

House of Representatives

Supplementary Order Paper

Tuesday, 23 March 2021

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

Proposed amendments

Hon David Parker, in Committee, to move the following amendments:

Clause 2

In *clause 2(2)* (page 8, line 4), replace “**37,**” with “**37, 44DB, 44DN(2),**”.

In *clause 2(8)* (page 8, line 12), replace “**28,**” with “**28(1) and (2),**”.

In *clause 2(12)* (page 8, line 21), replace “**33 and 58(5C) and (5G)**” with “**13D, 20B, 20E, 20G, 33, 33B, and 58(5C), (5G), and (5H)**”.

In *clause 2(16)* (page 8, line 28), replace “**82 and 101**” with “**33C, 33D, 33E, 82, and 101**”.

In *clause 2(17)* (page 8, line 29), replace “**25**” with “**25(1)**”.

After *clause 2(18)* (page 8, after line 31), insert:

(18B) **Sections 13E, 37G, 40BA, and 58(13BA) and (13C)** come into force on 17 March 2020.

In *clause 2(20)* (page 8, lines 34 and 35), replace “**16, 19(1A) and (1B), 21, 43, 44B, 44C, 44F, 44G, 44H, 56, 58(9B), (10B), (12B), and (15),**” with “**16, 16B, 19(1A) and (1B), 21, 25B, 28(1A), 37E, 37F, 37H, 37I, 43, 44B, 44C, 44DC, 44DD, 44DE, 44DF, 44DG, 44DH, 44DI, 44DJ, 44DK, 44DL, 44DM, 44DN(1), 44DO, 44DP, 44DQ, 44DR, 44DS, 44DT, 44DU, 44F, 44FB, 44FC, 44G, 44H, 45B, 56, 58(2B), (5CB), (5CC), (9B), (10BA), (10BAB), (10BAC), (10B), (12BA), (12B), (12C), and (15),**”.

After *clause 2(21)* (page 9, after line 4), insert:

(21BA) **Sections 68B, 69(1A), 69B, 69C, 69D, 69E, 69F, and 69G** come into force on 7 December 2020.

After *clause 2(21B)* (page 9, after line 5), insert:

(21C) **Sections 5A, 5AB, 5AC, 5AD, 5, 7B, 13F, 14B, 14C, 25(1A), 25C, 33F, 33G, 37EB, 37FB, 38BA, 38BAB, 57B, 58(3B), (3C), (3D), (6B), (8B), (10BABA), (12BAB), (12BAC), (13D), and (16), 73B, 73C, and 73D** come into force on 27 March 2021.

Replace *clause 2(22BA)* (page 9, lines 8 and 9) with:

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

New clauses 5A, 5AB, 5AC, and 5AD

Before *clause 5* (page 10, before line 4), insert:

5A Section CB 6A replaced (Disposal within 5 years: bright-line test for residential land)

(1) Replace section CB 6A with:

CB 6A Disposal within 10 years: bright-line test for residential land

Disposal within 10 years

- (1) Subject to **subsection (6)**, an amount that a person derives from disposing of residential land is income of the person, if the bright-line date for the residential land is within 10 years of—
- (a) the date on which the instrument to transfer the land to the person was registered—
 - (i) under the Land Transfer Act 2017; or
 - (ii) under foreign laws of a similar nature to the Land Transfer Act 2017, if the land is outside New Zealand; or
 - (b) their date of acquisition of the land, if an instrument to transfer the land to the person is not registered on or before the bright-line date.

Subdivision

- (2) Subject to **subsection (6)**, and despite **subsection (1)**, an amount that a person derives from disposing of residential land that results from the person subdividing other land (the **undivided land**) is income of the person if the bright-line date for the residential land is within 10 years of—
- (a) the date on which the instrument to transfer the undivided land to the person was registered—
 - (i) under the Land Transfer Act 2017; or

- (ii) under foreign laws of a similar nature to the Land Transfer Act 2017, if the land is outside New Zealand; or
- (b) their date of acquisition of the undivided land, if the land is not registered as described in **paragraph (a)** at the bright-line date.

Leases with perpetual right of renewal

- (3) Subject to **subsection (6)**, and despite **subsection (1)**, an amount that a person derives from disposing of a freehold estate in residential land, acquired as the owner of a leasehold estate with a perpetual right of renewal, is income if the bright-line date for the freehold estate is within 10 years of the grant of the leasehold estate.

Estate or interest acquired upon completion of land development or subdivision

- (4) Subject to **subsection (6)**, and despite **subsection (1)**, an amount that a person derives from disposing of an estate or interest in residential land, acquired as the result of the completion of a land development or subdivision, is income if the bright-line date for the estate or interest is within 10 years of the person entering into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

Beginning of 10-year period for transfers by registration if trustees change

- (5) If the person referred to in **subsection (1)(a) or (2)(a)** is a trustee of a trust who has been transferred the land or undivided land from a trustee of the trust, the date on which the instrument was registered is treated as occurring on—
 - (a) for **subsection (1)(a)**—
 - (i) the earliest date (the **first date**) on which an instrument to transfer the land to a trustee of the trust was registered under the relevant law referred to in the subsection, if there has been no intervening transfer to a person who is not a trustee; or
 - (ii) the first date following the intervening transfer, if there has been an intervening transfer to a person who is not a trustee;
 - (b) for **subsection (2)(a)**—
 - (i) the earliest date (the **undivided date**) on which an instrument to transfer the undivided land to a trustee of the trust was registered under the relevant law referred

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to in the subsection, if there has been no intervening transfer to a person who is not a trustee; or

- (ii) the undivided date following the intervening transfer, if there has been an intervening transfer to a person who is not a trustee.

Quantification

- (6) Despite **subsection (1), (2), (3), and (4)**, if the person has excluded days in the bright-line period for the residential land, the amount of income that the person derives from disposing of an estate or interest in the land is equal to the amount described in whichever is the relevant subsection *reduced by* the excluded adjustment amount calculated using the formula in **subsection (7)**.

Excluded adjustment formula

- (7) The excluded adjustment amount for the purposes of **subsection (6)** is calculated using the formula—
- $$\text{adjustment days} \div \text{total days} \times \text{unadjusted amount.}$$

Definition of items in formula

- (8) The items in the formula in **subsection (7)** are defined in **subsections (9) to (11)**.

Adjustment days

- (9) **Adjustment days** is the total number of excluded days in the bright-line period.

Total days

- (10) **Total days** is the total number of days in the bright-line period.

Unadjusted amount

- (11) **Unadjusted amount** is the amount described in whichever of **subsection (1), (2), (3), or (4)** is the relevant subsection for the person.

Exception: disposal of land by executor, administrator, or beneficiary

- (12) This section does not apply to an amount that an executor or administrator described in section FC 1(1)(a) (Disposals to which this subpart applies), or a beneficiary described in section FC 1(1)(b), derives from disposing of residential land that was transferred to them on the death of a person.

Relationship with subject matter

- (13) This section applies if none of sections CB 6 to CB 12 apply.

Some definitions

- (14) In this section,—
- (a) **date of acquisition** means the latest date on which the person acquires the estate or interest in the residential land; and
 - (b) **excluded day** means a day in a period for which the criteria in **section CB 16A(2)** are met, including a day that is counted under **section CB 16A(6)**.

Defined in this Act: amount, bright-line date, bright-line period, date of acquisition, dispose, excluded day, estate, income, interest, land, mortgage person, residential land, trustee, year

- (2) **Subsection (1)** applies to a person’s disposal of residential land, if the person acquires an estate or interest in the land on or after 27 March 2021. However, **subsection (1)** does not apply if the person makes an offer for the acquisition of the land, on or before 23 March 2021, that is irrevocable before 27 March 2021 and the person acquires an estate or interest in the land on or after 27 March 2021 as a result of that offer. Further, **subsection (1)** does not apply to—
- (a) a person’s disposal of a freehold estate in residential land that the person acquired as the owner of a leasehold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 27 March 2021:
 - (b) a person’s disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 27 March 2021 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

5AB Section CB 13 amended (Disposal: amount from major development or division and not already in income)

In section CB 13(1)(a), replace “and CB 14” with “, CB 14, and **CZ 39** (Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018)”.

5AC Section CB 14 amended (Disposal: amount from land affected by change and not already in income)

In section CB 14(1)(a), replace “to CB 12” with “to CB 12 and **CZ 39** (Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018)”.

5AD Section CB 15B amended (When land acquired)

In section CB 15B(1), replace “section CB 6A” with “**sections CB 6A and CZ 39** (Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018)”.

Clause 5

Replace *clause 5* (page 10, lines 4 to 32) with:

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

- (1) Replace section CB 16A with:

CB 16A Main home exclusion for disposal within 10 years

Main home exclusion

- (1) **Section CB 6A** does not apply to a person (**person A**) who disposes of residential land if, for all of the days in the bright-line period, the land meets the criteria in **subsection (2)**.

Criteria

- (2) For the purposes of **subsection (1)** and **subsection (6)**, the criteria are that the land has been used for the relevant period predominantly for a dwelling that was the main home for 1 or more of the following people:
- (a) person A;
 - (b) a beneficiary of a trust, if person A is a trustee of the trust and—
 - (i) a principal settlor of the trust does not have a main home; or
 - (ii) if a principal settlor of the trust does have a main home, it is that main home which person A is disposing of.

When this section does not apply

- (3) The exclusion in **subsection (1)** does not apply to person A if—
- (a) the exclusion has been used by person A 2 or more times within the 2 years immediately preceding the bright-line date for the residential land;
 - (b) person A has engaged in a regular pattern of acquiring and disposing of residential land described in **subsection (2)**.

Regular patterns undertaken by groups of persons

- (4) For the purposes of **subsection (3)(b)**, in relation to residential land described in **subsection (2)**, 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, residential land described in **subsection (2)**; and
 - (b) 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.

Special rule: counted days

- (6) For the purposes of **subsection (1)** and the definition of **excluded day** in **section CB 6A(14)(b)**, a day that is in the bright-line period is treated as meeting the criteria under **subsection (2)** (the **criteria**) if—
- (a) the residential land meets the criteria at some time in the bright-line period; and
 - (b) there is a continuous period within the bright-line period for which the criteria are not otherwise met (a **continuous period**); and
 - (c) the beginning or the end of the continuous period adjoins a period within the bright-line period that meets the criteria; and
 - (d) the whole of the continuous period is 365 days or less; and
 - (e) the day is in that continuous period, within the bright-line period.

A definition

- (7) In this section, and in **sections CZ 40** and **EL 9** (which relate to the main home exclusion), **principal settlor** means, for a trust, a settlor whose settlements for the trust are the greatest or greatest equal, by market value.

Defined in this Act: beneficiary, bright-line date, bright-line period, dispose, dwelling, land, main home, person, principal settlor, residential land, settlement, settlor, trustee, year

- (2) **Subsection (1)** applies to a person's disposal of residential land, if the person acquires an estate or interest in the land on or after 27 March 2021. However, **subsection (1)** does not apply if the person makes an offer for the acquisition of the land, on or before 23

March 2021, that is irrevocable before 27 March 2021 and the person acquires an estate or interest in the land on or after 27 March 2021 as a result of that offer. Further, **subsection (1)** does not apply to—

- (a) a person’s disposal of a freehold estate in residential land that the person acquired as the owner of a leasehold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 27 March 2021:
- (b) a person’s disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 27 March 2021 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

New clause 7B

After *clause 7* (page 12, after line 16), insert:

7B Section CB 23B amended (Land partially disposed of or disposed of with other land)

In section CB 23B, in the words before the paragraphs, replace “CB 23” with “CB 23, **CZ 39, and CZ 40** (which relate to the bright-line test for residential land)”.

New clauses 13D, 13E, and 13F

After *clause 13C* (page 14, after line 35), insert:

13D New section CZ 37 inserted (Income equalisation schemes)

- (1) After section CZ 36, insert:

CZ 37 Income equalisation schemes

Income

- (1) A refund made to a person under **section EZ 80** (Refund of excess deposit in main income equalisation account as consequence of election under **section EZ 4B**) or **EZ 81** (Refund of excess deposit in adverse event income equalisation account as consequence of election under **section EZ 4B**) is, to the extent to which the refund is interest payable under section EH 6 (Interest on deposits in main income equalisation account) or EH 40 (Interest on deposits in adverse event income equalisation account), income of the person and is allocated to the income year in which the person receives the refund.

Excluded income

- (2) A refund under **section EZ 80 or EZ 81** is, to the extent to which the refund is not interest payable under section EH 6 or EH 40, excluded income.

Defined in this Act: excluded income, income, income year, interest, pay

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

13E New section CZ 38 inserted (Disposals of trading stock to non-associates without business purpose)

After section CZ 37, insert:

CZ 38 Disposals of trading stock to non-associates without business purpose

An amount that a person is treated as deriving in an income year under **section GZ 5** (Disposals of trading stock to non-associates) is income of the person for the income year.

Defined in this Act: amount, income, income year

13F New sections CZ 39 and CZ 40 inserted

Before Part D, insert:

CZ 39 Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018

When this section applies

- (1) This section applies to a person's disposal of residential land, if the person first acquires an estate or interest in the residential land on or after 29 March 2018 and **section CB 6A** (Disposal within 10 years: bright-line test for residential land) does not apply. However, this section does not apply to—
- (a) a person's disposal of a freehold estate in residential land that the person acquired as the owner of a leasehold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 29 March 2018:
 - (b) a person's disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 29 March 2018 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

Disposal within 5 years

- (2) An amount that a person derives from disposing of residential land is income of the person, if the bright-line date for the residential land is within 5 years of—

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- (a) the date on which the instrument to transfer the land to the person was registered—
 - (i) under the Land Transfer Act 2017; or
 - (ii) under foreign laws of a similar nature to the Land Transfer Act 2017, if the land is outside New Zealand; or
- (b) their date of acquisition of the land, if an instrument to transfer the land to the person is not registered on or before the bright-line date.

Subdivision

- (3) Despite **subsection (2)**, an amount that a person derives from disposing of residential land that results from the person subdividing other land (the **undivided land**) is income of the person if the bright-line date for the residential land is within 5 years of—
 - (a) the date on which the instrument to transfer the undivided land to the person was registered—
 - (i) under the Land Transfer Act 2017; or
 - (ii) under foreign laws of a similar nature to the Land Transfer Act 2017, if the land is outside New Zealand; or
 - (b) their date of acquisition of the undivided land, if the land is not registered as described in **paragraph (a)** at the bright-line date.

Leases with perpetual right of renewal

- (4) Despite **subsection (2)**, an amount that a person derives from disposing of a freehold estate in residential land, acquired as the owner of a leasehold estate with a perpetual right of renewal, is income if the bright-line date for the freehold estate is within 5 years of the grant of the leasehold estate.

Estate or interest acquired upon completion of land development or subdivision

- (5) Despite **subsection (2)**, an amount that a person derives from disposing of an estate or interest in residential land, acquired as the result of the completion of a land development or subdivision, is income if the bright-line date for the estate or interest is within 5 years of the person entering into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

Beginning of 5-year period for transfers by registration if trustees change

- (6) If the person referred to in **subsection (2)(a) or (3)(a)** is a trustee of a trust who has been transferred the land or undivided land from a trustee of the trust, the date on which the instrument was registered is treated as occurring on—
- (a) for **subsection (2)(a)**—
- (i) the earliest date (the **first date**) on which an instrument to transfer the land to a trustee of the trust was registered under the relevant law referred to in the subsection, if there has been no intervening transfer to a person who is not a trustee; or
 - (ii) the first date following the intervening transfer, if there has been an intervening transfer to a person who is not a trustee:
- (b) for **subsection (3)(a)**—
- (i) the earliest date (the **undivided date**) on which an instrument to transfer the undivided land to a trustee of the trust was registered under the relevant law referred to in the subsection, if there has been no intervening transfer to a person who is not a trustee; or
 - (ii) the undivided date following the intervening transfer, if there has been an intervening transfer to a person who is not a trustee.

Exception: disposal of land by executor, administrator, or beneficiary

- (7) This section does not apply to an amount that an executor or administrator described in section FC 1(1)(a) (Disposals to which this subpart applies), or a beneficiary described in section FC 1(1)(b), derives from disposing of residential land that was transferred to them on the death of a person.

Relationship with subject matter

- (8) This section applies if none of sections CB 6 to CB 12 apply.

A definition

- (9) In this section, **date of acquisition** means the latest date on which the person acquires the estate or interest in the residential land.

Defined in this Act: amount, bright-line date, date of acquisition, dispose, estate, income, interest, land, mortgage person, residential land, trustee, year

CZ 40 Main home exclusion for bright-line: acquisition on or after 29 March 2018

When this section applies

- (1) This section applies for a person's disposal of residential land, if the person first acquires an estate or interest in the residential land on or after 29 March 2018 and **section CB 16A** (Main home exclusion for disposal within 10 years) does not apply. However, this section does not apply to—
- (a) a person's disposal of a freehold estate in residential land that the person acquired as the owner of a leasehold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 29 March 2018;
 - (b) a person's disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 29 March 2018 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

Main home exclusion

- (2) **Section CZ 39** does not apply to a person (**person A**) who disposes of residential land, if, for most of the bright-line period, the land has been used predominantly for a dwelling that was the bright-line grandparented home for—
- (a) person A;
 - (b) a beneficiary of a trust, if person A is a trustee of the trust and—
 - (i) a principal settlor of the trust does not have a main home; or
 - (ii) if a principal settlor of the trust does have a main home, it is that main home which person A is disposing of.

When this section does not apply

- (3) The exclusion in **subsection (2)** does not apply to person A if—
- (a) the exclusion has been used by person A 2 or more times within the 2 years immediately preceding the bright-line date for the residential land;
 - (b) person A has engaged in a regular pattern of acquiring and disposing of residential land described in **subsection (2)**.

Person may include group of persons

- (4) For the purposes of **subsection (3)(b)**, in relation to residential land described in **subsection (2)**, 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, residential land described in **subsection (2)**; and
 - (b) 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.

Defined in this Act: beneficiary, bright-line date, bright-line grandparented home, bright-line period, dispose, dwelling, land, person, principal settlor, residential land, settlement, settlor, trustee, year

New clauses 14B and 14C

After *clause 14* (page 15, after line 6), insert:

14B New section DB 23C inserted (Revenue account property: cost of some residential land reduced)

- (1) After section DB 23B, insert:

DB 23C Revenue account property: cost of some residential land reduced

Cost reduced

- (1) For the purposes of section DB 23, the cost of residential land for which income is derived under **section CB 6A(6)** (Disposal within 10 years: bright-line test for residential land) is *reduced by* the excluded adjustment amount calculated using the formula in **subsection (2)**.

Excluded adjustment formula

- (2) The excluded adjustment amount for the purposes of **subsection (1)** is calculated using the formula—

$$\text{adjustment days} \div \text{total days} \times \text{cost.}$$

Definition of items in formula

- (3) The items in the formula in **subsection (2)** are defined in **subsections (4) to (6)**.

Adjustment days

- (4) **Adjustment days** has the same meaning as in **section CB 6A(9)**.

Total days

- (5) **Total days** has the same meaning as in **section CB 6A(10)**.

Cost

- (6) **Cost** is the cost of the land.

Defined in this Act: amount, income, residential land

- (2) **Subsection (1)** applies to a person’s disposal of residential land, if the person acquires an estate or interest in the land on or after 27 March 2021. However, **subsection (1)** does not apply if the person makes an offer for the acquisition of the land, on or before 23 March 2021, that is irrevocable before 27 March 2021 and the person acquires an estate or interest in the land on or after 27 March 2021 as a result of that offer. Further, **subsection (1)** does not apply to—

- (a) a person’s disposal of a freehold estate in residential land that the person acquired as the owner of a leasehold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 27 March 2021:
- (b) a person’s disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 27 March 2021 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

14C Section DB 29 amended (Apportionment when land acquired with other property)

In section DB 29, replace “sections CB 6A to CB 14” with “any of sections **CB 6A** to CB 14 and **CZ 39**”.

New clause 16B

After *clause 16* (page 17, after line 35), insert:

16B Section DT 1A amended (Ring-fenced allocations)

In section DT 1A(4), replace “sections IA 5 and IP 3” with “sections IA 5, **IB 3**, and IP 3”.

Clause 17 deleted

Delete *clause 17* (page 17, line 36 to page 18, line 2).

Clause 20 deleted

Delete *clause 20* (page 18, lines 17 to 20).

New clauses 20B to 20G

After *clause 20* (page 18, after line 20), insert:

20B Section EH 1 amended (Income equalisation schemes)

- (1) In section EH 1(2)(a), replace “EH 36” with “EH 36 and **EZ 80**”.
- (2) **Subsection (1)** applies for the 2017–18 and later income years.

20C Section EH 5 amended (Main income equalisation account)

In section EH 5(5), replace “and EH 25” with “EH 25, **EZ 80, and EZ 81**”.

20D Section EH 13 amended (Refund on application)

In section EH 13(1), replace “and EH 25” with “EH 25, **EZ 80, and EZ 81**”.

20E Section EH 35 amended (Meaning of main maximum deposit)

- (1) In section EH 35(2)(a), after “provision”, insert “, other than **section EZ 4B** (Cattle destroyed because of *Mycoplasma bovis*: spreading),”.
- (2) **Subsection (1)** applies for the 2017–18 and later income years.

20F Section EH 36 amended (Other definitions)

In section EH 36, in the definition of **deposit**, paragraph (b), replace “sections EH 6(2) to (4) and EH 10 to EH 33” with “sections EH 6(2) to (4), EH 10 to EH 33, and **EZ 80(3) and (7)(b)**”.

20G Section EH 61 amended (Meaning of adverse event maximum deposit)

- (1) In section EH 61(3)(a), after “provision”, insert “, other than **section EZ 4B** (Cattle destroyed because of *Mycoplasma bovis*: spreading),”.
- (2) In section EH 61(3)(b), replace “EH 33,” with “EH 33, **EZ 4B**,”.
- (3) **Subsections (1) and (2)** apply for the 2017–18 and later income years.

Clause 25 amended

Before *clause 25(1)* (page 22, before line 17), insert:

- (1A) In section EL 3, definition of **land sales provisions**, replace “CB 15” with “CB 15 and **CZ 39**”.

New clauses 25B and 25C

After *clause 25* (page 22, after line 22), insert:

25B Section EL 14 amended (Continuity rules for companies)

In section EL 14, replace “sections IA 5 and IP 3” with “sections IA 5, **IB 3**, and IP 3”.

25C Section EL 20 amended (Allocation of deductions related to bright-line disposals of residential land)

- (1) In section EL 20(1)(a), replace “CB 6A (Disposal within 5 years: bright-line test for residential land)” with “**CB 6A or CZ 39** (which relate to the bright-line test for residential land)”.
- (2) In section EL 20(3)(a), replace “CB 6A” with “**CB 6A or CZ 39**”.

Clause 28

Before *clause 28(1)* (page 23, before line 3), insert:

- (1A) In section EX 21(13)(j), replace “subpart IC” with “subparts **IB** and **IC**”.

New clauses 33B to 33G

After *clause 33* (page 27, after line 11), insert:

33B New cross-heading and sections EZ 80 and EZ 81 inserted

- (1) After section EZ 79, insert:

Income equalisation schemes

EZ 80 Refund of excess deposit in main income equalisation account as consequence of election under section EZ 4B

When this section applies

- (1) This section applies when—
- (a) a person makes an election under **section EZ 4B(2)** (Cattle destroyed because of *Mycoplasma bovis*: spreading); and
- (b) as a consequence of the election, the person’s deposits for an accounting year, less the amount of any refund made to the person for the accounting year under section EH 8 (Refund of excess deposit), are more than their main maximum deposit for the accounting year.

Refund

- (2) The Commissioner must refund the excess to the person from deposits the person made for the accounting year,—
- (a) to the extent to which, at the time the election is made, the person has sufficient deposits made for the accounting year in their main income equalisation account to enable the Commissioner to do so; and
 - (b) as soon as practicable after the election is made.

Treatment of interest

- (3) The amount of the refund must include any interest payable under section EH 6 (Interest on deposits in main income equalisation account) on a deposit from which the excess must be refunded.

*When **subsection (5)** applies*

- (4) **Subsection (5)** applies when the Commissioner is unable to refund the full amount of the excess to the person from deposits the person made for the accounting year because some or all of those deposits (the **refunded deposits**) have already been refunded to the person under section EH 13 or EH 15 (which relate to refunds from main income equalisation accounts).

Treatment of certain deposits

- (5) The earliest of the refunded deposits to have been refunded, to the extent necessary to make up the shortfall, are treated as—
- (a) not having been refunded under section EH 13 or EH 15, as applicable; and
 - (b) having been refunded under this section.

Income when refund given

- (6) A refund under this section is,—
- (a) to the extent to which the refund is interest payable under section EH 6, income under **section CZ 37(1)** (Income equalisation schemes); and
 - (b) to the extent to which the refund is not interest payable under section EH 6, excluded income under **section CZ 37(2)**.

Modified application of section EH 6

- (7) Section EH 6 applies to a deposit that forms all or part of the excess, other than a deposit that has been refunded before the election is made, with the following modifications:
- (a) interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the election is made:

- (b) interest on the deposit accrues until the earlier of—
 - (i) 31 March in each year; and
 - (ii) the date the election is made.

Relationship with section EH 8

- (8) This section overrides section EH 8.

Defined in this Act: accounting year, amount, Commissioner, deposit, excluded income, income, interest, main income equalisation account, main maximum deposit, pay, year

EZ 81 Refund of excess deposit in adverse event income equalisation account as consequence of election under section EZ 4B

When this section applies

- (1) This section applies when—
 - (a) a person makes an election under **section EZ 4B(2)** (Cattle destroyed because of *Mycoplasma bovis*: spreading); and
 - (b) as a consequence of the election, the person’s adverse event deposits for an accounting year ignoring section EH 60 (Transfer of deposit), less the amount of any refund made to the person for the accounting year under section EH 42 (Refund of excess deposit), are more than their adverse event maximum deposit for the accounting year.

Refund

- (2) The Commissioner must refund the excess to the person from deposits the person made for the accounting year,—
 - (a) to the extent to which, at the time the election is made, the person has sufficient deposits made for the accounting year in their main income equalisation account to enable the Commissioner to do so; and
 - (b) as soon as practicable after the election is made.

Treatment of interest

- (3) The amount of the refund must include any interest payable under sections EH 6 and EH 40 (which relate to interest on deposits in income equalisation accounts) on a deposit from which the excess must be refunded.

*When **subsection (5)** applies*

- (4) **Subsection (5)** applies when the Commissioner is unable to refund the full amount of the excess to the person from deposits the person made for the accounting year because some or all of those deposits (the **refunded deposits**) have already been refunded to the person under section EH 13, EH 15, or EH 45 (which relate to refunds from income equalisation accounts).

Treatment of certain deposits

- (5) The earliest of the refunded deposits to have been refunded, to the extent necessary to make up the shortfall, are treated as—
- (a) not having been refunded under section EH 13, EH 15, or EH 45, as applicable; and
 - (b) having been refunded under this section.

Income when refund given

- (6) A refund under this section is,—
- (a) to the extent to which the refund is interest payable under section EH 6 or EH 40, income under **section CZ 37(1)** (Income equalisation schemes); and
 - (b) to the extent to which the refund is not interest payable under section EH 6 or EH 40, excluded income under **section CZ 37(2)**.

Modified application of section EH 6

- (7) Section EH 6 applies to a deposit that forms all or part of the excess, other than a deposit that has been refunded before the election is made, with the following modifications:
- (a) interest is computed with daily rests from the date on which the deposit was transferred to the main income equalisation account until the date the election is made:
 - (b) interest on the deposit accrues until the earlier of—
 - (i) 31 March in each year; and
 - (ii) the date the election is made.

Relationship with section EH 42

- (8) This section overrides section EH 42.

Some definitions

- (9) In this section,—
- adverse event deposit** has the meaning given in section EH 62 (Other definitions)
- deposit**—
- (a) means an adverse event deposit; and
 - (b) includes an adverse event deposit that has been transferred to a main income equalisation account under section EH 60; and
 - (c) includes, for the purposes of **subsections (3) and (7)(a) and (b)**, interest that is added to a deposit, as defined in **paragraphs (a) and (b)**, under section EH 6(5) or EH 40(4)

main income equalisation account has the meaning given in section EH 36 (Other definitions).

Defined in this Act: accounting year, adverse event deposit, adverse event maximum deposit, amount, Commissioner, deposit, excluded income, income, interest, main income equalisation account, pay, year

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

33C Cross-heading above section EZ 80 repealed

Repeal the cross-heading above section EZ 80, as inserted by the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019.

33D Section EZ 80 renumbered (Transfers of deposits when adverse event income equalisation accounts abolished)

Renumber section EZ 80, as inserted by the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019, as **section EZ 82**.

33E Section EZ 81 amended (Refund of excess deposit in adverse event income equalisation account as consequence of election under section EZ 4B)

In section EZ 81(9), in the definition of **deposit**, paragraph (b), replace “section EH 60” with “section EH 60 or **EZ 82**”.

33F Section FB 3A amended (Residential land)

- (1) In section FB 3A(1) replace “and CB 16A” with “, CB 16A, **CZ 39, and CZ 40**”.
- (2) In section FB 3A(3) replace “section CB 6A(1) to (4B)” with “**sections CB 6A(1) to (5) and CZ 39(2) to (6)**”.

33G Section FC 9 amended (Residential land transferred to executor, administrator, or beneficiary on death of person)

In section FC 9(2), replace “CB 6A (Disposal within 5 years: bright-line test for residential land) does” with “**CB 6A and CZ 39** (which relate to the bright-line test for residential land) do”.

Clause 34

In *clause 34(1A)*, in the words before *paragraph (cd)* (page 27, line 13), replace “:” with “.”.

Clause 35

After *clause 35(7)* (page 30, after line 10), insert:

- (8) **Subsections (1), (2), (3), (3C), (4), (5), (6), and (7)** apply for income years beginning on or after the day on which the Taxation

(Annual Rates for 2020–21, Feasibility Expenditure, and Remedial
Matters) Act **2021** receives the Royal assent.

New clauses 37E to 37I

After *clause 37D* (page 31, after line 30), insert:

37E Section FM 18 amended (Financial arrangements: transfer from company A to company B)

- (1) In section FM 18(1)(c), replace “sections IA 4 and IA 5” with “sections IA 4, IA 5, and **IB 3**”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

37EB Section FO 10 amended (When property passes on resident’s restricted amalgamation)

In section FO 10(6), replace “5-year bright-line test or the 10-year rule in any of sections CB 6A, CB 9 to CB 11, and CB 14” with “5-year bright-line test, the 10-year bright-line test, or the 10-year rule in any of **sections CB 6A, CB 9 to CB 11, CB 14, and CZ 39**”.

37F Section FO 12 amended (Financial arrangements: resident’s restricted amalgamation, companies in wholly-owned group)

- (1) In section FO 12(1)(d), replace “subpart ID” with “subparts **IB** and **ID**”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

37FB Section FO 17 amended (Land)

- (1) In section FO 17(2)(a), replace “CB 6A to CB 14” with “**CB 6A to CB 14, and CZ 39**”.
- (2) In section FO 17(2)(b), replace “5-year bright-line test or the 10-year rule in any of sections CB 6A, CB 9 to CB 11, and CB 14” with “5-year bright-line test, the 10-year bright-line test, or the 10-year rule in any of **sections CB 6A, CB 9 to CB 11, CB 14, and CZ 39**” in each place.
- (3) In section FO 17(3),—
 - (a) replace “5-year bright-line test or the 10-year rule in any of sections CB 6A, CB 9 to CB 11, and CB 14” with “5-year bright-line test, the 10-year bright-line test, or the 10-year rule in any of sections **CB 6A, CB 9 to CB 11, CB 14, and CZ 39**”:
 - (b) replace “CB 6A to CB 14” with “**CB 6A to CB 14, and CZ 39**”.

37G New section FZ 9 inserted (Transfers of trading stock to non-associates, donee organisations, or public authorities)

After section FZ 8, insert:

Trading stock

FZ 9 Transfers of trading stock to non-associates, donee organisations, or public authorities

Section FC 2(1) (Transfer at market value) does not apply to a transfer of property if—

- (a) the property is trading stock of the transferor; and
- (b) the transferee—
 - (i) is not associated with the transferor; or
 - (ii) is associated with the transferor, but is a donee organisation or a public authority; and
- (c) the transfer is made in—
 - (i) the period that begins on 17 March 2020 and ends on 16 March 2022; or
 - (ii) a period specified by an Order in Council made under **section 225ABA** of the Tax Administration Act 1994.

Defined in this Act: associated, donee organisation, property, public authority, trading stock

37H Section GB 3 amended (Arrangements for carrying forward loss balances: companies)

- (1) Replace the heading to section GB 3 with “**Arrangements for carrying forward loss balances: companies’ ownership**”.
- (2) In section GB 3(1)(b), replace “section IA 5 (Restrictions on companies’ loss balances carried forward)” with “section IA 5(2) and (3) (Restrictions on companies’ loss balances carried forward: continuity of ownership)”.
- (3) In section GB 3(2), replace “section IA 5” with “section IA 5(2) and (3)”.

37I New sections GB 3BA to GB 3BAC inserted

- (1) After section GB 3, insert:

GB 3BA Arrangements for carrying forward loss balances: companies’ business activities

When this section applies

- (1) This section applies when—

- (a) a share in a company (the **loss company**) or another company has been subject to an arrangement, including an arrangement—
 - (i) directly or indirectly altering rights attached to the shares;
 - (ii) to change the nature of business activities carried on by the loss company; and
- (b) the arrangement is entered into within the 2 years immediately preceding a breach of the requirements for continuity of ownership of section IA 5 (Restrictions on companies' loss balances carried forward: continuity of ownership) that, if they had been met, would have enabled a tax loss component of the loss company to be carried forward to a tax year in a loss balance; and
- (c) the arrangement allows the loss company to meet the requirements of **section IB 3(2)** (When tax loss components of companies carried forward despite ownership continuity breach) for the carrying forward of the tax loss component to the tax year; and
- (d) a purpose of the arrangement is to defeat the intent and application of **section IB 3**.

Company treated as not meeting requirements

- (2) The loss company is treated as not meeting the requirements of **section IB 3(2)** in relation to the tax loss component.

Defined in this Act: arrangement, business, company, loss balance, share, tax loss component, tax year

GB 3BAB Arrangements to inject income into companies carrying forward loss balances

When this section applies

- (1) This section applies when—
 - (a) a person (**person A**) enters into an arrangement with another person (**person B**); and
 - (b) person A and person B are associated persons at the time they enter into the arrangement; and
 - (c) an effect of the arrangement is that a company derives an amount of assessable income for an income year that, but for the arrangement, a person other than the company—
 - (i) would have derived; or
 - (ii) would in all likelihood have derived; or
 - (iii) might be expected to have derived; and

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- (d) tax loss components of the company are carried forward under **section IB 3(2)** (When tax loss components of companies carried forward despite ownership continuity breach) to the tax year corresponding to the income year; and
- (e) the arrangement has tax avoidance as its sole or main purpose.

Treatment of injected income

- (2) The amount is schedular income of the company for the tax year corresponding to the income year.

Defined in this Act: amount, arrangement, assessable income, associated person, company, income year, schedular income, tax avoidance, tax loss component, tax year

GB 3BAC Arrangements to shift expenditure from companies carrying forward loss balances

When this section applies

- (1) This section applies when—
 - (a) tax loss components of a company are carried forward under **section IB 3(2)** (When tax loss components of companies carried forward despite ownership continuity breach) to a tax year; and
 - (b) a person (**person A**) enters into an arrangement with another person (**person B**); and
 - (c) person A and person B are associated persons at the time they enter into the arrangement; and
 - (d) an effect of the arrangement is that, in the absence of this section, a person other than the company is allowed a deduction for an amount of expenditure or loss the person incurs that, but for the arrangement, the company—
 - (i) would have incurred in the income year corresponding to the tax year; or
 - (ii) would in all likelihood have incurred in the income year corresponding to the tax year; or
 - (iii) might be expected to have incurred in the income year corresponding to the tax year; and
 - (e) the arrangement has tax avoidance as its sole or main purpose.

Treatment of company

- (2) The company is treated as having incurred the amount of expenditure or loss—
 - (a) in the course of carrying on a business for the purpose of deriving assessable income; and

(b) in the income year corresponding to the tax year.

Treatment of other person

- (3) The person referred to in **subsection (1)(d)** that is not the company is treated as not having incurred the amount of expenditure or loss.

Defined in this Act: amount, arrangement, assessable income, associated person, business, company, deduction, income year, loss, tax avoidance, tax loss component, tax year

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

New clauses 38BA and 38BAB

After *clause 38* (page 31, after line 33), insert:

38BA Section GB 52 amended (Arrangements involving residential land: companies' shares)

- (1) In section GB 52(1)(a),—
- (a) replace “CB 6A(1)(a) or (b) (Disposal within 5 years: bright-line test for residential land)” with “**CB 6A(1)(a) or (b), or CZ 39(2)(a) or (b)** (which relate to the bright-line test for residential land)”:
- (b) replace “5 years” with “10 years or 5 years, as applicable,”.
- (2) In section GB 52(1)(c), replace “CB 6A” with “**CB 6A or CZ 39** (Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018)”.

38BAB Section GB 53 amended (Arrangements involving residential land: trusts)

In section GB 53(1)(c), replace “CB 6A (Disposal within 5 years: bright-line test for residential land)” with “**CB 6A or CZ 39** (which relate to the bright-line test for residential land)”.

Clause 40

In *clause 40(1)*, new *section GC 21(12)*, (page 41, line 2) replace “an amount that is not market value” with “an amount that is provided by this section”.

New clause 40BA

After *clause 40* (page 41, after line 31), insert:

40BA New sections GZ 4 and GZ 5 inserted

After section GZ 3, insert:

GZ 4 Disposals of trading stock to donee organisations or public authorities

Section GC 1 (Disposals of trading stock at below market value) does not apply to a disposal of trading stock by a person—

- (a) to a donee organisation or a public authority; and
- (b) in—
 - (i) the period that begins on 17 March 2020 and ends on 16 March 2022; or
 - (ii) a period specified by an Order in Council made under **section 225ABA** of the Tax Administration Act 1994.

Defined in this Act: donee organisation, public authority, trading stock

GZ 5 Disposals of trading stock to non-associates

When this section applies

- (1) This section applies when a person (**person A**) disposes of trading stock—
 - (a) to another person (**person B**) that—
 - (i) is not associated with person A; and
 - (ii) is not a donee organisation or a public authority; and
 - (b) in—
 - (i) the period that begins on 17 March 2020 and ends on 16 March 2022; or
 - (ii) a period specified by an Order in Council made under **section 225ABA** of the Tax Administration Act 1994.

Exclusion from section GC 1

- (2) Section GC 1 (Disposals of trading stock at below market value) does not apply to the disposal.

*When **subsection (4)** applies*

- (3) **Subsection (4)** applies if—
 - (a) person A does not have a business purpose for the disposal; and
 - (b) the disposal is for no consideration or an amount that is less than—
 - (i) for trading stock held by person A at the beginning of the income year of person A in which the disposal occurs, the value of the trading stock under section

(ii)	EB 3 (Valuation of trading stock) at the end of the previous income year; or otherwise, the cost of the trading stock to person A.
<i>Income</i>	
(4)	Person A is treated as deriving, in the income year of person A in which the disposal occurs, an amount calculated using the formula in subsection (5) .
<i>Formula</i>	
(5)	The formula is— value – consideration received.
<i>Definition of items in formula</i>	
(6)	In the formula,—
(a)	value is—
(i)	for trading stock held by person A at the beginning of the income year of person A in which the disposal occurs, the value of the trading stock under section EB 3 at the end of the previous income year; or
(ii)	otherwise, the cost of the trading stock to person A:
(b)	consideration received is the amount of consideration paid or payable to person A in relation to the disposal.
<small>Defined in this Act: amount, associated, donee organisation, income year, pay, public authority, trading stock</small>	

New clauses 44DB to 44DU

After *clause 44D* (page 45, after line 37), insert:

44DB Section IA 2 amended (Tax losses)

- (1) In section IA 2(7), replace “For the purposes of this subpart, a” with “A”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

44DC Section IA 3 amended (Using tax losses in tax year)

After section IA 3(5), insert:

*Relationship with **section IB 3***

- (6) **Section IB 3** (When tax loss components of companies carried forward despite ownership continuity breach) modifies the application of this section when the person is a company.

44DD Section IA 5 amended (Restrictions on companies' loss balances carried forward)

- (1) Replace the heading to section IA 5 with “**Restrictions on companies' loss balances carried forward: continuity of ownership**”.
- (2) In section IA 5(4), replace “section IP 3 (Continuity breach: tax loss components of companies carried forward)” with “section **IB 3** or IP 3 (which relate to the carrying forward of tax losses for companies)”.
- (3) In section IA 5(5), replace “companies” with “companies' ownership”.
- (4) **Subsection (2)** applies in relation to a breach of the requirements for continuity of ownership of section IA 5 if the breach occurs during the 2020–21 income year or a later income year.

44DE Section IA 7 amended (Restrictions relating to ring-fenced tax losses)

- (1) In section IA 7(1B), after “IA 10,”, insert “and **subpart IB** (Carrying forward companies' loss balances: continuity of business activities),”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

44DF Section IA 8 amended (Restrictions relating to schedular income)

- (1) In section IA 8(1)(e), replace “insurers.” with “insurers; or”.
- (2) After section IA 8(1)(e), insert:
 - (f) **paragraph (k)**, which relates to companies carrying forward loss balances.
- (3) In section IA 8, list of defined terms, insert “loss balance”.
- (4) **Subsections (1) and (2)** apply for the 2020–21 and later income years.

44DG New subpart IB inserted (Carrying forward companies' loss balances: continuity of business activities)

- (1) After subpart IA, insert:

Subpart IB—Carrying forward companies' loss balances:
continuity of business activities

IB 1 Purpose

The purpose of this subpart and **sections GB 3BA to GB 3BAC** (which relate to arrangements involving tax losses) is—

- (a) to enable companies to carry forward tax loss components in loss balances despite not meeting the requirements for continuity of ownership of section IA 5 (Restrictions on companies' loss balances carried forward: continuity of ownership), in order to reduce impediments to—
 - (i) innovation and economic growth;
 - (ii) corporate reorganisations;
 - (iii) changes in the direct or indirect ownership of companies;
 - (iv) companies accessing new sources of share capital;
 - (v) companies adapting their business activities in order to grow or be resilient; but
- (b) not to encourage tax avoidance arrangements involving the acquisition of ownership interests in companies.

Defined in this Act: business, company, loss balance, ownership interest, tax avoidance arrangement, tax loss component

IB 2 Meaning of ownership continuity breach

In this subpart, an **ownership continuity breach**, for a company, means a breach of the requirements for continuity of ownership of section IA 5 (Restrictions on companies' loss balances carried forward: continuity of ownership) that, if met, enable a tax loss component of the company to be carried forward in a loss balance.

Defined in this Act: company, loss balance, ownership continuity breach, tax loss component, tax year

IB 3 When tax loss components of companies carried forward despite ownership continuity breach

When this section applies

- (1) This section applies when an ownership continuity breach occurs for a company.

Tax loss components for earlier income years carried forward

- (2) Despite the ownership continuity breach, a tax loss component arising in an earlier income year is carried forward to a tax year in a loss balance under section IA 3(4) (Using tax losses in tax year) if—
 - (a) the earlier income year is the 2013–14 income year or a later income year; and
 - (b) the company does not cease to carry on business activities during the relevant period described in **section IB 4** (the **business continuity period**); and

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(c) no major change in the nature of the business activities carried on by the company occurs during the business continuity period, other than 1 or more major changes that are permitted under **subsection (5)**; and

(d) **subsection (3)** does not apply to prevent the tax loss component being carried forward to the tax year.

Tax loss components for earlier income years not carried forward

(3) The tax loss component is not carried forward to the tax year if—

(a) before the beginning of the business continuity period,—

(i) the business activities carried on by the company have ceased; and

(ii) the business activities have not been revived:

(b) the earlier income year is the 2020–21 income year or a later income year and the company has had another ownership continuity breach—

(i) since the beginning of the earlier income year; and

(ii) in relation to which the requirements of **subsection (2)(b) and (c)** for the carrying forward to the tax year of the tax loss component are not met:

(c) the earlier income year is before the 2020–21 income year and an ownership continuity breach occurred for the company in the period—

(i) beginning on the first day of the earlier income year; and

(ii) ending on the last day of the 2019–20 income year.

Major change: factor that must be taken into account

(4) For the purposes of **subsection (2)**, without limiting the factors that may be taken into account in determining whether a major change in the nature of the business activities carried on by the company has occurred during the business continuity period, the extent to which the assets used in deriving the company's assessable income have remained the same or similar over the business continuity period must be taken into account.

Permitted major changes

(5) A major change in the nature of the business activities carried on by the company during the business continuity period does not breach the requirement set out in **subsection (2)(c)** if the major change is—

(a) made to increase the efficiency of a business activity carried on by the company:

- (b) made to keep up to date with advances in technology:
- (c) caused by an increase in the scale of a business activity carried on by the company, including as a result of the company entering a new market for a product or service that it produces or provides:
- (d) caused by a change in the type of products or services the company produces or provides that involves the company starting to produce or provide a product or service using the same, or mainly the same, assets as, or that is otherwise closely connected with, a product or service that the company produced or provided immediately before the beginning of the business continuity period.

Avoidance arrangements

- (6) **Section GB 3BA** (Arrangements for carrying forward loss balances: companies' business activities) may apply to treat a company as not meeting the requirements of **subsection (2)**.

A definition

- (7) In **subsection (5)**, **asset** does not include land other than buildings and fixtures.

Defined in this Act: assessable income, asset, business, company, income year, land, loss balance, ownership continuity breach, tax loss component, tax year

IB 4 Business continuity period

Period

- (1) The period referred to in **section IB 3(2)(b)**, for an ownership continuity breach and a tax loss component of a company, is the period beginning immediately before the ownership continuity breach occurs and ending on,—
 - (a) for a company for which the amount calculated using the formula in **subsection (2)** is 0.50 or greater, the last day of the income year that corresponds to the tax year in which the company uses the tax loss component; or
 - (b) in any other case, the earlier of—
 - (i) the last day of the income year that corresponds to the tax year in which the company uses the tax loss component; and
 - (ii) the last day of the income year in which the fifth anniversary of the ownership continuity breach falls.

Formula

- (2) The formula is—

(bad debt deductions – bad debt repayment income) ÷ (total deductions – bad debt repayment income).

Definition of items in formula

- (3) In the formula,—
- (a) **bad debt deductions** is the total amount of deductions that the company has been allowed under section DB 31(3) (Bad debts) for income years between the 2013–14 income year and the income year corresponding to the tax year immediately preceding the ownership continuity breach, both income years inclusive, in which a tax loss component included in the company’s tax loss for that tax year arose:
- (b) **bad debt repayment income** is the total amount of income that the company has under section CG 3 (Bad debt repayment)—
- (i) for income years between the earliest and the latest of the income years described in **paragraph (a)**, both income years inclusive; and
- (ii) that relates to deductions that the company has been allowed under section DB 31(3):
- (c) **total deductions** is the total amount of deductions that the company has been allowed for the income years described in **paragraph (a)**.

Defined in this Act: amount, company, deduction, income, income year, ownership continuity breach, tax loss, tax loss component, tax year

IB 5 When group companies treated as single company

Companies that are part of the same group of companies immediately before and immediately after an ownership continuity breach occurs for each of the companies are treated as a single company for the purposes of this subpart and **sections GB 3BA to GB 3BAC** (which relate to arrangements involving tax losses).

Defined in this Act: company, group of companies, ownership continuity breach

- (2) **Subsection (1)** applies in relation to a breach of the requirements for continuity of ownership of section IA 5 if the breach occurs during the 2020–21 income year or a later income year.

44DH Section IC 2 amended (Threshold levels for grouping tax losses in tax year)

- (1) In the heading to section IC 2(1), after “ownership”, insert “or business activities”.
- (2) In section IC 2(1), replace “section IA 5 (Restrictions on companies’ loss balances carried forward)” with “section IA 5(2) and (3) or

IB 3(2) (which relate to the carrying forward of tax losses for companies)”.

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

44DI Section IC 5 amended (Company B using company A’s tax loss)

- (1) In section IC 5(1)(c), after “ownership”, insert “or business activities”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

44DJ Section IC 10 amended (When companies have different balance dates)

- (1) In section IC 10(2)(a), after “company A”, insert “, or continuity of company A’s business activities,”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

44DK Section IC 12 amended (Bad debts or decline in value of shares)

- (1) In section IC 12(2), replace “section IA 3(2) and IA 5” with “sections IA 3(2), IA 5, and **IB 3**”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

44DL Section ID 1 amended (Treatment of tax losses by consolidated groups)

- (1) In section ID 1(1), replace “and IC” with “to IC”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

44DM Section ID 2 amended (Pre-consolidation losses: general treatment)

- (1) In section ID 2(1), replace “section IA 5 (Restrictions on companies’ loss balances carried forward)” with “section IA 5(2) and (3) or **IB 3(2)** (which relate to the carrying forward of tax losses for companies)”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

44DN Section IE 2 amended (Treatment of tax losses by amalgamating company)

- (1) In section IE 2(1), replace “section IA 5 (Restrictions on companies’ loss balances carried forward)” with “section IA 5(2) and (3) or **IB 3(2)** (which relate to the carrying forward of tax losses for companies)”.
- (2) In section IE 2(3), replace “amalgamating company” with “amalgamated company”.

- (3) **Subsection (2)** applies for the 2008–09 and later income years.
- (4) **Subsection (1)** applies for the 2020–21 and later income years.

44DO Section IE 3 amended (Treatment of tax losses by amalgamated company)

- (1) In section IE 3(1)(b), replace “section IA 5 (Restrictions on companies’ loss balances carried forward)” with “section IA 5(2) and (3) or **IB 3(2)** (which relate to the carrying forward of tax losses for companies)”.
- (2) In section IE 3(2), replace “sections IA 5, IC 2,” with “sections IA 5, **IB 3**, IC 2.”
- (3) In section IE 3(3)(a), replace “section IA 5” with “section IA 5 or **IB 3**”.
- (4) Replace section IE 3(5) with:

*Relationship with sections IA 3, IA 4, IA 5, and **IB 3***
- (5) This section overrides—
 - (a) sections IA 3 and IA 4 (which relate to the general use of tax losses); and
 - (b) sections IA 5 and **IB 3** (which relate to the carrying forward of tax losses for companies).
- (5) **Subsections (1), (2), (3), and (4)** apply for the 2020–21 and later income years.

44DP Section IE 4 amended (Group companies’ treatment of tax losses on amalgamation)

- (1) In section IE 4(1)(a), replace “section IA 5 (Restrictions on companies’ loss balances carried forward)” with “section IA 5(2) and (3) or **IB 3(2)** (which relate to the carrying forward of tax losses for companies)”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

44DQ Section IP 1 amended (When this subpart applies)

In section IP 1(1)(b), replace “(Restrictions on companies’ loss balances carried forward)” with “(Restrictions on companies’ loss balances carried forward: continuity of ownership)”.

44DR Section IP 3 amended (Continuity breach: tax loss components of companies carried forward)

In section IP 3(1), replace “(Restrictions on companies’ loss balances carried forward)” with “(Restrictions on companies’ loss balances carried forward: continuity of ownership)”.

44DS Section IQ 1 amended (General treatment)

- (1) In section IQ 1(1)(a), replace “section IA 5 (Restrictions on companies’ loss balances carried forward)” with “section IA 5(2) and (3) or **IB 3(2)** (which relate to the carrying forward of tax losses for companies)”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

44DT Section IQ 1B (Losses carried forward to tax year)

- (1) In section IQ 1B, replace “(Restrictions on companies’ loss balances carried forward) applies” with “and **subpart IB** (which relate to the carrying forward of tax losses for companies) apply”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

44DU Section IS 2 amended (Treatment of net losses resulting from certain expenditure)

- (1) In section IS 2(2),—
 - (a) replace “(Restrictions on companies’ loss balances carried forward)” with “(Restrictions on companies’ loss balances carried forward: continuity of ownership)”;
 - (b) replace “(Arrangements for carrying forward loss balances: companies)” with “(Arrangements for carrying forward loss balances: companies’ ownership)”.
- (2) In section IS 2(5), replace “(Arrangements for carrying forward loss balances: companies) and IA 5 (Restrictions on companies’ loss balances carried forward)” with “and IA 5(2) and (3)”.

New clauses 44FB and 44FC

After *clause 44F* (page 46, after line 22), insert:

44FB Section LK 5 amended (Companies’ credits carried forward)

In section LK 5(1), replace “apply” with “and **subpart IB** (Carrying forward companies’ loss balances: continuity of business activities) apply”.

44FC Section LP 4 amended (Continuity rules for carrying credits forward)

- (1) After section LP 4(2), insert:

Carry forward of credits despite continuity breach

- (2B) Despite a breach of continuity under subsection (2), the amount is available for use under section LP 3(4) if the amount could be carried forward to the tax year following the current year under **subpart IB** (Carrying forward companies’ loss balances: continuity of business activities), treating the amount as a tax loss component

arising on the last day of the income year corresponding to the tax year in which the tax credit first arose.

- (2) In section LP 4, list of defined terms, insert “tax loss component”.
- (3) **Subsection (1)** applies in relation to a breach of continuity under section LP 4(2) if the breach occurs during the 2020–21 income year or a later income year.

New clause 45B

After *clause 45* (page 47, after line 9), insert:

45B Section LY 8 amended (Carry forward for remaining research and development tax credits)

- (1) In section LY 8(2), after “met.”, insert “This subsection is subject to subsections **(4B)** to (6).”.
- (2) After section LY 8(4), insert:

Breach of continuity

- (4B) If a company’s remaining tax credit cannot be carried forward and credited because the requirements of subsection (3) are not met, the company may apply **subsection (4C)**, or subsections (5) and (6), to determine whether some or all of its remaining tax credit is carried forward and credited.

Carry forward of credits despite continuity breach

- (4C) Despite a breach of continuity under subsection (3), a company may carry forward a remaining research and development tax credit arising in a tax year to a later tax year and credit it under section LY 1(3)(b) for that later tax year, if the remaining tax credit could be carried forward to that later tax year under **subpart IB** (Carrying forward companies’ loss balances: continuity of business activities), treating the remaining tax credit as a tax loss component arising on the last day of the income year corresponding to the tax year in which the credit first arose.
- (3) In section LY 8(5), words before the paragraphs, replace “is” with “may be”.
- (4) In section LY 8(6), words before the paragraphs, replace “is” with “may be”.
- (5) In section LY 8, list of defined terms, insert “tax loss component”.
- (6) **Subsections (1), (2), (3), and (4)** apply in relation to a breach of continuity under section LY 8(3) if the breach occurs during the 2020–21 income year or a later income year.

New clause 57B

After *clause 57* (page 50, after line 32), insert:

57B Section RL 1 amended (Residential land withholding tax)

In section RL 1(2)(a), replace “CB 6A (Disposal within 5 years: bright-line test for residential land) ignoring sections CB 6A(6) and CB 16A” with “**CB 6A or CZ 39** (which relate to the bright-line test for residential land) ignoring **sections CB 6A(13), CB 16A, CZ 39(8), and CZ 40**”.

Clause 58

After *clause 58(2)* (page 50, after line 36), insert:

(2B) In the definition of **asset**, after paragraph (c), insert:

(d) is defined in **section IB 3(7)** (When tax loss components of companies carried forward despite ownership continuity breach) for the purposes of **section IB 3(5)**

After *clause 58(3)* (page 51, after line 10), insert:

(3B) Replace the definition of **bright-line date** with:

bright-line date means, for a disposal of residential land,—

- (a) the earliest of—
- (i) the date that the person enters into an agreement for the disposal:
 - (ii) the date on which the person makes a gift of the residential land:
 - (iii) the date on which the person’s residential land is compulsorily acquired under any Act by the Crown, a local authority, or a public authority:
 - (iv) if there is a mortgage secured on the residential land, the date on which the land is disposed of by or for the mortgagee as a result of the mortgagor’s defaulting; or
- (b) if none of **paragraph (a)(i) to (iv)** apply, the date on which the estate or interest in the residential land is disposed of

(3C) Insert, in appropriate alphabetic order:

bright-line grandparented home means, for a person, the 1 dwelling—

- (a) that is mainly used as a residence by the person (a **home**); and
- (b) with which the person has the greatest connection, if they have more than 1 home

(3D) Insert, in appropriate alphabetic order:

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bright-line period means, for a person and residential land, the period beginning with the relevant date described in, as applicable:

- (a) **section CB 6A(1) to (5)** (Disposal within 10 years: bright-line test for residential land), and ending with the bright-line date for the residential land:
- (b) **section CZ 39(2) to (6)** (Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018), and ending with the bright-line date for the residential land

After *clause 58(5C)* (page 51, after line 19), insert:

(5CB) In the definition of **continuity period**, paragraph (a), replace “(Restrictions on companies’ loss balances carried forward)” with “(Restrictions on companies’ loss balances carried forward: continuity of ownership)”.

(5CC) In the definition of **continuity provisions**,—

- (a) paragraph (a), replace “(Arrangements for carrying forward loss balances: companies)” with “(Arrangements for carrying forward loss balances: companies’ ownership)”:
- (b) paragraph (d), replace “(Restrictions on companies’ loss balances carried forward)” with “(Restrictions on companies’ loss balances carried forward: continuity of ownership)”.

After *clause 58(5G)* (page 51, after line 29), insert:

(5H) In the definition of **deposit**, after paragraph (c), insert:

- (d) is defined in **section EZ 81** (Refund of excess deposit in adverse event income equalisation account as consequence of election under **section EZ 4B**) for the purposes of that section

After *clause 58(6)* (page 51, after line 33), insert:

(6B) In the definition of **dispose**, replace “CB 22” with “CB 22, **CZ 39**”.

After *clause 58(8)* (page 52, after line 12), insert:

(8B) Insert in the appropriate alphabetical order:

excluded day is defined in **section CB 6A** (Disposal within 10 years: bright-line test for residential land) for the purposes of that section

After *clause 58(10)* (page 52, after line 30), insert:

(10BA) In the definition of **loss balance**, paragraph (b),—

- (a) replace “section IA 5 (Restrictions on companies’ loss balances carried forward)” with “section IA 5(2) and (3) (Restrictions on companies’ loss balances carried forward: continuity of ownership)”:

- (b) after “1992),”, insert “or **IB 3(2)** (When tax loss components of companies carried forward despite ownership continuity breach),”.

(10BABA) In the definition of **main home**, in paragraph (a), delete “mainly”.

(10BAB) In the definition of **minimum market value interest**, paragraph (a), replace “(Restrictions on companies’ loss balances carried forward)” with “(Restrictions on companies’ loss balances carried forward: continuity of ownership)”.

(10BAC) In the definition of **minimum voting interest**, paragraph (a), replace “(Restrictions on companies’ loss balances carried forward)” with “(Restrictions on companies’ loss balances carried forward: continuity of ownership)”.

After *clause 58(12)* (page 52, after line 40), insert:

(12BA) Insert, in appropriate alphabetical order:

ownership continuity breach is defined in **section IB 2** (Meaning of ownership continuity breach) for the purposes of **subpart IB** (Carrying forward companies’ loss balances: continuity of business activities)

(12BAB) In the definition of **principal settlor**, replace “section EL 9 (Main home exclusion)” with “**sections CZ 40** and EL 9 (which relate to the main home exclusion)”.

(12BAC) Replace the definition of **residential land** with:

residential land,—

- (a) means—
- (i) land that has a dwelling on it, unless the land is farmland, or is used predominantly as business premises:
 - (ii) land for which the owner has an arrangement that relates to erecting a dwelling, unless the land is farmland or is used predominantly as business premises:
 - (iii) bare land that may be used for erecting a dwelling under rules in the relevant operative district plan, unless the bare land is farmland or is used predominantly as business premises; and
- (b) includes land that has a dwelling on it, if it is used by a person predominantly as business premises for a business of supplying accommodation and the dwelling is not a main home for the person or 1 or more other persons referred to in **section CB 16A(2)** (Main home exclusion for disposal within 10 years)

After *clause 58(12B)* (page 53, after line 1), insert:

(12C) In the definition of **schedular income**, after paragraph (j), insert:

- (k) income to which **section GB 3BAB** (Arrangements to inject income into companies carrying forward loss balances) applies

After *clause 58(13)* (page 53, after line 2), insert:

(13BA) In the definition of **trading stock**, paragraph (a), replace “(b),” with “(b), **(bb)**, **(bc)**”.

After *clause 58(13B)* (page 53, after line 7), insert:

(13C) In the definition of **trading stock**, after paragraph (b), insert:

- (bb) in **section FZ 9** (Transfers of trading stock to non-associates, donee organisations, or public authorities), means property that is trading stock under section EB 2 except that it includes—
 - (i) livestock not used in a dealing business:
 - (ii) consumable aids to be used in the process of producing trading stock:
- (bc) in **sections GZ 4 and GZ 5** (which relate to the disposal of trading stock to non-associates, donee organisations, or public authorities), has the meaning given in paragraph (b) except that it does not include—
 - (i) timber or a right to take timber:
 - (ii) land whose disposal would produce income under any of sections CB 6A to CB 15:

(13D) In the definition of **trading stock**, in paragraph (b)(v), replace “CB 15” with “CB 15 and **CZ 39**”.

In *clause 58(15)* (page 53, line 9), replace “**Subsection (9B)** applies” with “**Subsections (9B), (10BA), and (12C)** apply”.

After *clause 58(15)* (page 53, after line 9) insert:

(16) **Subsection (12BAC)** applies—

- (a) for purposes of the rules related to the bright-line test for residential land, if the person acquires an estate or interest in the land on or after 27 March 2021. However, **subsection (12BAC)** does not apply if the person makes an offer for the acquisition of the land, on or before 23 March 2021, that is irrevocable before 27 March 2021 and the person acquires an estate or interest in the land on or after 27 March 2021 as a result of that offer. Further, **subsection (12BAC)** does not apply to—
 - (i) a person’s disposal of a freehold estate in residential land that the person acquired as the owner of a lease-

hold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 27 March 2021:

- (ii) a person’s disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 27 March 2021 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision:
- (b) for other purposes, for the 2021–22 and later income years.

New clause 68B

After *clause 68* (page 56, after line 31), insert:

68B Section 17B amended (Commissioner may require information or production of documents)

- (1) In section 17B(2), replace “17, 17G, and 17H” with “17 and 17G to 17H”.
- (2) In section 17B(5), replace “17F to 17K” with “17F, 17G, and 17H to 17K”.

Clause 69

Replace *clause 69(1)* (page 56, lines 33 to 35) with:

- (1A) In section 17C(1), replace “17B or 17G” with “17B, 17G, or 17GB”.
- (1) In section 17C(1), replace “provided under section 17B, 17G, or 17GB, or produced under section 17H” with “or produced under 1 or more of sections 17B, 17GB, 17H(6), and 17I”.

New clauses 69B to 69G

After *clause 69* (page 56, after line 37), insert:

69B Section 17E amended (Information or documents treated as in persons’ knowledge, possession, or control)

- (1) In section 17E(1), replace “17B(1),” with “17B(1), 17GB(1),”.
- (2) In section 17E(2), replace “17B(1)” with “17B(1), 17GB(1),”.

69C Section 17H amended (Court may make order for provision of information)

In section 17H(1), replace “an information demand under section 17B” with “a notice under section 17B or 17GB,”.

69D Section 20 amended (Privilege for confidential communications between legal practitioners and their clients)

- (1) In section 20(1), replace “17H, and 17I” with “17GB to 17I”.
- (2) In section 20(4), replace “17H, and 17I” with “17GB to 17I”.

69E Section 20B amended (No requirement to disclose tax advice document)

In section 20B(1), replace “17E, 17H, and 17I” with “17E and 17GB to 17I”.

69F Section 20D amended (Claim that document is tax advice document)

- (1) In section 20D(4)(a), replace “or 17C” with “and 17C”.
- (2) In section 20D(4)(b), replace “17C” with “17GB”.

69G Section 20F amended (Person must disclose tax contextual information from tax advice document)

- (1) In section 20F(2)(a), replace “or 17C” with “and 17C”.
- (2) In section 20F(2)(b), replace “17C” with “17GB”.

New clauses 73B, 73C, and 73D

After *clause 73* (page 57, after line 19), insert:

73B Section 54C amended (Information in relation to payment of RLWT)

In section 54C(1), in the words before the paragraphs, replace “is within 5 years” with “is either within 5 years if **section CZ 39** applies, or within 10 years if **section CB 6A** applies,”.

73C Section 54D amended (Information in relation to repayment of RLWT)

In section 54D(1)(b), replace “section CB 16A” with “**section CB 16A or CZ 40**”.

73D Section 54E amended (RLWT certificate of exemption)

In section 54E(4), replace “section CB 16A” with “**section CB 16A or CZ 40**”.

New clause 74B

After *clause 74* (page 57, after line 24), insert:

74B Section 59BA amended (Annual return for trusts)

- (1) Replace section 59BA(1) with:

- (1) A trustee of a trust who derives assessable income for a tax year must file a return for the tax year of all income derived in the corresponding income year by the trustee as trustee of the trust.
- (2) In section 59BA(2), replace the words before paragraph (a) with “A trustee who is required to file a return for a tax year under subsection (1) and does not meet the requirements of **subsection (3)** must make the return in the form prescribed by the Commissioner and include, unless otherwise required by the Commissioner,—”.
- (3) Replace section 59BA(3) with:
 - (3) A trustee of a trust who is required to file a return for a tax year under subsection (1) is not required to file a return in the form required by subsection (2) if—
 - (a) the trustee is excluded from the requirement to make a return by section 43B (which relates to non-active trusts):
 - (b) the trustee is required to make a return by section 59D (which relates to foreign trusts):
 - (c) the trustees of the trust are incorporated as a board under the Charitable Trusts Act 1957:
 - (d) the trust is a charitable trust registered under the Charities Act 2005:
 - (e) the trustee is eligible under section HF 2 of the Income Tax Act 2007 to choose under section HF 11 of that Act to become a Maori authority:
 - (f) the trust is a widely-held superannuation fund, as defined in section YA 1 of the Income Tax Act 2007:
 - (g) the trust is an employee share scheme that is an exempt ESS, as defined in section YA 1 of the Income Tax Act 2007:
 - (h) the trustee is a debt funding special purpose vehicle, as defined in section YA 1 of the Income Tax Act 2007:
 - (i) the trustee is a lines trust established under the Energy Companies Act 1992.
- (4) After section 59BA(4), insert:
- (5) The Commissioner may vary the requirements set out in subsection (2) for a trustee or class of trustees.
- (6) A variation under **subsection (5)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

New clauses 83CB and 83CC

After *clause 83C* (page 60, after line 3), insert:

83CB New section 225ABA inserted (Orders in Council: periods for purposes of certain provisions of Income Tax Act 2007 relating to disposals of trading stock)

After section 225A, insert:

225ABA Orders in Council: periods for purposes of certain provisions of Income Tax Act 2007 relating to disposals of trading stock

- (1) This section provides a power to extend the period, or specify another later period, during which certain provisions of the Income Tax Act 2007 apply in relation to certain disposals of trading stock.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister of Revenue,—
 - (a) replace the date on which the period specified in 1 or more of **sections FZ 9(c)(i), GZ 4(b)(i), and GZ 5(1)(b)(i)** of the Income Tax Act 2007 ends with another date that is later than the one it replaces:
 - (b) specify a period for the purposes of 1 or more of **sections FZ 9(c)(ii), GZ 4(b)(ii), and GZ 5(1)(b)(ii)** of that Act.
- (3) An Order in Council under **subsection (2)(a)** to replace the existing end date of a period must be made before that date.
- (4) The Minister of Revenue may recommend the making of an Order in Council under **subsection (2)(a)** only if satisfied that people in New Zealand are likely to continue, beyond the expiry of the existing period, to be significantly adversely affected by COVID-19.
- (5) The period specified by an Order in Council made under **subsection (2)(b)** may begin before the date on which the Order in Council comes into force.
- (6) The Minister of Revenue may recommend the making of an Order in Council under **subsection (2)(b)** only if satisfied that—
 - (a) an event has occurred that meets the requirements of paragraphs (a) and (b) of the definition of emergency in section 4 of the Civil Defence Emergency Management Act 2002; and
 - (b) people in New Zealand were being significantly adversely affected as a consequence of the event at the beginning of the period that is to be recommended is specified; and
 - (c) people in New Zealand—
 - (i) were being significantly adversely affected as a consequence of the event at the end of the period that is to be recommended is specified; or

- (ii) are likely to continue to be significantly adversely affected as a consequence of the event at least until the end of the period that is to be recommended is specified.
- (7) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

83CC New section 227H inserted (Transitional provision relating to annual return for trusts)

After section 227G, insert:

227H Transitional provision relating to annual return for trusts

A variation under **section 59BA(5)** is a disallowable instrument if the variation is made in the period from the date on which the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act **2020** receives the Royal assent to the date on which Part 3 of the Legislation Act 2019 comes into force.

Clause 100

After the heading to *clause 100* (page 67, line 3), insert “**(Transitional, savings, and related provisions)**”.

Clause 100D

Replace *new section 4(1)(c)* (page 68, lines 15 to 17) with:

- (c) is held by a person who—
 - (i) is not the Commissioner; or
 - (ii) is the Commissioner and has not delisted the money under **section 11(5B)**.

In *new section 4(3)(a)*, words before *subparagraph (i)* (page 68, line 26), replace “\$100 or more” with “more than \$100”.

In *new section 4(4)*,—

- (a) in the words before *paragraph (a)* (page 69, line 6), replace “either of” with “1 or more of”;
- (b) in *paragraph (b)(ii)* (page 69, line 15), replace “occurred.” with “occurred.”;
- (c) after *paragraph (b)* (page 69, after line 15), insert:
 - (c) an agreement, arrangement, or situation that gives rise to an obligation under law or equity of the holder to make a payment to the owner.

Clause 100H

In *clause 100H(4)* (page 71, line 33), replace “after” with “on or after”.

In *clause 100H(5)* (page 71, line 36), replace “**subsection (6)**” with “**subsection (6) or (7)**”.

In *clause 100H(6)*, words before *paragraph (a)* (page 72, line 1), replace “this section” with “this subsection”.

After *clause 100H(6)* (page 72, after line 11), insert

- (7) A holder and an amount meet the requirements of this subsection if the money becomes unclaimed money under section 4 before the date on which this Act receives the Royal assent and is not paid to the Commissioner before that date.

Clause 100K(3)

Insert before *new section 11(6)* (page 72, before line 33):

- (5B) The Commissioner may remove an amount of unclaimed money from the list of amounts that are available for the owner to claim from the Commissioner, and the amount then ceases to be unclaimed money, if the money—
- (a) has been unclaimed money for 25 years or more;
 - (b) is money for which the Commissioner holds no information relating to the owner;
 - (c) is an amount of \$100 or less.

Replace *new section 11(7)* (page 73, lines 1 to 3), with:

- (7) No person shall have a right of action against the Commissioner for an amount of money that—
- (a) has been delisted by the Commissioner under **subsection (5B)**; or
 - (b) is unclaimed money meeting the requirements of **subsection (5B)** for delisting by the Commissioner.

New cross-heading and clause 103

After *clause 102* (page 73, after line 32), insert:

Taxation (Income Tax Rate and Other Amendments) Act 2020

103 Section 19 amended (Schedule 1, part D, table 2 amended)

In section 19 of the Taxation (Income Tax Rate and Other Amendments) Act 2020, in new schedule 1, part D, table 2, row 2, column 3, replace “0.390” with “0.330”.

Explanatory note

This Supplementary Order Paper proposes amendments to the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill, and therefore amendments to the—

- Income Tax Act 2007;
- Tax Administration Act 1994;
- Taxation (Income Tax Rate and Other Amendments) Act 2020; and
- Unclaimed Money Act 1971.

Broadly, the proposals contained in the Supplementary Order Paper fall into 4 categories. The first is the extension of the bright-line test for residential land from 5 years to 10 years. The second consists of policies progressed as part of the Government’s COVID-19 response. The third consists of changes to policies already included in the Bill. The last category consists of remedial and technical amendments.

Extension of bright-line test

The Supplementary Order Paper proposes to extend the bright-line test from 5 years to 10 years (*see*: proposed *clause 5A*).

The exclusion from the bright-line test for the “main home” would no longer apply on an all or nothing basis, but rather apply only for the period the property is actually used as the owner’s main home (*see*: proposed *clauses 5, 13F, 14B, and 58(10BABA)*).

A 12-month change of use “buffer” is proposed, within which the change of use to/from being the taxpayer’s main home does not need to be accounted for (*see*: proposed *clauses 5A and 5*).

An amendment to the business premises exclusion is proposed to exclude the provision of short-stay accommodation in a dwelling that is not the owner’s home (*see*: proposed *clause 58(12BAC)*).

The 10 year bright-line test and the associated rules would apply to residential property acquired on or after 27 March 2021 except if the property was acquired as a result of an offer made by the purchaser on or before 23 March 2021 and the offer cannot be revoked before 27 March 2021.

A significant number of cross-reference consequential amendments to support the 10 year bright-line test and the associated rules are also proposed.

Loosening the loss continuity rules

New Zealand’s current loss continuity rules require at least 49% continuity of ownership of a company for losses to be carried forward to offset future taxable income. The Supplementary Order Paper proposes to introduce into the Income Tax Act 2007 a business continuity test under which losses may be carried forward if there is no “major change” in the company’s business activities for 5 years after a change in

ownership. The test is an alternative to the current test for continuity of ownership. It is supported by specific anti-avoidance measures.

New clause 37I inserts *new sections GB 3BA to GB 3BAC*, which are anti-avoidance provisions supporting the new business continuity test. *New clause 44DF*, which amends *section IA 8*, and *clause 58(12C)*, which amends the definition of *schedular income*, support *new section GB 3BAB*. *New clause 37H* makes consequential amendments.

New clause 44DG inserts *new subpart IB*, which implements the new business continuity test. *New clauses 16B, 25B, 28(1A), 37E, 37F, 44DC to 44DE, 44DH to 44DN(1), 44DO to 44DU, 44FB, 44FC, 45B, and 58(2B), (5CB), (5CC), (10BA), (10BAB), (10BAC), and (12BA)* make consequential amendments. A consequential amendment to *clause 58(15)* is proposed.

Donated trading stock

Rules in the Income Tax Act 2007 impose tax on the market value of donated trading stock. The Supplementary Order Paper proposes that trading stock donated between 17 March 2020 and 16 March 2022 not be subject to these rules if donated to donee organisations, public authorities, or other persons not associated with the donor.

New clause 37G inserts *new section FZ 9*, which provides an exception from the rule in *section FC 2(1)* that requires the transfer of property on the making of a gift to be treated as a disposal and acquisition at market value. *New clause 40BA* inserts *new sections GZ 4 and GZ 5*, with *section GZ 4* providing an exclusion for donations to public authorities and donee organisations from *section GC 1*, which is an anti-avoidance provision that would otherwise tax the donor on the market value of donated trading stock. *Section GZ 5* provides an exclusion from *section GC 1* for donations to persons not associated with the donor. *New clause 13E* inserts *new section CZ 38*, which supports *section GZ 5* by making the donor taxable on a deemed amount of income, and offsetting the deduction that the donor has previously taken for the trading stock, when the donor does not have a business purpose for making the donation. *Clause 58(13BA) and (13C)* amend the definition of *trading stock* for the purposes of the new sections.

New clause 83CB inserts *new section 225ABA* into the Tax Administration Act 1994. That section authorises the making of an Order in Council to extend the period for which the new sections in the Income Tax Act 2007 apply or to declare a later period for which the new sections apply.

Unclaimed money

The Supplementary Order Paper proposes changes to the clauses in the Bill that modernise the Unclaimed Money Act 1971. In *clause 100K(3)*, proposed *section 11(5B)* provides that the Commissioner of Inland Revenue may end the status, as unclaimed money, of money that is held by the Commissioner if—

- more than 25 years has passed since the money became unclaimed money;
- the Commissioner has no information relating to the owner of the money;

- the amount of money involved is \$100 or less.

Consequential changes are proposed to *section 4(1)(c) and (3)(a) in clause 100D* and *section 11(7) in clause 100K(3)*.

In *clause 100D*, proposed *section 4(4)(c)* provides that unclaimed money can result from obligations arising under situations, as well as from obligations arising under arrangements.

Proposed amendments to *clause 100H*, including the insertion of *subclause (7)*, relate to the transitional treatment of amounts that become unclaimed money. It is proposed that amounts becoming unclaimed money before the amendments to section 4 commence, but not paid to the Commissioner before the commencement date, be given the same transitional treatment as amounts that do not become unclaimed money before the commencement date but would have met the new requirements before that date.

Mycoplasma bovis

Clause 33 of the Bill introduces an option by which owners of livestock culled for having *Mycoplasma bovis* may spread their income over a 6-year period. The Supplementary Order Paper proposes amendments giving affected farmers who have already made deposits in the Main Income Equalisation Scheme (MIES) or in the Adverse Event Income Equalisation Scheme (AEIES) an option of switching to the 6-year income spreading option, with the tax effects of the deposits then being reversed.

New clauses 20E and 20G ensure that the income spread is taken into account when determining the maximum annual deposit for the MIES and the AEIES, respectively. This has the effect of disallowing the deduction previously taken for deposits made to the extent of the excess. *New clause 33B* inserts proposed *new sections EZ 80 and EZ 81*, which require excess deposits in the MIES and the AEIES to be refunded. *New clause 13D* inserts proposed *new section CZ 37*, which provides that a refund, apart from interest earned on the deposit, is excluded income of the farmer. *New clauses 20B to 20D, 20F, 33C to 33E, and 58(5H)* make other consequential changes.

Other remedial and technical amendments

Proposed *new clause 35(8)* provides for the application on an income year basis of the amendments to section FE 6 of the Income Tax Act 2007.

A consequential amendment is proposed to *section GC 21(12) in clause 40(1)* to clarify the relationship between amounts allocated under the purchase price allocation rule in section GC 21(7) and amounts arising under other market value provisions in the Income Tax Act 2007.

Proposed *new clauses 68B, 69(1A) and (1), and 69B to 69G* correct cross-references in provisions of the Tax Administration Act 1994 to include references to section 17GB.

Proposed *new clause 74B* amends section 59BA of the Tax Administration Act 1994 to modify the rules relating to the returns and information required to be provided to the Commissioner by trustees who derive income. The amendments: clarify that a

return is required if a trustee derives assessable income; clarify the types of trustee in *section 59BA(3)* that are excluded from the information requirements; and insert *new section 59BA(5) and (6)*, which give the Commissioner a power to vary the information requirements for a trustee or class of trustees. Proposed *new clause 83CC* makes a consequential transitional amendment.

Proposed *new clause 103* amends the Taxation (Income Tax Rate and Other Amendments) Act 2020, which introduced a new personal tax rate of 39% for income of more than \$180,000. The clause amends section 19 of the amendment Act so as to keep the default resident withholding tax rate at 33%.

New clauses 44DB and 44DN(2) retrospectively correct minor errors in the Income Tax Act 2007.

Departmental disclosure statement

The Inland Revenue Department is required to prepare a supplementary disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The supplementary disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2021&no=23>.

Regulatory impact assessment

The Inland Revenue Department produced regulatory impact assessments on 15 January 2021, 18 January 2021, 11 February 2021, and 5 March 2021 to help inform the new policy decisions taken by the Government relating to the contents of this Supplementary Order Paper.

Copies of these regulatory impact assessments can be found at—

- <https://taxpolicy.ird.govt.nz/publications>
- <https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments>