Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

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

Introduction

This omnibus bill seeks to amend the KiwiSaver Act 2006, the Student Loan Scheme Act 2011, and various taxation-related Acts and regulations. In particular, the bill would:

- allow KiwiSaver members to change their contribution rates through their scheme provider or the Inland Revenue Department (IRD), in addition to through their employer
- allow the Commissioner of Inland Revenue to change the tax rate applied for portfolio investment entity (PIE) investors in a greater variety of circumstances, rather than leaving the onus solely on the investor
- broaden eligibility for refundable research and development tax credits
- exempt overseas-based borrowers with serious illnesses or disabilities from being required to pay interest on student loan repayments.

Proposed amendments include Supplementary Order Paper 293

After the bill was introduced, the Minister of Commerce and Consumer Affairs released Supplementary Order Paper (SOP) 293 proposing amendments to the bill. If adopted, SOP 293 would amend the KiwiSaver Act to allow people with life-shorten-

ing congenital conditions (such as Trisomy 21, also known as Down Syndrome) to withdraw their KiwiSaver funds before the age of 65.

We have considered SOP 293 and recommend that it be incorporated into the bill with some minor adjustments which we discuss later in this commentary.

The rest of this commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Amendments to the KiwiSaver Act

Application date for KiwiSaver members

Clause 14(1) would allow KiwiSaver members to change their contribution rate by giving notice to their scheme provider or to IRD. Currently, members can only make changes through their employer.

This change would require IRD to pass on a member's request to change their contribution rate to their employer. The employer would then need to action it. We note that while the change has strong public support, it could increase compliance costs for employers. We therefore recommend inserting clause 2(23) to defer the application date for this provision until 1 April 2022 or an earlier date set by Order in Council. This would give IRD more time to consult stakeholders on how to reduce compliance costs associated with the change.

Provision of employer's information

When KiwiSaver members request a contribution rate change, the bill as introduced (clause 14(2B)) would require them to give IRD or their scheme provider the name and address of their employer(s).

We note that problems may arise if members provide incorrect details (such as their employer's trading name rather than its registered name). In those cases, IRD would need to rely on the information it received at the time the employee was first employed.

We recommend various amendments so IRD would simply need to notify each employer it has on record of the member's new contribution rate or enrolment in KiwiSaver. We also recommend that, when applying for savings suspensions, members would only need to provide the name and address of their employer(s) when IRD asks them to. This should reduce the compliance burden for employers, providers, and employees. The provisions affected include clauses 5E, 5F, 14(1), 32C, 33B, and 33C.

Requirement for employers to provide additional information

Clause 13 would require employers to provide the Commissioner of Inland Revenue with information about the income their employees' KiwiSaver contributions are based on in certain situations. This would provide IRD with further data on KiwiSaver and make it easier for it to detect miscalculations of Employer Superannuation Contribution Tax (ESCT) deductions by employers.

We consider that requiring employers to provide information on all of their employees may unnecessarily increase compliance costs. We also note that IRD can already calculate members' ESCT rates from information received under the existing regime.

We recommend removing the requirement for employers to provide information on their employees' ESCT rates. With regard to income information, we propose only requiring employers to provide information for new employees and those who have just enrolled in KiwiSaver. The main provisions affected by these amendments are clauses 13, 25(2), and 132.

Amendments relating to SOP 293, early withdrawal for KiwiSaver members with life-shortening conditions

As part of our consideration of the bill, we also considered Supplementary Order Paper 293, released on 12 August 2019. This would amend the KiwiSaver Act to allow people with life-shortening congenital conditions (such as Down Syndrome) to withdraw their KiwiSaver funds before the age of 65.

Among other changes, the SOP would amend clause 38 of the bill as introduced to require the person to complete a statutory declaration stating that they intended to cease full-time employment.

We note that a requirement to retire from full-time employment is not consistent with the treatment of people who withdraw their KiwiSaver funds after they reach 65. We therefore recommend amendments to new clause 38(3) so that, in the statutory declaration, the KiwiSaver member instead has to acknowledge that they understand the consequences of withdrawing their funds.

Amendments to the student loan regime

Student loan deductions from schedular, election-day, and casual agricultural income

The recent Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 will require student loan deductions to be taken from schedular, election-day, and casual agricultural income payments. This is due to come into effect on 1 April 2020.

We understand that further consultation has indicated that implementing this change could impose significant compliance costs on employers that outweigh the benefits. We therefore recommend that this requirement be repealed through the insertion of new clause 146C.

Exemption threshold for student loan repayments

Under section 72 of the Student Loan Scheme Act 2011, self-employed persons are required to make student loan repayments when their adjusted annual net income is $1,500 or more and their total annual income is $21,260 or more.

Adjusted net income refers to income (other than salary or wages) minus expenses. It includes income from sources such as self-employment and contracting work, rental properties, and overseas income and investments.

We note that the $1,500 threshold was introduced to reflect the compliance costs associated with the requirement to file a return for student loan purposes. However, following recent releases of IRD's business transformation programme, these costs have been reduced. We therefore recommend inserting clause 45B to lower the threshold to $500. This would also ensure that the change comes into place before IRD moves the administration of student loan repayment rules to its new computer system in April 2020.

Custodial institutions

We recommend various amendments to deal with the obligations of custodial institutions, including the requirement to report details of investment income to IRD and the requirement that investment income be taxed at source.

A custodian is a financial institution that holds customers' money or property. A "custodial institution" acts as a conduit between the payer of investment income and the investor. There may be more than one custodial institution involved, particularly where, for example, the income payer (the business invested in) is resident in New Zealand and the investor is resident elsewhere.

We note that there are cases where overseas investors invest in New Zealand listed companies via New Zealand custodians. They in turn deliver returns to an offshore custodian (which would deliver returns to the overseas investor).

We recommend various amendments for withholding and reporting purposes. The changes would clarify the withholding rules for custodial institutions. They would also relax the reporting rules so that an overseas custodial institution would be treated as the end investor for investment income withholding and reporting purposes. This would mean that a New Zealand custodian would only need to report that a return had been made to a foreign custodian, and would not need to report the details of the end investor. Certain fields of reportable information which apply to all payers of investment income would be relaxed for custodial institutions. This would reduce the compliance burden on New Zealand custodians.

Various additional technical changes to the withholding and reporting rules are proposed.

The provisions affected include clauses 111B, 111C, 111E, 113(2B), 113(4B), 113(5B), 116F, 116G and 116H.

Amendments to the research and development tax credits regime

Tax exempt income exclusion from research and development tax credits

The bill as introduced would exclude entities that receive exempt income from receiving refundable research and development tax credits. We note that many organisations receive small amounts of exempt income, but otherwise carry out significant research

and development. We see no reason why these entities should not receive research and development tax credits. We therefore recommend amendments to clauses 106 and 107 to allow entities that derive small amounts of exempt income to claim the tax credits. This would be achieved by only including within the scope of the exempt income exclusion certain sections in subpart CW that effectively make entire entities (rather than bits of income they derive) exempt from income tax. Our amendments would remove the blanket ban and clarify which types of exempt income would qualify or disqualify someone from the tax credits.

Mandatory approval of criteria and methodology

All businesses that intend to claim research and development tax credits are required to obtain in-year approval. The default approval route is "general approval", but businesses can opt out of this into the "significant performer" regime if they meet certain criteria.

These criteria include a reasonable estimate that they will have more than $2 million of eligible research and development expenditure in the relevant income year. The significant performer regime is intended to provide an alternative to the general approval rule. This is because the compliance costs to obtain general approval for large amounts of research and development activities may outweigh the value of the tax credit received.

A regime known as "criteria and methodologies approval" was created for businesses in the significant performer regime. Under this regime, it is intended that businesses will be able to obtain approval from IRD that their research and development systems and processes are appropriate for determining their eligibility for the tax credit. Without this or the general approval process, businesses have no certainty of whether their R&D is eligible until they file their returns.

We agree with the need to provide large businesses with some certainty over receiving research and development tax credits. We therefore recommend inserting clause 117E so that all businesses that opt into the significant performer regime are required to complete the criteria and methodologies approval process.

PIE tax provisions

Refundability of overpaid PIE tax

In the last tax year, approximately 950,000 people were on a portfolio investment entity (PIE) tax rate that was higher than their prescribed investor rate (PIR). This resulted in a collective overpayment of $42 million in tax. Conversely, approximately 550,000 people were on a PIE tax rate that was lower than their PIR, resulting in a collective underpayment of $45–50 million. Under existing legislation, IRD can issue tax bills to taxpayers who have underpaid PIE tax, but cannot provide refunds to those who have overpaid PIE tax.

We agree that this treatment is inequitable, and so recommend amendments to introduce an end-of-year reconciliation for all investors in multi-rate PIEs. This process

would take effect from the 2020/21 tax year, and would apply the correct PIR to the PIE income to determine the PIE tax payable. Any refund or tax payable would be added to the person's end-of-year tax position. The provisions affected include clauses 59B, 77B, 98B, 98C and 113.

Power of the Commissioner to change rate of PIE tax applied

Because so many taxpayers are having PIE tax applied at the wrong rate, we recommend amendments to clauses 99 and 99B to widen the Commissioner's powers to correct this. In particular, we recommend amending the Income Tax Act 2007 so that IRD could instruct the PIE directly to change the rate of tax applied to an investor when they believe they are on the wrong rate.

National Party minority view

The National Party notes that approximately 950,000 people were on a portfolio investment entity (PIE) tax rate that was higher than their prescribed investor rate (PIR) in the 2018/19 tax year, resulting in an overpayment of $42 million in tax. A similar situation is continuing to occur in the current tax year. The Government has proposed to address this issue by making refunds effective in the 2020/21 tax year.

When asked by National Party members, the Commissioner has stated that there are no computer system issues or constraints that would prevent Inland Revenue from paying refunds on overpaid tax on KiwiSaver accounts. The only constraint is the requirement to make a legislative change. Given the general principle of tax that people are required to pay their fair share of tax and no more, the National Party believes it is incumbent on the Government to make such a legislative change quickly, and proposed that refunds should apply for the 2018/19 year onwards. The Minister appears to be reluctant to make such a change. In order to expedite this issue, a Supplementary Order Paper in the name of Andrew Bayly has been prepared and given to the Minister and it could easily be incorporated into this bill.

We are consequently disappointed that the Government has chosen not to make the legislative amendment, especially as it affects those lower-income members of our society earning less than $48,000 per annum, or approximately $23 per hour.

R&D refundability

We are disappointed that the extension of refundability for the research and development tax incentive for small firms will not help many early-stage firms.

Appendix

Committee process

The Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill was referred to the committee on 24 July 2019. SOP 293 was referred to the committee on 13 August 2019.

The closing date for submissions on the bill and SOP 293 was 4 September 2019. We received and considered 35 submissions from interested groups and individuals. We heard oral evidence from 12 submitters.

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

Committee membership

Dr Deborah Russell (Chairperson)

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Hon Judith Collins

Hon Paul Goldsmith

Ian McKelvie

Greg O'Connor

Willow-Jean Prime

David Seymour

Fletcher Tabuteau

Dr Duncan Webb

Key to symbols used in reprinted bill

As reported from a select committee

<u>text inserted unanimously</u>

~~text deleted unanimously~~

Hon Stuart Nash

Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

Government Bill

Contents

		Page
1	Title	13
2	Commencement	13
	Part 1 **Amendments to KiwiSaver Act 2006**	
3	KiwiSaver Act 2006	15
4	Section 4 amended (Interpretation)	15
4B	Section 17 amended (How to opt out)	15
5	Section 18 amended (Extension of opt-out period)	16
5B	Section 22 amended (Employees giving information to employers)	16
5C	Section 23 replaced (Employers must give information to Commissioner)	16
	23 Employers must give information about new employees to Commissioner	16
5D	Section 34 amended (Opting in by person 18 years or more)	16
5E	Section 38 amended (Providers must give notice to Commissioner if they contract directly with members)	17
5F	Section 39 amended (Commissioner must give notice to employer if provider gives notice that employee has opted in under section 38)	17
6	Section 48 amended (Effect of employer choice of KiwiSaver scheme)	17
7	Section 51 amended (Completion of allocation to default KiwiSaver scheme if person does not choose his or her own KiwiSaver scheme)	17

8	Section 56 amended (Notification of transfers and requirement to transfer funds and information)	17
9	Section 57 amended (Involuntary transfers)	17
10	Section 59B amended (Initial back-dated validation)	17
11	Section 59C amended (Confirmed back-dated validation)	18
12	Section 59D amended (No confirmed backdated validation)	18
13	New section 63B inserted (Information on salary or wages from which deductions are made)	18
	63B Information on salary or wages from which deductions are made	18
14	Section 64 amended (Contribution rate)	19
15	Section 69 replaced (Unremitted deductions made by employers)	20
	69 Unremitted deductions made by employers	20
16	Section 71 amended (Time at which unexplained remittances deemed to be received)	20
17	Section 73 amended (Deductions entered in and paid out of holding account)	20
18	Section 74 amended (Other contributions entered in and paid out of holding account)	21
19	Section 75 amended (Initial contributions stay in holding account for 3 months)	21
20	Section 76 repealed (Employer contributions may stay in holding account until deducted contributions paid)	21
21	Section 78 replaced (Treatment of unremitted deductions in holding account)	22
	78 Treatment of certain unremitted deductions and employer contributions in holding account	22
22	Section 81 amended (Refund by provider of amounts paid in excess of required amount of contribution)	22
23	Section 85 replaced (Time when contributions treated as received for interest purposes)	22
	85 Time when deductions and employer contributions treated as received for interest purposes	23
24	Section 88 amended (How and when interest is paid on on-payments)	23
25	Section 93 amended (Employer contributions paid via Commissioner)	23
26	New sections 95B to 95D inserted	24
	95B Unremitted employer contributions	24
	95C Unexplained remittances of employer contributions	24
	95D Time at which unexplained remittances of employer contributions deemed to be received	25
27	Section 96 amended (What Commissioner must do with contributions received under this subpart)	25

28	Section 98 repealed (Short payments by employers if not enough money remitted to Commissioner to cover all of employees' deductions and employer contributions)	25
29	Section 98A amended (Quantifying short payments for the purposes of Income Tax Act 2007 and Tax Administration Act 1994)	25
30	Section 99 repealed (Short payments if not enough employer contribution remitted to cover all employees)	25
31	Section 101 amended (Refunds of employer contribution by provider)	25
32	New section 101AA inserted (What Commissioner must do with employer contribution refunded by provider)	25
	101AA What Commissioner must do with employer contribution refunded by provider	26
32B	Section 101C amended (Employee's requirements)	26
32C	Section 103 amended (How to apply for savings suspension)	26
33	Section 104 amended (Granting of savings suspension)	26
33B	Section 105 amended (Commissioner must give notice of grant of savings suspension)	26
33C	Section 107 amended (Employers to whom savings suspension applies)	26
34	Section 108 amended (Savings suspensions have 3-month minimum life)	27
35	Section 112B amended (Non-deduction notices)	27
36	New section 221B inserted (Commissioner may make certain assumptions)	27
	221B Commissioner may make certain assumptions	27
37	Section 226 amended (Crown contribution: kick-start contributions)	27
37B	Section 228 amended (Regulations)	27
37C	New section 243 inserted (Protection from non-compliance: Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2019)	28
	243 Protection from non-compliance: Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2019	28
38	Schedule 1 amended (KiwiSaver scheme rules)	28

Part 2
Amendments to Student Loan Scheme Act 2011

39	Student Loan Scheme Act 2011	30
39B	Section 4 amended (Interpretation)	30
39C	Section 5 amended (Meaning of unpaid amount)	30
~~40~~	~~Section 22 amended (Meaning of New Zealand-based)~~	~~30~~
~~41~~	~~Section 23 amended (Meaning of overseas-based)~~	~~30~~

42	Section 25 amended (Commissioner may treat certain borrowers as being physically in New Zealand)	30
43	Section 26 amended (Method of making application and provision of evidence and information)	31
44	Section 27 amended (Commissioner must notify borrower and specify period or conditions when granting application)	31
45	New section 62A inserted (Commissioner may notify employers when loan balance close to zero)	31
	62A Commissioner may notify employers when loan balance close to zero	31
45B	Section 72 amended (Application of this subpart)	31
45C	Section 74 amended (Notification of Schedule 3 adjustments)	31
46	Section 106 amended (Meaning of repayment holiday)	32
47	Cross-heading and section 107 amended	32
48	Section 107B amended (Grant of repayment holiday)	32
49	Section 108 amended (Duration of repayment holiday)	32
50	Section 108A amended (Borrowers who have had, or are having, repayment holidays under Student Loan Scheme Act 1992)	32
51	Section 110 amended (Repayment obligations of overseas-based borrowers)	33
51B	Section 114 amended (Notification of Schedule 3 adjustments by New Zealand-based non-resident borrowers)	33
52	Section 115 amended (Repayment obligations of borrowers who are overseas-based for part of tax year)	33
52B	Section 144 amended (Power of Commissioner in relation to small amounts)	33
52C	Section 146A amended (Commissioner may grant relief from penalties)	33
52D	Section 161A and cross-heading repealed	33
53	Section 176 amended (Challenge to decision concerning treating borrowers as being physically in New Zealand)	33
54	Section 182A amended (Challenge to decision concerning repayment holiday)	33
54B	Section 189 amended (Annual administration fee)	34
54C	Section 191 amended (Limit on repayment obligation for pay period or tax year)	34
54D	Section 194 amended (Order in which salary or wage deductions and payments offset against borrower's consolidated loan balance)	34
54E	Section 195 amended (Date on which salary or wage deductions and payments treated as being made and credited)	34
54F	Section 197 amended (Write-off of consolidated loan balance)	35
55	Section 220 amended (Application, savings, and transitional provisions)	35

56	Schedule 1 amended (Conditions to borrower being treated as being physically in New Zealand)	35
57	Schedule 6 amended (Application, savings, and transitional provisions)	35

Part 3
Amendments to other enactments

Income Tax Act 2007

58	Income Tax Act 2007	35
59	Section BB 2 amended (Main obligations)	36
59B	Section BC 7 amended (Income tax liability of person with schedular income)	36
60	Section CB 16A amended (Main home exclusion for disposal within 5 years)	36
61	Section CC 1 amended (Land)	36
61B	Section CC 1B amended (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence)	36
62	Section CC 1B amended (Consideration relating to grant, renewal, extension, or transfer of leasehold estate or licence)	37
63	Section CD 4 amended (Transfers of value generally)	37
64	Section CD 5 amended (What is a transfer of value?)	37
65	Section CD 6 amended (When is a transfer caused by a shareholding relationship)	38
66	Section CD 27 amended (Property made available intra-group)	38
67	Section CD 29C amended (Transfers to shareholders by ASX-listed Australian company of shares in subsidiary)	38
68	Section CD 38 amended (General calculation rule for transfers of value)	39
69	New section CE 7CB inserted (Meaning of market value)	39
	CE 7CB Meaning of market value	39
70	Section CW 26C amended (Meaning of exempt ESS)	39
71	New section CW 26DB inserted (Meaning of market value)	40
	CW 26DB Meaning of market value	40
72	Section CW 38 amended (Public authorities)	41
73	Section CW 38B amended (Public purpose Crown-controlled companies)	41
74	Section CW 39 amended (Local authorities)	41
75	Section CW 56 amended (Non-resident aircraft operators)	41
76	Section CX 17 amended (Benefits provided to employees who are shareholders or investors)	42
77	Section CX 22 amended (Benefits to non-executive directors)	42
77B	Section CX 56 amended (Attributed income of certain investors in multi-rate PIEs)	42

77C	Section CZ 35 amended (Amounts derived by Te Kōwhatu Tū Moana)	42
78	Section EE 47 amended (Events for purposes of section EE 44)	42
78B	Section EL 3 amended (Definitions for this subpart)	42
78C	Section EL 4 amended (Allocation of deductions for loss-making residential rental properties)	43
78D	Section EL 5 amended (When residential portfolios sold)	43
78E	Section EL 7 amended (When property A sold)	43
78F	Section EL 8 repealed (Treatment of previously transferred amounts on fully-taxed disposals)	44
78G	Section EL 15 amended (Transfers between companies in wholly-owned groups)	44
78H	Section EL 16 amended (Interests in residential land-rich entities)	44
78I	Section EL 18 amended (Modifications when entities transparent)	44
78J	Section EY 30 amended (Transitional adjustments: life risk)	44
78K	Section FB 3A amended (Residential land)	45
79	Section FC 1 amended (Disposals to which this subpart applies)	45
79B	Section FC 2 amended (Transfer at market value)	45
80	Section FE 5 amended (Thresholds for application of interest apportionment rules)	45
81	Section FE 6 amended (Apportionment of interest by excess debt entity)	45
81B	Section FE 16B amended (Total group non-debt liabilities)	45
81C	Section FH 1 amended (Subpart implements OECD recommendations for domestic law)	46
81D	Section FH 5 amended (Payments by New Zealand resident or New Zealand deducting branch producing deduction without income)	46
81E	New section FH 5B inserted (Exception: when payee group not allowed deductions for supplies as prerequisites for payer supplies)	46
	FH 5B Exception: when payee group not allowed deductions for supplies as prerequisites for payer supplies	47
81F	Section FH 14 amended (Irrevocable election by owner of hybrid entity)	48
82	Section FM 8 amended (Transactions between group companies: income)	48
83	Section GB 27 amended (Attribution rule for income from personal services)	48
84	Section GB 29 amended (Attribution rule: calculation)	49
85	Section GC 10 amended (Compensating arrangement: person receiving more than arm's length amount)	50
85B	Section GC 16 amended (Credit rating of borrower: other than insuring or lending person)	50
86	Section HA 13 amended (Qualifying companies' distributions)	50

87	Section HC 2 amended (Obligations of joint trustees for calculating income and providing returns)	50
88	Section HC 4 amended (Corpus of trust)	50
89	Section HC 7 amended (Trustee income)	51
90	Section HC 10 amended (Complying trusts)	51
90B	Section HC 14 amended (Distributions from trusts)	52
91	Section HC 15 amended (Taxable distributions from non-complying and foreign trusts)	52
92	Section HC 16 amended (Ordering rule for distributions from non-complying and foreign trusts)	52
92B	Section HC 25 amended (Foreign-sourced amounts: non-resident trustees)	53
93	Section HC 26 amended (Foreign-sourced amounts: resident trustees)	53
94	Section HC 27 amended (Who is a settlor?)	53
95	Section HC 28 amended (Activities treated as those of settlor)	54
96	New section HC 31B inserted (Value transfer by deferral, or non-exercise, of right to demand payment)	54
	HC 31B Value transfer by deferral, or non-exercise, of right to demand payment	54
97	Section HC 33 amended (Choosing to satisfy income tax liability of trustee)	56
97B	Section HC 36 amended (Trusts and minor beneficiary rule)	58
98	Section HM 3 amended (Foreign PIE equivalents)	58
98B	Section HM 6 amended (Intended effects for multi-rate PIEs and investors)	58
98C	New section HM 36B inserted (Calculating PIE schedular income adjustments for natural person investors)	59
	HM 36B Calculating PIE schedular income adjustments for natural person investors	59
98D	Section HM 55D amended (Requirements for investors in foreign investment PIEs)	60
98E	Section HM 56 amended (Prescribed investor rates: schedular rates)	60
99	Section HM 60 amended (Notified investor rates)	60
99B	New section HM 60B inserted (Investor rates provided by Commissioner)	61
	HM 60B Investor rates provided by Commissioner	61
100	Section IQ 4 amended (Group companies using attributed CFC net losses)	62
101	Section LA 5 amended (Treatment of remaining credits)	62
102	Section LD 6 amended (When donation is paid to ineligible recipient)	63
103	Section LJ 2 amended (Tax credits for foreign income tax)	63

104	Section LO 2 amended (Beneficiaries of trusts)	64
104B	Section LS 2 amended (Tax credits for investors in multi-rate PIEs)	64
105	Section LY 1 amended (Research and development tax credits)	64
106	Section LY 3 amended (When this subpart applies)	64
107	Section LY 8 amended (Carry forward for remaining research and development tax credits)	65
107B	Section LZ 13 amended (Part-year override of section LY 3(2)(b))	65
107C	Section MF 6 amended (Overpayment or underpayment of tax credit)	65
107D	Section MK 2 amended (Eligibility requirements)	66
108	Section OK 19 amended (Maori authority credits attached to distributions)	66
109	Section RC 5 amended (Methods for calculating provisional tax liability)	66
109B	Section RC 9 amended (Provisional tax payable in instalments)	67
110	Section RC 10 amended (Calculating amount of instalment under standard and estimation methods)	67
110B	Section RC 13 amended (Paying 2 instalments for tax year)	68
110C	Section RC 14 amended (Paying 1 instalment for tax year)	68
110D	Section RC 20 amended (Calculating residual income tax in transitional years)	68
110E	Section RC 29 amended (Residual income tax of consolidated groups)	68
110F	Section RC 33 amended (Amalgamated companies: calculating residual income tax)	68
110G	Section RC 35B amended (Treatment of overpaid provisional tax instalments calculated using AIM method)	68
110H	Section RC 37 amended (Availability of early-payment discounts)	69
111	Section RD 5 amended (Salary or wages)	69
111B	Section RE 4 amended (Persons who have withholding obligations)	69
111C	New section RE 10C inserted (Obligations of custodial institutions in relation to certain payments of investment income)	69
	RE 10C Obligations of custodial institutions in relation to certain payments of investment income	69
111D	Section RF 2 amended (Non-resident passive income)	71
111E	Section RF 4 amended (Non-resident passive income received by agents and others)	71
111F	Section RF 12 amended (Interest paid by approved issuers or transitional residents)	72
112	Section RZ 16 amended (Treatment of certain refunds not paid within 4-year period: 1 April 2008 to 31 March 2013)	72
113	Section YA 1 amended (Definitions)	72

113B	New section YD 3BA inserted (Country of residence of joint trustees)	76
	YD 3BA Country of residence of joint trustees	76
113C	Schedule 21 amended (Excluded activities for research and development activities tax credits)	76
113D	Schedule 28 amended (Requirements for complying fund rules)	76
114	Schedule 32 amended (Recipients of charitable or other public benefit gifts)	76
114B	Amendments to Income Tax Act 2007 consequential to enactment of Kāinga Ora–Homes and Communities Act 2019	76
	Tax Administration Act 1994	
115	Tax Administration Act 1994	76
115B	Section 3 amended (Interpretation)	77
116	Section 22 amended (Keeping of business and other records)	77
116B	Section 22AA amended (Records to be kept by employers and PAYE intermediaries)	77
116C	Section 22AAB amended (Records to be kept by payers of passive income)	77
116D	Section 22D amended (Key terms)	77
116E	Section 22H amended (Finalising accounts)	78
116F	Section 25B amended (Investment income information: outline of provisions)	78
116G	Section 25E amended (Who must provide investment income information to Commissioner)	78
116H	New section 25MB inserted (Information from custodial institutions)	78
	25MB Information from custodial institutions	79
116I	Section 25O amended (Correction of errors in investment income information)	80
116J	Section 32E amended (Applications for RWT-exempt status)	80
117	Section 36BB amended (Electronic format for details required for tax pooling intermediaries)	80
117B	Section 41 amended (Annual returns by persons who receive credit under family scheme)	80
117C	Section 68CB amended (Research and development tax credits: general approval 2019–20 income year pilot)	81
117D	Section 68CB amended (Research and development tax credits: general approval)	81
117E	Section 68CC amended (Research and development tax credits: greater than $2 million approval)	81
118	Section 78D amended (Evidential requirements for tax credits)	81
118B	Section 80KLB amended (Recovery of excess tax credits)	81
118C	Section 80KM repealed (Summary of instalments paid)	81

118D	Section 89C amended (Notices of proposed adjustment required to be issued by Commissioner)	81
119	Section 91EI amended (Withdrawal of a private ruling)	81
120	New section 91ESB inserted (Withdrawal of a short-process ruling)	82
	91ESB Withdrawal of a short-process ruling	82
121	Section 91FJ amended (Withdrawal of a product ruling)	82
122	Section 108 amended (Time bar for amendment of income tax assessment)	83
122B	Section 113A amended (Correction of certain errors in subsequent returns)	83
123	Section 113E amended (Amended assessments: research and development tax credits)	84
123B	New section 113F inserted (Amended assessments: election under section HC 33 to satisfy trustee liability)	84
	113F Amended assessments: election under section HC 33 to satisfy trustee liability	84
123C	Section 120C amended (Definitions)	84
124	Section 120KB amended (Provisional tax instalments and due dates generally)	85
125	Section 120KBB amended (Interest for most standard method and some estimation method provisional taxpayers)	85
125B	New section 120KF inserted (Tolerance for provisional tax instalments)	85
	120KF Tolerance for provisional tax instalments	85
126	Section 120L amended (Meaning of unpaid tax and overpaid tax for provisional tax purposes)	85
126B	Section 120LB repealed (Meaning of unpaid tax and overpaid tax for certain transferees under AIM method)	86
126C	Section 124G amended (Refusal, removal, or disallowance of status of tax agents, representatives, and nominated persons)	86
126D	Section 124ZH amended (Approved research providers)	87
127	Section 124ZI amended (Certificates for research and development)	87
128	Section 138E amended (Certain rights of challenge not conferred)	87
129	Section 139B amended (Late payment penalty)	87
130	Section 139C amended (Late payment penalty and provisional tax)	87
130B	Section 141JA repealed (Application of Part 9 to non-filing taxpayers)	88
130C	New section 142AC inserted (New due date for payment of terminal tax by certain individuals)	88
	142AC New due date for payment of terminal tax by certain individuals	88
130D	Section 143A amended (Knowledge offences)	88

130E	Section 143D amended (Offences related to disclosure of certain information by persons other than revenue officers)	89
131	Section 173L amended (Transfer of excess tax within taxpayer's accounts)	89
131B	Section 184A amended (Refund of tax paid in excess made by direct credit to bank account)	89
132	Schedule 4 amended (Reporting of employment income information)	89
~~133~~	~~Schedule 5 amended (Certain tax codes and rates)~~	~~89~~
134	Schedule 7 amended (Disclosure rules)	89
	38 Agencies for research and development	90
	39 Agencies for Australian wine producer rebate	90
135	Schedule 8 amended (Reporting of income information by individuals and treatment of certain amounts)	91
	Goods and Services Tax Act 1985	
135B	Goods and Services Tax Act 1985	91
135C	Section 5 amended (Meaning of term supply)	91
135D	Section 8 amended (Imposition of goods and services tax on supply)	91
135E	Section 10B amended (Estimating value of goods in supply for treatment as distantly taxable goods)	92
135F	Section 10C amended (Election by supplier that supplies of higher-value goods be supplies of distantly taxable goods)	92
135G	Section 12 amended (Imposition of goods and services tax on imports)	92
135H	Section 20H amended (Goods and services tax incurred in making financial services for raising funds)	92
135I	Section 24 amended (Tax invoices)	92
135J	Section 24BAB amended (Receipts for supplies)	93
135K	Section 24BAC amended (Information for importation of goods including distantly taxable goods)	93
135L	Section 60C amended (Electronic marketplaces)	93
135M	Section 60D amended (Approved marketplaces)	93
135N	Section 77 amended (New Zealand or foreign currency)	93
135O	Section 85C amended (Certain contracts entered into before 1 December 2019)	93
	Income Tax Act 2004	
136	Income Tax Act 2004	93
137	Section CW 45 amended (Non-resident aircraft operators)	94
137B	Section MD 1 amended (Refund of excess tax)	94
138	Section MD 1C amended (Treatment of certain refunds not paid within 4-year period: 2005–06, 2006–07, and 2007–08 income years)	94

139	Section OB 1 amended (Definitions)	94
	Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019	
140	Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019	95
141	Section 34 repealed (Section 36BB amended (Electronic format for details required for tax pooling intermediaries))	95
141B	Section 362 amended (Section MD 1 amended (Refund of excess tax))	95
141C	Section 370 amended (Section MD 1 amended (Refund of excess tax))	95
142	Section 375 amended (Regulation 2 amended (Interpretation))	95
142B	Schedule 1 amended (New schedules 7 and 8 amended)	95
	3 Small amounts of tax payable	95
	Other enactments	
	Income Tax Act 1994	
143	Section CB 14 amended (Exemption from tax of certain aircraft operators)	95
143B	Section MD 1 amended (Refund of excess tax)	96
	Income Tax Act 1976	
144	Section 64A amended (Exemption from tax of certain aircraft operators)	96
144B	Section 409 amended (Refund of excess tax)	96
	Taxation (Research and Development Tax Credits) Act 2019	
145	Section 46 amended (Section 138E amended (Certain rights of challenge not conferred))	97
	Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018	
146	Section 332 repealed (Section 78D amended (Evidential requirements for tax credits))	97
	Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019	
146B	Section 65 amended (Section EY 30 amended (Transitional adjustments: life risk))	97
146C	Sections repealed	97
	Accident Compensation Act 2001	
147	Section 11 amended (Earnings as an employee: what it does not include)	98

Search and Surveillance Act 2012

147B Schedule amended (Powers in other enactments to which all or part of Part 4 of Search and Surveillance Act 2012 applies) 98

Serious Fraud Office Act 1990

147C Section 2 amended (Interpretation) 98

Privacy Act 1993

147D Schedule 3 amended (Information matching provisions) 98

Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995

148 Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995 revoked 98

Schedule 1 99
New Part 5 inserted into Schedule 6 of Student Loan Scheme Act 2011

Schedule 2 103
Amendments to Income Tax Act 2007 consequential to enactment of Kāinga Ora–Homes and Communities Act 2019

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act **2019**.

2 Commencement

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

(2) **Section 144** comes into force on 1 April 1984.

(3) **Section 143(1), (3), (4), and (6)** comes into force on 1 April 1995.

(4) **Section 143(2) and (5)** comes into force on 1 April 1997.

(4B) **Sections 141C and 144B** come into force on 1 April 2000.

(4C) **Section 143B** comes into force on 1 April 2004.

(5) **Sections 137, 137B, 138, ~~and~~ 139**, and **141B** come into force on 1 April 2005.

(6) **Sections 72, 74, 75, 83, 84, 85, 89, 100, 103, 104, 107C(1) and (3), 108, 112, and 113(2) and (19)** come into force on 1 April 2008.

(7) **Section 102** comes into force on 6 January 2010.

(8) **Sections 78J, 113(11) and (21), and 146B** ~~comes~~ come into force on 1 July 2010.

(9) **Section 113(3)** comes into force on 1 April 2011.

(10) **Section 80** comes into force on 1 July 2011.

(10B) **Section 61B** comes into force on 1 April 2013.

(11) **Section 7(1)** comes into force on 1 December 2014.

(12) **Sections 61 and 62** come into force on 1 April 2015.

(12B) **Section 135C** comes into force on 28 May 2015.

(12C) **Section 78K(2)** comes into force on 1 October 2015.

(12D) **Section 135N** comes into force on 1 October 2016.

(13) **Sections 109(2) and (3), 109B(1B) and (3), 110(1B) and (3), 110D, 124, 125(1), (2), (3), and (5), 125B, 129, ~~and~~ 130, and 135H** come into force on 1 April 2017.

(14) **Sections 70, 71, 98, 113(4) and (7), and 131** come into force on 29 March 2018.

(15) **Sections~~109(2) and (3), and~~ 125(3B) and (5B), and 126(1), (2), and (3)** come into force on 1 April 2018.

(16) **Section 78** comes into force on 28 June 2018.

(17) **Sections 81, 81B, 81C, 81D, 81E, 81F, 85B, and 113(15)(a)** comes into force on 1 July 2018.

(18) **Sections 4(3), 69, 113(8), and 147** come into force on 29 September 2018.

(18B) **Sections 77C and 113(15C)** come into force on 17 March 2019.

(19) **Sections 73, 79B, 113(12), 119, 121, 147B, 147D, and 148** come into force on 18 March 2019.

(20) **Sections 78B to 78I, 105, 106(1A), 107, 107C(2), 109(1), 110(1) and (2), 110G, 111, 113(5), (15)(b), and (22), 113C, 114(1) and (2), 116, 116E, 117C, 118D, 122, 123, 123C(1), 125(4) and (6), 126B, 126D, 128, ~~129, 133,~~ 130B, 134(4), ~~and~~ 135**, and **142B** come into force on 1 April 2019.

(20B) **Section 114(1B)** comes into force on 30 May 2019.

(20C) **Section 114(1C)** comes into force on 15 June 2019.

(20D) **Section 116B** comes into force on 26 June 2019.

(21) **Sections 114B and 142** comes into force on 1 October 2019.

(21B) **Sections 135D, 135E, 135J, 135K, 135L, 135M, and 135O** come into force on 1 December 2019.

(21C) **Section 146C** comes into force on 31 March 2020.

(22) **Sections 4(1), (2), and (4), 4B, 5, 5B, 5C, 5D, 5E(1), 5F(1), 6, 7(2) and (3), 8, 9, 10, 11, 12, 13, 14(2), 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 32C, 33, 33B, 33C, 34, 35, 36, 37, 38, 39B, 39C,~~40, 41,~~ 42, 43, 44, 45, 45B, 45C, 46, 47, 48, 49, 50, 51, 51B,**

52, 52B, 52C, 52D, 53, 54, 54B, 54C, 54D, 54E, 54F, 55, 56, 57, 59B, 77B, 94(1B), 98B, 98C, 98E, 99, 99B, 101, 104B, 106(1), (2), (3), (4), and (5), 107B, 109B(1) and (2), 110B, 110C, 110E, 110F, 110H, 111B, 111C, 111E, 111F, ~~, 113(6), (9), (10), and (13),~~ 113(2B), (4B), (5B), (6), (9), (10B), (11B), (13), (13B), (13D), and (15B), 113D, 115B(3), 116C, 116D(1), (2), (3), (4), and (6), 116F to 116J, 117, 117D, 117E, 118, 118B, 123C(2), 126(1B) and (4), 127, 130C, 132, and 145 come into force on 1 April 2020.

(23) **Sections 5E(2), 5F(2), and 14(1)** come into force on 1 April 2022 or on an earlier date set by Order in Council.

(24) **Sections 130E and 134(3)** come into force on a date to be set by Order in Council.

Part 1
Amendments to KiwiSaver Act 2006

3 KiwiSaver Act 2006

This Part amends the KiwiSaver Act 2006.

4 Section 4 amended (Interpretation)

(1) In section 4(1), definition of **employer contribution**, replace paragraph (c) with:

(c) does not include an amount that does not count as a contribution under section 68(2)

(2) In section 4(1), insert, in appropriate alphabetical order:

payday has the same meaning as in section 3(1) of the Tax Administration Act 1994

(3) In section 4(1), definition of **salary or wages**, paragraph (a)(vi), replace "section CE 2(2) or (4) of the Income Tax Act 2007 under a share purchase agreement" with "section CE 2 of the Income Tax Act 2007 under an employee share scheme".

(4) Repeal section 4(3).

4B Section 17 amended (How to opt out)

Replace section 17(5) with:

(5) An employer who receives an opt-out notice from an employee must give notice of that opt-out to the Commissioner no later than the time the employer is next required to deliver employment income information in relation to the employee to the Commissioner under section RD 22 of the Income Tax Act 2007 and sections 23E to 23H and 23J of the Tax Administration Act 1994.

5 Section 18 amended (Extension of opt-out period)

In section 18(2), replace "3 months" with "92 days".

5B Section 22 amended (Employees giving information to employers)

Replace section 22(1)(a) with:

(a) his or her name; and

(ab) his or her address; and

5C Section 23 replaced (Employers must give information to Commissioner)

Replace section 23 with:

23 Employers must give information about new employees to Commissioner

(1) This section applies if—

(a) a person starts new employment with an employer; and

(b) the employer is satisfied that the person is subject to the automatic enrolment rules.

(2) The employer must give notice to the Commissioner of—

(a) the person's name; and

(b) the person's tax file number; and

(c) the person's address, if required by the Commissioner.

(3) That information must be given no later than the time that the employer is next required to deliver employment income information in relation to the person to the Commissioner under section RD 22 of the Income Tax Act 2007 and sections 23E to 23H and 23J of the Tax Administration Act 1994 after the information is given to the employer.

5D Section 34 amended (Opting in by person 18 years or more)

(1) Replace section 34(2)(a) with:

(a) his or her name; and

(ab) his or her address; and

(2) Replace section 34(3) and (4) with:

(3) If an employer who receives a notice from a person under this section is satisfied that the person is eligible to opt in under section 33, the employer must give notice to the Commissioner of—

(a) the person's name; and

(b) the person's tax file number; and

(c) the person's address, if required by the Commissioner.

(4) That information must be given no later than the time that the employer is next required to deliver employment income information in relation to the person to

the Commissioner under section RD 22 of the Income Tax Act 2007 and sections 23E to 23H and 23J of the Tax Administration Act 1994.

5E Section 38 amended (Providers must give notice to Commissioner if they contract directly with members)

(1) Replace section 38(2)(d):

(d) if A is an employee, A's contribution rate; and

(2) Replace section 38(2)(d) with:

(d) if A is an employee, the contribution rate chosen by A under **section 64(2)**; and

5F Section 39 amended (Commissioner must give notice to employer if provider gives notice that employee has opted in under section 38)

(1) In section 39, words before the paragraphs, delete "to whom the opt-in notice relates".

(2) Replace section 39(b) with:

(b) the contribution rate chosen by the person under **section 64(2)**; and

6 Section 48 amended (Effect of employer choice of KiwiSaver scheme)

In section 48(1)(d), replace "3 months" with "62 days".

7 Section 51 amended (Completion of allocation to default KiwiSaver scheme if person does not choose his or her own KiwiSaver scheme)

(1) In section 51(1B), replace "(bb)" with "(ba)".

(2) In section 51(4)(a), replace "3 months" with "the 62nd day".

(3) In section 51(4)(b), replace "3 months" with "62 days".

8 Section 56 amended (Notification of transfers and requirement to transfer funds and information)

In section 56(4), replace "35 days" with "10 working days".

9 Section 57 amended (Involuntary transfers)

In section 57(5), replace "3 months instead of 35 days" with "62 days instead of 10 working days".

10 Section 59B amended (Initial back-dated validation)

(1) After section 59B(2)(a), insert:

(ab) for a person referred to in section 59A(a), ending on the earlier of—

(i) the day the mistake is discovered by the person's KiwiSaver scheme provider:

(ii) the day the mistake is notified to the provider by the Commissioner or another person; and

(2) In section 59B(2)(b), words before the subparagraphs, delete "(a),".

(3) In section 59B(2)(b)(i) and (ii), replace "3 months" with "the 92nd day" in each place.

11 Section 59C amended (Confirmed back-dated validation)

(1) Replace section 59C(1) with:

(1) This section applies if,—

(a) during the period of initial back-dated validation under section 59B, the person described in section 59A is a person to whom the automatic enrolment rules were applied because of the mistake described in section 59A(b)(i), and—

(i) they are less than the New Zealand superannuation qualification age; and

(ii) they do not opt out; and

(b) the person described in section 59A is not a person to whom this Act has been applied because of a mistake described in section 59A(a).

(2) In section 59C(2)(a), delete "(a) and".

(3) In section 59C(2)(b), delete "the requirements of section 6 or".

12 Section 59D amended (No confirmed backdated validation)

(1) In section 59D(1), after the words before the paragraphs, insert:

(aa) in relation to a person described in section 59A(a), the period described in section 59B(2)(a) and **(ab)** has ended:

(2) Replace section 59D(1)(a) with:

(a) in relation to a person to whom the automatic enrolment rules were applied because of the mistake described in section 59A(b)(i), confirmed backdated validation under section 59C does not occur in the period of initial back-dated validation under section 59B:

13 New section 63B inserted (Information on salary or wages from which deductions are made)

After section 63A, insert:

63B Information on salary or wages from which deductions are made

An employer who makes a deduction under this subpart must specify the amount of salary or wages from which the deduction was made in their employment income information for the payment of salary or wages from which the deduction was made, if—

(a) that amount differs from the information required under schedule 4, table 1, row 4, item d of the Tax Administration Act 1994; and

(b) the deduction is the first that the employer has made under this subpart for the relevant employee.~~either—~~

~~(i) the deduction is the first that the employer has made under this subpart for the relevant employee; or~~

~~(ii) the amount of the difference is not the same as it was when the employer last made a deduction under this subpart for the relevant employee.~~

14 Section 64 amended (Contribution rate)

(1) Replace section 64(2) and (3) with:

(2) Despite subsection (1), the employee may choose a contribution rate of 3%, 4%, 6%, 8%, or 10% of their gross salary or wages by giving notice of the rate they choose to—

(a) their employer; or

(b) their KiwiSaver scheme provider; or

(c) the Commissioner.

~~(2B) If an employee gives a notice under **subsection (2)** to their provider or to the Commissioner, the notice must include, as applicable,—~~

~~(a) for a notice given to a provider, the name and address of each employer that the employee intends the new rate will be used by:~~

~~(b) for a notice given to the Commissioner,—~~

~~(i) the name and address of each employer that the employee intends the new rate will be used by; and~~

~~(ii) any other information that the Commissioner requires.~~

(2B) If an employee gives a notice under **subsection (2)** to the Commissioner, the notice must include any other information that the Commissioner requires.

(2C) A provider must, as soon as practicable after receiving a notice under **subsection (2)** in relation to an employee, give notice to the Commissioner of—

(a) the employee's name and address; and

(b) the employee's tax file number; and

(c) the contribution rate chosen by the employee; and

~~(d) the name and address of each of the employee's employers that the employee intends the new rate will be used by; and~~

(e) any other information that the Commissioner requires.

(2D) The Commissioner must, as soon as practicable after receiving a notice under **subsection (2) or (2C)** in relation to an employee~~ and to an employer~~, give notice to ~~the employer~~each of the person's employers of—

(a) the employee's name; and

(b) the employee's tax file number; and

(c) the contribution rate chosen by the employee.

(3) The new rate applies to the next payment of salary or wages that is calculated after the employer receives the notice under **subsection (2) or (2D)**.

(2) In section 64(4), replace "3 months" with "92 days".

15 Section 69 replaced (Unremitted deductions made by employers)

Replace section 69 with:

69 Unremitted deductions made by employers

(1) This section applies if—

(a) an amount is included in employment income information received by the Commissioner as a deduction made by an employer under this subpart; and

(b) the Commissioner is satisfied that the employer has deducted the amount under this subpart; and

(c) the amount of the deduction is not paid to the Commissioner by the employer on or before the date by which the employer is required to pay the deduction to the Commissioner under section RD 4 of the Income Tax Act 2007 (as applied by section 67 of this Act).

(2) The amount of the deduction is treated, for the purposes of this Act, as having been received by the Commissioner,—

(a) for employment income information that includes the date of the payday on which the deduction was made, on that date; or

(b) otherwise, on the 15th day of the month in which the deduction was made.

16 Section 71 amended (Time at which unexplained remittances deemed to be received)

Replace the heading to section 71 with "**Time at which unexplained remittances of deductions deemed to be received**".

17 Section 73 amended (Deductions entered in and paid out of holding account)

(1) Replace the heading to section 73 with "**Certain unremitted deductions and employer contributions entered in and paid out of holding account**".

(2) Replace section 73(1) and (2) with:

(1) This section applies to any amount that—

(a) is included in employment income information provided under section RD 22 of the Income Tax Act 2007 as—

(i) a deduction made from an employee's salary or wages under subpart 1; or

(ii) an employer contribution for an employee; and

(b) is not received by the Commissioner at the same time as, or before, the Commissioner receives the information described in **paragraph (a)**; and

(c) the Commissioner is satisfied,—

(i) for an amount included in the information as a deduction, has been deducted from salary or wages under subpart 1:

(ii) for an amount included in the information as an employer contribution, that the employer to whom the information relates has sufficient funds available, at the time at which that employer makes the payment of salary or wages to which the contribution relates, to be able to pay to the Commissioner.

(2) As soon as practicable after receiving employment income information in relation to an amount described in **subsection (1)**, the Commissioner must enter the amount in the holding account in respect of the person, as applicable,—

(a) from whose salary or wages the deduction was made; or

(b) whom the employer contribution is for.

(3) In section 73(3), replace "sections 75 to 77" with "sections 75 and 77".

(4) In section 73(5), replace "sections 70 and 71" with "sections 70, 71, **95C, and 95D**".

(5) Repeal section 73(6).

18 Section 74 amended (Other contributions entered in and paid out of holding account)

In section 74(3), replace "sections 75 to 77" with "sections 75 and 77".

19 Section 75 amended (Initial contributions stay in holding account for 3 months)

(1) In the heading to section 75, replace "**3 months**" with "**62 days**".

(2) In section 75(1), words before the paragraphs, replace "3-month" with "62-day".

(3) In section 75(3), replace "3 months" with "62-day period".

20 Section 76 repealed (Employer contributions may stay in holding account until deducted contributions paid)

Repeal section 76.

21 Section 78 replaced (Treatment of unremitted deductions in holding account)

Replace section 78 with:

78 Treatment of certain unremitted deductions and employer contributions in holding account

(1) This section applies to an amount referred to in **section 73(1)** to the extent to which it is not paid to the Commissioner on or before the date by which the employer is required to pay the deduction or employer contribution to the Commissioner under, as applicable,—

(a) section RD 4 of the Income Tax Act 2007 (as applied by section 67 of this Act); or

(b) section 93(3) or (4), as applicable.

(2) The Commissioner must pay the amount out of a Crown Bank Account, without further authority than this section.

(3) The amount is treated, for the purposes of section 73, as having been received by the Commissioner,—

(a) for employment income information received by the Commissioner that includes the date of the payday for the payment of salary or wages to which the deduction or employer contribution relates, on that date; or

(b) otherwise, on the 15th day of the month in which the payment of salary or wages to which the deduction or employer contribution relates was made.

22 Section 81 amended (Refund by provider of amounts paid in excess of required amount of contribution)

(1) Replace the heading to section 81 with "**Refund by provider of amounts paid in excess of required amount of contribution or if member opts out**".

(2) Replace section 81(1) with:

(1) A provider must refund to the Commissioner any amount of contribution paid to the provider by the Commissioner in respect of a member of that provider's KiwiSaver scheme if—

(a) the member opts out; or

(b) the contribution is in excess of the amount that is required to be paid to the provider under the KiwiSaver scheme and this Act.

(3) In section 81(2), replace "the amount" with "any amount".

23 Section 85 replaced (Time when contributions treated as received for interest purposes)

Replace section 85 with:

85 Time when deductions and employer contributions treated as received for interest purposes

(1) This section applies to any amount that—

(a) is included in employment income information provided under section RD 22 of the Income Tax Act 2007 as—

(i) a deduction made from an employee's salary or wages under subpart 1; or

(ii) an employer contribution for an employee; and

(b) the Commissioner is satisfied,—

(i) for an amount included in the information as a deduction, has been deducted from salary or wages under subpart 1:

(ii) for an amount included in the information as an employer contribution, that the employer to whom the information relates has sufficient funds available, at the time at which that employer makes the payment of salary or wages to which the contribution relates, to be able to pay to the Commissioner.

(2) The amount is treated, for the purpose of the payment of interest, as received by the Commissioner, as applicable,—

(a) for employment income information that includes the date of the payday on which the deduction was made, on that date if the Commissioner is satisfied that the deduction has been made on that date; or

(b) for employment income information that includes the date of the payday for the payment of salary or wages to which the employer contribution relates, on that date; or

(c) otherwise, on the 15th day of the month in which the payment of salary or wages to which the deduction or employer contribution relates was made.

24 Section 88 amended (How and when interest is paid on on-payments)

In section 88, replace "3 months" with "92 days".

25 Section 93 amended (Employer contributions paid via Commissioner)

(1) In section 93(5), delete "paid".

~~(2) After section 93(6), insert:~~

~~(7) The employer must specify the tax rate applied to an amount of employer contribution in their employment income information for the payment of salary or wages to which the contribution relates, if—~~

~~(a) it is the first time the employer has included an employer contribution for the relevant employee in their employment income information; or~~

~~(b) the tax rate applied differs from the rate used when the employer last included an employer contribution for the relevant employee in their employment income information.~~

26 New sections 95B to 95D inserted

After section 95, insert:

95B Unremitted employer contributions

(1) This section applies if—

(a) an amount is included in employment income information received by the Commissioner as an employer contribution for an employee; and

(b) the Commissioner is satisfied that the employer to whom the information relates has sufficient funds available, at the time at which that employer makes the payment of salary or wages to which the contribution relates, to be able to pay the amount of the employer contribution to the Commissioner; and

(c) the amount of the employer contribution is not paid to the Commissioner by that employer on or before the date by which that employer is required to pay the amount of employer contribution to the Commissioner under section 93(3) or (4), as applicable.

(2) The amount of the employer contribution is treated, for the purposes of this Act, as having been received by the Commissioner,—

(a) for employment income information that includes the date of the payday for the payment of salary or wages to which the contribution relates, on that date; or

(b) otherwise, on the 15th day of the month in which the payment of salary or wages to which the contribution relates was made.

95C Unexplained remittances of employer contributions

(1) This section applies if—

(a) the Commissioner receives an amount (the **received amount**) of employer contributions from an employer; and

(b) the employer has failed to supply to the Commissioner the particulars required by the Commissioner in relation to the received amount; and

(c) the Commissioner is unable to ascertain to the Commissioner's satisfaction, in sufficient time prior to the cut-off day for the making of on-payments to the providers of KiwiSaver schemes, the portion of the received amount attributable to each of the persons in relation to whom an employer contribution has been made by the employer.

(2) The Commissioner may, for the purposes of this Part, hold the received amount until the amount attributable to each of the persons in relation to whom an

employer contribution has been made by the employer has been established to the satisfaction of the Commissioner.

95D Time at which unexplained remittances of employer contributions deemed to be received

Any amount that is held by the Commissioner under **section 95C(2)** is treated, for the purposes of this Act (other than sections 84 to 91 (interest on contributions)), as not having been received by the Commissioner until the day on which the amount attributable to each of the persons in relation to whom an employer contribution has been made by the employer has been established to the satisfaction of the Commissioner.

27 Section 96 amended (What Commissioner must do with contributions received under this subpart)

Replace the heading to section 96 with "**What Commissioner must do with contributions received, or treated as received, under this subpart**".

28 Section 98 repealed (Short payments by employers if not enough money remitted to Commissioner to cover all of employees' deductions and employer contributions)

Repeal section 98.

29 Section 98A amended (Quantifying short payments for the purposes of Income Tax Act 2007 and Tax Administration Act 1994)

(1) Replace the heading to section 98A with "**Short payments of employer contributions**".

(2) In section 98A, words before the paragraphs, delete "the Income Tax Act 2007 and".

(3) In section 98A(a), replace "treated as received by the Commissioner under section 98(2) of this Act" with "received by the Commissioner".

30 Section 99 repealed (Short payments if not enough employer contribution remitted to cover all employees)

Repeal section 99.

31 Section 101 amended (Refunds of employer contribution by provider)

After section 101(1), insert:

(1B) If an employee opts out after an employer contribution is paid to a provider by the Commissioner, the provider must refund the employer contribution to the Commissioner.

32 New section 101AA inserted (What Commissioner must do with employer contribution refunded by provider)

After section 101, insert:

101AA What Commissioner must do with employer contribution refunded by provider

(1) This section applies if an amount of employer contribution is refunded to the Commissioner by a provider under **section 101(1B)**.

(2) The Commissioner must—

(a) refund the amount to a Crown Bank Account, if—

(i) the amount has been paid out of a Crown Bank Account under **section 78**; and

(ii) the amount has not been paid to the Commissioner by the employer to whom the employer contribution relates; or

(b) otherwise, refund the amount to the employer who made the employer contribution.

32B Section 101C amended (Employee's requirements)

After section 101C(c), insert:

(cb) must not have made a withdrawal under **clause 12B** of the KiwiSaver scheme rules (which relates to life-shortening congenital condition withdrawals); and

32C Section 103 amended (How to apply for savings suspension)

Replace section 103(2)(c) with:

(c) the name and address of each of the person's employers to whom the person intends that the suspension will apply, if required by the Commissioner; and

33 Section 104 amended (Granting of savings suspension)

(1) In section 104(2), replace "3 months" with "92 days".

(2) In section 104(3)(a), replace "3 months" with "92 days".

33B Section 105 amended (Commissioner must give notice of grant of savings suspension)

Replace section 105(2) with:

(2) In this section, **relevant employer**, for an application for a savings suspension that was required by the Commissioner to contain the information described in **section 103(2)(c)**, means each employer to whom the person stated, in the application, that the savings suspension was intended to apply.

33C Section 107 amended (Employers to whom savings suspension applies)

(1) In section 107(a), replace "apply" with "apply, if the application was required by the Commissioner to contain the information described in **section 103(2)(c)**".

(2) **Subsection (1)** applies in relation to an application for a savings suspension made on or after 1 April 2020.

34 Section 108 amended (Savings suspensions have 3-month minimum life)

(1) In the heading to section 108, replace "**3-month**" with "**92-day**".

(2) In section 108(2), replace "3 months" with "92 days".

35 Section 112B amended (Non-deduction notices)

In section 112B(3), replace "3 months" with "92 days" in each place.

36 New section 221B inserted (Commissioner may make certain assumptions)

After section 221, insert:

221B Commissioner may make certain assumptions

The Commissioner is entitled, in the absence of information to the contrary, to assume the following:

(a) for the purposes of **sections 69(1)(b), 73(1)(c), and 85(1)(b)**, that an amount included in employment income information has been deducted from salary or wages:

(b) for the purposes of **section 85(2)(a)**, if employment income information includes the date of the payday on which an amount was deducted from salary or wages, that the amount was deducted from salary or wages on that date:

(c) for the purposes of **sections 73(1)(c), 85(1)(b), and 95B(1)(b)**, that an employer to whom an amount included in employment income information relates has sufficient funds available at the relevant time to be able to pay the amount to the Commissioner.

37 Section 226 amended (Crown contribution: kick-start contributions)

(1) In section 226(1B), replace "3-month" with "62-day".

(2) In section 226(1C), replace "3 months" with "62 days".

37B Section 228 amended (Regulations)

(1) After section 228(1)(m), insert:

(mb) prescribing conditions that are regarded as life-shortening congenital conditions for the purposes of **clause 12B** of the KiwiSaver scheme rules:

(2) After section 228(1), insert:

(1B) For the purposes of **subsection (1)(mb)**, **life-shortening congenital condition** means a condition that exists for a person from the date of their birth and is likely to reduce the life expectancy for persons in general with the condition below the New Zealand superannuation qualification age.

37C New section 243 inserted (Protection from non-compliance: Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2019)

After section 242, insert:

243 Protection from non-compliance: Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2019

Non-compliance with an enactment related to securities is ignored if the non-compliance—

(a) results from the enactment of sections **32B, 37B, 38, 107D, and 113D** of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act **2019**; and

(b) relates to a product disclosure statement, or to information lodged on the relevant disclosure register, under the Financial Markets Conduct Act 2013; and

(c) the period of the non-compliance ends before 31 January 2021.

38 Schedule 1 amended (KiwiSaver scheme rules)

(1) In schedule 1, replace clause 8(2) with:

(2) An amount of contribution that is deducted from salary or wages under this Act is treated, for the purposes of subclause (1)(a), as received by the Commissioner,—

(a) for employment income information received by the Commissioner that includes the date of the payday on which the deduction was made, on that date; or

(b) otherwise, on the 15th day of the month in which the deduction was made.

(2) In schedule 1, after clause 12, insert:

12B Withdrawal in cases of life-shortening congenital conditions

(1) A member may apply under this clause for a withdrawal, in addition to a withdrawal on the grounds of serious illness under clause 11(1)(g) or 12, when the member suffers from a condition that exists from the date of their birth—

(a) that is identified as a life-shortening congenital condition by a regulation made under **section 228(1)(mb)** (a **listed condition**); or

(b) for which the member has medical evidence to verify that the congenital condition is expected to reduce life expectancy below the New Zealand superannuation qualification age for the member or for persons in general with the condition (a **non-listed condition**).

(2) The member may apply under **clause 13** for a congenital condition withdrawal to the manager (in the case of a restricted KiwiSaver scheme) or supervisor (in the case of any other KiwiSaver scheme) if,—

(a) for a listed condition that exists for a person from the date of their birth, the manager or the supervisor, as applicable, is satisfied that a medical certificate issued by a medical practitioner verifies that the member suffers from the condition:

(b) for a non-listed condition that exists for a person from the date of their birth, the manager or the supervisor, as applicable, is satisfied that a medical certificate issued by a medical practitioner verifies that—

(i) the condition is a life-shortening congenital condition for the member or for persons in general with the condition; and

(ii) the member suffers from the condition.

(3) The member may choose the amount of the congenital condition withdrawal, which may be up to the value of their accumulation.

(4) For the purposes of the KiwiSaver scheme rules, a member who makes a congenital condition withdrawal is treated as if—

(a) they are not a grandparented member; and

(b) they have reached the New Zealand superannuation qualification age referred to in clause 4(1).

(5) A withdrawal under this clause does not prevent a member continuing in paid employment. However, no Crown contribution or compulsory employer contribution is payable in relation to the member's continuing contributions.

(3) In schedule 1, clause 13,—

(a) replace the clause heading with "**Application for withdrawal for significant financial hardship, serious illness, or life-shortening congenital condition**":

(b) in subclause (1), replace "clause 10 or 12" with "clause 10, 12, or **12B**":

(c) after subclause (1B), insert:

(1C) The application by a member for a withdrawal under **clause 12B** must include—

(a) a completed statutory declaration by the member to acknowledge that they understand—

(i) first, that their KiwiSaver funds are to be released to them as if they had reached the New Zealand superannuation qualification age; and

(ii) secondly, that after the withdrawal of the funds, they are no longer eligible to receive Crown contributions or compulsory employer contributions in relation to their future contributions, if any; and

(b) a medical certificate issued by a medical practitioner that verifies that the member suffers from—

(i) a listed condition:

(ii) a non-listed condition that is a life-shortening congenital condition.

(1D) For the purposes of **subclause (1C)(b)(i) and clause 12B(2)**, **medical practitioner** has the meaning given in the definition set out in the Social Security Act 2018, schedule 2.

Part 2
Amendments to Student Loan Scheme Act 2011

39 Student Loan Scheme Act 2011

This Part amends the Student Loan Scheme Act 2011.

39B Section 4 amended (Interpretation)

(1) In section 4(1), definition of **loan balance**, repeal paragraph (a)(iva).

(2) In section 4(1), repeal the definition of **underestimation penalty**.

39C Section 5 amended (Meaning of unpaid amount)

Repeal section 5(1)(i).

~~**40 Section 22 amended (Meaning of New Zealand-based)**~~

~~In section 22(1)(a) and (b)(ii), replace "section 25(1)" with "section 25".~~

~~**41 Section 23 amended (Meaning of overseas-based)**~~

~~In section 23(1)(e)(i), replace "section 25(1)" with "section 25".~~

42 Section 25 amended (Commissioner may treat certain borrowers as being physically in New Zealand)

Replace section 25(2) with:

(2) Subsection (1)(b) to (j) and **subsection (3)** are subject to the conditions set out in, as applicable, clauses 2 to 11 of Schedule 1.

(3) On application, the Commissioner may, for the purposes of sections 22 to 24 and if the Commissioner considers that it is fair and reasonable to do so, treat a borrower as being physically in New Zealand if the Commissioner is satisfied that the borrower—

(a) has a serious illness for the period to which the application relates; and

(b) is unable to meet their overseas-based repayment obligation for that period as a result of that serious illness.

(4) In **subsection (3)**, **serious illness** means an injury, illness, or disability that—

(a) results in the borrower being unable to engage in paid work (other than work for which the person is paid a token payment or a very low wage); or

(b) poses a serious and imminent risk of death.

43 Section 26 amended (Method of making application and provision of evidence and information)

(1) In section 26, replace "section 25(1)" with "section 25".

(2) In section 26(b), after "Schedule 1,", insert "or **section 25(3)**,".

44 Section 27 amended (Commissioner must notify borrower and specify period or conditions when granting application)

In section 27, replace "section 25(1)" with "section 25".

45 New section 62A inserted (Commissioner may notify employers when loan balance close to zero)

After section 62, insert:

62A Commissioner may notify employers when loan balance close to zero

(1) The purpose of this section is to reduce the likelihood that a deduction under this subpart will result in a borrower's consolidated loan balance falling below zero.

(2) When a borrower's consolidated loan balance is close to zero, the Commissioner may—

(a) notify 1 or more of the borrower's employers of the loan balance; and

(b) require the employer, or those employers, to reduce the standard deduction that would otherwise be made on the relevant payday or paydays to the amount needed to meet the purpose of this section; and

(c) require the employer, or those employers, then to stop making deductions under this subpart.

(3) The Commissioner must give a copy of the notification to the borrower ~~if the Commissioner has a valid address for the borrower~~.

(3A) However, **subsection (3)** does not apply if the Commissioner is aware that he or she has incorrect contact details for the borrower or cannot reasonably locate the borrower.

(4) The notification revokes, for the payday or paydays, all other deduction rate certificates previously issued to the employer or those employers in relation to the borrower under this subpart.

45B Section 72 amended (Application of this subpart)

In section 72(a), replace "$1,500" with "$500" in each place.

45C Section 74 amended (Notification of Schedule 3 adjustments)

After section 74(2)(c), insert:

(d) the time at which the borrower makes an application under section 25 to be treated as being physically in New Zealand, if the borrower is subject to clause 11 of Schedule 1 and the Schedule 3 adjustments relate to the current tax year or any past tax year.

46 Section 106 amended (Meaning of repayment holiday)

(1) In the heading to section 106, replace "**repayment holiday**" with "**temporary repayment suspension**".

(2) In section 106, replace "**repayment holiday**" with "**temporary repayment suspension**".

47 Cross-heading and section 107 amended

(1) In the cross-heading above section 107, replace "*Repayment holiday from*" with "*Temporary repayment suspension of*".

(2) In the heading to section 107, replace "**repayment holidays**" with "**temporary repayment suspensions**".

(3) In section 107(1), replace "repayment holiday" with "temporary repayment suspension".

48 Section 107B amended (Grant of repayment holiday)

(1) In the heading to section 107B, replace "**repayment holiday**" with "**temporary repayment suspension**".

(2) In section 107B(1), (2), (3)(c)(ii)(B), and (3)(d), replace "repayment holiday" with "temporary repayment suspension" in each place.

(3) In section 107B(3)(a), (b), and (c), replace "repayment holidays" with "temporary repayment suspensions" in each place.

49 Section 108 amended (Duration of repayment holiday)

(1) In the heading to section 108, replace "**repayment holiday**" with "**temporary repayment suspension**".

(2) In section 108(1), (2), and (3), replace "repayment holiday" with "temporary repayment suspension" in each place.

50 Section 108A amended (Borrowers who have had, or are having, repayment holidays under Student Loan Scheme Act 1992)

(1) In the heading to section 108A, replace "**repayment holidays**" with "**temporary repayment suspensions**".

(2) In section 108A(1), replace "repayment holidays" with "temporary repayment suspensions".

(3) In section 108A(1), (2), and (3), replace "repayment holiday" with "temporary repayment suspension" in each place.

51 Section 110 amended (Repayment obligations of overseas-based borrowers)

In section 110(1)(a), replace "repayment holiday" with "temporary repayment suspension".

51B Section 114 amended (Notification of Schedule 3 adjustments by New Zealand-based non-resident borrowers)

Replace section 114(3) with:

(3) The borrower must notify the Commissioner of the Schedule 3 adjustments under this section—

(a) at the time when, if the borrower were a New Zealand resident, he or she would have had to notify the Commissioner of the Schedule 3 adjustments under section 74(2)(a) to (c); or

(b) no later than the time at which the borrower makes an application under section 25 to be treated as being physically in New Zealand, if the borrower is subject to clause 11 of Schedule 1 and the Schedule 3 adjustments relate to the current tax year or any past tax year.

52 Section 115 amended (Repayment obligations of borrowers who are overseas-based for part of tax year)

In section 115(1)(c), replace "repayment holiday" with "temporary repayment suspension".

52B Section 144 amended (Power of Commissioner in relation to small amounts)

(1) In section 144(1)(a) and (c), replace "less than $20" with "not more than $20".

(2) In section 144(1)(e), replace "$20 or less" with "not more than $20".

(3) In section 144(2)(a), replace "$20 or more" with "more than $20".

52C Section 146A amended (Commissioner may grant relief from penalties)

Repeal section 146A(3)(a)(ii).

52D Section 161A and cross-heading repealed

Repeal section 161A and the cross-heading above section 161A.

53 Section 176 amended (Challenge to decision concerning treating borrowers as being physically in New Zealand)

In section 176(a), replace "section 25(1)" with "section 25".

54 Section 182A amended (Challenge to decision concerning repayment holiday)

(1) In the heading to section 182A, replace "**repayment holiday**" with "**temporary repayment suspension**".

(2) In section 182A, replace "repayment holiday" with "temporary repayment suspension".

54B Section 189 amended (Annual administration fee)

In section 189(1), replace "$20 or more" with "more than $20".

54C Section 191 amended (Limit on repayment obligation for pay period or tax year)

(1) In section 191(1) and (3A), before "loan balance", insert "consolidated".

(2) In section 191(1), replace "of the month in which the pay period falls" with "of the pay period".

(3) Replace section 191(2) with:

(2) If a borrower derives adjusted net income for a tax year, the borrower's end-of-year repayment obligation for that tax year must not exceed the amount of the borrower's loan balance,—

(a) if the borrower files their return of income or provides a statement of adjusted net income before the end of that tax year, on the day on which the borrower files the return or provides the statement; and

(b) in any other case, on the last day of that tax year.

54D Section 194 amended (Order in which salary or wage deductions and payments offset against borrower's consolidated loan balance)

(1) In the heading to section 194, replace "**salary or wage**" with "**certain**".

(2) Replace section 194(1) with:

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

(a) first, against the borrower's oldest assessments, unpaid amounts, and repayment obligations; and

(b) within each of those things, first, against any interest charged and secondly, any remainder must be offset against any principal outstanding.

(3) In section 194(2), after "penalties", insert "(unless the borrower's consolidated loan balance consists only of 1 or more of those things)".

54E Section 195 amended (Date on which salary or wage deductions and payments treated as being made and credited)

Replace section 195(3) and (3A) with:

(3) For the purposes of calculating loan interest and late payment interest, determining whether an annual administration fee is payable, and determining whether a borrower's consolidated loan balance is not more than $20 for the purposes of section 197,—

(a) a salary or wage deduction is credited on the date on which the deduction is made; and

(b) all other payments are credited on the date on which they are received by the Commissioner.

54F Section 197 amended (Write-off of consolidated loan balance)

In section 197(2), replace "less than $20" with "not more than $20".

55 Section 220 amended (Application, savings, and transitional provisions)

In section 220(2), table, after the item relating to the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2016, insert:

Provisions relating to Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act **2019**	**Part 5**

56 Schedule 1 amended (Conditions to borrower being treated as being physically in New Zealand)

In Schedule 1, clause 11(1), after "section 25(1)", insert "or under **section 25(3)**".

57 Schedule 6 amended (Application, savings, and transitional provisions)

(1) In Schedule 6, replace the heading to clause 2 with "**Student Loan Scheme Act 1992 applies to tax years prior to 1 April 2012 in limited circumstances**".

(2) In Schedule 6, clause 2(1), replace "continues in full effect to the extent necessary for the proper administration and completion of all matters under that Act" with "continues in effect only to the extent necessary for the proper administration and completion of the matters referred to in **clauses 24 to 28**".

(3) In Schedule 6, clause 2(2) and (3), replace "a matter under the Student Loan Scheme Act 1992" with "a matter referred to in subclause (1)".

(4) In Schedule 6, after Part 4, insert the **Part 5** set out in ~~the Schedule~~**schedule 1** of this Act.

Part 3
Amendments to other enactments

Income Tax Act 2007

58 Income Tax Act 2007

Sections 59 to 114B amend the Income Tax Act 2007.

59 Section BB 2 amended (Main obligations)

(1) In section BB 2(5), replace "another ancillary tax" with "income tax or ancillary tax".

(2) In section BB 2, list of defined terms, insert "income tax".

59B Section BC 7 amended (Income tax liability of person with schedular income)

(1) After section BC 7(4), insert:

Special rule for natural person investors in multi-rate PIEs

(5) The schedular income tax liability of a natural person investor in a multi-rate PIE who derives income under section CP 1 (Attributed income of investors in multi-rate PIEs) is calculated under **section HM 36B** (Calculating PIE schedular income adjustments for natural person investors) to provide an adjustment to the amount of the person's income tax liability referred to in subsection (1)(b).

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

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

In section CB 16A(1), replace "if the land has been used predominantly, for most of the time the person owns the land, for a dwelling" with "if, for most of the period starting with the relevant date described in section CB 6A(1) to (4B) and ending with the bright-line date for the residential land, the land has been used predominantly for a dwelling".

61 Section CC 1 amended (Land)

Repeal section CC 1(2C).

61B Section CC 1B amended (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence)

(1) In section CC 1B(1), after "use land", insert "or as consideration for the grant, renewal, extension, or transfer of the land right".

(2) **Subsection (1)** applies to an amount derived by a person on or after 1 April 2013, except an amount for which the person relies on a tax position taken by the person in a return of income filed with the Commissioner, or on a binding ruling issued by the Commissioner,—

(a) in the period beginning with 1 April 2013 and ending before 23 August 2019; and

(b) that is inconsistent with the amendments made by **subsection (1)**.

62 Section CC 1B amended (Consideration relating to grant, renewal, extension, or transfer of leasehold estate or licence)

(1) In section CC 1B(1)(a), words before the subparagraphs, replace "is" with "is—".

(1B) Replace section CC 1B(1)(b)(ii) with:

(ii) the grant, renewal, extension, or transfer of the land right.

(2) After section CC 1B(5), insert:

Exception for payment as consideration for grant of permanent easement

(6) The amount is not income of the payee if—

(a) the payee is the owner of a fee simple estate in land; and

(b) the amount—

(i) is consideration for the grant, for the duration of the estate, of an easement over the land; and

(ii) is not a periodic payment.

(3) **Subsection (1B)** applies to an amount derived by a person on or after 1 April 2015, except an amount for which the person relies on a tax position taken by the person, or on a binding ruling issued by the Commissioner,—

(a) in the period beginning with 1 April 2015 and ending before 23 August 2019; and

(b) that is inconsistent with the amendments made by **subsection (1B)**.

63 Section CD 4 amended (Transfers of value generally)

(1) In the heading to section CD 4, replace "**Transfers of value**" with "**Transfers of company value**".

(2) In the heading to section CD 4(1), replace "*Transfers of value*" with "*Transfers of company value*".

(3) In section CD 4(1), replace "transfer of value" with "transfer of company value".

(4) In section CD 4, list of defined terms, replace "transfer of value" with "transfer of company value".

64 Section CD 5 amended (What is a transfer of value?)

(1) In the heading to section CD 5, replace "**transfer of value**" with "**transfer of company value**".

(2) In section CD 5(1), replace "**transfer of value**" with "**transfer of company value**".

(3) In section CD 5(3), replace "transfer of value" with "transfer of company value".

(4) In section CD 5, list of defined terms, replace "transfer of value" with "transfer of company value".

65 Section CD 6 amended (When is a transfer caused by a shareholding relationship)

(1) In section CD 6(1), replace "transfer of value" with "transfer of company value".

(2) In section CD 6(3), replace "transfer of value" with "transfer of company value".

(3) In section CD 6(4), replace "transfer of value" with "transfer of company value".

(4) In section CD 6, list of defined terms, replace "transfer of value" with "transfer of company value".

66 Section CD 27 amended (Property made available intra-group)

(1) In section CD 27(1)(a), replace "transfer of value" with "transfer of company value".

(2) In section CD 27(2),—

(a) words before the paragraphs, replace "transfer of value" with "transfer of company value":

(b) paragraph (c), replace "transfers of value" with "transfers of company value".

(3) In section CD 27(3),—

(a) heading, replace "*transfers of value*" with "*transfers of company value*":

(b) words before the paragraphs, replace "transfer of value" with "transfer of company value":

(c) paragraph (a)(ii), replace "transfer of value" with "transfer of company value".

(4) In section CD 27(4), replace "transfer of value" with "transfer of company value".

(5) In section CD 27, list of defined terms, replace "transfer of value" with "transfer of company value".

67 Section CD 29C amended (Transfers to shareholders by ASX-listed Australian company of shares in subsidiary)

(1) In section CD 29C, replace "transfer of value" with "transfer of company value" in the first place it appears.

(2) In section CD 29C, list of defined terms, replace "transfer of value" with "transfer of company value".

68 Section CD 38 amended (General calculation rule for transfers of value)

(1) In the heading to section CD 38, replace "**transfers of value**" with "**transfers of company value**".

(2) In section CD 38(1), replace "transfer of value" with "transfer of company value".

(3) In section CD 38, list of defined terms, replace "transfer of value" with "transfer of company value".

69 New section CE 7CB inserted (Meaning of market value)

After section CE 7C, insert:

CE 7CB Meaning of market value

Market value, for an employee share scheme—

(a) has the same meaning as in section YA 1 (Definitions), definition of **market value**, paragraphs (a) and (b); and

(b) includes, for a share or option quoted on the official list of a recognised exchange, at the time, an amount equal to the 5-day volume weighted average price or any other method that is accepted by the Commissioner or is comparable to the 5-day volume weighted average price, for such shares or options.

70 Section CW 26C amended (Meaning of exempt ESS)

(1A) After section CW 26C(3), insert:

Trusts

(3B) If a trust holds the shares in trust for the employee, the arrangement must provide that—

(a) the trustee pays dividends directly to the employee; and

(b) the dividends are treated as being derived by the employee.

(1) In section CW 26C(7)(a), replace "disposed of" with "disposed of other than as part of a takeover or similar share reorganisation,".

(2) In section CW 26C(7)(b), replace "disposed of" with "disposed of other than as part of a takeover or similar share reorganisation,".

(3) Replace section CW 26C(8)~~, other than the heading,~~ with:

~~(8) The arrangement must provide, when the period of restriction provided by subsection (7) ends, 1 of the following:~~

~~(a) that the shares are transferred to the employee or, if the employee chooses, that the shares are purchased for the lesser of—~~

~~(i) the cost of the shares to the employee:~~

~~(ii) the market value of the shares on the date the period of restriction ends; or~~

~~(b) if the employee is currently employed, the provision described in **paragraph (a)**, and if the employee is not currently employed, that the shares are purchased for the lesser of —~~

~~(i) the cost of the shares to the employee:~~

~~(ii) the market value of the shares on the date the period of restriction ends.~~

End of period of restriction: first option

(8) The arrangement may provide, when the period of restriction provided by subsection (7) ends, that the shares are transferred to the employee if they have not already been transferred or, if the employee chooses, that the shares are acquired from the employee or trustee for the lesser of—

(a) the cost of the shares to the employee:

(b) the market value of the shares on the date the period of restriction ends.

End of period of restriction: second option

(8B) If the arrangement does not provide as described in **subsection (8)**, the arrangement must provide, when the period of restriction provided by subsection (7) ends,—

(a) in the case that the employee is currently employed, that the shares are transferred to the employee if they have not already been transferred or, if the employee chooses, that the shares are acquired from the employee or trustee for the lesser of—

(i) the cost of the shares to the employee:

(ii) the market value of the shares on the date the period of restriction ends:

(b) in the case that the employee is not currently employed, that the shares are acquired from the employee or trustee for the lesser of—

(i) the cost of the shares to the employee:

(ii) the market value of the shares on the date the period of restriction ends.

(4) In section CW 26C(9), replace "subsection (8)" with "**subsections (8) and (8B)**".

71 New section CW 26DB inserted (Meaning of market value)

After section CW 26D, insert:

CW 26DB Meaning of market value

For the purposes of section CW 26C, **market value**—

(a) has the same meaning as in section YA 1 (Definitions), definition of **market value**, paragraphs (a) and (b); and

(b) includes, for a share or option quoted on the official list of a recognised exchange, at the time, an amount equal to the 5-day volume weighted average price or any other method that is accepted by the Commissioner or is comparable to the 5-day volume weighted average price, for such shares or options.

72 Section CW 38 amended (Public authorities)

(1) Replace the heading to section CW 38(1) with "*Exempt income: sinking funds*".

(2) Replace the heading to section CW 38(2) with "*Exempt income: other income*".

73 Section CW 38B amended (Public purpose Crown-controlled companies)

(1) Replace the heading to section CW 38B(1) with "*Exempt income: sinking funds*".

(2) Replace the heading to section CW 38B(2) with "*Exempt income: other income*".

74 Section CW 39 amended (Local authorities)

(1) Replace the heading to section CW 39(1) with "*Exempt income: sinking funds*".

(2) Replace the heading to section CW 39(2) with "*Exempt income: other income*".

75 Section CW 56 amended (Non-resident aircraft operators)

(1) In section CW 56(1), replace "air transport from New Zealand is exempt income" with "air transport from New Zealand, or from air transport to New Zealand, is exempt income".

(2) In section CW 56(3), definition of **air transport from New Zealand**, replace paragraph (b) with:

(b) includes a flight by the aircraft between the airport in New Zealand where the emplaning or embarking occurred and another airport in New Zealand at which the aircraft calls before leaving New Zealand on the international flight for which the emplaning or embarking occurred

(3) In section CW 56(3), insert, in appropriate alphabetical order:

air transport to New Zealand—

(a) means the carriage to an airport in New Zealand by an aircraft of cargo, mail, or passengers emplaned or embarked on the aircraft at an airport in a country or territory outside New Zealand; and

(b) includes a flight by the aircraft to the airport in New Zealand for carriage to which the emplaning or embarking occurred from another airport in New Zealand at which the aircraft calls en route

(4) In section CW 56, list of defined terms, insert "air transport to New Zealand".

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

76 Section CX 17 amended (Benefits provided to employees who are shareholders or investors)

In section CX 17(4)(a), replace "Transfers of value" with "Transfers of company value".

77 Section CX 22 amended (Benefits to non-executive directors)

(1) In section CX 22, replace "transfer of value" with "transfer of company value".

(2) In section CX 22, list of defined terms, replace "transfer of value" with "transfer of company value".

77B Section CX 56 amended (Attributed income of certain investors in multi-rate PIEs)

(1) In section CX 56(1), replace "when an investor in a multi-rate PIE" with "when an investor in a multi-rate PIE, other than an investor who is a natural person,".

(2) After section CX 56(1B), insert:

When this section also applies

(1C) When a trustee of a trust is an investor in a multi-rate PIE and an election is made in an income year (the **election year**) for the trust under section HC 33 (Choosing to satisfy income tax liability of trustee), this section also applies to the trustee for the income years that end before the election year and for which the election applies.

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

(d) an amount of PIE schedular income is derived by a natural person who is an investor in the PIE.

(4) In section CX 56, in the list of defined terms, insert "natural person" and "PIE schedular income".

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

77C Section CZ 35 amended (Amounts derived by Te Kōwhatu Tū Moana)

In section CZ 35, list of defined terms,—

(a) insert "Te Kōwhatu Tū Moana":

(b) delete "month".

78 Section EE 47 amended (Events for purposes of section EE 44)

Replace the heading to section EE 47(2B) with "*Event timing for person's income becoming tax exempt*".

78B Section EL 3 amended (Definitions for this subpart)

In section EL 3,—

(a) in the definition of **land sales provisions**, replace "CB 14" with "CB 15":

(b) in the definition of **residential income**, paragraph (d), replace "paragraphs (a) and (b)" with "paragraphs (a), (b), and (c)".

78C Section EL 4 amended (Allocation of deductions for loss-making residential rental properties)

In section EL 4(2), replace "the person's residential income for the income year." with "the person's residential income for the income year. An amount identified as a person's residential income may be counted only once in making an allocation under this subpart."

78D Section EL 5 amended (When residential portfolios sold)

(1) In section EL 5(2), replace "*see* section EL 8" with "*see* **subsections (5) and (6)**".

(2) After section EL 5(4), insert:

When subsection (6) applies

(5) **Subsection (6)** applies in relation to a disposal described in subsection (2) when—

(a) an unused excess amount was transferred to the portfolio from another of the person's properties that was not included in the portfolio; and

(b) the person did not derive income from the disposal of the other property.

Reduction and transfer to another residential rental property

(6) An unused excess amount that would otherwise be released under subsection (2) is—

(a) reduced by an amount equal to the total unused excess amount transferred from the other property; and

(b) to the extent of the amount transferred, is a deduction referred to in section EL 4(1) that is transferred to another residential rental property for an income year in which the person derives residential income.

78E Section EL 7 amended (When property A sold)

(1) In section EL 7(2),—

(a) replace "section EL 4(3)" with "section EL 4(2)":

(b) replace "*see* section EL 8" with "*see* **subsections (5) and (6)**".

(2) After section EL 7(4), insert:

When subsection (6) applies

(5) **Subsection (6)** applies in relation to a disposal described in subsection (2) when—

(a) an unused excess amount was transferred to the property A from another of the person's properties; and

(b) the person did not derive income from the disposal of the other property.

Reduction and transfer to another residential rental property

(6) An unused excess amount that would otherwise be released under subsection (2) is—

(a) reduced by an amount equal to the total unused excess amount transferred from the other property; and

(b) to the extent of the amount transferred, is treated as a deduction referred to in section EL 4(1) that is transferred to another residential rental property for an income year in which the person derives residential income.

78F Section EL 8 repealed (Treatment of previously transferred amounts on fully-taxed disposals)

Repeal section EL 8.

78G Section EL 15 amended (Transfers between companies in wholly-owned groups)

In section EL 15(1), delete "carried forward".

78H Section EL 16 amended (Interests in residential land-rich entities)

Replace section EL 16(2)(b) with:

(b) carried forward to a later income year in which the entity derives residential income; and

78I Section EL 18 amended (Modifications when entities transparent)

In section EL 18(a), replace "residential income for the income year" by "residential income for the income year from property held by the entity".

78J Section EY 30 amended (Transitional adjustments: life risk)

(1) In section EY 30(5BA)(c), replace "consisting of the last 4 quarters preceding the year" with "that is the basis for the calculation, under the formula referred to in paragraph (b), of the increase in the sum assured".

(2) In section EY 30, list of defined terms, delete "quarter".

(4) **Subsection (1)** applies for a person for the income year that includes 1 July 2010 and later income years, except for an income year for which the person notifies the Commissioner on or after 26 June 2019 that the person chooses to rely on a tax position that is inconsistent with the amendment made by **subsection (1)**.

78K Section FB 3A amended (Residential land)

(1) In section FB 3A(1), replace "section CB 6A (Disposal within 5 years: bright-line test for residential land)" with "sections CB 6A and CB 16A (which relate to the bright-line test for residential land),".

(2) In section FB 3A(3), replace "section CB 6A(1) to (4)" with "section CB 6A(1) to (4B)".

79 Section FC 1 amended (Disposals to which this subpart applies)

(1) In section FC 1(1)(d), replace "transfer of value" with "transfer of company value".

(2) In section FC 1, list of defined terms, replace "transfer of value" with "transfer of company value".

79B Section FC 2 amended (Transfer at market value)

(1) Replace section FC 2(4) with:

Relationship with settlements and distributions for trusts

(4) Subsection (1) does not apply for the purposes of determining whether a transfer of property is—

(a) a settlement on a trust:

(b) a distribution from a trust as defined in section HC 14 (Distributions from trusts).

(2) In section FC 2, list of defined terms, insert "settlement".

80 Section FE 5 amended (Thresholds for application of interest apportionment rules)

In section FE 5(1C)(c), replace "interest:" with "interest; and".

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

(1) In section FE 6(3)(ac)(i), after "for the excess debt entity", insert "or that is related-party debt for which the lender is not a New Zealand resident and does not carry on a business through a fixed establishment in New Zealand".

(2) In section FE 6, list of defined terms, insert "fixed establishment", "New Zealand resident", and "related-party debt".

(3) **Subsection (1)** applies for income years beginning on or after 1 July 2018.

81B Section FE 16B amended (Total group non-debt liabilities)

(1) In section FE 16B(1)(b), words before subparagraph (i), replace "a shareholder that is a member of the group" with "a shareholder".

(2) In section FE 16B(1)(b)(i), replace "shareholding of each shareholder" with "voting interest of each shareholder".

(3) In section FE 16B(1)(c)(i), replace "shareholding of each shareholder" with "voting interest of each shareholder".

(4) After section FE 16B(2), insert:

Wholly-owned group treated as single shareholder and provider of funds

(3) If a shareholder is a member of a wholly-owned group,—

(a) for the purposes of section FE 16B(1)(b)(i) and (c)(i), the wholly-owned group is treated as the shareholder for all shares held by persons who are members of the wholly-owned group; and

(b) for the purposes of section FE 16B(1)(b), the wholly-owned group is treated as the provider of all the funds that are provided by persons who are members of the wholly-owned group.

(5) In section FE 16B, list of defined terms, insert "wholly-owned group".

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

81C Section FH 1 amended (Subpart implements OECD recommendations for domestic law)

(1) After section FH 1(4)(c), insert:

(cb) **section FH 5B** gives the requirements for an exception to section FH 5:

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2018.

81D Section FH 5 amended (Payments by New Zealand resident or New Zealand deducting branch producing deduction without income)

(1) In section FH 5(2)(b), replace "as the payee." with "as the payee; and".

(2) After section FH 5(2)(b), insert:

(c) the expenditure is not an amount that is—

(i) consideration for a supply of goods or services by the payee to the payer meeting the requirements of **section FH 5B(1)**; and

(ii) excluded from being a mismatch amount by **section FH 5B(2)**.

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

81E New section FH 5B inserted (Exception: when payee group not allowed deductions for supplies as prerequisites for payer supplies)

(1) After section FH 5, insert:

FH 5B Exception: when payee group not allowed deductions for supplies as prerequisites for payer supplies

When this section applies

(1) This section applies when expenditure meets the requirements of section FH 5(2)(a) and (b).

Supply to payer depending on supply to payee or group

(2) For the purposes of **section FH 5(2)(c)**, a supply of goods or services by the person who is the payee for the purposes of that section (the **payee**) to the person who is the payer for the purposes of that section (the **payer**) meets the requirements of this subsection if—

(a) a prerequisite for the supply is a supply of goods or services (the **prerequisite group supply**) received and paid for by the payee or by a person who is a member of the payee's control group and is resident in the payee jurisdiction; and

(b) the prerequisite group supply is made by a person who, at the time of the supply, is in no control group that includes the payee or the payer; and

(c) the taxation law of the payee jurisdiction allows no deduction from income, and no equivalent tax relief, for an amount (the **non-deductible amount**) of the payment for the prerequisite group supply because income of the payer is not taxable in the payee jurisdiction; and

(d) no country or territory outside the payee jurisdiction allows a deduction from income for the non-deductible amount or allows equivalent tax relief for the non-deductible amount.

Expenditure excluded from being mismatch amount

(3) The amount of the consideration for a supply that meets the requirements of **subsection (2)** (the **payer supply**) that is an amount excluded from being a mismatch amount (the **excluded amount**) and is linked for the purposes of **paragraph (a)** or **subsection (4)** to a prerequisite group supply is,—

(a) if the payer supply is the sole payer supply to the payer by the payee, or by a member of the payee's control group, that occurs in or before the income year in which the payer supply is made, and the prerequisite group supply is the sole prerequisite group supply for the payer supply, the amount that is the lesser of—

(i) the amount of the consideration for the payer supply:

(ii) the non-deductible amount for the prerequisite group supply; or

(b) if **paragraph (a)** does not apply, the amount that meets the requirements of **subsection (4)** for the payer supply and the prerequisite group supply.

More than 1 payer supply and more than 1 prerequisite group supply

(4) If the requirements of **subsection (3)(a)** are not met for a payer supply and a prerequisite group supply, the excluded amount for the payer supply, together with excluded amounts for other payer supplies, must meet the following requirements—

(a) for a payer supply, the total of the excluded amounts linked to prerequisite group supplies must not exceed the consideration for the payer supply; and

(b) for a prerequisite group supply, the total of the excluded amounts linked to the prerequisite group supply must not exceed the non-deductible amount for the prerequisite group supply; and

(c) for each payer supply, the excluded amount that is linked to a prerequisite group supply is the maximum amount that, together with other excluded amounts already linked to the prerequisite group supply, meets the requirements of **paragraphs (a) and (b)**, when—

(i) the excluded amounts for each payer supply are determined for payer supplies in the order in which the payer supplies are made or, for payer supplies made at the same time, in the order chosen by the payer; and

(ii) the excluded amounts for a payer supply that are linked to prerequisite group supplies are determined in the order in which the prerequisite group supplies are made or, for prerequisite group supplies made at the same time, in the order chosen by the payer.

Defined in this Act: control group, income year, services

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2018.

81F Section FH 14 amended (Irrevocable election by owner of hybrid entity)

(1) In section FH 14(2), after "subsection (5)(a)(i)", insert "and sections FH 3 to FH 11 do not apply to expenditure incurred, or income derived, by the hybrid entity from the deemed sale".

(2) In section FH 14(5)(a)(i), after "of the hybrid entity", insert ", as a hybrid entity,".

(3) **Subsection (1)** applies for income years beginning on or after 1 July 2018.

82 Section FM 8 amended (Transactions between group companies: income)

In section FM 8(3)(c), replace "Transfers of value" with "Transfers of company value".

83 Section GB 27 amended (Attribution rule for income from personal services)

(1) Replace section GB 27(4), other than the heading, with:

(4) If a company that is required to attribute an amount to the working person under this section and section GB 29 pays a dividend, sections HA 14 to HA 19 (which relate to qualifying companies) are treated as applying to the company and the dividend if—

(a) the dividend is paid—

(i) ~~by the company to the working person~~ no earlier than the end of 6 months after the end of the income year referred to in subsection (1); and

(ii) from income ~~derived in the income year~~that has been attributed to the working person under this section and section GB 29; and

(b) the company,—

(i) for each tax year that corresponds to an income year in which it derived income from which it pays the dividend, has no net income ~~for the tax year in which it pays the dividend~~ other than income attributed under this section and section GB 29, ignoring interest income that is incidental to the company's business; and

(ii) is not a qualifying company; and

(iii) chooses to have the dividend treated as if it were paid by a qualifying company; and

(iv) keeps sufficient records to enable the Commissioner to verify the matters referred to in **paragraph (a)**.

(2) In section GB 27(5), replace "subsection (4)(c)" with "**subsection (4)(b)(iii)**".

(3) In section GB 27, list of defined terms, insert "Commissioner".

(4) **Subsections (1) and (2)** apply for the 2008–09 and later income years. However, **subsections (1) and (2)** do not apply to a person in relation to a tax position taken by the person—

(a) in the period that starts on 1 April 2008 and ends on the date on which the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill is introduced; and

(b) in relation to a dividend; and

(c) relying on section GB 27(4) and (5) as those subsections were before the amendments made by **subsections (1) and (2)**.

84 Section GB 29 amended (Attribution rule: calculation)

(1) After section GB 29(1), insert:

Associated entity's net income calculated before attribution

(1B) For the purposes of calculating the associated entity's net income for the corresponding tax year in the application of subsection (1), section DC 8 (Attribution of personal services) is ignored.

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

85 Section GC 10 amended (Compensating arrangement: person receiving more than arm's length amount)

(1) In section GC 10(1)(b)(ii), replace "arrangement:" with "arrangement; and".

(2) In section GC 10(1)(c), replace "amount:" with "amount; and".

85B Section GC 16 amended (Credit rating of borrower: other than insuring or lending person)

(1) In section GC 16(5), replace "senior unsecured debt" with "senior debt".

(2) **Subsection (1)** applies for a person and a financial arrangement and income years beginning on or after 1 July 2018.

86 Section HA 13 amended (Qualifying companies' distributions)

(1) In section HA 13, replace "transfer of value" with "transfer of company value".

(2) In section HA 13, list of defined terms, replace "transfer of value" with "transfer of company value".

87 Section HC 2 amended (Obligations of joint trustees for calculating income and providing returns)

(1A) Replace section HC 2(2), other than the heading, with:

(2) The trustees of the trust are treated in that capacity as if they were a notional single person and are jointly and severally liable to satisfy the obligations imposed by section BB 2 on the notional single person.

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

Residence

(3) ~~The~~ If no election under section HC 33 is made for the trust, the notional single person referred to in **subsection (2)** is—

(a) a New Zealand resident when 1 or more of the trustees is resident in New Zealand:

(b) a non-resident when none of the trustees is resident in New Zealand.

(2) In section HC 2, list of defined terms, insert "New Zealand resident", "non-resident", and "resident in New Zealand".

(3) **Subsections (1A) and (1)** ~~applies~~ apply for income years beginning after the date on which this Act receives the Royal assent.

88 Section HC 4 amended (Corpus of trust)

Replace section HC 4(1) with:

Meaning of corpus

~~(1) In the trust rules, **corpus** for a trust means the settlement value under **subsection (1B)** of property settled on the trust that—~~

~~(a) is capable of being distributed by the trustee of the trust; and~~

~~(b) is not excluded by subsection (2).~~

(1) In the trust rules, **corpus** for a trust means the settlement value under **subsection (1B)** of property settled on the trust that is not excluded by subsection (2).

Settlement value of settled property

(1B) For property meeting the requirements of **subsection (1)~~(a) and (b)~~**, the value under this subsection (the **settlement value**) of the property settled on a trust is—

(a) the market value of the property determined at the time of the settlement of the property, for a single settlement on the trust; or

(b) the total of the amounts determined under **paragraph (a)** for each settlement of property, if the trustee treats the settlements in the way permitted by section HC 3.

89 Section HC 7 amended (Trustee income)

(1) Replace section HC 7(3), other than the heading, with:

(3) The trustee of a trust has, from a property settlement that is referred to in section HC 4(3) to (5) and made in an income year, an amount of trustee income for the income year equal to the market value of the property settlement reduced by the amount of the market value that the trustee treats as beneficiary income, or as a taxable distribution made by the trustee, in the income year.

(2) In section HC 7, list of defined terms, insert "taxable distribution".

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

90 Section HC 10 amended (Complying trusts)

(1) Replace section HC 10(1)(ab) with:

(ab) the requirements of paragraph (a) are not met and—

(i) a person makes an election meeting the requirements of section HC 30(2) and the requirements of subsection (2) are met; or

(ii) a person makes an election meeting the requirements of section HC 33(1) and for all income years beginning on or after the date on which the election applies to the trust and before the time of distribution, the trustee's tax obligations relating to the trustee's income tax liability for the trustee income, determined consistently with section HC 33(1C), are satisfied; or

(1B) In section HC 10(3), delete "and (ab)".

(2) **Subsection (1)** applies for a trust and an election under section HC 33(1) made after the date on which this Act receives the Royal assent.

90B Section HC 14 amended (Distributions from trusts)

(1) After section HC 14(2), insert:

Payment of interest at rate above market rate not distribution

(2B) If a trustee pays to a beneficiary interest on an amount owed to the beneficiary, the payment is not a distribution by the trustee except to the extent to which the interest exceeds the amount given by the rate that is the greater of the market rate and the prescribed rate of interest.

(2) In section HC 14, list of defined terms, insert "interest" and "prescribed rate of interest".

91 Section HC 15 amended (Taxable distributions from non-complying and foreign trusts)

(1) After section HC 15(5B), insert:

Source of income from capital gain

(5C) The source of a capital gain that is included in a taxable distribution is determined for the trustee under section YD 4 (Classes of income treated as having New Zealand source) as if the capital gain were an amount of income.

Source of capital loss

(5D) The source of a capital loss for the trustee is given by **subsection (5C)**, applied as if the capital loss were a capital gain included in a taxable distribution.

(2) In section HC 15(6), replace "~~disposing of property at less than market value or~~ providing" with "providing financial assistance or".

(3) In section HC 15, list of defined terms, insert "financial assistance" and "income".

92 Section HC 16 amended (Ordering rule for distributions from non-complying and foreign trusts)

(1) Before section HC 16(2)(a), insert:

(aa) first, an amount derived by the trustee that is beneficiary income of the beneficiary in the previous income year:

(2) In section HC 16(2)(a), replace "first" with "second".

(3) In section HC 16(2)(b), replace "second" with "third".

(4) In section HC 16(2)(c), replace "third" with "fourth".

(5) In section HC 16(2)(d), replace "fourth" with "fifth".

(6) In section HC 16(5), words before the paragraphs, replace "not being a taxable distribution" with "not being beneficiary income or a taxable distribution".

(7) Repeal section HC 16(5)(b).

(8) **Subsections (1) to (7)** apply for income years beginning after the date on which this Act receives the Royal assent.

92B Section HC 25 amended (Foreign-sourced amounts: non-resident trustees)

In section HC 25(2)(c)(ii), after "year)", insert "or the last surviving settlor was resident in New Zealand when that settlor ceased to exist".

93 Section HC 26 amended (Foreign-sourced amounts: resident trustees)

~~(1) In section HC 26(1), words before the paragraphs, after "resident trustee derives", insert ", other than beneficiary income,".~~

(1) In section HC 26(1), words before the paragraphs, after "derives in an income year", insert ", and is included in trustee income for the income year,".

(2) In section HC 26(1)(a), after "transitional resident", insert "or, if no settlor exists in the income year, the last surviving settlor was a non-resident when that settlor ceased to exist".

(2B) After section HC 26(1)(a), insert:

(ab) no election under section HC 33 has been made for the trust; and

(3) In section HC 26(1)(d)(iv), replace "year." with "year; and".

(4) After section HC 26(1)(d), insert:

(e) the amount is not beneficiary income derived by a minor that is ~~being~~ treated as if it were trustee income.

(5) In section HC 26, list of defined terms, insert "beneficiary income", "minor", "non-resident", and "trustee income".

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

(1) Replace section HC 27(4), other than the heading, with:

~~(4) A transfer, or other action or omission, referred to in subsection (2) (the **act**) is performed by a person if —~~

~~(a) the person directly or indirectly controls or influences the act:~~

~~(b) the act involves an associated person:~~

~~(c) the act is effected by means of 1 or a number of arrangements meeting the requirements of **paragraph (a) or (b)** for an act.~~

(4) A person may make a transfer of value, or provision of financial assistance, referred to in subsection (2) directly or indirectly and by 1 transaction or a number of connected transactions.

(1B) In section HC 27(6),—

(a) replace the heading with "*Amounts owing to beneficiaries*":

(b) in the words before paragraph (a), replace "subsection (2)(a) in an income year of the trustee" with "subsection (2)":

(c) replace paragraphs (a) and (b) with:

(a) the amount owing at the end of the income year is not more than $25,000, after adjustments to include the effect of transactions that are made after the end of the income year and by the date given for the income year by section HC 6(1B) and are included in the financial statements of the trust for the income year:

(b) the trustee pays to the beneficiary, for each income year in which the amount is owing and by the date given for the income year by section HC 6(1B), interest on the amount at a rate equal to the prescribed rate of interest or the market rate.

(2) In section HC 27, list of defined terms, insert "~~arrangement~~" ~~and~~ "~~associated~~prescribed rate of interest".

95 Section HC 28 amended (Activities treated as those of settlor)

(1) Replace section HC 28(3), other than the heading, with:

(3) A person is treated as a settlor of a trust if a controlled foreign company settles an amount on a trust and the person has a control interest of 10% or more in the CFC—

(a) at the time of the settlement:

(b) for the accounting period of the CFC in which the settlement occurs.

(2) Replace section HC 28(4)(c) with:

(c) the person would be treated as having a control interest of 10% or more in the company, if the company were a foreign company,—

(i) at the time of the settlement:

(ii) under section EX 1(3), for the accounting period of the company in which the settlement occurs.

(3) In section HC 28, list of defined terms, insert "accounting period" and "controlled foreign company".

96 New section HC 31B inserted (Value transfer by deferral, or non-exercise, of right to demand payment)

After section HC 31, insert:

HC 31B Value transfer by deferral, or non-exercise, of right to demand payment

When this section applies

(1) This section applies when a person (the **creditor**) provides financial assistance to or for the benefit of another person (the **debtor**) with an obligation (the **debtor obligation**) that the ~~other person~~ debtor could meet, if performance of the obligation were demanded immediately after the time of the provision, by paying an amount (the **debt amount**) and—

(aa) the debtor does not pay to the creditor, for a period for which the debtor has the debtor obligation, interest on the debt amount at a rate equal to the prescribed rate of interest or the market rate; and

(a) the debtor obligation is not forgiven; and

(b) the right of the creditor to demand payment of the debt amount under the debtor obligation~~, or a guarantee of the debtor obligation,~~ is not exercised or is deferred; and

(c) the non-exercise, or the deferral, results in a transfer of value by the creditor; and

(d) the transfer of value meets the requirements of—

(i) section HC 14 for the transfer of value to be a distribution made by a trustee:

(ii) section HC 27(2)(b) for the creditor to be a settlor of a trust.

When this section does not apply

(1B) This section does not apply to a situation in the application of section HC 27(6) to the situation.

Valuation

(2) The value transferred by the creditor during a period for which the debtor obligation exists is the amount calculated for the debt amount, treated as a loan, using the formula—

~~prescribed~~ benchmark interest – interest paid.

Definition of items in formula

(3) In the formula—

(a) **~~prescribed~~ benchmark interest** is the amount of interest that would have accrued on the debt amount that is unpaid during the period if the interest had been calculated on the daily balance of the loan at a rate that is equal to whichever the debtor chooses of the prescribed rate of interest and the market rate:

(b) **interest paid** is the total of—

(i) the amount of interest that accrues on the debt amount during the period:

(ii) the amount that would have accrued as interest on the debt amount during the period if the amount had not been included in a taxable distribution to the debtor:

(iii) for a period that includes the date on which the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act **2019** receives the Royal assent (the **transition date**), the amount that is ~~pre-~~

~~scribed~~ benchmark interest for the part of the period that precedes the transition date.

Defined in this Act: distribution, interest, prescribed rate of interest, settlor, transfer of value, trustee

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

(1) In section HC 33(1B), words before the paragraphs, delete "ignoring the requirement in subsection (4),".

(2) Replace section HC 33(1B)(b) and (c) with:

(b) the trust ceases to meet the requirement in section HC 10(1)(a)(i) in an income year (the **non-complying year**); and

(c) the trustee meets the tax obligations relating to the income tax liability referred to in subsection (2), for the non-complying year and notifies the Commissioner that the trust is a complying trust for the non-complying year,—

(i) for a trustee that is required to file a return of income for the non-complying year, in the return of income and by the due date for the return of income:

(ii) for a trustee that is not required to file a return of income for the non-complying year, ~~before the end of the income year following the non-complying year~~ by the due date for a return, by a resident foreign trustee, required by section 59D of the Tax Administration Act 1994 for the non-complying year.

(3) After section HC 33(1B), insert:

Status of person making election and settlor

(1C) From when an election by a person under subsection (1) applies under subsection (3), the tax obligations of the ~~person~~ trustee of the trust arising from the trust are determined on the basis that—

(a) the trustee ~~of the trust~~ is a New Zealand resident; and

(b) the trust has a settlor who is a New Zealand resident.

(4) Replace section HC 33(2)(a) with:

(a) must satisfy the tax obligations of the trustee relating to the income tax liability of the trustee; and

(5) Replace section HC 33(3)(a) and (b) with:

(a) for an election to which section HC 30 applies, on and after the date on which the election is made; or

(b) for an election to which section HC 30 does not apply and that does not meet the requirements of **subsection (1B)**, on and after whichever date (the **effective date**) the person making the election chooses of—

~~(i) the beginning of the income year in which the election is made:~~

~~(ii) the date of the election; or~~

(i) the date of the election (the **electing date**):

(ii) the beginning of the income year (the **electing year**) that includes the electing date:

(iii) the beginning of an income year that is 4 years or less before the beginning of the electing year; or

(c) for an election to which section HC 30 does not apply and that meets the requirements of **subsection (1B)**, on and after the beginning of the non-complying year referred to in **subsection (1B)(b)**.

(6) After section HC 33(3), insert:

Period of election under subsection (1B)

(3B) An election meeting the requirements of **subsection (1B)** is effective until the beginning of an income year for which the trustee does not—

(a) meet the tax obligations of the trustee relating to the income tax liability of the trustee for the income year:

(b) notify the Commissioner that the trust is a complying trust for the income year in the way that would be required by **subsection (1B)(c)** for a non-complying year.

(7) In section HC 33(4), replace "The person must notify the Commissioner of an election under subsection (1)" with "If the trustee of a trust is required to file a return of income for an income year, a person making an election under subsection (1) must notify the Commissioner of the election and provide to the Commissioner the information required by **section 113F** of the Tax Administration Act 1994".

(8) After section HC 33(4), insert:

Effect on distributions

(5) For a trust (the **distributing trust**) and an election for which the tax treatment of the trust is not given by section HC 30(3) ~~and that applies from a date (the **transition date**) in an income year (the **transition year**),—~~

(aa) a distribution made before the beginning of the electing year has the taxation consequences that it would have in the absence of the election:

(a) a distribution made after the beginning of the electing year from income derived by the trustee before the ~~transition date~~ effective date is treated as being a distribution by a trust having the status, of foreign trust or non-complying trust or complying trust, that the distributing trust has when the income is derived:

(b) a distribution made after the beginning of the electing year from income derived on or after the ~~transition date~~ effective date is treated as being made by the trustee as trustee of—

(i) a complying trust, if the requirements of **section HC 10(1)(ab)** are met for the trustee income derived on or after the ~~transition date~~ effective date:

(ii) a non-complying trust, if **subparagraph (i)** does not apply:

(c) for the purposes of **paragraphs (a) and (b)**, the amount derived before the ~~transition date~~ effective date by the trustee in ~~the transition year~~ an income year that includes, but does not begin with, the effective date is—

(i) the amount derived before the ~~transition date~~ effective date in the ~~transition year~~ income year, if the person making the election does not choose to rely on **subparagraph (ii)**; or

(ii) a proportion of the income derived in the ~~transition year~~ income year equal to the proportion of the days in the ~~transition year~~ income year that are before the ~~transition date~~ effective date.

No liability for penalties from increased assessments in some circumstances

(6) When a person makes an election for a trust under section HC 33(1) with an effective date given by **subsection (3)(b)(iii)** and the election results in an increase in the assessed income tax liability of the trustee, or in the amount of resident withholding tax payable by the trustee, for an income year before the electing year, the person and the trustee are not liable for a penalty under Part 9 of the Tax Administration Act 1994 arising from the increase if the Commissioner accepts that the trustee's tax position for each income year beginning on or after the effective date and before the electing year is none of—

(a) an unacceptable tax position under section 141B of the Tax Administration Act 1994:

(b) an abusive tax position under section 141D of that Act:

(c) a tax position that causes the trustee to be liable to pay a shortfall penalty for evasion or a similar act under section 141E of that Act.

(9) In section HC 33, list of defined terms, insert "foreign trust", "income", ~~and~~ "non-complying trust", and "tax position".

97B Section HC 36 amended (Trusts and minor beneficiary rule)

In section HC 36(5), repeal the definition of **financial assistance**.

98 Section HM 3 amended (Foreign PIE equivalents)

In section HM 3(1)(b)(ii), replace "scheme." with "scheme; and".

98B Section HM 6 amended (Intended effects for multi-rate PIEs and investors)

(1) Replace section HM 6(2)(a)(i) with:

(i) the PIE has applied a rate that is lower than the investor's prescribed investor rate:

(2) After section HM 6(2)(c), insert:

(d) despite paragraphs (a) and (b), an adjustment may be made to the schedular income tax liability of an investor who derives PIE schedular income.

(3) In section HM 6, in the list of defined terms, insert "PIE schedular income" and "schedular income tax liability".

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

98C New section HM 36B inserted (Calculating PIE schedular income adjustments for natural person investors)

(1) After section HM 36, insert:

HM 36B Calculating PIE schedular income adjustments for natural person investors

When this section applies

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

Calculating adjustments

(2) The adjustment for the amount of PIE schedular income referred to in the definition of **schedular income**, **paragraph (dc)**, is equal to the amount calculated using the formula—

(amount of PIE income × investor's PIR) − amount of tax credit.

Definition of items in formula

(3) In the formula,—

(a) **amount of PIE income** is the amount of the investor's attributed PIE income for the tax year:

(b) **investor's PIR** is the investor's prescribed investor rate applying for the tax year under schedule 6, clause 1 (Prescribed rates: PIE investments and retirement scheme contributions):

(c) **amount of tax credit** is the amount of the investor's tax credit determined for the tax year under **section LS 2** (Tax credits for investors in multi-rate PIEs).

Positive adjustment

(4) If the result of the calculation in **subsection (3)** is positive, the amount of the adjustment is added to the terminal tax payable by the person for the tax year.

Negative adjustment

(5) If the result of the calculation in **subsection (3)** is negative, the amount is refundable under sections RB 4, RM 2 to RM 8, and RM 10 (which relates to refunds and their use), as applicable.

Meaning of PIE schedular income

(6) For the purposes of this section, and **sections CX 56 and HM 6**, and the definition of **residual income tax**, **PIE schedular income** means an amount of attributed PIE income that a natural person who is an investor in a multi-rate PIE derives under section CP 1 (Attributed income of investors in multi-rate PIEs) to which the prescribed rates of tax set out in schedule 6, clause 1 (Prescribed rates: PIE investments and retirement scheme contributions) apply.

Defined in this Act: amount, attributed PIE income, income tax liability, investor, multi-rate PIE, natural person, PIE schedular income, prescribed investor rate, schedular income tax liability, tax credit, tax year, terminal tax

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

98D Section HM 55D amended (Requirements for investors in foreign investment PIEs)

After section HM 55D(8), insert:

Cancelling status of trustee after election under section HC 33

(8B) If a trustee of a trust who meets the requirements of subsections (3) and (4) notifies the PIE that the trustee wishes to be treated as a notified foreign investor and later becomes ineligible to be a notified foreign investor because of an election under section HC 33 (Choosing to satisfy income tax liability of trustee) for the trust, the PIE must continue to calculate the tax liability or tax credit of the PIE for the income year in which the election is made and earlier income years as if the trustee continued to be a notified foreign investor until the end of the income year.

98E Section HM 56 amended (Prescribed investor rates: schedular rates)

After section HM 56(2), insert:

Increased assessment of trustee arising from election

(3) In the determination of a trustee's prescribed investor rate under subsection (1), the amount of the trustee's assessed taxable income for an income year is treated as not including the amount of an increase in the assessed taxable income that results from an election under section HC 33 (Choosing to satisfy income tax liability of trustee), if the election is made after the beginning of the income year and has an effective date that is or precedes the beginning of the income year.

99 Section HM 60 amended (Notified investor rates)

~~() Replace section HM 60(5) and (6) with:~~

~~*When no rate notified*~~

~~(5) If an investor does not have a notified investor rate for a multi-rate PIE, the rate applying for a period is 28%.~~

~~*Notification of rate by Commissioner*~~

~~(6) The Commissioner may notify a multi-rate PIE to apply a rate provided by the Commissioner for an investor in the PIE if—~~

~~(a) the Commissioner considers that the investor's notified investor rate for the PIE is inconsistent with the investor's prescribed investor rate; or~~

~~(b) the investor does not have a notified investor rate for the PIE.~~

~~*Subsequent notification of rate by investor*~~

~~(7) If the Commissioner notifies a multi-rate PIE under **subsection (6)**, in relation to an investor in the PIE, and the investor subsequently notifies the PIE of a different investor rate, the PIE must apply the rate notified by the investor.~~

(1) In section HM 60(4), replace "an investor" with "an investor other than an investor who is a natural person".

(2) Repeal section HM 60(5).

(3) In section HM 60(6), replace "notified investor rate," with "notified investor rate, and the Commissioner has not provided a rate for the investor under **section HM 60B**,".

(4) In section HM 60, in the list of defined terms, insert "natural person".

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

99B New section HM 60B inserted (Investor rates provided by Commissioner)

After section HM 60, insert:

HM 60B Investor rates provided by Commissioner

Rates provided by Commissioner

(1) Despite **section HM 60**, the Commissioner may, in relation to an investor in a multi-rate PIE, provide a tax rate for the PIE to apply to the investor's attributed PIE income for a calculation period if—

(a) the Commissioner—

(i) considers that the investor's notified investor rate is inconsistent with the investor's prescribed investor rate; and

(ii) holds information about the investor that is sufficient to enable the Commissioner to determine the appropriate rate for the investor:

(b) the investor does not have a notified investor rate.

Application of rate

(2) For the purposes of section HM 60(3), as soon as reasonably practicable after having been notified of the rate provided by the Commissioner, the PIE must

apply the rate provided by the Commissioner as if it were the most recent notified investor rate.

Subsequent notification of rate by investor

(3) Despite **subsection (2)**, if the Commissioner provides a tax rate for an investor to the PIE under **subsection (1)**, and the investor subsequently notifies the PIE under section HM 60(1) of a different investor rate, the PIE must apply the rate notified by the investor.

Defined in this Act: attributed PIE income, Commissioner, investor, multi-rate PIE, notified investor rate, prescribed investor rate

100 Section IQ 4 amended (Group companies using attributed CFC net losses)

(1) In section IQ 4(2)(c), replace "loss):" with "loss); and".

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

101 Section LA 5 amended (Treatment of remaining credits)

(1) Replace section LA 5(4B), other than the heading, with:

(4B) A person's research and development tax credit is used by—

(a) first, the Commissioner refunding the tax credit up to the maximum limit of the person's ~~payroll tax-based~~refundability cap, by treating it as a refundable tax credit and applying section LA 6(2). There is no maximum limit for refunding the tax credit, if and to the extent to which—

(i) the person is a levy body researcher:

(ii) the tax credit is for eligible research and development expenditure on approved research providers:

(b) secondly, applying section LY 8 (Carry forward for remaining research and development tax credits), to the extent to which **paragraph (a)** does not apply to the tax credit.

(2) After section LA 5(5), insert:

Meaning of ~~payroll tax-based~~refundability cap

(5B) For the purposes of this section, **~~payroll tax-based~~refundability cap** is the amount calculated for the tax year using the formula—

own ~~payroll~~tax + other wholly-owned ~~payroll~~tax + other controller ~~payroll~~tax − double-dip allocation + transitional 2020–21 amount.

Definition of items in formula

(5C) In the formula,—

(a) **own ~~payroll~~tax** is the total amount of PAYE, ESCT, and FBT that the person (**person A**) pays for the tax year to the extent to which the total amount has not been allocated under **paragraph (b) or (c)** to another person for the purposes of calculating their ~~payroll tax-based~~refundability cap for the tax year:

(b) **other wholly-owned ~~payroll~~tax** is zero or, if ~~the~~ person A is a company and is a member of a wholly-owned group of companies, is the amount of PAYE, ESCT, and FBT that the other members pay for the tax year and that is allocated to person A for the purposes of calculating person A's ~~payroll tax-based~~refundability cap for the tax year:

(c) **other controller ~~payroll~~tax** is zero or, if person A is a company, is the total amount of PAYE, ESCT, and FBT that companies that directly or indirectly control person A pay for the tax year and that is allocated to person A for the purposes of calculating their ~~payroll tax-based~~refundability cap for the tax year:

(d) **double-dip allocation** means the total amount allocated to person A under **paragraphs (b) and (c)** that has been allocated to a person other than person A for the purposes of calculating the other person's ~~payroll tax-based~~refundability cap for the tax year.

(e) **transitional 2020–21 amount** is zero or, if the tax year is 2020–21, is the amount that would have arisen applying the formula in **subsection (5B)** in relation to person A for the 2019–20 tax year, ignoring this paragraph.

(3) In section LA 5, list of defined terms,—

(a) insert "approved research provider", "eligible research and development expenditure", "ESCT", "FBT", "levy body researcher", "PAYE", and "~~payroll tax-based~~refundability cap":

(b) delete "associated person", "exempt income", and "listed company".

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

102 Section LD 6 amended (When donation is paid to ineligible recipient)

In section LD 6, list of defined terms, insert "PAYE intermediary".

103 Section LJ 2 amended (Tax credits for foreign income tax)

(1) Replace the heading to section LJ 2(7) with "*Tax credit: attributing interest in FIF*".

(2) After section LJ 2(7), insert:

*When **subsections (9) and (10)** apply*

(8) **Subsections (9) and (10)** apply when a person (the **associated entity**) resident in New Zealand derives an amount (the **attributed amount**) that—

(a) is assessable income of the associated entity that is sourced from outside New Zealand; and

(b) is attributed under sections GB 27 to GB 29 (which relate to the attribution rule for income from personal services) in an income year to another person (the **working person**) who is resident in New Zealand when the associated entity derives the attributed amount.

Tax credit: attributed income from personal services

(9) Despite section LJ 1(2)(a), the working person has a tax credit under this subpart for foreign income tax paid on the attributed amount by the associated entity or withheld in relation to the attributed amount. The calculation of the maximum amount of the tax credit is made under section LJ 5(2), modified so that the item **segment** in the formula is the attributed amount for the income year.

No tax credit for associated entity

(10) The associated entity does not have a tax credit under this subpart for foreign income tax paid on or withheld in relation to the attributed amount.

(3) In section LJ 2, list of defined terms, insert "income year" and "resident in New Zealand".

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

104 Section LO 2 amended (Beneficiaries of trusts)

(1) In section LO 2(3)(a), replace "taxable Maori authority distributions" with "distributions".

(2) **Subsection (1)** applies for a person and a tax year beginning on or after 1 April 2008, except for a tax year for which the person chooses to rely on a tax position, taken before the day on which this Act receives the Royal assent, that is inconsistent with **subsection (1)**.

104B Section LS 2 amended (Tax credits for investors in multi-rate PIEs)

(1) In section LS 2(1)(c)(ii), replace "section CX 56(2)(b) or (c)" with "section CX 56(2)(b), (c), or (d)".

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

105 Section LY 1 amended (Research and development tax credits)

(1) In section LY 1(4), delete "the income of".

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

106 Section LY 3 amended (When this subpart applies)

(1A) Replace section LY 3(2)(d)(iii) with:

> (iii) a tertiary education organisation, including a foreign tertiary education organisation:
>
> (iv) Callaghan Innovation.

(1) After section LY 3(2)(e), insert:

> ~~(f) if the person is not a levy body researcher and the person derives exempt income, ignoring sections CW 9 and CW 10 (which relate to income from dividends).~~

(f) if the person is not a levy body researcher and the person derives exempt income under section CW 38, CW 39, CW 40, CW 41, CW 42, or CW 55BA (which relate to exempt income).

(2) In the heading to section LY 3(4), replace "*non-business researcher*" with "*levy body researcher*".

(3) In section LY 3(4), replace "non-business researcher" with "levy body researcher".

(4) In section LY 3(5), replace "LY 13" with "LZ 13".

(5) In section LY 3, list of defined terms,—

(a) insert "exempt income" and "levy body researcher":

(b) delete "non-business researcher".

(6) **Subsections (1), (2), (3) and (4)** apply for the 2020–21 and later income years.

(7) **Subsection (1A)** applies for the 2019–20 and later income years.

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

(1) After section LY 8(2), insert:

Carry forward: another exception

(2B) Despite subsection (1), if a person is not a levy body researcher and the person derives exempt income for the tax year~~, ignoring sections CW 9 and CW 10 (which relate to income from dividends)~~ under section CW 38, CW 39, CW 40, CW 41, CW 42, or CW 55BA (which relate to exempt income), the remaining tax credit is extinguished and must not be carried forward and credited.

(2) In section LY 8, list of defined terms, insert "exempt income".

(3) **Subsection (1)** applies for the 2019–20 and later income years.

107B Section LZ 13 amended (Part-year override of section LY 3(2)(b))

In section LZ 13(2), replace "a person is eligible for a research and development tax credit" with "subpart LY may apply to a person".

107C Section MF 6 amended (Overpayment or underpayment of tax credit)

(1) Replace section MF 6(1)(b) with:

(b) the person—

(i) applies under section MF 1 to have the tax credit paid by instalment; or

(ii) is paid a tax credit under section 80KN of the Tax Administration Act 1994 by the chief executive of the administering department; and

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

Treatment when tax credits paid by chief executive to certain persons

(4) The Commissioner may, in relation to a person referred to in **subsection (1)(b)(ii)**, choose to treat the amount of the tax credit paid to the person for the tax year as equal to the person's entitlement for the tax year.

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

107D Section MK 2 amended (Eligibility requirements)

After section MK 2(1)(c), insert:

(cb) they must not have made a withdrawal under **clause 12B** of the KiwiSaver scheme rules (which relates to life-shortening congenital condition withdrawals); and

108 Section OK 19 amended (Maori authority credits attached to distributions)

(1) In section OK 19(6), after "Maori authority distribution", insert "arising from an adjustment, under section GC 7 or GC 8 (which relate to transfer pricing arrangements), of the amount of a distribution that would have been a non-cash dividend if made by a company".

(2) In section OK 19(7), words before the paragraphs, replace "under this section" with "referred to in subsection (6)".

(3) In section OK 19(7), before paragraph (a), insert:

(aa) an ICA company were a reference to the Maori authority; and

(4) In section OK 19, list of defined terms, insert "ICA company" and "non-cash dividend".

(5) **Subsections (1), (2), and (3)** apply for a person and a tax year beginning on or after 1 April 2008, except for a tax year for which the person chooses to rely on a tax position, taken before the day on which this Act receives the Royal assent, that is inconsistent with **subsections (1), (2), and (3)**.

109 Section RC 5 amended (Methods for calculating provisional tax liability)

(1) In section RC 5(4), replace "Sections RZ 3" with "Sections **RC 10(5)**, RZ 3".

~~(2) After section RC 5(4), insert:~~

~~*Use of money interest and penalties*~~

~~(4B) For a person who uses the standard method, use of money interest and penalties for provisional tax under Parts 7 and 9 of the Tax Administration Act 1994 are calculated using the lowest of the amounts under subsections (2) and (3), for instalment dates prior to the date that the taxpayer provides a return of income for the year before the current income year.~~

~~(3) **Subsection (2)** applies for the 2018–19 and later income years.~~

(2) After section RC 5(4), insert:

Truncation

(4B) An amount calculated under subsections (2) or (3) is truncated to whole dollars, *for example* $10.98 equals $10.

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

109B Section RC 9 amended (Provisional tax payable in instalments)

(1) In section RC 9(9), replace "a new provisional tax liability" with "an initial provisional tax liability".

(1B) After section RC 9(12), insert:

Truncation

(13) An instalment calculated under this section is truncated to whole dollars, *for example* $10.98 equals $10.

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

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

110 Section RC 10 amended (Calculating amount of instalment under standard and estimation methods)

(1) After section RC 10(4), insert:

Some standard method taxpayers

(5) A person who uses the standard method may, despite subsection (2), choose that the amount of their final instalment of provisional tax of a tax year is calculated using the following formula, if their expected RIT under **subsection (6)(a)** is $60,000 or more—

expected RIT ~~estimate~~ − tax ~~paid~~.

Definition of items in formula

(6) In the formula,—

(a) **expected RIT ~~estimate~~** is the person's expectation~~estimate~~ of their residual income tax for the tax year:

(b) **tax ~~paid~~** is the amount of ~~provisional tax that the person has paid before their final instalment~~a person's provisional tax liabilities for the tax year to date.

~~*Truncation*~~

~~(7) Amounts calculated under this section are truncated to whole dollars *for example* $10.98 equals $10.~~

(1B) After section RC 10(4), insert:

Truncation

(7) An instalment calculated under this section is truncated to whole dollars, *for example* $10.98 equals $10.

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

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

110B Section RC 13 amended (Paying 2 instalments for tax year)

(1) In section RC 13(3), replace "For the purposes of section RC 9(9)(b), the" with "The".

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

110C Section RC 14 amended (Paying 1 instalment for tax year)

(1) In section RC 14(2), replace "For the purposes of section RC 9(9)(b), the" with "The".

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

110D Section RC 20 amended (Calculating residual income tax in transitional years)

(1) After section RC 20(4), insert:

Truncation

(5) An amount of residual income tax calculated under this section is truncated to whole dollars, *for example* $10.98 equals $10.

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

110E Section RC 29 amended (Residual income tax of consolidated groups)

(1) In section RC 29(1), replace "some or all of the preceding tax year" with "some or all of the preceding tax year, or some or all of the tax year before the preceding tax year, as applicable".

(2) In section RC 29(2), replace "for the preceding tax year" with "for the preceding tax year, or for the tax year before the preceding tax year, as applicable" in each place.

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

110F Section RC 33 amended (Amalgamated companies: calculating residual income tax)

(1) In section RC 33(2), replace "for the preceding tax year" with "for the preceding tax year, or for the tax year before the preceding tax year, as applicable" in each place.

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

110G Section RC 35B amended (Treatment of overpaid provisional tax instalments calculated using AIM method)

(1) In section RC 35B(2), replace "shareholder" with "shareholder-employee".

(2) Replace section RC 35(2)(a) with:

(a) a payment of tax for the shareholder-employee:

(3) In section RC 35B, list of defined terms, insert "shareholder-employee".

(4) **Subsections (1), (2), and (3)** apply for the 2019–20 and later income years.

110H Section RC 37 amended (Availability of early-payment discounts)

(1) In section RC 37, replace "who is not liable to pay provisional tax for the income year" with "who has no obligation to pay provisional tax under section RC 3(3)".

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

111 Section RD 5 amended (Salary or wages)

Replace section RD 5(6)(bh) with:

(bh) the amount of an honorarium that is paid by Fire and Emergency New Zealand to a volunteer as defined in section CW 62B(4) (Voluntary activities):

111B Section RE 4 amended (Persons who have withholding obligations)

(1) After section RE 4(3)(e), insert:

(f) the person is a custodial institution that pays on or transfers an amount of investment income to an end investor, *see* **section RE 10C**.

(2) In section RE 4(7)(b), replace "to use that rate." with "to use that rate; or", and insert:

(c) the exchange rate on the date on which the payment of income is received.

(3) In section RE 4, in the list of defined terms, insert "custodial institution", "end investor", and "investment income".

111C New section RE 10C inserted (Obligations of custodial institutions in relation to certain payments of investment income)

After section RE 10B, insert:

RE 10C Obligations of custodial institutions in relation to certain payments of investment income

When this section applies

(1) This section applies for the purposes of **sections RE 4 and RF 4** (Non-resident passive income received by agents and others) when—

(a) a person who is a custodial institution receives a payment of investment income; and

(b) the institution has RWT-exempt status; and

(c) the institution pays on or transfers the amount received to an end investor.

When this section does not apply

(2) This section does not apply to a custodial institution that is the operator of a designated settlement system under the Reserve Bank of New Zealand (Designated Settlement System—NZCDC) Order 2010.

Obligation to withhold

(3) At the time the payment or transfer is made and to the extent to which the amount of tax has not already been withheld, the custodial institution that makes the payment to the end investor must withhold RWT for the payment and pay it to the Commissioner.

Agreements to transfer withholding obligations: outsourcing withholding

(4) A custodial institution that is required to withhold an amount of tax for a payment may, before the date on which the payment is received by the institution, enter into an agreement with another person (**person B**) for person B to withhold the amount of tax and pay it to the Commissioner. However, if person B does not withhold the amount of tax and pay it to the Commissioner, the withholding obligation remains with the custodial institution.

Agreements to transfer withholding obligations: passing obligation to other custodial institutions

(5) When a payment of investment income is paid on or transferred through interposed custodial institutions before being paid to an end investor, the custodial institution that is last in the chain may enter into an agreement with another custodial institution that precedes them in the chain, for the latter institution to withhold the amount of tax for the payment and pay it to the Commissioner. In this case, the withholding obligation passes to the latter institution, and the final custodial institution's obligation is discharged.

Meaning of custodial institution

(6) For the purposes of this section and **sections RE 4 and RF 4** a **custodial institution** means an entity—

(a) that holds financial assets or financial instruments as a bare trustee on account for another person; and

(b) whose activities,—

(i) for a resident entity, are supervised or regulated under the Financial Markets Conduct Act 2013, the Financial Markets Authority Act 2011, the Financial Advisers Act 2008, or the Reserve Bank of New Zealand Act 1989:

(ii) for a non-resident entity, other than an institution that is carrying on a business in New Zealand through a fixed establishment in New Zealand, are supervised or regulated under corresponding legislation in the relevant jurisdiction, or legislation that is substantially similar.

Meaning of end investor

(7) For the purposes of this section and **sections RE 4 and RF 4**, an **end investor**—

(a) means an investor to whom a payment of investment income is made who is—

(i) a direct investor, whether resident or non-resident, who is the beneficial owner of the investment:

(ii) a non-resident custodial institution, other than an institution that is carrying on a business in New Zealand through a fixed establishment in New Zealand; and

(b) includes a trustee, PIE, or PIE proxy if the person or entity has an obligation to provide investment income information to the Commissioner.

Meaning of investment income

(8) For the purposes of this section, and **sections RE 4 and RF 4**, **investment income** means—

(a) resident passive income under section RE 2(1)(a) to (c) subject to the withholding obligations set out in sections RE 3 and **RE 4**:

(b) non-resident passive income under section RF 2(1) (Non-resident passive income) subject to the withholding obligations set out in section RF 3 (Obligation to withhold amounts of tax for non-resident passive income):

(c) attributed income of investors in portfolio investment entities under sections CP 1, CX 56, and CX 56B (which relate to attributed PIE income).

Relationship with sections RE 7 and RE 8

(9) This section overrides sections RE 7 and RE 8 (which relate to amounts paid to trustees and nominees).

Defined in this Act: amount, amount of tax, attributed PIE income, business, Commissioner, custodial institution, end investor, fixed establishment, investment income, New Zealand, pay, portfolio investment entity, non-resident, non-resident passive income, resident, resident passive income, RWT, RWT-exempt status

111D Section RF 2 amended (Non-resident passive income)

After section RF 2(2)(c), insert:

(d) an amount derived by a trustee of a trust after the effective date of an election under section HC 33(1) (Choosing to satisfy income tax liability of trustee) for the trust.

111E Section RF 4 amended (Non-resident passive income received by agents and others)

(1) In section RF 4, replace "agent or other person" with "agent, custodial institution, or other person" in each place.

(2) After section RF 4(3), insert:

Agreements to transfer withholding obligations: outsourcing withholding

(4) A custodial institution that is required to withhold an amount of tax for a payment may, before the date on which the payment is received by the institution, enter into an agreement with another person (**person B**) for person B to withhold the amount of tax and pay it to the Commissioner. However, if person B does not withhold the amount of tax and pay it to the Commissioner, the withholding obligation remains with the custodial institution.

Agreements to transfer withholding obligations: passing obligation to other custodial institutions

(5) When a payment of investment income is paid on or transferred through interposed custodial institutions before being paid to an end investor, the custodial institution that is last in the chain may enter into an agreement with another custodial institution that precedes them in the chain, for the latter institution to withhold the amount of tax for the payment and pay it to the Commissioner. In this case, the withholding obligation passes to the latter institution, and the final custodial institution's obligation is discharged.

(3) In section RF 4, in the list of defined terms, insert "amount", "custodial institution", "end investor", and "investment income".

111F Section RF 12 amended (Interest paid by approved issuers or transitional residents)

Replace section RF 12(1)(a)(i) with:

(i) is paid by an approved issuer under a registered security and the issuer has received confirmation from the investor that the approved issuer levy treatment applies in relation to the security; and

112 Section RZ 16 amended (Treatment of certain refunds not paid within 4-year period: 1 April 2008 to 31 March 2013)

In section RZ 16(1)(c), replace "section 108(1)" with "section 108(1) of the Tax Administration Act 1994".

113 Section YA 1 amended (Definitions)

(1) This section amends section YA 1.

(2) Insert, in appropriate alphabetical order:

air transport to New Zealand is defined in section CW 56(3) (Non-resident aircraft operators) for the purposes of that section

(2B) Insert, in appropriate alphabetical order:

custodial institution is defined in **section RE 10C(6)** (Obligations of custodial institutions in relation to certain payments of investment income) for the purposes of that section and **sections RE 4 and RF 4**

(3) In the definition of **deductible output tax**, paragraph (a)(iv), replace "Act; and" with "Act:".

(4) In the definition of **employee**, paragraph (d), replace "ESS)" with "ESS):".

(4B) Insert, in appropriate alphabetical order:

end investor is defined in **section RE 10C(7)** (Obligations of custodial institutions in relation to certain payments of investment income) for the purposes of that section and **sections RE 4 and RF 4**

(4C) Replace the definition of **financial assistance** with:

financial assistance, in subpart HC (Trusts), for a person or trust, means assistance provided to or for the benefit of the person or trust that produces a financial benefit for which the person or trust provides less than market value, and assistance is treated as having been provided for less than market value if—

(a) the assistance is provided at below market rates:

(b) an amount payable for the assistance is payable on demand and the right to demand is not exercised or is deferred

(5) In the definition of **internal software development expenditure**,—

(a) replace paragraph (a) with:

(a) means, for a person, expenditure or loss that is incurred on developing software; but

(b) paragraph (b)(ii), replace "business" with "business:", and insert:

(iii) the expenditure or loss is for ineligible internal software development

(5B) Insert, in appropriate alphabetical order:

investment income is defined in **section RE 10C(8)** (Obligations of custodial institutions in relation to certain payments of investment income) for the purposes of that section and **sections RE 4 and RF 4**

(6) Insert, in appropriate alphabetical order:

levy body researcher means an industry organisation to which a levy is payable under an Act

(7) In the definition of **market value**, after paragraph (b), insert:

(bba) is defined in **section CW 26DB** (Meaning of market value) for the purposes of exempt ESSs

(8) In the definition of **market value**, after **paragraph (bba)**, insert:

(bbab) is defined in **section CE 7CB** (Meaning of market value) for the purposes of employee share schemes

(8B) In the definition of **New Zealand resident**, paragraph (a)(ii), replace "YD 3" with "YD 3B".

(9) Repeal the definition of **non-business researcher**.

~~(10) Insert, in appropriate alphabetical order:~~

~~**payroll tax-based cap** is defined in **section LA 5(5B)** (Treatment of remaining credits) for the purposes of that section~~

(10B) Insert, in appropriate alphabetical order:

PIE schedular income is defined in **section HM 36B** (Calculating PIE schedular income adjustments for natural person investors) for the purposes of that section and **sections CX 56 and HM 6** (which relate to attributed PIE income and the treatment of investors) and the definition of **residual income tax**

(11) In the definition of **premium**, paragraph (a)(ii), replace "premium:" with "premium; and".

(11B) Insert, in appropriate alphabetical order:

refundability cap is defined in **section LA 5(5B)** (Treatment of remaining credits) for the purposes of that section

~~(12) In the definition of **RWT proxy**, replace "section 124ZB" with "section 124ZF".~~

(13) In the definition of **research and development contractor**, replace paragraph (b) with:

(b) does not include a levy body researcher

(13B) In the definition of **residual income tax**, insert after paragraph (c):

(f) the amount of an adjustment under **section HM 36B** (Calculating PIE schedular income adjustments for natural person investors) in relation to the PIE schedular income of a natural person who is an investor in a multi-rate PIE arising from income attributed to them by the PIE

(13C) In the definition of **RWT proxy**, replace "section 124ZB" with "section 124ZF".

(13D) In the definition of **schedular income**, insert after paragraph (db):

(dc) attributed PIE income derived by natural person who is an investor in a multi-rate PIE:

(14) In the definition of **services**, paragraph (a), replace "transfer of value" with "transfer of company value".

~~(15) In the definition of **services**, paragraph (b), replace "subparts LY and MX" with "subpart LY".~~

(15) In the definition of **services**, paragraph (b),—

(a) after "(Goods and services tax)", insert ", section FH 5 (Payments by New Zealand resident or New Zealand deducting branch producing deduction without income)":

(b) replace "subparts LY and MX" with "subpart LY".

(15B) In the definition of **taxable activity**, replace paragraph (a) with:

(a) in the RWT rules and the NRWT rules, is defined in section 6 of the Goods and Services Tax Act 1985, except that section 6(3)(d) does not apply:

(ab) in the provisional tax rules, is defined in section 6 of that Act, except that sections 6(3)(d) and 57(2) do not apply:

(15C) Insert, in appropriate alphabetical order:

Te Kōwhatu Tū Moana is defined in section CZ 35(2) (Amounts derived by Te Kōwhatu Tū Moana) for the purposes of that section

(16) Insert, in appropriate alphabetical order:

transfer of company value is defined in section CD 5 (What is a transfer of company value?)

(17) In the definition of **transfer of value**, repeal paragraph (a).

~~(18) In the definition of **transfer of value**, paragraph (b), replace "money's worth" with "money's worth, whether or not convertible into money," in each place.~~

(18) In the definition of **transfer of value**,—

(a) in paragraph (b), replace "money's worth" with "money's worth, whether or not convertible into money," in each place:

(b) after paragraph (c), insert:

(cb) includes a disposition of property at less than market value; and

(19) In the definition of **trust rules**, after the words before the paragraphs, insert:

(aa) section BD 1(4)(c) (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income):

~~(20) In the definition of **trust rules**, before paragraph (b), insert:~~

~~(ab) sections CV 13, CW 53, CW 54, and CX 59 (which relate to distributions by trusts and amounts derived by trustees):~~

(20) In the definition of **trust rules**,—

(a) before paragraph (b), insert:

(ab) sections CV 13, CW 53, CW 54, and CX 59 (which relate to distributions by trusts and amounts derived by trustees):

(b) after paragraph (gb), insert:

(gc) **section YD 3BA** (Country of residence of joint trustees):

(21) **Subsection (11)** applies—

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

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

(22) **Subsection (15)** applies for the 2019–20 and later income years.

(23) **Subsections (10B), (13B), and (13D)** apply for the 2020–21 and later income years.

113B New section YD 3BA inserted (Country of residence of joint trustees)

After section YD 3, insert:

YD 3BA Country of residence of joint trustees

For 2 or more persons who derive income jointly as trustees of a trust, the residence of the joint trustees is given by **sections HC 2(3) and HC 33(1C)** (which relate to the obligations and residency of trustees).

113C Schedule 21 amended (Excluded activities for research and development activities tax credits)

(1) After schedule 21, part B, item 11, insert:

12		If section 68CB of the Tax Administration Act 1994 applies for the person, activities that are not approved under that section.

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

113D Schedule 28 amended (Requirements for complying fund rules)

In schedule 28, clause 1(b), replace "9, and 17" with "9, **12B**, and 17".

114 Schedule 32 amended (Recipients of charitable or other public benefit gifts)

(1) In schedule 32, insert, in appropriate alphabetical order, "Little Brothers and Sisters International", "Partners Relief & Development - New Zealand", "Project Moroto", and "UN Women National Committee Aotearoa New Zealand Incorporated".

(1B) In schedule 32, delete "OneSight New Zealand".

(1C) In schedule 32,—

(a) insert, in appropriate alphabetical order, "Hope Street Charitable Trust":

(b) delete "Orphans Refugees and Aid (ORA International) of NZ Charitable Trust".

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

114B Amendments to Income Tax Act 2007 consequential to enactment of Kāinga Ora–Homes and Communities Act 2019

The Income Tax Act 2007 is amended as set out in **schedule 2** of this Act.

Tax Administration Act 1994

115 Tax Administration Act 1994

Sections ~~116~~115B to 135 amend the Tax Administration Act 1994.

115B Section 3 amended (Interpretation)

(1) This section amends section 3(1).

(2) In the definition of **pre-populated account**, delete ", 80KM,".

(3) In the definition of **START tax type**, after paragraph (a), insert:

(abb) PAYE:

(abc) employees' child support deducted by employers:

(abd) salary or wage deductions (as defined in section 4(1) of the Student Loan Scheme Act 2011):

(abe) KiwiSaver deductions made by employers under Part 3, subpart 1 of the KiwiSaver Act 2006:

(abf) compulsory employer contributions made by employers under Part 3, subpart 3A of the KiwiSaver Act 2006:

(abg) ESCT:

(abh) RSCT:

116 Section 22 amended (Keeping of business and other records)

In section 22(2)(ke), replace "section 169B" with "section 124ZG".

116B Section 22AA amended (Records to be kept by employers and PAYE intermediaries)

(1) In section 22AA(1), after "English", insert "or te reo Maori".

(2) In section 22AA(4), after "English", insert "or te reo Maori".

116C Section 22AAB amended (Records to be kept by payers of passive income)

(1) In section 22AAB(2), after "English", insert "or te reo Maori".

(2) In section 22AAB(5), after "English", insert "or te reo Maori".

116D Section 22D amended (Key terms)

(1) In section 22D(1), words before the paragraphs, replace "110," with "110, **142AC**,".

(2) In section 22D(3)(a)(iv), replace "; and" with ":".

(3) After section 22D(3)(a)(iv), insert:

(v) attributed PIE income; and

(4) Replace section 22D(3)(c) with:

(c) in relation to which information must be provided under this Act to the Commissioner by—

(i) for the items referred to in paragraph (a)(i) to (iv), 31 May in the next tax year:

(ii) for the item referred to in **paragraph (a)(v)**, the date referred to in section 25K.

(5) In section 22D(5), words before the paragraphs, delete "80KM,".

(6) In section 22D(5), words before the paragraphs, replace "106," with "106, **142AC**,".

(7) **Subsections (1) and (6)** apply for the 2019–20 and later income years.

(8) **Subsections (2), (3), and (4)** apply for the 2020–21 and later income years.

116E Section 22H amended (Finalising accounts)

(1) In section 22H(2), delete ", at any time before the date set out in subsection (4),".

(2) In section 22H(4), replace "The date referred to in subsection (2) is" with "The adjustment, correction, or confirmation is due to be made by".

116F Section 25B amended (Investment income information: outline of provisions)

After section 25B(3), insert:

Custodial institutions

(4) For the purposes of subsection (2), a custodial institution that pays on or transfers an amount of investment income to an end investor is treated as a payer.

116G Section 25E amended (Who must provide investment income information to Commissioner)

(1) After section 25E(1)(g), insert:

(gb) a listed PIE that pays a dividend to an investor, for which *see* **section 25G** for the information required:

(2) After section 25E(1)(i), insert:

(ib) a custodial institution that pays on or transfers an amount of investment income to an end investor, *see* **section 25MB**:

(3) After section 25E(2), insert:

(3) If a person who has an obligation under this section to provide investment income information to the Commissioner makes a payment to a custodial institution referred to in **subsection (1)(ib)**, whether or not the institution pays on or transfers the amount to an end investor, the person must, for the purposes of this subpart, treat the institution as a payee.

116H New section 25MB inserted (Information from custodial institutions)

After section 25M, insert:

25MB Information from custodial institutions

When this section applies

(1) This section applies when—

(a) a person who is a custodial institution receives a payment of investment income; and

(b) the institution pays on or transfers the amount received to an end investor.

Who this section does not apply to

(2) This section does not apply to a custodial institution that is a specified operator of a designated settlement system under the Reserve Bank of New Zealand (Designated Settlement System—NZCDC) Order 2010.

Providing investment income information

(3) The custodial institution must provide investment income information relating to the payment of investment income to the Commissioner under section 25E(1).

Agreements to transfer reporting obligations: outsourcing obligations

(4) The custodial institution may, before the date on which the payment is received by the institution, enter into an agreement with another person (**person B**) for person B to provide to the Commissioner the information referred to in **subsection (3)**. However, if person B does not provide the information to the Commissioner, the reporting obligation remains with the custodial institution.

Agreements to transfer reporting obligations: passing up information

(5) When a payment of investment income is paid on or transferred through interposed custodial institutions before being paid to an end investor, the custodial institution that is last in the chain may enter into an agreement with another custodial institution that precedes them in the chain, for the latter institution to provide to the Commissioner the information referred to in **subsection (3)**. In this case, the reporting obligation passes to the latter institution, and the final custodial institution's obligation is discharged.

Limited information

(6) Despite **subsection (3)**,—

(a) when an end investor is a non-resident custodial institution, the information required under section 25E may be aggregated:

(b) the investment income information set out in schedule 6, rows 9 (in relation to approved issuer levy), 17, and 21 that a custodial institution is required to provide is limited to information held by the institution.

Meaning of custodial institution

(7) For the purposes of this subpart, a **custodial institution** means an entity—

(a) that holds financial assets or financial instruments as a bare trustee on account for another person; and

(b) whose activities,—

(i) for a resident entity, are supervised or regulated under the Financial Markets Conduct Act 2013, the Financial Markets Authority Act 2011, the Financial Advisers Act 2008, or the Reserve Bank of New Zealand Act 1989:

(ii) for a non-resident entity, other than an institution that is carrying on a business in New Zealand through a fixed establishment in New Zealand, are supervised or regulated under the corresponding legislation in the relevant jurisdiction, or under legislation that is substantially similar.

Meaning of end investor

(8) For the purposes of this subpart, an **end investor** —

(a) means an investor to whom a payment of investment income is made who is—

(i) a direct investor, whether resident or non-resident, who is the beneficial owner of the investment:

(ii) a non-resident custodial institution, other than an institution that is carrying on a business in New Zealand through a fixed establishment in New Zealand; and

(b) includes a trustee, PIE, or PIE proxy if the person or entity has an obligation to provide investment income information to the Commissioner under this subpart.

116I Section 25O amended (Correction of errors in investment income information)

In section 25O, replace "RWT or NRWT." with "RWT, NRWT, or a payment of approved issuer levy."

116J Section 32E amended (Applications for RWT-exempt status)

In section 32E(1A), replace "the Charitable Trusts Act 1957" with "the Charities Act 2005".

117 Section 36BB amended (Electronic format for details required for tax pooling intermediaries)

In section 36BB, replace "sections 15N to 15S" with "sections 124S to 124W and 124ZF".

117B Section 41 amended (Annual returns by persons who receive credit under family scheme)

Repeal section 41(4)(a).

117C Section 68CB amended (Research and development tax credits: general approval 2019–20 income year pilot)

(1) After section 68CB(7), insert:

(8) The Commissioner's approval under this section binds the Commissioner in accordance with the provisions of this section.

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

117D Section 68CB amended (Research and development tax credits: general approval)

(1) After section 68CB(7), insert:

(8) The Commissioner's approval under this section binds the Commissioner in accordance with the provisions of this section.

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

117E Section 68CC amended (Research and development tax credits: greater than $2 million approval)

(1) Delete section 68CC(2)(a).

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

118 Section 78D amended (Evidential requirements for tax credits)

In section 78D, replace "taxpayer who" with "taxpayer who has not provided their investment income payer with their tax file number and who".

118B Section 80KLB amended (Recovery of excess tax credits)

(1) In section 80KLB(1)(b), replace "Commissioner" with "Commissioner or the chief executive of the administering department".

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

118C Section 80KM repealed (Summary of instalments paid)

Repeal section 80KM.

118D Section 89C amended (Notices of proposed adjustment required to be issued by Commissioner)

After section 89C(l), insert:

(lbaa) the Commissioner is making an amendment before finalising the account of a qualifying individual under section 22H; or

119 Section 91EI amended (Withdrawal of a private ruling)

(1) In section 91EI(3), replace the words before the paragraphs with "If the Commissioner withdraws a private ruling in relation to an arrangement—".

(2) After section 91EI(3), insert:

(4) If the Commissioner withdraws a private ruling on the status of a person, item, or matter under section 91CB otherwise than in relation to an arrangement—

(a) the ruling continues to apply for the remainder of the period or tax year specified in the ruling; and

(b) a status ruling that has been made on the private ruling continues to apply, for the remainder of the period or tax year specified in the ruling.

120 New section 91ESB inserted (Withdrawal of a short-process ruling)

(1) After section 91ES, insert:

91ESB Withdrawal of a short-process ruling

(1) The Commissioner may at any time withdraw a short-process ruling by notifying the person to whom the ruling applies that the ruling has been withdrawn.

(2) The short-process ruling is withdrawn from the date stated in the notice of withdrawal. That date may not be earlier than the date on which the person could reasonably be expected to receive the notice of withdrawal.

(3) If the Commissioner withdraws a short-process ruling in relation to an arrangement—

(a) the ruling does not apply if the arrangement was entered into after the date of withdrawal; but

(b) the ruling continues to apply, for the remainder of the period or tax year stated in the ruling, if the arrangement was entered into before the date of withdrawal.

(4) If the Commissioner withdraws a short-process ruling on the status of a person, item, or matter under section 91CB otherwise than in relation to an arrangement the ruling continues to apply for the remainder of the period or tax year stated in the ruling.

(2) **Subsection (1)** applies in relation to a short-process ruling issued on or after 1 October 2019.

121 Section 91FJ amended (Withdrawal of a product ruling)

(1) In section 91FJ(4), replace the words before the paragraphs with "If the Commissioner withdraws a product ruling in relation to an arrangement—".

(2) After section 91FJ(4), insert:

(4B) If the Commissioner withdraws a product ruling on the status of an item or matter under section 91CB otherwise than in relation to an arrangement—

(a) the ruling continues to apply for the remainder of the period or tax year specified in the ruling; and

(b) a status ruling that has been made on the product ruling continues to apply, for the remainder of the period or tax year specified in the ruling.

122 Section 108 amended (Time bar for amendment of income tax assessment)

(1) In section 108(1E), replace "tax year." with "tax year, except if the increase is to take into account a notice of proposed adjustment initiated by a taxpayer in accordance with section 113E."

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

122B Section 113A amended (Correction of certain errors in subsequent returns)

(1) Replace section 113A(1) to (3) with:

(1) This section applies for the purposes of this Act and the Goods and Services Tax Act 1985 when—

(a) a person—

(i) has made an assessment of income tax or goods and services tax in a return that results in a tax liability for the person; or

(ii) has provided a return that results in a liability for fringe benefit tax for the person; and

(b) 1 or more errors in the assessment or return, as applicable, cause a tax discrepancy in the amount of the liability.

(2) This section does not apply in relation to an assessment or return for an ancillary tax other than fringe benefit tax as described in **subsection (1)(a)(ii)**.

(3) If the total tax discrepancy amounts to $1,000 or less, the person may make a correction in the next return that is due after the discovery of the error or errors.

(3B) If the total tax discrepancy is caused by an error or errors that, for the person, is not a material error or are not material errors, the person may make a correction in the next return that is due after the discovery of the error or errors.

(2) In section 113A(4):

(a) replace "subsection (2)" with "**subsection (3B)**":

(b) replace "the total discrepancy" with "the amount of the total tax discrepancy caused by the error or errors":

(c) replace paragraph (a) with:

(a) $10,000; and

(3) In section 113A(5),—

(a) replace "Subsection (3) does not apply" with "**Subsections (3) and (3B)** do not apply":

(b) replace "assessment of their liability for income tax, fringe benefit tax, or goods and services tax" with "assessment of their liability for income tax or goods and services tax, or return for fringe benefit tax,".

123 Section 113E amended (Amended assessments: research and development tax credits)

(1) Replace section 113E(1)(a) with:

> (a) issue 1 notice of proposed adjustment in relation to an increase in the amount of a person's research and development tax credit for a tax year before the earlier of—
>
> (i) 1 year after the due date to provide their return of income for the tax year:
>
> (ii) 4 months after they provide their return of income for the tax year; or

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

123B New section 113F inserted (Amended assessments: election under section HC 33 to satisfy trustee liability)

After section 113E, insert:

113F Amended assessments: election under section HC 33 to satisfy trustee liability

(1) This section applies when a person chooses under section HC 33 of the Income Tax Act 2007 to satisfy the income tax liability of the trustee of a trust and the election applies to an income year (the **affected year**) ending before the income year in which the person makes the election.

(2) The Commissioner may from time to time and at any time make an assessment or reassessment for the trustee and the affected year as a consequence of the election notwithstanding that tax already assessed may have been paid.

(3) The person who makes the election must provide the Commissioner with the information required by the Commissioner for determining the correct assessment for the affected year.

123C Section 120C amended (Definitions)

(1) In section 120C(1), definition of **date interest starts**, in paragraph (a)(iib), replace "qualifying individual" with "qualifying individual or an individual who is treated as a qualifying individual".

(2) In section 120C(1), definition of **date interest starts**, after paragraph (f), insert:

> (g) for unpaid tax, being terminal tax for which a taxpayer has a new due date for payment of the tax because **section 142AC** applies, means the day after the date fixed by the Commissioner under section 142AB(2) for the payment of the tax

(3) **Subsections (1) and (2)** apply for the 2019–20 and later income years.

124 Section 120KB amended (Provisional tax instalments and due dates generally)

(1) In section 120KB(2), replace "section RC 9 of the Income Tax Act 2007" with "section RC 9 of the Income Tax Act 2007, but using only the current year residual income tax for the item **residual income tax** in section RC 10".

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

125 Section 120KBB amended (Interest for most standard method and some estimation method provisional taxpayers)

(1) In section 120KBB(3)(a), replace "an instalment" with "those instalments".

(2) In section 120KBB(3)(b), replace "an instalment" with "each of those instalments".

(3) In section 120KBB(3)(b)(ii), replace "date." with "date; and", and insert:

> (c) the amount of unpaid tax that a person has in relation to the final instalment is equal to the amount given by section 120KB(2) less the total amount paid for earlier instalments in the tax year. A negative amount is overpaid tax on the final instalment.

(3B) After section 120KBB(3), insert:

> (3B) For a person who uses the standard method, use of money interest and penalties for provisional tax under Parts 7 and 9 are calculated using the lowest of the amounts under sections RC 5(2) and (3) of the Income Tax Act 2007, for instalment dates prior to the date that the taxpayer provides a return of income for the year before the current income year.

(4) Repeal section 120KBB(4)(a)(ii).

(5) **Subsections (1), (2), and (3)** apply for the 2017–18 and later income years.

(5B) **Subsection (3B)** applies for the 2018–19 and later income years.

(6) **Subsection (4)** applies for the 2019–20 and later income years.

125B New section 120KF inserted (Tolerance for provisional tax instalments)

(1) After section 120KE, insert:

> **120KF Tolerance for provisional tax instalments**
>
> Despite a provisional taxpayer underpaying an instalment by $20 or less, the provisional taxpayer is treated as paying the instalment in full for the purposes of section 120KE.

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

126 Section 120L amended (Meaning of unpaid tax and overpaid tax for provisional tax purposes)

(1) Replace section 120L(2) with:

(2) If a taxpayer makes a payment, the Commissioner must apply the payment towards the provisional tax that is due on the earliest instalment date on which there is an unpaid amount, and then in order from earliest to latest.

(1B) After section 120L(2), insert:

(2B) For the purposes of this section, **provisional tax** includes late payment penalties charged in relation to the provisional tax.

(2) Repeal section 120L(3).

(3) **Subsections (1) and (2)** apply for the 2018–19 and later income years but excluding payments that have been applied before the introduction of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill towards provisional tax.

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

126B Section 120LB repealed (Meaning of unpaid tax and overpaid tax for certain transferees under AIM method)

(1) Repeal section 120LB.

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

126C Section 124G amended (Refusal, removal, or disallowance of status of tax agents, representatives, and nominated persons)

(1) In section 124G(6)(a), replace "of the reasons for the exercise of the discretion" with "of the Commissioner's intention to exercise the discretion".

(2) In section 124G(6)(b), replace "against the exercise of the discretion" with "against the Commissioner's intention to exercise the discretion".

(3) Replace section 124G(7) with:

Integrity concerns

(7) The procedural requirements set out in subsection (6) may be disregarded if the Commissioner considers it necessary in the circumstances to protect the integrity of the tax system. However, for the purposes of subsections (2) and (3), the Commissioner must notify the person that, as applicable,—

(a) they have been removed from the list of tax agents:

(b) their status has been disallowed as a representative or nominated person.

(4) Replace section 124G(8), other than the heading, with:

(8) Having considered any arguments provided under subsection (6)(b), the Commissioner must notify a person on taking an action to remove or disallow the status of tax agent, representative, or nominated person. The removal or disallowance, as applicable, takes effect on the date of the notice. However, if the Commissioner disregards the requirement to notify the person for the reason set out in **subsection (7)**, the effective date is the date of the notification under that subsection.

126D Section 124ZH amended (Approved research providers)

(1) In section 124ZH(4), replace "research and development" with "core research and development" in each place.

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

127 Section 124ZI amended (Certificates for research and development)

(1) Replace section 124ZI(4) with:

(4) The Commissioner must not approve a person whose approval—

(a) would adversely affect the integrity of the tax system:

(b) the Commissioner has revoked under **subsection (7)** in the last 2 years:

(c) was surrendered by the person in the last 2 years in anticipation of a revocation.

(2) Replace section 124ZI(7)(b) with:

(b) the person has given a research and development certificate to another person who has, in the 2 years before the income year,—

(i) been liable to a shortfall penalty under section 141D or 141E in relation to research and development tax credits:

(ii) entered into a tax avoidance arrangement in relation to research and development tax credits:

(c) the person's approval would adversely affect the integrity of the tax system.

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

128 Section 138E amended (Certain rights of challenge not conferred)

(1) In section 138E(1)(e)(iv), replace "63" with "63, 68CB, 68CC, and 68CD".

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

129 Section 139B amended (Late payment penalty)

(1) In section 139B(6)(bb), replace "1 or both of the first 2 instalments of provisional tax" with "1 or more of any of the instalments of provisional tax other than the final instalment".

(2) **Subsection (1)** applies for the ~~2019–20~~2017–18 and later income years.

130 Section 139C amended (Late payment penalty and provisional tax)

(1) In section 139C(1D), replace "the date" with "the date. **Subsection (1E)** applies to the final instalment".

(2) After section 139C(1D), insert:

(1E) Despite subsection (1), for a person that section 120KBB applies to, the only amount of unpaid tax for a failed instalment that is the final instalment is the

amount of unpaid tax that would be given by section 120KBB(3)(b) if that section applied to the final instalment.

(3) **Subsections (1) and (2)** apply for the 2017–18 and later income years.

130B Section 141JA repealed (Application of Part 9 to non-filing taxpayers)

Repeal section 141JA.

130C New section 142AC inserted (New due date for payment of terminal tax by certain individuals)

(1) After section 142AB, insert:

142AC New due date for payment of terminal tax by certain individuals

(1) This section applies when—

(a) an individual (**person A**) has, or reasonably expects that they may have, for a period or periods in a tax year, whether the period or periods consist of some or all of the days in the tax year,—

(i) a tax credit under section LC 13 of the Income Tax Act 2007:

(ii) an entitlement to a tax credit under the family scheme; and

(b) person A has met their obligations, if any, under sections 22F(1) and 41 for the tax year within the time allowed; and

(c) person A's pre-populated account for the tax year cannot be finalised under section 22H until the Commissioner receives information from another individual who is or was the spouse, civil union partner, or de facto partner of person A; and

(d) person A's pre-populated account for the tax year is finalised under section 22H on or after the 30th day before their terminal tax date for the tax year; and

(e) person A has terminal tax due for the tax year.

(2) The assessment that person A would be treated as having made under section 22I(1) in the absence of this section is treated, for the purposes of section 142AB, as if it were a new assessment of tax for person A made by the Commissioner.

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

130D Section 143A amended (Knowledge offences)

(1) In section 143A(1)(g), after "recipient of a supply", insert "of distantly taxable goods or".

(2) In section 143A(1)(g), replace "registered person." with "registered person; or".

(3) After section 143A(1)(g), insert:

(h) in relation to an underlying supplier, of a supply of distantly taxable goods or remote services by a marketplace, knowingly provides altered, false, or misleading information relating to the country or territory in which the underlying supplier is resident.

130E Section 143D amended (Offences related to disclosure of certain information by persons other than revenue officers)

In section 143D(1)(a)(i), replace "part A, clauses 7, 10," with "part A, clauses 10,".

131 Section 173L amended (Transfer of excess tax within taxpayer's accounts)

(1) In section 173L(2B)(a)(i), delete "after the date".

(2) In section 173L(2B)(c), delete "after the date".

(3) **Subsections (1) and (2)** apply for taxable periods ending on or after 1 April 2018.

131B Section 184A amended (Refund of tax paid in excess made by direct credit to bank account)

After section 184A(5)(f), insert:

(g) unclaimed money under the Unclaimed Money Act 1971:

(h) an amount in an income equalisation account:

(i) an amount in an environmental restoration account.

132 Schedule 4 amended (Reporting of employment income information)

~~(1) In schedule 4, table 1, row 5, delete "amounts".~~

(2) In schedule 4, table 1, row 5, after item e, insert:

f	the amount of salary or wages, as defined in section 4(1) of the KiwiSaver Act 2006, if required under **section 63B** of that Act
~~g~~	~~the tax rate applied to the amount of employer KiwiSaver contributions, if required under section 93 of the KiwiSaver Act 2006~~

~~133 Schedule 5 amended (Certain tax codes and rates)~~

~~In schedule 5, part A, clause 4, rows 3, 4, 5, and 6 of the table, replace "total PAYE income payments" with "total PAYE income payments are" in each place.~~

134 Schedule 7 amended (Disclosure rules)

(1) In schedule 7, part A, replace the heading to clause 3 with "**Tax advisors, tax agents, and representatives**".

(2) In schedule 7, part A, after clause 3(2), insert:

(3) Despite section 18, the Commissioner may supply information about a person to an association or group if—

(a) the person is, or purports to be, a member of the association or group as a person who meets the requirements of section 124D(2); and

(b) the members of the association or group are subject to—

(i) a professional code of conduct; and

(ii) a disciplinary process that enforces compliance with the code of conduct; and

(c) the information—

(i) is relevant to a decision of the Commissioner disallowing the person's approval as a representative or refusing to approve the person as a representative:

(ii) in the Commissioner's opinion, is or would be relevant to a decision referred to in **subparagraph (i)**.

(3) Repeal schedule 7, part A, clause 7.

(4) In schedule 7, part C, subpart 1, replace clauses 38 and 39 with:

38 Agencies for research and development

(1) Section 18 does not prevent the Commissioner communicating to an officer, employee, or agent of the Treasury (as defined in section 2 of the Public Finance Act 1989), of Callaghan Innovation, of the Ministry of Business, Innovation and Employment, or of a state sector entity responsible for any function related to research and development advice or incentives, information reasonably necessary for that person to perform their work in relation to evaluating (in accordance with section LY 10 of the Income Tax Act 2007), administering, statistical reporting on, and policy formation for, tax credits provided in subparts LY and MX of that Act.

(2) Section 18 does not prevent the Commissioner communicating to an officer, employee, or agent of Callaghan Innovation or of the Ministry of Business, Innovation and Employment, information reasonably necessary for that person to perform their work in relation to offering research and development advice and incentives.

(3) Section 18 does not prevent the Commissioner allowing an officer, employee, or agent of Callaghan Innovation access to information reasonably necessary for that person to perform their work in relation to administering tax credits provided in subparts LY and MX of the Income Tax Act 2007.

39 Agencies for Australian wine producer rebate

(1) The purpose of this clause is to facilitate the exchange of information between the Commissioner and the Australian Taxation Office and the New Zealand Customs Service for the purpose of administering the entitlements of New Zealand resident wine producers to Australian wine producer rebates.

(2) Section 18 does not prevent the Commissioner providing all information referred to in **subclause (3)** to a person who is—

(a) an officer, employee, or agent of the Australian Taxation Office or the New Zealand Customs Service; and

(b) authorised to receive the information by the chief executive officer of the Australian Taxation Office or the New Zealand Customs Service.

(3) The information that may be provided under **subclause (2)** is all information relevant to—

(a) the claim by a New Zealand resident wine producer for payment of an Australian wine producer rebate in respect of wine produced in New Zealand that is sold in Australia:

(b) the approval or verification of the entitlement of a New Zealand resident wine producer to a payment of an Australian wine producer rebate.

135 Schedule 8 amended (Reporting of income information by individuals and treatment of certain amounts)

In schedule 8, part B, clause 1(a), replace "individual, is" with "individual that is".

Goods and Services Tax Act 1985

135B Goods and Services Tax Act 1985

Sections 135C to 135O amend the Goods and Services Tax Act 1985.

135C Section 5 amended (Meaning of term supply)

In section 5(6F) delete "for the provision of accommodation in social housing".

135D Section 8 amended (Imposition of goods and services tax on supply)

(1) After section 8(4B)(b), insert:

(bb) for a supply of goods,—

(i) the goods are part of a consignment of goods having a value for the purposes of schedule 4 of the Customs and Excise Act 2018 that is less than or equal to the entry value threshold; and

(ii) the recipient does not pay the amount of tax levied on the goods to the New Zealand Customs Service or to the supplier; and

(2) **Subsection (1)** applies to supplies made by a person on or after 1 December 2019, except for a supply for which the person takes a tax position—

(a) in the period beginning with 1 December 2019 and ending before the date on which this Act receives the Royal assent; and

(b) that is inconsistent with the amendments made by **subsection (1)**; and

(c) on which the person chooses to rely on or after the date on which this Act receives the Royal assent.

135E Section 10B amended (Estimating value of goods in supply for treatment as distantly taxable goods)

Replace section 10B(2)(b) with:

(b) the amount of tax that would be chargeable on the supply of the item under section 8(1) if the supply were made by the supplier as a resident and for the same consideration:

135F Section 10C amended (Election by supplier that supplies of higher-value goods be supplies of distantly taxable goods)

(1) In section 10C(1)(b), replace "period." with "period; and".

(2) After section 10C(1)(b), insert:

(c) the electing supplier meets the requirements of subsection (2).

(3) In section 10C(2), replace the words before paragraph (a) with "An electing supplier may make an election under subsection (1) if—".

(4) In section 10C(2)(a), replace "there are reasonable grounds for believing" with "the electing supplier considers".

(5) In section 10C(2)(b), words before subparagraph (i), replace "agreeing with the election" with "giving effect to an election by the electing supplier".

(6) In section 10C(3), words before paragraph (a), replace "under this section to which the Commissioner agrees" with "under subsection (1) meeting the requirements of subsection (2)".

135G Section 12 amended (Imposition of goods and services tax on imports)

In section 12(1B), replace "subsection (2)(a), (c), and (d)" with "subsection (2)(a) and (c)".

135H Section 20H amended (Goods and services tax incurred in making financial services for raising funds)

In section 20H(1)(d), replace "debt security or equity security" with "debt security, participatory security, or equity security" in each place.

135I Section 24 amended (Tax invoices)

(1) In section 24(4)(g), after "subsection (5B)", insert "or (5BB)".

(2) In section 24(5D), replace "the supplier and the recipient are treated as agreeing that section 8(4) will not apply to the supply" with "so that the supplier treats the supply incorrectly as being made in New Zealand, the supply is treated as being made in New Zealand".

135J Section 24BAB amended (Receipts for supplies)

In section 24BAB(2)(e), delete "and the amount of tax included,".

135K Section 24BAC amended (Information for importation of goods including distantly taxable goods)

In section 24BAC, words before paragraph (a), after "distantly taxable goods", insert ", on which tax at a rate greater than 0% is charged under section 8(1),".

135L Section 60C amended (Electronic marketplaces)

(1) After section 60C(1)(a), insert:

(ab) for a marketplace operated by a resident person, the underlying supplier is a non-resident person; and

(2) **Subsection (1)** applies to supplies made by a person on or after 1 December 2019, except for a supply for which the person takes a tax position—

(a) in the period beginning with 1 December 2019 and ending before the date on which this Act receives the Royal assent; and

(b) that is inconsistent with the amendments made by **subsection (1)**.

135M Section 60D amended (Approved marketplaces)

(1) After section 60D(1)(a), insert:

(ab) for a marketplace operated by a resident person, the underlying supplier is a non-resident person; and

(2) **Subsection (1)** applies to supplies made by a person on or after 1 December 2019, except for a supply for which the person takes a tax position—

(a) in the period beginning with 1 December 2019 and ending before the date on which this Act receives the Royal assent; and

(b) that is inconsistent with the amendments made by **subsection (1)**.

135N Section 77 amended (New Zealand or foreign currency)

Before section 77(3)(a), insert:

(aa) the date of the supply; or

135O Section 85C amended (Certain contracts entered into before 1 December 2019)

(1) In section 85C(1)(b), replace "section 9(3)(a)" with "section 9(3)(a) or (aa)".

(2) In section 85C(2), replace "section 9(3)(a)" with "section 9(3)(a) or (aa)".

Income Tax Act 2004

136 Income Tax Act 2004

Sections 137 to 139 amend the Income Tax Act 2004.

137 Section CW 45 amended (Non-resident aircraft operators)

(1) In section CW 45(1), replace "air transport from New Zealand is exempt income" with "air transport from New Zealand, or from air transport to New Zealand, is exempt income".

(2) In section CW 45(3), definition of **air transport from New Zealand**, replace paragraph (b) with:

> (b) includes a flight by the aircraft between the airport in New Zealand where the emplaning or embarking occurred and another airport in New Zealand at which the aircraft calls before leaving New Zealand on the international flight for which the emplaning or embarking occurred

(3) In section CW 45(3), insert, in appropriate alphabetical order:

> **air transport to New Zealand—**
>
> (a) means the carriage to an airport in New Zealand by an aircraft of cargo, mail, or passengers emplaned or embarked on the aircraft at an airport in a country or territory outside New Zealand; and
>
> (b) includes a flight by the aircraft to the airport in New Zealand for carriage to which the emplaning or embarking occurred from another airport in New Zealand at which the aircraft calls en route

(4) In section CW 45, list of defined terms, insert "air transport to New Zealand".

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

137B Section MD 1 amended (Refund of excess tax)

In section MD 1(1)(b), replace "either" with "the Commissioner is satisfied that the taxpayer is entitled to the refund within the specified period and either".

138 Section MD 1C amended (Treatment of certain refunds not paid within 4-year period: 2005–06, 2006–07, and 2007–08 income years)

In section MD 1C(1)(c), replace "section 108(1)" with "section 108(1) of the Tax Administration Act 1994".

139 Section OB 1 amended (Definitions)

In section OB 1, insert, in appropriate alphabetical order:

> **air transport to New Zealand** is defined in section CW 45(3) (Non-resident aircraft operators) for the purposes of that section

Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019

140 Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019

Sections 141 ~~and~~to 142B amend the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019.

141 Section 34 repealed (Section 36BB amended (Electronic format for details required for tax pooling intermediaries))

Repeal section 34.

141B Section 362 amended (Section MD 1 amended (Refund of excess tax))

In section 362 replace "MD 1(b)" with "MD 1(1)(b)".

141C Section 370 amended (Section MD 1 amended (Refund of excess tax))

In section 370, replace "MD 1(b)" with "MD 1(1)(b)".

142 Section 375 amended (Regulation 2 amended (Interpretation))

In section 375, delete "of the Tax Administration (Binding Rulings) Regulations 1991".

142B Schedule 1 amended (New schedules 7 and 8 amended)

In schedule 1, in new schedule 8, part B, after clause 2, insert:

3 Small amounts of tax payable

Despite clause 2, the Commissioner may write off an amount of tax under section 22J if the amount is not substantial and represents an underpayment of tax that is attributable to a function or operation of the tax collection rules.

Other enactments

Income Tax Act 1994

143 Section CB 14 amended (Exemption from tax of certain aircraft operators)

(1) In section CB 14(1) of the Income Tax Act 1994,—

(a) replace "air transport from New Zealand, the" with "air transport from New Zealand, or in air transport to New Zealand, the":

(b) replace "air transport from New Zealand, if" with "air transport from New Zealand, or from that air transport to New Zealand, if".

(2) In section CB 14(1) of the Income Tax Act 1994, replace "air transport from New Zealand, and derives from that air transport from New Zealand" with "air transport from New Zealand, or in air transport to New Zealand, and derives

from that air transport from New Zealand, or from that air transport to New Zealand".

(3) In section CB 14(2) of the Income Tax Act 1994, insert, in appropriate alphabetical order:

Air transport to New Zealand means the carriage to any airport in New Zealand by any aircraft of merchandise, goods, livestock, mails, or passengers emplaned or embarked on that aircraft at any airport in any country or territory outside New Zealand; and includes any flight by that aircraft to the airport in New Zealand for carriage to which that emplaning or embarking occurred from any other airport in New Zealand at which that aircraft calls en route:

(4) **Subsection (1)** applies for the 1995–96 and 1996–97 income years.

(5) **Subsection (2)** applies for the 1997–98 and later income years.

(6) **Subsection (3)** applies for the 1995–96 and later income years.

143B Section MD 1 amended (Refund of excess tax)

In section MD 1(1)(b) of the Income Tax Act 1994, replace "either" with "the Commissioner is satisfied that the taxpayer is entitled to the refund within the specified period and either".

Income Tax Act 1976

144 Section 64A amended (Exemption from tax of certain aircraft operators)

(1) In section 64A(1) of the Income Tax Act 1976, insert, in appropriate alphabetical order:

Air transport to New Zealand means the carriage to any airport in New Zealand by any aircraft of merchandise, goods, livestock, mails, or passengers emplaned or embarked on that aircraft at any airport in any country or territory outside New Zealand; and includes any flight by that aircraft to the airport in New Zealand for carriage to which that emplaning or embarking occurred from any other airport in New Zealand at which that aircraft calls en route:

(2) In section 64A(2) of the Income Tax Act 1976,—

(a) replace "air transport from New Zealand, the" with "air transport from New Zealand, or in air transport to New Zealand, the":

(b) replace "air transport from New Zealand, if" with "air transport from New Zealand, or from that air transport to New Zealand, if".

(3) **Subsections (1) and (2)** apply for the income year commencing 1 April 1984 and later income years.

144B Section 409 amended (Refund of excess tax)

After section 409(3) of the Income Tax Act 1976, insert:

(3B) The conditions upon which the Commissioner must refund an amount that a taxpayer has paid as tax are that the Commissioner is satisfied that—

(a) the amount represents an excess over the tax properly payable by the taxpayer; and

(b) the taxpayer is entitled to the refund within the specified period and either—

(i) the amount has arisen on an original assessment; or

(ii) the amount has arisen on an amended assessment and the 8-year period for amendment of an assessment has not ended.

Taxation (Research and Development Tax Credits) Act 2019

145 Section 46 amended (Section 138E amended (Certain rights of challenge not conferred))

Repeal section 46(2) of the Taxation (Research and Development Tax Credits) Act 2019.

Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018

146 Section 332 repealed (Section 78D amended (Evidential requirements for tax credits))

Repeal section 332 of the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018.

Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019

146B Section 65 amended (Section EY 30 amended (Transitional adjustments: life risk))

Replace section 65(4) of the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 with:

(4) Subsections (1) and (2) apply for a person for the income year that includes 1 July 2010 and later income years, except for an income year for which the person notifies the Commissioner on or after 26 June 2019 that the person chooses to rely on a tax position that is inconsistent with the amendments made by subsections (1) and (2).

146C Sections repealed

Repeal sections 115, 118, 123, and 124 of the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019.

Accident Compensation Act 2001

147 Section 11 amended (Earnings as an employee: what it does not include)

In section 11(1)(cb) of the Accident Compensation Act 2001, replace "share purchase agreement under section CE 2(2) or (4)" with "employee share scheme under section CE 2".

Search and Surveillance Act 2012

147B Schedule amended (Powers in other enactments to which all or part of Part 4 of Search and Surveillance Act 2012 applies)

In the schedule to the Search and Surveillance Act 2012, for the item in column 1 for the Tax Administration Act 1994, replace the text in column 3 with—

Commissioner of Inland Revenue may have access to things described in section 17 of the Tax Administration Act 1994 for purpose of inspection as described in that section
Commissioner of Inland Revenue may obtain and execute warrant to (i) enter private dwelling and (ii) remove books and documents from place and retain them for full and complete inspection if issuing officer is satisfied that this may be required to enable application to exercise functions under sections 17 and 17D of Tax Administration Act 1994

Serious Fraud Office Act 1990

147C Section 2 amended (Interpretation)

In section 2 of the Serious Fraud Office Act 1990, in the definition of **inland revenue offence**, replace "the Schedule" with "Schedule 1".

Privacy Act 1993

147D Schedule 3 amended (Information matching provisions)

In schedule 3 of the Privacy Act 1993, for the item *Tax Administration Act 1994* in the first column, replace the item in the second column with "Clauses 41 to 43 and 45 of schedule 7".

Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995

148 Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995 revoked

(1) Revoke the Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995.

(2) **Subsection (1)** applies for income years beginning after 18 March 2019.

Schedule 1
New Part 5 inserted into Schedule 6 of Student Loan Scheme Act 2011

s 57(4)

Part 5
Transitional provisions relating to Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2019

Provisions relating to tax year ending on 31 March 2013 and all earlier tax years

21 Outline of clauses 22 to 27

Clauses 22 to 27 prevent the reopening of a borrower's repayment obligations for closed-off tax years except in limited circumstances.

22 Interpretation for clauses 23 to 27

(1) In **clauses 23 to 27**, unless the context otherwise requires,—

Act,—

(a) in relation to the tax year ending on 31 March 2012 and all earlier tax years, means the Student Loan Scheme Act 1992 and all relevant regulations made under that Act:

(b) in relation to the tax year ending on 31 March 2013, means this Act and all relevant regulations made under this Act

closed-off tax year means the tax year ending on 31 March 2013 and all earlier tax years

interest—

(a) includes interest imposed under the Student Loan Scheme Act 1992 and loan interest imposed under this Act; but

(b) excludes late payment interest imposed under this Act

reopen, in relation to a repayment obligation, means all or any of the following:

(a) the Commissioner taking steps to reflect the manner in which the Act should have been applied to a borrower (for example, if the Act was incorrectly applied to the borrower or in respect of a change in the borrower's circumstances):

(b) the Commissioner making an assessment or amending an assessment in order to ensure that a correct assessment is made, whether or not a repayment obligation already assessed has been paid:

(c) a borrower objecting, disputing, or challenging a decision of the Commissioner or another matter.

(2) In **clauses 23 to 27**, a term or an expression used in relation to a tax year (but not defined in **subclause (1)**) has the same meaning as in the Act that applies in relation to that tax year.

23 General rules for closed-off tax years

Neither the Commissioner nor a borrower may, after 1 April 2020, reopen any repayment obligation relating to a closed-off tax year except to the extent to which **clauses 24 to 27** provide for the reopening.

24 Residency errors: when repayment obligations should have been overseas-based repayment obligations

(1) This clause applies to a borrower who—

(a) has been incorrectly treated as New Zealand-based for all or any part of a closed-off tax year; and

(b) after 1 April 2020, is established to have been overseas-based for all or any part of that closed-off tax year (the **relevant period**).

(2) The borrower's repayment obligations may be reopened as a result of the incorrect treatment by taking 1 or more of the following steps:

(a) steps to reflect that the borrower must be taken to be, and to always have been, liable to pay interest for the relevant period:

(b) steps referred to in **clauses 25 to 27**.

25 Residency errors: when repayment obligations should have been New Zealand-based repayment obligations

(1) This clause applies to a borrower who—

(a) was incorrectly treated as overseas-based for all or any part of a closed-off tax year; and

(b) after 1 April 2020, is established to have been New Zealand-based for all or any part of that closed-off tax year (the **relevant period**).

(2) The borrower's obligations in respect of the relevant period may be reopened as a result of the incorrect treatment by taking 1 or more of the following steps:

(a) steps to reflect that the borrower must be taken to be, and to always have been, not liable to pay interest for the relevant period:

(b) steps to reflect that the borrower should not have been assessed with an overseas-based repayment obligation for the relevant period:

(c) steps referred to in **clauses 24 to 27**.

26 Evasion or similar offences

(1) This clause applies to a borrower for a closed-off tax year—

Evasion or similar act

(a) if all or any of the following apply to the borrower:

(i) the borrower committed an offence under section 143B of the Tax Administration Act 1994, as applied by section 162:

(ii) the borrower is or was liable to pay a student loan shortfall penalty imposed under section 159 relating to a penalty imposed under section 141E of the Tax Administration Act 1994:

(iii) the borrower committed an offence under section 79(1) of the Student Loan Scheme Act 1992:

(iv) the borrower is or was chargeable with a penal repayment obligation under section 85 of the Student Loan Scheme Act 1992:

Other failures

(b) if the Commissioner is satisfied that it is cost-effective for the Commissioner to reopen the borrower's repayment obligation and that the borrower has not provided information (including tax returns and tax forms) to the Commissioner or any other person when required to do so by a tax law.

(2) The Commissioner may reopen the borrower's repayment obligation relating to all or any part of a closed-off tax year by taking 1 or more of the following steps:

(a) steps to reflect the manner in which the Act should have been applied to the borrower, as if the end-of-year repayment obligation for the relevant tax year were calculated as follows:

$$10\% \times (a - b)$$

where—

a is the difference between the income of the borrower that should have been used to calculate the borrower's end-of-year repayment obligation and the income that was used (if a return was filed) or nil (if a return was not filed)

b is the unused part of the borrower's repayment threshold:

(b) steps referred to in **clauses 24 to 27**.

27 Persons adversely affected

(1) This clause applies if—

(a) a borrower applies to the Commissioner for the reopening of any repayment obligation relating to all or any part of a closed-off tax year; and

(b) the borrower establishes, and the Commissioner considers, that the borrower would be adversely affected if reopening did not occur.

(2) The Commissioner may reopen any repayment obligation for all or any part of a closed-off tax year.

Other application, savings, and transitional provisions

28 Loans resulting from identity theft, etc

(1) This clause applies to a loan balance that—

(a) has been transferred to the Commissioner for collection under the Student Loan Scheme Act 1992 before 1 April 2000; and

(b) is in the name of a person—

(i) who did not enter into the loan contract under the student loan scheme from which the loan results; and

(ii) who did not receive the loan.

(2) The Commissioner must reduce the consolidated loan balance to zero, with effect from the day on which the loan was transferred to the Commissioner for collection, if the Commissioner is satisfied that the person who did receive the loan cannot be identified or located.

29 New Zealand-based borrowers and interest in respect of periods on or before 1 April 2020

(1) This clause applies to New Zealand-based borrowers in respect of interest that, without this clause, would be charged—

(a) on or after 1 April 2020 in relation to periods before that date; and

(b) under section 134 and written off under section 137.

(2) The Commissioner must treat sections 119 to 122 of the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 as having commenced on 1 April 2012.

Schedule 2
Amendments to Income Tax Act 2007 consequential to enactment of Kāinga Ora–Homes and Communities Act 2019

s 114B

Section CB 9 amended (Disposal within 10 years: land dealing business)

In section CB 9(3), replace "Housing New Zealand Corporation" with "Kāinga Ora–Homes and Communities".

In section CB 9, list of defined terms, insert "Kāinga Ora–Homes and Communities".

Section CB 10 amended (Disposal within 10 years: land development or subdivision business)

In section CB 10(3), replace "Housing New Zealand Corporation" with "Kāinga Ora–Homes and Communities".

In section CB 10, list of defined terms, insert "Kāinga Ora–Homes and Communities".

Section CB 11 amended (Disposal within 10 years of improvement: building business)

In section CB 11(3), replace "Housing New Zealand Corporation" with "Kāinga Ora–Homes and Communities".

In section CB 11, list of defined terms, insert "Kāinga Ora–Homes and Communities".

Section CB 15 amended (Transactions between associated persons)

In the heading to section CB 15(1B), replace "*Housing New Zealand Corporation*" with "*Kāinga Ora–Homes and Communities*".

Cross-heading and section CB 15D amended

In the cross-heading above section CB 15D, replace "*Housing New Zealand Corporation*" with "*Kāinga Ora–Homes and Communities*".

In the heading to section CB 15D, replace "**Housing New Zealand Corporation**" with "**Kāinga Ora–Homes and Communities**".

In section CB 15D(1), replace "Housing New Zealand Corporation" with "Kāinga Ora–Homes and Communities" in each place.

In section CB 15D, list of defined terms, insert "Kāinga Ora–Homes and Communities".

Section CV 1 amended (Group companies)

In section CV 1(2), replace "Housing New Zealand Corporation" with "Kāinga Ora–Homes and Communities".

Section CV 2 amended (Consolidated groups: income of company in group)

In section CV 2(3), replace "Housing New Zealand Corporation" with "Kāinga Ora–Homes and Communities".

Section FM 9 amended (Amounts that are company's income)

In section FM 9(3), replace "Housing New Zealand Corporation" with "Kāinga Ora–Homes and Communities".

Section FM 15 amended (Amortising property and revenue account property)

In the heading to section FM 15(8), replace "*Housing New Zealand Corporation*" with "*Kāinga Ora–Homes and Communities*".

In section FM 15(8), replace "Housing New Zealand Corporation" with "Kāinga Ora–Homes and Communities" in each place.

In section FM 15, list of defined terms, insert "Kāinga Ora–Homes and Communities".

Section YA 1 amended (Definitions)

In section YA 1, insert, in appropriate alphabetical order:

> **Kāinga Ora–Homes and Communities** means Kāinga Ora–Homes and Communities established by the Kāinga Ora–Homes and Communities Act 2019

Schedule 36 amended (Government enterprises)

In schedule 36, part A, replace "Housing New Zealand Corporation" with "Kāinga Ora–Homes and Communities".

Legislative history

27 June 2019	Introduction (Bill 158–1)
23 July 2019	First reading
24 July 2019	Referral to Finance and Expenditure Committee

Wellington, New Zealand:
Published under the authority of the House of Representatives—2019