (1)(a)**, if the Commissioner considers the relevant amount does not reflect that value.

Exception: de minimis threshold

(5) **Subsections (2), (3), and (4)(a)** do not apply if—

(a) the total consideration for all of the property disposed of as described in **subsection (1)(a)** is less than $1 million; or

~~(b) the total consideration allocated by person B for all of the property disposed of as described in **subsection (1)(a)** to which deduction provisions of this Act apply for person B is less than $100,000.~~

~~*Exception: low value depreciable property*~~

~~(6) In relation to an allocation under **subsection (2)**, **subsection (4)(b)** does not apply to purchased property that is an item of depreciable property that, together with other materially identical property disposed of under **subsection (1)(a)**, has been allocated consideration of less than $1 million, if—~~

~~(a) the allocated amount is less than the original cost of the purchased property for person A; and~~

~~(b) the allocated amount is equal to or greater than its adjusted tax value reduced by the amount of depreciation loss person A would have for the property in the year of disposal for the period before the change in ownership of the property (the **part-year period**) using the relevant depreciation method for the part-year period, pro-rata; and~~

~~(c) the adjusted tax value for the purchased property is $10,000 or less.~~

~~*No allocated amount*~~

~~(7) In the absence of an allocated amount, person A is treated as disposing of the purchased property for an amount that reflects its respective market value in relation to the other property disposed of under **subsection (1)(a)**, and person B is treated as acquiring the purchased property for nil consideration.~~

~~*Allocated amount: person A requirements*~~

~~(8) Despite **subsection (2)**, an allocated amount that person A notifies to both the Commissioner and person B under **subsection (2)** must be equal to or greater than—~~

~~(a) to the extent to which the purchased property is an item of depreciable property, the amount of the purchased property's adjusted tax value reduced by the amount of depreciation loss person A would have for the purchased property in the year of disposal for the period before the change in ownership of the purchased property (the **part-year period**) using the relevant depreciation method for the part-year period, pro-rata:~~

~~(b) to the extent to which the purchased property is revenue account property, the amount of the deduction that person A has for the purchased property at the time of disposal:~~

~~(c) to the extent to which the purchased property is a financial arrangement, the amount of consideration that together with all other amounts of consideration would give an amount of income or expenditure under section EW 31 (Base price adjustment formula) equal to the income or expenditure that person A would have for the purchased property in the year of disposal for the period before the change in ownership of the purchased~~

~~property (the **part-year period**) using the relevant spreading method for the purchased property for the part-year period, pro-rata.~~

~~*Amortised property*~~

~~(9) Despite **subsections (2) and (3)**, the allocated amount for purchased property to which section DO 4, DO 12, or DP 3 (which relate to amortised property) applies is the diminished value amount for the purchased property under the relevant section. Person A must notify person B of the diminished value amount, and the allocated amount for Person B is nil if Person A fails to notify person B of the diminished value amount.~~

~~Defined in this Act: adjusted tax value, Commissioner, deduction, diminished value, depreciable property, depreciation loss, dispose, financial arrangement, income, return of income, revenue account property, tax position~~

GC 20 Effect of purchase price allocation agreement

When this section applies

(1) This section applies when—

(a) for consideration, a person (**person A**) disposes (the **disposal**), to another person (**person B**), items of property (the **purchased property**) that, for person A or for person B, fall into 2 or more of the following classes (the **classes of purchased property**)—

(i) trading stock, other than timber or a right to take timber:

(ii) timber or a right to take timber:

(iii) depreciable property, other than buildings:

(iv) buildings that are depreciable property:

(v) financial arrangements:

(vi) purchased property for which the disposal does not give rise to assessable income for person A or deductions for person B; and

(b) person A and person B have agreed, and recorded in a document, amounts of the total consideration allocated to any of the classes of purchased property before the earlier of—

(i) the day person A files a return of income in relation to their tax position for the purchased property:

(ii) the day person B files a return of income in relation to their tax position for the purchased property.

Agreed amount enforced, at market

(2) A class of purchased property—

(a) is treated as disposed of and acquired for the relevant allocated amount; or

(b) may be treated by the Commissioner as disposed of and acquired for an amount that reflects the relative market value of the class of purchased

property, proportional to the other classes of purchased property, if the Commissioner considers the allocated amount does not reflect that value.

Exception: low value depreciable property

(3) **Subsection (2)(b)** does not apply to an item of purchased property that is an item of depreciable property, if—

(a) the original cost of the item for person A is less than $10,000; and

(b) the total allocated amount for the item and for any identical property is less than $1 million; and

(c) the allocated amount for the item is—

(i) no greater than its original cost for person A; and

(ii) no less than its tax book value as described in **section GC 21(13)(c)**.

Defined in this Act: adjusted tax value, Commissioner, deduction, depreciable property, depreciation loss, dispose, financial arrangement, income, return of income, revenue account property, tax position, trading stock

GC 21 Purchase price allocation required: no agreement

When this section applies

(1) This section applies when—

(a) for consideration, a person (**person A**) disposes (the **disposal**), to another person (**person B**), items of property (**purchased property**) that, for person A or for person B, fall into 2 or more of the following classes (**classes of purchased property**) and the relevant person uses different income tax treatments for 2 or more of the classes of purchased property—

(i) trading stock, other than timber or a right to take timber:

(ii) timber or a right to take timber:

(iii) depreciable property, other than buildings:

(iv) buildings that are depreciable property:

(v) financial arrangements:

(vi) purchased property for which the disposal does not give rise to assessable income for person A or deductions for person B; and

(b) person A and person B have not agreed, and have not recorded in a document, amounts of the total consideration allocated to any of the classes of purchased property before the earlier of—

(i) the day person A files a return of income in relation to their tax position for the purchased property:

(ii) the day person B files a return of income in relation to their tax position for the purchased property.

When this section does not apply

(2) This section does not apply if—

(a) the total consideration for the purchased property in the disposal is less than $1 million; or

(b) the only purchased property in the disposal is residential land together with its chattels, and the total consideration for them is less than $7.5 million.

Allocated amount: person A

(3) If **subsection (1)(a)** applies for person A, person A may notify both the Commissioner and person B of the amounts (the **allocated amounts**) allocated by person A to the classes of purchased property within 3 months of the change in ownership of the purchased property. An allocated amount must reflect the greater of—

(a) the relative market value of the relevant class of purchased property proportional to the other classes of purchased property; and

(b) person A's tax book value for the relevant class of property described in **subsection (1)(a)(i) to (v)**.

Allocated amount: person A: excess allocation

(4) If the total amounts that would be allocated by **subsection (3)** exceed the consideration payable for all of the classes of purchased property, then the excess is applied—

(a) first, to reduce any amount allocated to the class of property described in **subsection (1)(a)(vi)**:

(b) second, to reduce, pro rata, any amounts allocated to the classes of property described in **subsection (1)(a)(i) to (v)**.

Allocated amount: person B

(5) If person A does not notify person B as provided for in **subsection (3)**, person B may notify the Commissioner and person A of the amounts (the **allocated amounts**) allocated by person B to the classes of purchased property within 6 months of the change in ownership of the purchased property. An allocated amount must reflect the relative market value of the relevant class of purchased property proportional to the other classes of purchased property.

Non-compliance

(6) If person A and person B do not notify the relevant people in accordance with **subsection (3) or (5)**, the Commissioner may allocate, to the relevant classes of purchased property (the **allocated amounts**),—

(a) the amounts allocated by person A to the classes of purchased property:

(b) the amounts allocated by person B to the classes of purchased property:

(c) amounts that reflect the relative market value of the relevant class of purchased property, proportional to the other classes of purchased property.

Allocated amounts enforced, at market

(7) A class of purchased property is treated as disposed of and acquired for the relevant allocated amount provided by **subsections (3) to (6)**.

No deduction until allocation

(8) Person B's deductions in relation to consideration for purchased property are not allocated to an income year, and are not included in person B's annual total deductions for any tax year, except to the extent provided by this section.

Allocation when allocation notice timely

(9) Person B's deductions in relation to consideration for purchased property are allocated to income years in accordance with section BD 4 (Allocation of deductions to particular income years), if allocation notification occurs in the income year that the purchased property is disposed of (the **purchase year**) or if the deductions are not pre-allocation deductions.

Allocation when allocation notice not timely

(10) If **subsections (1)(a) and (5)** apply to person B and if allocation notification occurs in an income year after the purchase year, then pre-allocation deductions are allocated to the earliest year (the **allocation year**) for which person B's return of income is not filed or due at the time of allocation notification. The allocation year may correspond to the purchase year, but the allocation year must not be earlier than the purchase year. *Example:* the purchase year for purchased property is 2025–26. 2027–28 is the income year that allocation notification occurs. At the time of allocation notification, person B's return of income for 2026–27 is not filed or due. Consequently, pre-allocation deductions are allocated to the 2026–27 income year.

Exception: low value depreciable property

(11) **Subsection (6)(c)** does not apply to an item of purchased property that is an item of depreciable property, if—

(a) the original cost of the item for person A is less than $10,000; and

(b) the total allocated amount for the item and for any identical property is less than $1 million; and

(c) the allocated amount for the item is—

(i) no greater than its original cost for person A; and

(ii) no less than its tax book value.

Relationship with subject matter

(12) This section overrides a provision of this Act that expressly requires the use of the market value for purchased property, to the extent to which **subsection**

(7) treats the relevant class of purchased property as disposed of and acquired for an amount that is not market value.

Definitions

(13) In this section and **section GC 20**,—

(a) **allocation notification** means the earliest of the following:

(i) the time when person B's notification of person B's allocation is provided to the Commissioner in the form prescribed by the Commissioner:

(ii) the time when the Commissioner's notification of the Commissioner's allocation under **subsection (6)** is provided to person B:

(b) **pre-allocation deduction** means person B's deductions in relation to consideration for purchased property that, ignoring this section, would be allocated to an income year before the income year that allocation notification occurs.

(c) **tax book value**, for a class of property, means the total amount that person A uses or would use, for purchased property in the class of property, in calculating person A's tax position for their income year in which the change in ownership of the purchased property occurs. The tax book value is adjusted, part-year, for a change in ownership that occurs part-year. *Example:* the tax book value of a financial arrangement is the consideration that would give an amount of income or expenditure under section EW 31 (Base price adjustment formula) equal to the income or expenditure that person A would have for the purchased property in the year of disposal for the period before the change in ownership of the purchased property (the **part-year period**) using the relevant spreading method for the purchased property for the part-year period, pro rata.

Defined in this Act: adjusted tax value, Commissioner, deduction, diminished value, depreciable property, depreciation loss, dispose, financial arrangement, income, residential land, return of income, revenue account property, tax position, trading stock

(2) **Subsection (1)** applies for agreements for the disposal and acquisition of property entered into on or after ~~1 April 2021~~1 July 2021.

40B Section HC 6 amended (Beneficiary income)

(1) After section HC 6(2)(a), insert:

(ab) an amount of income derived by a trustee of a trust in an income year in which the trust is an approved unit trust referred to in clause 2 of the Income Tax Act (Exempt Unit Trusts) Order 1990; or

(2) **Subsection (1)** applies for income years beginning on or after 1 April 2021.

41 Section HC 10 amended (Complying trusts)

(1) After section HC 10(1)(ab), insert:

(ac) the requirements of paragraph (a) are not met and the distribution meets the requirements of **section HC 30(4)(ab)**; or

(2) **Subsection (1)** applies for an assessment of a period for which a voluntary disclosure is made before, on, or after 23 March 2020.

42 Section HC 24 amended (Trustees' obligations)

In section HC 24, list of defined terms, delete "cash basis person".

43 Section HC 27 amended (Who is a settlor?)

(1) After section HC 27(2)(b), insert:

(bb) is a beneficiary of the trust who is owed money by the trustee and does not meet the requirements of **subsection (6)**:

(2) Replace the heading to section HC 27(6) with "*Beneficiaries owed money by trustee*".

(3) Replace section HC 27(6)(a) with:

(a) the amount owing at the end of the income year is not more than $25,000:

(4) In section HC 27(6)(b), before "the trustee pays", insert "the amount owing at the end of the income year is more than $25,000 and".

(5) After section HC 27(6), insert:

Determining amount owed to beneficiary

(7) For the purposes of **subsection (6)**, the amount of money owing to a beneficiary at the end of an income year is the amount of the debt at that time, adjusted to include the effect of transactions that are—

(a) made after the end of the income year and by the date given for the income year by section HC 6(1B); and

(b) included in the financial statements of the trust for the income year.

44 Section HC 30 amended (Treatment of foreign trusts when settlor becomes resident)

(1) Replace section HC 30(4)(b) with:

(ab) as a complying trust to the extent to which the distribution consists of an amount derived by the trustee that gives rise on or after the transition date to an income tax liability meeting the requirements of **subsection (4B)**:

(b) as a non-complying trust to the extent to which the distribution consists of an amount derived by the trustee that gives rise on or after the transition date to an income tax liability that is not satisfied before the distribution is made.

(2) In **section HC 30(4)(ab)**, after "subsection (4B)", insert "or section HC 10(1)(ab)".

(3) After section HC 30(4), insert:

Tax shortfall voluntarily disclosed

(4B) An income tax liability meets the requirements of this subsection if—

(a) the income tax liability is satisfied before the distribution is made, other than for the trust as a complying trust under an election under section HC 33; and

(b) the income tax liability gives rise to a tax shortfall for the trustee for an income year ending before the distribution is made; and

(c) where a shortfall penalty arises for the tax shortfall, the shortfall penalty is satisfied before the distribution is made.

(4) **Subsections (1) and (3)** apply for an assessment of a period for which a voluntary disclosure is made before, on, or after 23 March 2020.

(5) **Subsection (2)** applies for income years for which an election under section HC 33 is made on or after 23 March 2020.

44A Section HC 33 amended (Choosing to satisfy income tax liability of trustee)

(1) In section HC 33(5)(b),—

(a) replace "from income derived" with "from an amount derived":

(b) replace "when the income" with "when the amount".

(2) In section HC 33(5)(c), words before subparagraph (i), replace "from income derived" with "from an amount derived".

(3) In section HC 33(5)(d)(ii), replace "the income derived" with "the amount derived".

44B Section HM 36B amended (Calculating PIE schedular tax adjustments for natural person investors)

(1) Replace section HM 36B(1) to (3) with:

When this section applies

(1) This section applies for the purposes of calculating the income tax liability under **section BC 7** (Income tax liability of person with schedular income) of a natural person who is resident in New Zealand and is an investor in a multi-rate PIE to determine whether an adjustment must be made to the person's income tax liability for a tax year for an amount of PIE schedular income.

When this section does not apply

(1B) Despite **subsection (1)**, this section does not apply to a natural person who derives PIE schedular income in the form of beneficiary income from a trust that is not a PIE.

Making PIE schedular tax adjustments

(2) An adjustment must be made to the person's income tax liability for the tax year for a tax credit or tax liability of the person that arises under section HM 47 when—

(a) the person's prescribed investor rate for the tax year has not been applied to some or all of the person's PIE schedular income for the tax year; and

(b) the Commissioner has information described in **subsection (3)** that relates to the person and is available for the tax year.

What must be taken into account in making adjustments

(3) The PIE schedular tax adjustment must take into account—

(a) an amount of a tax credit used by the PIE to satisfy the person's income tax liability for the tax year:

(b) another attributed tax credit that the person has for the tax year, including an unused tax credit under section HM 52 or HM 54, or a tax credit under section LS 4 (Tax credits for certain exiting investors):

(c) an amount that has not been taken into account by the PIE in the calculation for the tax year, whether it is an amount of an adjustment for a tax credit for the person for the tax year or another identified adjustment for the person under sections HM 51 to HM 55 and subpart LS (Tax credits for multi-rate PIEs and investors), as applicable:

(d) whether—

(i) the person has an attributed PIE loss in relation to which the person's prescribed investor rate for the tax year has not been applied:

(ii) an adjustment has been made for the tax year under section HM 48 to the person's investor interest, or a distribution paid to them, or a payment required from them:

(iii) the PIE has a tax credit for the tax year under section LS 1 (Tax credits for multi-rate PIEs) in relation to the amount of loss attributed to the investor:

(iv) a rate under section HM 60(6) applies for the investor for the tax year:

(v) the person holds their investment in the PIE jointly with another person:

(e) any other circumstance of which the Commissioner is aware that affects the application of the person's prescribed investor rate to their attributed PIE income for the tax year.

Adjustment items counted only once

(3B) For the purposes of this section, if a component of an item described in **subsection (3)** is a component of 1 or more other adjustment items, the value of the component is counted only once.

(2) In section HM 36B(4), replace "the result of the calculation in subsection (3)" with "the adjustment".

(3) In section HM 36B(5), replace "the result of the calculation in subsection (3)" with "the adjustment".

(4) Replace section HM 36B(6), other than the heading, with:

(6) For the purposes of this section, and **sections CX 56, DB 53, and LA 6**, **PIE schedular income**—

(a) means an amount of attributed PIE income that a natural person who is resident in New Zealand and is an investor in a multi-rate PIE derives under section CP 1 (Attributed income of investors in multi-rate PIEs) to which the prescribed rates of tax set out in schedule 6, clause 1 (Prescribed rates: PIE investments and retirement scheme contributions) apply; and

(b) includes an amount of attributed PIE loss of the person under **section DB 53** (Attributed PIE losses of certain investors).

(5) In section HM 36B, in the list of defined terms,—

(a) delete "residual income tax":

(b) insert "attributed PIE loss", "Commissioner", "investor interest", and "pay".

44C Section HM 52 amended (Use of foreign tax credits by zero-rated and certain exiting investors)

(1) After section HM 52(2), insert:

PIE schedular tax adjustments for natural person investors

(2B) Subsection (2) does not apply to an investor who is a natural person resident in New Zealand. In this case,—

(a) the amount of the investor's tax credit calculated under this section may only be used in making a PIE schedular tax adjustment under **section HM 36B**; and

(b) the total amount of the tax credit that may be used is limited to the extent of the investor's tax liability on their PIE schedular income.

(2) In section HM 52, in the list of defined terms, insert "PIE schedular income".

44D Section HM 56 amended (Prescribed investor rates: schedular rates)

Repeal section HM 56(2).

44E Section IZ 8 amended (Election to use net loss for 2019–20 or 2020–21 year as tax loss in preceding year)

(1) In section IZ 8(1), words before paragraph (a), replace "a person who has taxable income in the 2018–19 or 2019–20 income year and" with "a person who has taxable income in the 2018–19 or 2019–20 income year, or is in a group of companies with a person who has taxable income in 1 of those years, and has".

(2) In section IZ 8(2), words before paragraph (a), delete "wholly-owned".

(3) In the heading to section IZ 8(3), replace "*wholly-owned group*" with "*group of companies*".

(4) In section IZ 8(3), words before paragraph (a), delete "wholly-owned".

(5) In section IZ 8(3)(b), before "in the absence", insert "for a person who is a member of a wholly-owned group,".

(6) In section IZ 8(3)(b), replace "the other group members" with "the other members of the wholly-owned group" in each place.

44F Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)

Replace section LA 6(1)(i) with:

(i) **section LS 4** (Tax credits for certain exiting investors) and the person is not a natural person, or is a natural person who—

(i) has the tax credit as a beneficiary of the trust:

(ii) uses the tax credit in the calculation of their PIE schedular income under **section HM 36B**:

44G Section LS 3 amended (Tax credits for zero-rated investors)

In section LS 3(3), replace "(Use of foreign tax credits by zero-rated and certain exiting investors)" with "(Use of foreign tax credits by zero-rated investors)".

44H Section LS 4 amended (Tax credits for certain exiting investors)

(1) Repeal section LS 4(3).

(2) After section LS 4(4), insert:

Treatment of credits for individual investors

(4B) Despite subsections (2) and (4), when an exiting investor who is a natural person resident in New Zealand has an available tax credit, the amount must be taken into account in an adjustment under **section HM 36B** (Calculating PIE schedular income adjustments for natural person investors) for the purposes of calculating the income tax liability of the person.

(3) In section LS 4, in the list of defined terms,—

(a) delete "foreign income tax":

(b) insert "natural person" and "resident in New Zealand".

45 Section LY 5 amended (Eligible research and development expenditure)

(1) Replace section LY 5(1)(a) with:

(a) means expenditure or loss, described in schedule 21B, part A, if, for the income year, the expenditure or loss—

(i) directly relates to a research and development activity; and

(ii) is required for a research and development activity; and

(iii) is integral to a research and development activity; but

(2) **Subsection (1)** applies for the 2019–20 and later income years.

46 Section MD 12 amended (Calculation of parental tax credit)

Repeal section MD 12(4).

47 Section MF 7 amended (Orders in Council)

(1) Repeal section MF 7(1)(c).

(2) In the heading to section MF 7(4), delete "*and parental tax credit*".

(3) In section MF 7(4), delete "and the parental tax credit".

(4) In section MF 7, list of defined terms, delete "parental tax credit".

48 Section OB 52 replaced (ICA imputation credit of consolidated imputation group)

(1) Replace section OB 52 with:

OB 52 ICA transfer to consolidated imputation group

When this section applies

(1) This section applies when the nominated company of a consolidated imputation group makes an election under **section OP 22(2)** (Consolidated ICA transfer from group company's ICA) for a group company.

Debit

(2) The group company has an imputation debit for the amount of the credit balance that is transferred to the imputation credit account of the consolidated imputation group.

Table reference

(3) The imputation debit in **subsection (2)** is referred to in table O2: imputation debits, row 25 (transfer to consolidated imputation group's ICA).

Debit date

(4) The debit date is the same as the credit date for the credit to the imputation credit account of the consolidated imputation group for the amount of the credit balance transferred.

Defined in this Act: amount, consolidated imputation group, imputation credit, imputation credit account, imputation debit, nominated company

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

49 Table O2 amended (Imputation debits)

(1) In table O2, replace row 25 with:

25	Amount of credit balance transferred to consolidated imputation group's ICA	credit date for group's imputation credit	section OB 52

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

50 Section OP 22 replaced (Consolidated ICA group company's credit)

(1) Replace section OP 22 with:

OP 22 Consolidated ICA transfer from group company's ICA

When this section applies

(1) This section applies when—

(a) the imputation credit account of a consolidated imputation group has an imputation debit described in a row of table O20: imputation debits of consolidated imputation groups; and

(b) the imputation credit account of a group company has a credit balance; and

(c) the credit balance referred to in **paragraph (b)** existed before the debit referred to in **paragraph (a)** arose in the imputation credit account of the group.

Election

(2) The nominated company of the consolidated imputation group may choose to transfer some or all of the credit balance in the imputation credit account of the group company to the imputation credit account of the group.

Restrictions

(3) The following restrictions apply to a transfer under **subsection (2)**:

(a) the consolidated imputation group and the group company must meet the requirements of section OA 8 (Shareholder continuity requirements for memorandum accounts) for the carrying forward of imputation credits

until the end of the day on which the debit referred to in **subsection (1)(a)** arises in the imputation credit account of the group:

(b) credits in the imputation credit accounts of the group and all group companies must be used to reduce the debit referred to in **subsection (1)(a)** in the order in which the credits arose:

(c) the total amount of the credit balances in the imputation credit accounts of companies in the group referred to in **subsection (1)(a)** that may be transferred to the imputation credit account of the group is limited to the amount of the imputation debit referred to in that paragraph.

How elections made

(4) The nominated company makes an election under **subsection (2)** by recording the amount of the credit balance that it chooses to transfer as—

(a) a debit in the group company's imputation credit account; and

(b) a credit in the group's imputation credit account.

Credit

(5) When the nominated company makes an election under **subsection (2)** for a group company, the consolidated imputation group has an imputation credit for the amount of the credit balance transferred.

Table reference

(6) The imputation credit in **subsection (5)** is referred to in table O19: imputation credits of consolidated imputation groups, row 17 (transfer from group company's ICA).

Credit date

(7) The credit date is the same as the debit date for the debit referred to in **subsection (1)(a)**.

Defined in this Act: amount, company, consolidated imputation group, imputation credit, imputation credit account, imputation debit, nominated company

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

51 Table O19 amended (Imputation credits of consolidated imputation groups)

(1) In table O19, row 17, second column, replace "Group company's credit" with "Amount of credit balance transferred from group company's ICA".

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

52 Section RA 1 amended (What this Part does)

After section RA 1(gb), insert:

(gc) the payment of residential land withholding tax (RWLT), *see* subpart RL; and

53 Section RC 5 amended (Methods for calculating provisional tax liability)

(1) In section RC 5(8), replace "life insurance rules" with "rules for life insurers".

(2) In section RC 5, list of defined terms, delete "life insurance rules".

54 Section RD 24 amended (Exemptions for non-resident contractors)

(1) In section RD 24(1)(a), replace "income" with "assessable income".

(2) In section RD 24, list of defined terms, delete "income" and insert "assessable income".

55 Section RE 2 amended (Resident passive income)

(1) Replace section RE 2(5)(b) with:

> (b) an amount—
>
> (i) of an association rebate that is excluded from being a dividend by section CB 34(5)(a) (Amounts derived by members from mutual associations); or
>
> (ii) that is payable to a person by a company and is treated as being a dividend by sections GB 23 to GB 25 (which relate to excessive remuneration):

(2) In section RE 2, list of defined terms, insert "association rebate".

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

56 Section RE 10C amended (Obligations of custodial institutions in relation to certain payments of investment income)

(1) In section RE 10C(3) replace "RWT" with "the amount of tax".

(2) Replace section RE 10C(6)(b) with:

> (b) whose activities are supervised or regulated under the Financial Markets Conduct Act 2013, the Financial Markets Authority Act 2011, the Financial Advisers Act 2008, or the Reserve Bank of New Zealand Act 1989, or are supervised or regulated under corresponding legislation in another jurisdiction.

57 Section RF 2C amended (Meaning of non-resident financial arrangement income)

(1) Replace section RF 2C(6)(a) with:

> (a) the item **accumulated accruals** is equal to the item **hybrid deductions**:

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2018.

58 Section YA 1 amended (Definitions)

(1) This section amends section YA 1.

(2) In the definition of **annual branch equivalent tax account return**, replace "by a company under sections 77 and 78" with "under section 78".

(3) Replace the definition of **Australian complying superannuation scheme** with:

Australian complying superannuation scheme means—

(a) an entity that is a complying superannuation fund for the purposes of Part 5, Division 2 of the Superannuation Industry (Supervision) Act 1993 (Aust) and that is regulated by the Australian Prudential Regulation Authority:

(b) the Australian Commissioner of Tax (**ACT**), in the ACT's capacity under the Superannuation (Unclaimed Money and Lost Members) Act 1999 (Aust)

(4) In the definition of **business premises**, after "expenditure)", add "and the land sales provisions".

(5) In the definition of **claim**, replace "life insurance rules" with "rules for life insurers".

(5B) In the definition of **class**, replace "and in" with "and in section EZ 4 (Valuation of livestock bailed or leased as at 2 September 1992), and in".

(5C) In the definition of **class**, replace "section EZ 4 (Valuation of livestock bailed or leased as at 2 September 1992)" with "sections EZ 4 and **EZ 4B** (which are terminating provisions relating to livestock)".

(5D) Insert, in appropriate alphabetical order:

contractor labour means, for the purposes of schedule 21B, expenditure by a person's contractor on the salary and wages of the contractor's employees

(5E) In the definition of **cost price**, paragraph (a), replace "subpart EC (Valuation of livestock)" with "subpart EC (Valuation of livestock), and in sections EZ 5, EZ 6, FB 17, and HG 10 (which relate to livestock)".

(5F) In the definition of **cost price**, paragraph (a), replace "and HG 10" with "HB 10, and HG 10".

(5G) In the definition of **cost price**, paragraph (a), replace "EZ 5" with "**EZ 4B**, EZ 5".

(6) In the definition of **dispose**, after paragraph (h), insert:

(i) in **sections GC 20 and GC 21** (which relate to purchase price allocation) includes all events in paragraphs (a) to (h) of this definition and the grant, amendment, or transfer of a property right or interest

(7) In the definition of **dividend**, paragraph (e),—

(a) replace "treated as a dividend under section CB 34(5)," with "excluded from being a dividend under section CB 34(5) (Amounts derived by members from mutual associations) or treated as a dividend under section":

(b) replace "mutual associations, family-owned businesses," with "family-owned businesses".

(7B) In the definition of **dwelling**, replace paragraph (a) with:

(a) means any place configured as a residence or abode, whether or not it is used as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place:

(ab) despite **paragraph (a)**, for the purposes of subpart EE and the definitions of **commercial building**, **commercial fit-out**, and **residential building**, means any place used predominantly as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place:

(8) In the definition of **early life regime application day**, replace "the new life insurance rules, as provided in" with "the amendments to the rules for life insurers made by".

(9) Replace the definition of **group of persons** with:

group of persons—

(a) includes 1 person:

(b) is defined in **section CB 16A(2C)** (Main home exclusion for disposal within 5 years) for the purposes of that section:

(c) is defined in **section CB 16(5)** (Residential exclusion from sections CB 6 to CB 11) for the purposes of that section:

(d) is defined in **section CB 19(2C)** (Business exclusion from sections CB 6 to CB 11) for the purposes of that section

(9B) In the definition of **initial provisional tax liability**, after paragraph (b)(i), insert:

(ib) if 1 or more of the income years 2016–17, 2017–18, 2018–19, and 2019–20 (the **transitional years**) are included in the 4 previous tax years, they did not have residual income tax of more than $2,500 in the included transitional years; and

(10) In the definition of **lease**, paragraph (d), replace "EJ 10 (Personal property lease payments)" with "EJ 10 (Personal property lease payments), **EJ 10B** (IFRS leases)".

(10B) In the definition of **non-refundable tax credit**, in paragraph (fb), replace "beneficiary of a trust" with "beneficiary of a trust, but this paragraph does not apply to the extent to which the tax credit is taken into account in an adjustment under **section HM 36B(2)** (Calculating PIE schedular income adjustments for natural person investors)".

(11) Repeal the definition of **NZIAS 17**.

(12) Insert, in appropriate alphabetical order:

NZ IFRS 16 means New Zealand Equivalent to International Financial Reporting Standard 16, in effect under the Financial Reporting Act 2013 and as amended from time to time, or an equivalent standard issued in its place

(12B) In the definition of **residual income tax**, repeal paragraph (f).

(13) Repeal the definition of **specified living allowance**.

(13B) In the definition of **trading stock**, paragraph (b), replace "and GC 1 to GC 3 (which relate to the disposal of trading stock for inadequate consideration)" with "GC 1 to GC 3 (which relate to the disposal of trading stock for inadequate consideration), and GC 20 and GC 21 (which relate to purchase price allocation)".

(14) **Subsection (7)** applies for the 2008–09 and later income years.

(15) **Subsection (9B)** applies for the 2020–21 and later income years.

~~59~~ ~~Schedule 21 amended (Excluded activities for research and development activities tax credits)~~

~~(1) Replace schedule 21, part A, clause 5 with:~~

~~5 Prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy, and development activities relating to prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy.~~

~~(2) Replace schedule 21, part B, clause 5 with:~~

~~5 Prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy and development activities relating to prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy.~~

~~(3) **Subsections (1) and (2)** apply for the 2019–20 and later income years.~~

59 Schedule 21 amended (Excluded activities for research and development activities tax credits)

(1) Repeal schedule 21, part A, clause 5.

(2) Repeal schedule 21, part B, clause 5.

(3) **Subsections (1) and (2)** apply for the 2019–20 and later income years.

60 Schedule 21B amended (Expenditure or loss for research and development tax credits)

~~(1) After schedule 21B, part B, clause 2, insert:~~

~~2B Expenditure or loss incurred in acquiring property that would be depreciable property in the absence of an election under section EE 8.~~

(1) Replace schedule 21B, part B, clause 2 with:

2 Expenditure or loss incurred in acquiring property that is depreciable property or that would be depreciable in the absence of an election under section EE 8, but ignoring expenditure or loss incurred in making the property.

(2) Replace schedule 21B, part B, clause 3 with:

3 Expenditure or loss, other than amounts for employees or contractor labour in relation to core research and development activities, to the extent to which the expenditure or loss contributes to the cost of tangible depreciable property, ~~unless the property~~ or tangible property that would be depreciable in the absence of an election under section EE 8, but ignoring expenditure or loss for property if the property is used solely in performing a research and development activity, is intended to be used in the future solely in performing a research and development activity, and the expenditure or loss is for a core research and development activity.

(2B) After schedule 21B, part B, clause 3, insert:

3B Expenditure or loss, other than amounts for employees or contractor labour in relation to core research and development activities, incurred by—

(a) a petroleum miner:

(b) a mineral miner:

(c) a person that would be a mineral miner if geothermal energy and all minerals were included on the list of listed industrial minerals in section CU 8.

Expenditure or loss is ignored for the purposes of this clause to the extent to which the expenditure or loss contributes to the cost of tangible depreciable property, if the property is used solely in performing a research and development activity, is intended to be used in the future solely in performing a research and development activity, and the expenditure or loss is for a core research and development activity.

(3) Replace schedule 21B, part B, clause 10 with:

10 Expenditure or loss to acquire land.

(4) In schedule 21B, part B, clause 13, replace "Professional fees" with "Expenditure or loss".

(5) After schedule 21B, part B, clause 13, insert:

13B Expenditure or loss incurred in performing corporate governance activities.

(6) After schedule 21B, part B, clause 20, insert:

20B Expenditure or loss incurred in decommissioning.

20C Expenditure or loss incurred in remediating land.

(6B) In schedule 21B, part B, clause 21,—

(a) replace "terms of, required by, or otherwise related to" with "terms of, or required by,":

(b) replace "scheme." with "scheme. Nor does it include an amount related to a Callaghan Innovation project grant, to the extent to which the amount exceeds the estimated cost of the project specified in the contract for the Callaghan Innovation project grant."

(7) **Subsections (1), (2), (2B), (3), (4), (5), ~~and~~ (6), and (6B)** apply for the 2019–20 and later income years.

61 Schedule 29 amended (Portfolio investment entities: listed investors)

(1) In schedule 29, part A, repeal item 7B.

(2) In schedule 29, part A, after item 9, insert:

11	A lines trust.
12	A company in which a local authority or a lines trust holds— (a) a voting interest of 100%; and (b) if a market value circumstance exists for the company, a market value interest of 100%.

62 Schedule 32 amended (Recipients of charitable or other public benefit gifts)

(1) In schedule 32, insert, in appropriate alphabetical order, "Active Hearts Foundation", "Kiwilink", and "Shimshal Trust".

(2) **Subsection (1)** applies for the 2020–21 and later income years.

63 Schedule 36 amended (Government enterprises)

In schedule 36, part A, insert, in appropriate alphabetical order, "Housing New Zealand Build Limited".

64 Income Tax Act 2007: aligning nomenclature with Social Security Act 2018

The Income Tax Act 2007 is amended as set out in **schedule 1**.

65 Other enactments: consequential amendments aligning nomenclature

The enactments specified in **schedule 2** are amended as set out in that schedule.

Part 3
Amendments to other enactments

Tax Administration Act 1994

66 Tax Administration Act 1994

Sections 67 to 84 amend the Tax Administration Act 1994.

67 Section 3 amended (Interpretation)

(1) This section amends section 3(1).

(2) In the definition of **deferrable tax**,—

(a) in paragraph (c), replace "2007" with "2007:":

(b) after paragraph (c), insert:

(d) an amount of tax for which the person's liability depends on the liability of another person (the **disputant**) for an amount of tax and the disputant has a current dispute with the Commissioner concerning the disputant's liability after making a competent objection or challenge that meets the requirements of paragraph (a) or (b) for the disputant or entering an agreement with the Commissioner referred to in section RP 17B(3)(bb) of the Income Tax Act 2007

(3) Insert, in appropriate alphabetical order:

New Zealand superannuation qualification age means the age at which a person becomes entitled to receive New Zealand superannuation under the New Zealand Superannuation and Retirement Income Act 2001

(4) In the definition of **tax**,—

(a) replace paragraph (a)(iii)(CC) with:

(CC) KiwiSaver Act 2006 employer contributions:

(b) in paragraph (a)(iii)(CD), replace "101I(5)" with "141(5)":

(c) repeal paragraph (a)(viii)~~.~~:

(d) after paragraph (a)(xiv), insert:

(xv) a registration fee referred to in section 59B:

(xvi) a return filing fee referred to in section 59D:

(e) in paragraph (cc), replace "for the purposes of sections 6, 6A," with "for the purposes of Part 10B, and sections 6, 6A,".

(5) In the definition of **tax law**, replace paragraph (a) with:

(a) a provision of an Inland Revenue Act other than the Unclaimed Money Act 1971, or an Act that such an Inland Revenue Act replaces:

68 Section 4A amended (Construction of certain provisions)

Replace section 4A(3)(bc) with:

(bc) amounts of KiwiSaver Act 2006 employer contributions paid or to be paid to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under section 141(5) of that Act; or

69 Section 17C amended (Commissioner's powers in relation to documents)

(1) In section 17C(1), replace "provided under section 17B or 17G, or produced under section 17H" with "or produced under 1 or more of sections 17B, 17H(6), and 17I".

~~(2) In section 17C(5), replace "provided" with "produced".~~

(2) In section 17C(5), delete "provided, accessed, or".

70 Section 25E amended (Who must provide investment income information to Commissioner)

(1) In section 25E(1)(f), delete ", other than a superannuation fund or retirement savings scheme,".

(2) Repeal section 25E(1)(g).

71 Section 25J amended (Information on attributed PIE income: non-locked-in funds

In section 25J, replace the section heading with "**Information on attributed PIE income**".

72 Section 25K repealed (Information on attributed PIE income; locked-in funds)

Repeal section 25K.

73 Section 25MB amended (Information from custodial institutions)

Replace section 25MB(7)(b) with:

(b) whose activities are supervised or regulated under the Financial Markets Conduct Act 2013, the Financial Markets Authority Act 2011, the Financial Advisers Act 2008, or the Reserve Bank of New Zealand Act 1989, or are supervised or regulated under corresponding legislation in another jurisdiction.

74 Section 57B amended (Return requirements for multi-rate PIEs)

(1) In section 57B(1), replace "Sections 25J and 25K set out" with "Section 25J sets out".

(2) In section 57B(2)(a)(ii), replace "required under sections 25J and 25K, as applicable" with "required under section 25J".

75 Section 61 amended (Disclosure of interest in foreign company or foreign investment fund)

In section 61(1C), replace "section 25J or 25K, as applicable" with "section 25J".

76 Section 68CC amended (Research and development tax credits: greater than $2 million approval)

(1A) In section 68CC(2)(b)(iv), replace "has" with "the person has".

(1) In section 68CC(3), replace "7th day of the 2nd month after~~before~~ the end of the first income year." with "last day of the 6th month before the end of the first income year (**application date**). The Commissioner may accept and approve an application after the application date if the taxpayer has changed the end date of their income year due to a change in their balance date for the first income year.".

(2A) **Subsection (1A)** applies for the 2020–21 and later income years.

(2) **Subsection (1)** applies for the 2021–22 and later income years.

77 Section 89D amended (Taxpayers and others with standing may issue notices of proposed adjustment)

(1) In section 89D(1), replace "subsection (2)" with "**subsection (1B)** and (2)".

(2) After section 89D(1), insert:

(1B) If the assessment by the Commissioner is an amended assessment, the taxpayer's entitlement to dispute the assessment is limited to disputing—

(a) a liability imposed by the assessment that was not imposed by the assessment being amended:

(b) an increase imposed by the assessment in a liability that was imposed by the assessment being amended.

78 Section 89DA amended (Taxpayer may issue notice of proposed adjustment for taxpayer assessment)

After section 89DA(1), insert:

(1B) If the assessment by the taxpayer is an amended assessment, the taxpayer's entitlement to dispute the assessment is limited to disputing—

(a) a liability imposed by the assessment that was not imposed by the assessment being amended:

(b) an increase imposed by the assessment in a liability that was imposed by the assessment being amended.

78B Section 91C amended (Taxation laws in respect of which binding rulings may be made)

After section 91C(1)(d), insert:

(db) the Unclaimed Money Act 1971; or

79 Section 108 amended (Time bar for amendment of income tax assessment)

Replace section 108(1E) with:

(1E) Despite subsection (1), the Commissioner may not amend an assessment so as to increase an amount of research and development tax credit if 1 year has passed from the latest date to provide a return of income for the relevant tax year, except if the increase is to take into account—

(a) a notice of proposed adjustment initiated by a taxpayer in accordance with section 113E:

(b) a request under section 113 initiated by a taxpayer in accordance with section 113E.

80 Section 120B amended (Persons excluded)

In section 120B, replace paragraph (bb) with:

(bb) an employer in relation to amounts of~~an amount of~~ compulsory employer contributions unpaid~~,~~ and specified in a notice under section 141(5) of the KiwiSaver Act 2006:

80B Section 120KBB amended (Interest for most standard method and some estimation method provisional taxpayers)

In the heading to section 120KBB, delete "and some estimation method".

81 Section 139A amended (Late filing penalty for certain returns)

(1) In section 139A(1), delete "the reconciliation statement required to be provided under regulation 3 of the Accident Rehabilitation and Compensation Insurance (Earnings Definitions) Regulations 1992 or regulation 15 of the Accident Insurance (Premium Payment Procedures) Regulations 1999 or any successor to that regulation made under the Accident Compensation Act 2001,".

(2) Repeal section 139A(2)(a)(iii).

82 Section 139AB amended (Penalty for member of large multinational group failing to provide information)

In section 139AB(1)(a), replace "section 17(1CB)" with "section 17E(2)".

83 Section 157 amended (Deduction of tax from payments due to defaulters)

(1) In section 157(10), definition of **income tax**, paragraph (i), replace "101I(5)" with "141(5)".

(2) After section 157(10), definition of **income tax**, paragraph ~~(i)~~(k), insert:

(~~j~~l) KiwiSaver Act 2006 employer contributions

83B New section 173V inserted (Transfer of unclaimed money on request)

After section 173U, insert:

173V Transfer of unclaimed money on request

If a taxpayer is entitled to a payment from the Commissioner of unclaimed money under the Unclaimed Money Act 1971, the taxpayer or their agent may request the Commissioner to transfer all or part of the unclaimed money to a tax type and period of the taxpayer as if the amount were excess tax.

83C Section 184A amended (Refund of tax paid in excess made by direct credit to bank account)

After section 184A(5)(i), insert:

(j) an amount of the problem gambling levy payable under—

(i) Part 4, subpart 4 of the Gambling Act 2003 and regulations made under section 319 of that Act:

(ii) section 101 of the Racing Industry Act 2020.

83D Schedule 1 amended (Inland Revenue Acts)

In schedule 1, after "Taxation Review Authorities Act 1994", insert "Unclaimed Money Act 1971".

83E Schedule 7 amended (Disclosure rules)

After schedule 7, part A, clause 13B, insert:

13C Unclaimed money

Section 18 does not prevent the Commissioner publishing information that relates to unclaimed money held by the Commissioner under the Unclaimed Money Act 1971 and is intended to enable the owner of the unclaimed money to make a claim of ownership, including—

(a) the name of the holder that transferred the unclaimed money to the Commissioner:

(b) the location of the business of the holder:

(c) the name and other details provided by the holder that associate the owner with the unclaimed money.

84 Schedule 8 amended (Reporting of income information by individuals and treatment of certain amounts)

(1A) In schedule 8, part B, clause 1(a), replace "$50" with "$200".

(1AB) In schedule 8, part B, clause 1(a), replace "$200" with "$50".

(1) After schedule 8, part B, clause 1(a), insert:

(ab) an amount of tax that—

(i) relates to reportable income derived for a tax year by an individual who uses a tailored tax code; and

(ii) is derived solely from a payment of New Zealand superannuation or a veteran's pension; and

(iii) is equal to or less than $50:

(ac) an amount of tax that, for a tax year in which an individual who uses a tailored tax code reaches the New Zealand superannuation qualification age,—

(i) relates to income derived from 1 or more of the amounts described in paragraph (b); and

(ii) is equal to or less than $50:

(1B) In schedule 8, part B, clause 1(b), replace "an amount of tax" with "subject to **paragraphs (ab) and (ac)**, an amount of tax".

(1C) **Subsection (1A)** applies for the 2019–20 income year.

(2) **Subsections ~~(1)~~(1AB), (1), and (1B)** ~~applies~~apply for the 2020–21 and later income years.

Goods and Services Tax Act 1985

85 Goods and Services Tax Act 1985

Sections 86 to 91 amend the Goods and Services Tax Act 1985.

86 Section 2 amended (Interpretation)

Insert in section 2(1), in appropriate alphabetical order:

mobile roaming services—

(a) means mobile telecommunications services supplied to the mobile device of a person who is outside the country of their usual mobile network as determined by the country code of the subscriber identity module for the person's mobile device; and

(b) includes services supplied to enable a person to receive mobile telecommunications services when the person is outside the country of their usual mobile network determined as described in **paragraph (a)**; and

(c) are services that are classified as—

(i) inbound mobile roaming services when the services are received by a person who is in New Zealand and whose usual mobile network determined as described in **paragraph (a)** is outside New Zealand; or

(ii) outbound mobile roaming services when the services are received by a person whose usual mobile network determined as described in **paragraph (a)** is in New Zealand

87 Section 8 amended (Imposition of goods and services tax on supply)

(1) Replace section 8(7) with:

(7) Subsection (6) does not apply to—

(a) supplies made between telecommunications suppliers:

(b) inbound mobile roaming services supplied to a non-resident person.

(2) After section 8(8), insert:

(8B) Despite subsection (6) but subject to subsection (8), a supply of telecommunications services is treated as being supplied in New Zealand if—

(a) the services are outbound mobile roaming services supplied by a non–resident; and

(b) the recipient of the supply is outside New Zealand when the services are supplied.

88 Section 11 amended (Zero-rating of goods)

(1) In section 11(8D)(a),—

(a) replace "a supply that is" with "a supply that wholly or partly consists of":

(b) delete "and paragraph (b) does not apply".

(2) In section 11(8D)(ab), replace "a supply that is" with "a supply that wholly or partly consists of".

(3) In section 11(8D)(b), words before subparagraph (i), replace "a supply of an interest" with "a supply that is wholly or partly of an interest".

(4) In section 11(8D)(c)(ii),—

(a) replace "an arrangement that involves" with "an arrangement that wholly or partly consists of".

(b) after "to the lessor", insert ", or the lessor's cancellation of the supply of the interest in land to the lessee,".

(5) **Subsections (1) to (4)** apply to a supply made by a person on or after 30 June 2014, except for a supply for which the person takes a tax position—

(a) in the period beginning with 30 June 2014 and ending before the date in which this Act receives the Royal assent; and

(b) that is inconsistent with the amendments made by **subsections (1) to (4)**.

89 Section 11AB amended (Zero-rating of telecommunications services)

(1) In section 11AB(b), replace "under section 8(9)." with "under section 8(9); or", and insert:

(c) the services are inbound mobile roaming services supplied to a non-resident.

(2) After section 11AB(c), insert:

(2) Subsection (1)(b) does not apply to outbound mobile roaming services.

90 Section 25 amended (Credit and debit notes)

~~(1) After section 25(1)(aa), insert:~~

~~(aaa) section 8(1) was incorrectly applied to the treatment of the supply, so that the supply was charged with tax at the rate of 15% when it should have been—~~

~~(i) charged with tax at the rate of 0%; or~~

~~(ii) an exempt supply; or~~

(1) Repeal section 25(1)(aab).

(1B) Replace section 25(1)(ab) with:

(ab) this Act was incorrectly applied to the treatment of the supply, so that the supply was charged with tax at an incorrect rate, or charged with tax when it should not have been, or not charged with tax when it should have been; or

(1C) Replace section 25(1)(ab) with:

(ab) the supplier—

(i) incorrectly applied this Act to the treatment of the supply, so that the supply was charged with tax at an incorrect rate, or charged with tax when it should not have been, or not charged with tax when it should have been; and

(ii) did not subsequently make an election under section 24(5B) for the supply; or

(1D) Repeal section 25(1)(abb).

(1E) Replace section 25(3)(f) with:

(f) in the case of a supply to which section 11(1)(mb) was incorrectly applied to the treatment of, so that the supply was not zero-rated when it should have been, a credit note may not be issued after 7 years from the date of settlement of the transaction relating to the supply.

(2) Replace section 25(3)(f) with:

(f) a credit note in relation to a supply may not be issued after the earlier of the following, as applicable:

(i) in the case of a supply to which ~~subsection (1)(ab) applies~~section 11(1)(mb) was incorrectly applied to the treatment of, so that the supply was not zero-rated when it should have been, 7 years from the date of settlement of the transaction relating to the supply:

(ii) 4 years from the end of the 4-year period referred to in the relevant subsection of section 45, in the case of a supply that results in an overpayment of tax that is—

(A) referred to in section 45(1), (2), or (3); and

(B) the result of a clear mistake or simple oversight of the supplier:

(iii) in the case of a supply other than a supply described in **subparagraph (ii)**, 4 years from the end of the taxable period in which the return was provided by the supplier for the taxable period in which the supply was made.

~~(3) In section 25(4), replace "paragraphs (a), (aa), (ab)" with "paragraphs (a), (aa), **(aaa)**, (ab)".~~

91 Section 51 amended (Persons making supplies in course of taxable activity to be registered)

Repeal section 51(1)(e).

Student Loan Scheme Act 2011

92A Student Loan Scheme Act 2011

Sections 92 and 92B amend the Student Loan Scheme Act 2011.

92 Section 34 amended (Repayment codes for New Zealand-based borrowers who derive salary or wages)

In section 34(2) ~~of the Student Loan Scheme Act 2011~~, words before paragraph (a), replace "STC" with "TTC".

92B Section 208 amended (Disclosure of information between Inland Revenue Department and New Zealand Customs Service for information-matching purposes)

After section 208(2)(c), insert:

(d) a borrower's passport number.

KiwiSaver Act 2006

93A KiwiSaver Act 2006

Sections 93 and 93B amend the KiwiSaver Act 2006.

93 Section 4 amended (Interpretation)

(1) This section amends section 4(1) ~~of the KiwiSaver Act 2006~~.

(2) Replace the definition of **Australian complying superannuation scheme** with:

Australian complying superannuation scheme means—

(a) an entity that is a complying superannuation fund for the purposes of Part 5, Division 2 of the Superannuation Industry (Supervision) Act 1993 (Aust) and that is regulated by the Australian Prudential Regulation Authority:

(b) the Australian Commissioner of Tax (**ACT**), in the ACT's capacity under the Superannuation (Unclaimed Money and Lost Members) Act 1999 (Aust)

(3) In the definition of **KiwiSaver status**, replace "contribution holiday" with "savings suspension".

93B Section 83 amended (Unclaimed money held by Commissioner)

(1) In section 83(1)(a), replace "6 years" with "5 years".

(2) After section 83(3)(a), insert:

(ab) for money relating to an employer deduction or employer contribution to which subsection (1)(b) applies, as if the date on which the Commissioner becomes the holder is the last day of the month to which the employment income information for the money relates; and

(3) In section 83(3)(c), replace "subparagraph (i) of the proviso to section 4(1) of the Unclaimed Money Act 1971" with "**section 4(2)(e)** of the Unclaimed Money Act 1971".

Companies Act 1993

94 Section 53 amended (Dividends)

In section 53(2)(a) of the Companies Act 1993, replace "for a portfolio tax rate entity, as a result of section HL 7 of the Income Tax Act 2004" with "for a multi-rate PIE, as a result of section HM 48 of the Income Tax Act 2007".

Land Transfer Act 2017

95 Land Transfer Act 2017

Sections 96 to 100 amend the Land Transfer Act 2017.

96 Section 77 amended (Interpretation)

(1) In section 77(1), repeal the definition of **tax information**.

(2) In section 77(1), insert in their appropriate alphabetical order:

IRD number has the meaning given to tax file number by section 3(1) of the Tax Administration Act 1994

tax information means the information specified in a tax statement in accordance with **section 79(1)(a)** and (if applicable) section 80

97 Section 79 replaced (Content of tax statement)

Replace section 79 with:

79 Content of tax statement

(1) A tax statement must—

(a) contain the prescribed information; and

(b) be completed by or on behalf of the transferor or transferee; and

(c) be signed by the transferor or transferee.

(2) If the prescribed information includes the transferor's or transferee's IRD number and they do not have one, they must request an IRD number for the purpose of providing that information.

97B New section 82A inserted (Chief executive must supply tax information to Statistician)

After section 82, insert:

82A Chief executive must supply tax information to Statistician

(1) The chief executive must supply to the Statistician (as defined in section 2 of the Statistics Act 1975) tax information and details about the transfer or transfers to which the tax information relates that are held by Land Information New Zealand, if the Statistician requests the information for the purposes of the Statistics Act 1975.

(2) **Subsection (1)** applies despite anything in the Family Violence Act 2018.

98 Section 83 amended (Other provisions concerning use of tax information)

(1) In section 83, replace "the information specified in section 79(1)(d), (e), (f), and (g), (2)(b), and (c)(i) and (ii)" with "tax information, other than identifying information,".

(2) In section 83, insert as subsection (2):

(2) In this section, **identifying information** means any of the following (if it is part of the prescribed tax information):

(a) a person's name:

(b) a person's IRD number:

(c) a person's number in another jurisdiction that is equivalent to an IRD number:

(d) any other tax information declared to be identifying information by regulations made under this Act.

98B Section 85 amended (Status of tax information)

In section 85(1), after "82,", insert "**82A**,".

98C Section 86 amended (Disclosure of information between authorised persons)

(1) In section 86(1)(a), after "82," insert "**82A**,".

(2) In section 86(2), definition of **authorised person**, after paragraph (a), insert:

(aa) the Statistician or an employee of the department (as those terms are defined in section 2 of the Statistics Act 1975) who is authorised by the Statistician to disclose and receive information under this section; or

99 Section 227 amended (Regulations)

(1) In section 227(1)(3), after "record,", insert "statement,".

(2) After section 227(1)(27), insert:

(27A) declaring tax information to be identifying information for the purposes of section 83:

100 Schedule 1 amended

In schedule 1, after clause 14, insert:

Part 3
Provision relating to Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2020

15 Content of tax statements before regulations are made prescribing content

(1) This clause applies from the 2020 commencement date until the first regulations prescribing information for the purposes of new **section 79(1)(a)** come into force.

(2) The information required by section 79 (as in force before the 2020 commencement date) to be included in a tax statement is taken to be the information required to be included in a tax statement under new **section 79(1)(a)** as if it were information prescribed in regulations made for the purposes of new **section 79(1)(a)**.

(3) In this clause,—

2020 commencement date means the date on which the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act **2020** receives the Royal assent

new section 79(1)(a) means **section 79(1)(a)** as inserted by the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act **2020**.

Unclaimed Money Act 1971

100B Unclaimed Money Act 1971

Sections 100C to 100O amend the Unclaimed Money Act 1971.

100C Section 2 amended (Interpretation)

(1) In section 2, insert in appropriate 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

(2) In section 2, insert in appropriate alphabetical order:

mutual association means a body or association of persons, whether incorporated or not, which enters into transactions of a mutual character with its members, whether or not it also enters into transactions with other persons

(3) In section 2, insert in appropriate alphabetical order:

quarter means a period of 3 consecutive calendar months that ends with the last day of March, June, September, or December

100D Section 4 replaced (Unclaimed money)

Section 4 is replaced by:

4 Meaning of unclaimed money

(1) **Unclaimed money** means money held in New Zealand that—

(a) is payable by a person who is a holder under section 5 to the person who is entitled to the money (the **owner**); and

(b) meets the requirements of **subsection (2) or (7)**; and

(c) is held by a person who is not the Commissioner, or is held by the Commissioner and has met the requirements of **subsection (2) or (7)** for a period of not more than 60 years.

(2) Money meets the requirements of this subsection if—

(a) the obligation of the holder to pay the money to the owner arises under an agreement, arrangement, or situation described in **subsection (4)**; and

(b) the money is not excluded from meeting the requirements of this subsection by **subsection (5)**; and

(c) the requirements of **subsection (3)** are met.

(3) The requirements of this subsection are met if—

(a) the amount of money payable to an individual owner is $100 or more, and—

(i) for money to which a single-term arrangement described in **subsection (6)(a)** applies, the owner during a period of 5 years does not request information from, and does not provide instructions or information to, the holder, whether about the money or about another matter; and

(ii) for money to which a renewing-term arrangement described in **subsection (6)(b)** applies, the owner during a period of 5 years beginning on or after the end of the first fixed period and ending with the end of the second or a later fixed period does not request information from, and does not provide instructions or informa-

tion to, the holder, whether about the money or about another matter; or

(b) the holder chooses to pay the money to the Commissioner as unclaimed money and satisfies the requirements of **section 5B**.

(4) For the purposes of **subsection (2)**, money payable by a holder to an owner may be unclaimed money if the obligation arises under either of—

(a) an arrangement under which the holder receives money from the owner in consideration for the holder's providing money to the owner at a future time or on the occurrence or non-occurrence of a future event, whether or not the event occurs because notice is given or not given:

(b) a policy of life assurance that matures—

(i) otherwise than by death; or

(ii) by death, in which case the due date for payment is treated for the purposes of **subsection (2)** as being the date on which the holder first has reason to suppose that the death has occurred.

(5) Money payable by a holder to an owner does not meet the requirements of **subsection (2)** if the money is payable—

(a) as a dividend by the holder as a company to the owner as a shareholder, unless the payment is made by the holder as a mutual association in relation to money deposited with the holder by the owner as a member:

(b) as a rebate by the holder as a mutual association to the owner as a member in relation to the trading transactions of the member with the association, unless the payment is made in relation to money deposited with the holder by the owner:

(c) as a benefit from a pension fund or superannuation fund.

(6) For the purposes of **subsection (3)(a)**,—

(a) an arrangement that applies to money is a **single-term arrangement** if, under the arrangement, the money becomes due for payment on the date of a demand by the owner, or on a specified date or on the date of the occurrence or non-occurrence of an event, and remains due after that date until paid to the owner:

(b) an arrangement that applies to money is a **renewing-term arrangement** if, under the arrangement, the money—

(i) becomes due for payment after a fixed period if the owner near the end of the fixed period requests repayment; and

(ii) is treated as being paid by the holder to the owner and then by the owner to the holder for a further fixed period if the owner does not request repayment as described in **subparagraph (i)**.

(7) Money meets the requirements of this subsection if—

(a) the money is payable to an owner by a holder who ceases to carry on business, or by the personal representative of a holder who dies; and

(b) the obligation of the holder to make the payment arises from the holder's business; and

(c) the money is held by the holder or the personal representative of the holder after a period of 6 months from the cessation or death; and

(d) the money would meet the requirements of **subsection (2)** in the absence of **subsection (4)** if the holder or the personal representative of the holder were to hold the money for a sufficient period; and

(e) the holder or the personal representative of the holder chooses to pay the money to the Commissioner and satisfies the requirements of **section 5B**.

100E Section 5 amended (Holder)

(1) Replace section 5(2) with:

(2) A person, firm, body, or institution (the **elective holder**), who holds or owes an amount of money is the holder of the money under this subsection if—

(a) the money is not unclaimed money under **section 4(2) or (7)** of which the elective holder is the holder under **subsection (1)**; and

(b) if the money is excluded from being unclaimed money by **section 4(5)**, the money meets the requirements of **section 4(7)**; and

(c) the elective holder chooses to be treated as the holder of the money.

(2) After section 5(2), insert:

(3) A department or office of Parliament or Crown entity, as defined in the Public Finance Act 1989, or an organisation or company listed in Schedule 4 or 4A of that Act, is excluded from being a holder under this Act.

100F New section 5B inserted (Obligations of holders)

After section 5, insert:

5B Obligations of holders

(1) A holder must make reasonable efforts to locate the owner of money that is, or will soon become, unclaimed money and to communicate with the owner concerning the money.

(2) A holder of money that pays the money to the Commissioner as unclaimed money must provide to the Commissioner, with or before the payment and in a form acceptable to the Commissioner, the information relating to the owner and the money that is in the possession or control of the holder and is readily available to the holder, including—

(a) the source, and history of the accrual, of the amount:

(b) the identity and whereabouts of the owner:

(c) the source of the owner's entitlement to payment of the money.

100G Sections 6 and 7 repealed

Repeal sections 6 and 7 (which relate to a register of unclaimed money kept by a holder).

100H Section 8 amended (Payment of unclaimed money to Commissioner)

(1) Replace section 8(1) with:

(1) If money becomes unclaimed money under **section 4(2)** for a holder in a reporting period given by **subsection (5)**, the holder must, within a period of 1 month and 20 days from the end of the reporting period,—

(a) meet the requirements of **section 5B** for the money; and

(b) pay the money to the Commissioner.

(2) In section 8(2), replace "his" with "the Commissioner's".

(3) After section 8(4), insert:

(5) The period (the **reporting period**) for a holder within which the holder is required to comply with **subsection (1)** for an amount of unclaimed money is—

(a) a quarter, except if **paragraph (b) or (c)** applies; or

(b) a period consisting of 2 consecutive quarters and starting and ending on calendar dates approved by the Commissioner, if the Commissioner approves the use of a 6-monthly reporting period by the holder and **paragraph (c)** does not apply; or

(c) for a period that is the first reporting period of the holder ending after the date on which this Act receives the Royal assent, and for which the Commissioner approves a different length from that of the later reporting periods, the period that ends on a date that is —

(i) approved by the Commissioner; and

(ii) less than 2 years after the date on which the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act **2020** receives the Royal assent; and

(iii) consistent with the later reporting periods under **paragraph (a) or (b)** for the holder.

(4) **Subsection (1)** applies for money that, under **section 4** as amended by this Act, becomes unclaimed money after the date on which this Act receives the Royal assent.

(5) **Subsection (1)** applies for a holder and money that meet the requirements of **subsection (6)**, except that the date by which the money is required to be paid to the Commissioner as unclaimed money is the date that is 2 years after the date on which this Act receives the Royal assent.

(6) A holder and an amount meet the requirements of this section if—

(a) the holder and the money do not meet the requirements under section 4, as they were immediately before the amendments made by this Act, for the amount to become unclaimed money on or before the date on which this Act receives the Royal assent; and

(b) the holder and the money would have met the requirements under **section 4**, as amended by this Act, for the amount to become unclaimed money on or before the date on which this Act receives the Royal assent; and

(c) the amount is not paid to the Commissioner as unclaimed money on or before the date on which this Act receives the Royal assent.

100I Section 9 amended (Special arrangements may be made by Commissioner)

In section 9, replace "section 6, section 7, or subsection (1) of section 8" with "section 8(1)".

100J Section 10 amended (Examination of accounts)

(1) In section 10(1),—

(a) replace "by him" with "by the Commissioner".

(b) replace "register kept by a holder pursuant to section 6" with "records":

(c) delete the second sentence.

(2) In section 10(2), replace "by him" with "by the Commissioner".

(3) In section 10(3),—

(a) replace "by him" with "by the Commissioner":

(b) replace "in his knowledge, or his possession" with "in the person's knowledge, or the person's possession".

100K Section 11 amended (Commissioner may make payment to claimant)

(1) In section 11(1), words after paragraph (b),—

(a) replace "demanded by him" with "demanded by the claimant":

(b) replace "made by him" with "made by the Commissioner".

(2) In section 11(5),—

(a) replace "by him" with "by the claimant":

(b) replace "to him" with "to the claimant".

(3) After section 11(5), insert:

(6) No person shall have a right of action against the Commissioner for the investment or non-investment of an amount of unclaimed money held by the Commissioner.

(7) No person shall have a right of action against the Commissioner for an amount of unclaimed money held by the Commissioner for a period of more than 60 years.

100L New section 11B inserted (Capacity of trustees)

After section 11, insert:

11B Capacity of trustees

(1) For the purposes of this Act, a person who is acting as a trustee of a trust is acting in a capacity that is separate from their other capacities.

(2) The other capacities of the person referred to in **subsection (1)** may include—

(a) a personal capacity:

(b) a capacity as a body corporate that is a legal person:

(c) a capacity as a trustee of another trust.

100M Section 12 repealed (Officers to maintain secrecy)

Repeal section 12.

100N Section 13 amended (Offences)

In section 13(a), replace "section 6, section 7, subsection (1) of section 8," with "section 8(1)".

100O Schedule repealed

Repeal the Schedule.

Taxation (Disclosure of Information to Approved Credit Reporting Agencies) Regulations 2017

101 Regulation 3 amended (Reportable unpaid tax threshold)

In regulation 3 of the Taxation (Disclosure of Information to Approved Credit Reporting Agencies) Regulations 2017, replace "section 85N(2)(d)(i)" with "clause 33(3)(d)(i) of schedule 7".

COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020

102 Section 4 amended (Section DB 65 repealed)

In section 4 of the COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020, insert, as new subsection (2):

(2) This section applies for the 2020–21 and later income years.

Schedule 1
Income Tax Act 2007: aligning nomenclature with Social Security Act 2018

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Section CF 1 amended (Benefits, pensions, compensation, and government grants)

Replace section CF 1(1)(c) with:

(c) a payment of a main benefit:

In section CF 1, list of defined terms, delete "income-tested benefit".

In section CF 1, list of defined terms, insert "main benefit".

Section CW 33 amended (Allowances and benefits)

Replace section CW 33(1)(a)(i) with:

(i) a payment of a main benefit:

In section CW 33, list of defined terms, delete "income-tested benefit".

In section CW 33, list of defined terms, insert "main benefit".

Section LC 13 amended (Tax credits for independent earners)

In section LC 13(1)(a), replace "an income-tested benefit" with "a main benefit".

In section LC 13, list of defined terms, delete "income-tested benefit".

In section LC 13, list of defined terms, insert "main benefit".

Section MA 8 amended (Some definitions for family scheme)

In section MA 8, definition of **social assistance payment**, replace paragraph (a) with:

(a) a main benefit; or

In section MA 8, list of defined terms, delete "income-tested benefit".

In section MA 8, list of defined terms, insert "main benefit".

Section MB 1 amended (Adjustments for calculation of family scheme income)

In section MB 1(1)(b), replace "an income-tested benefit" with "a main benefit".

In section MB 1, list of defined terms, delete "income-tested benefit".

In section MB 1, list of defined terms, insert "main benefit".

Section MC 6 amended (When person does not qualify)

Replace section MC 6(b)(i) with:

(i) a main benefit; or

In section MC 6, list of defined terms, delete "income-tested benefit".

In section MC 6, list of defined terms, insert "main benefit".

Section MD 8 amended (Fourth requirement: person not receiving benefit)

Replace section MD 8(a) with:

(a) a main benefit; or

In section MD 8, list of defined terms, delete "income-tested benefit".

In section MD 8, list of defined terms, insert "main benefit".

Section MD 11 amended (Entitlement to parental tax credit)

In section MD 11(1)(b), replace "an income-tested benefit" with "a main benefit".

In section MD 11(6)(b)(ii), replace "an income-tested benefit" with "a main benefit".

In section MD 11, list of defined terms, delete "income-tested benefit".

In section MD 11, list of defined terms, insert "main benefit".

Section MD 14 amended (Person receiving protected family tax credit)

In section MD 14(1)(a), replace "an income-tested benefit" with "a main benefit".

In section MD 14(1)(b), replace "an income-tested benefit" with "a main benefit".

In section MD 14, list of defined terms, delete "income-tested benefit".

In section MD 14, list of defined terms, insert "main benefit".

Section MF 2 amended (When person not entitled to payment by instalment)

In section MF 2(1)(a)(i), replace "an income-tested benefit" with "a main benefit".

In section MF 2(1)(a)(ii), replace "an income-tested benefit" with "a main benefit".

In section MF 2, list of defined terms, delete "income-tested benefit".

In section MF 2, list of defined terms, insert "main benefit".

Section MG 3 amended (Best Start credit abatement)

In section MG 3, list of defined terms, delete "income-tested benefit".

Section MG 4 amended (Person receiving protected Best Start tax credit)

In section MG 4(1)(a), replace "an income-tested benefit" with "a main benefit".

In section MG 4(1)(b), replace "an income-tested benefit" with "a main benefit".

In section MG 4, list of defined terms, delete "income-tested benefit".

In section MG 4, list of defined terms, insert "main benefit".

Section MZ 2 amended (Calculation of child tax credit)

In section MZ 2(3)(b), replace "an income-tested benefit" with "a main benefit".

In section MZ 2, list of defined terms, delete "income-tested benefit".

In section MZ 2, list of defined terms, insert "main benefit".

Section RD 5 amended (Salary or wages)

Replace section RD 5(6)(b) with:

(b) a main benefit:

In section RD 5, list of defined terms, delete "income-tested benefit".

In section RD 5, list of defined terms, insert "main benefit".

Section RD 11 amended (~~Reduction~~Amount of tax in certain circumstances)

In the heading to section RD 11(3), replace "*Income-tested benefits*" with "*Main benefits*".

~~In section RD 11(3), replace "an income-tested benefit" with "a main benefit".~~

Replace section RD 11(3)(a) with:

(a) a main benefit:

In section RD 11, list of defined terms, delete "income-tested benefit".

In section RD 11, list of defined terms, insert "main benefit".

Section YA 1 amended (Definitions)

In section YA 1, repeal the definition of "**income-tested benefit**".

In section YA 1, insert, in appropriate alphabetical order:

main benefit means any of the following:

(a) a main benefit, as defined in **paragraph (a)** of the definition of **main benefit** in schedule 2 of the Social Security Act 2018:

(b) main benefit equivalent assistance

In section YA 1, definition of **main benefit equivalent assistance**, paragraph (a), replace "defined" with "defined in **paragraph (a)** of the definition of **main benefit**".

Schedule 2
Other enactments: consequential amendments aligning nomenclature

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Part 1
Amendments to other Acts

Accident Compensation Act 2001 (2001 No 49)

In section 11(1)(a), replace "income-tested benefit" with "main benefit".

In section 11(2), replace "**income-tested benefit**" with "**main benefit**".

Social Security Act 2018 (2018 No 32)

In section 349, repeal the definition of "**income-tested benefit**".

In section 349, insert, in appropriate alphabetical order:

> **main benefit** means any of the following:
>
> (a) a main benefit as defined in section YA 1 of the Income Tax Act 2007:
>
> (b) an income-tested benefit, as that term is defined in whichever of the following apply:
>
> (i) section 2 of the Income Tax Act 1976; or
>
> (ii) section OB 1 of the Income Tax Act 1994; or
>
> (iii) section OB 1 of the Income Tax Act 2004

In the heading to section 350, replace "**income-tested benefit**" with "**main benefit**".

In section 350(1), replace "an income-tested benefit" with "a main benefit".

In section 352(1), replace "an income-tested benefit" with "a main benefit".

In schedule 2, repeal the definition of "**income-tested benefit**".

In schedule 2, replace the definition of "**main benefit under this Act** or **main benefit**" with:

> **main benefit under this Act** or **main benefit**,—
>
> (a) means a benefit under this Act that is—
>
> (i) jobseeker support; or
>
> (ii) sole parent support; or
>
> (iii) a supported living payment on the ground of restricted work capacity or total blindness, under section 34; or
>
> (iv) a supported living payment on the ground of caring for another person, under section 40; or
>
> (v) a youth payment; or

Social Security Act 2018 (2018 No 32)—*continued*

(vi) a young parent payment; or

(vii) an emergency benefit:

(b) is defined in section 349 for the purposes of sections 349 to 352

Student Loan Scheme Act 2011 (2011 No 62)

In the heading to section 40, replace "**income-tested benefits**" with "**main benefits**".

In section 40(1)(a), replace "an income-tested benefit" with "a main benefit".

In section 40(1)(b), replace "income-tested benefit" with "main benefit".

In section 40(2)(a), replace "income-tested benefit" with "main benefit".

In section 40(2)(b), replace "income-tested benefit" with "main benefit".

In section 40(4), definition of **equivalent gross amount**, paragraph (a), replace "an income-tested benefit" with "a main benefit".

In section 40(4), definition of **equivalent gross amount**, paragraph (b), replace "income-tested benefit" with "main benefit".

In section 40(4), repeal the definition of **income-tested benefit**.

In section 40(4), insert, in appropriate alphabetical order:

main benefit has the same meaning as in section YA 1 of the Income Tax Act 2007.

Tax Administration Act 1994 (1994 No 166)

In the heading to section 24B(3), replace "*Income-tested benefits*" with "*Main benefits*".

~~In section 24B(3), replace "an income-tested benefit" with "a main benefit".~~

Replace section 24B(3)(a) with:

(a) a main benefit:

In section 80KK(3)(a)(i), replace "an income-tested benefit" with "a main benefit".

In section 80KN(1)(a), replace "an income-tested benefit" with "a main benefit".

In section 80KN(2), replace "income-tested benefit" with "main benefit".

In the heading to section 80KP, replace "**income-tested benefit**" with "**main benefit**".

In section 80KP(1)(a), replace "an income-tested benefit" with "a main benefit".

In section 80KP(2), replace "an income-tested benefit" with "a main benefit".

In section 80KU(1)(a), replace "an income-tested benefit" with "a main benefit".

In section 225A(1)(a), replace "an income-tested benefit" with "a main benefit".

In section 225A(2)(a), replace "an income-tested benefit" with "a main benefit".

Tax Administration Act 1994 (1994 No 166)—*continued*

In section 225A(2)(b), words before the subparagraphs, replace "an income-tested benefit" with "a main benefit".

In section 225A(2)(b)(i), replace "income-tested benefit" with "main benefit".

In section 225A(2)(b)(ii), replace "income-tested benefit" with "main benefit".

In schedule 5, part A, clause 1(3), replace "an income-tested benefit" with "a main benefit" in each place.

In schedule 8, part B, replace clause 1(b)(i) with:

(i) a main benefit:

Part 2
Amendments to legislative instrument

Public and Community Housing Management (Prescribed Elements of Calculation Mechanism) Regulations 2018 (LI 2018/173)

In regulation 3(1), revoke the definition of "**income-tested benefit**".

In regulation 3(1), insert, in appropriate alphabetical order:

main benefit has the same meaning as in section 349 of the Social Security Act 2018

In regulation 13(a)(i), replace "an income-tested benefit" with "a main benefit".

Legislative history

4 June 2020	Introduction (Bill 273–1)
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