Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill and recommends that it be passed with the amendments shown.

Overview

The bill contains mainly business-related measures, some in the interests of being business-friendly, others with a base maintenances focus. The bill will amend the following Acts:

- Estate and Gift Duties Act 1968
- Goods and Services Tax Act 1985
- Income Tax Act 1994
- Income Tax Act 2004
- Student Loan Scheme Act 1992
- Tax Administration Act 1994.

In addition to these measures, the Minister of Revenue released Supplementary Order Papers 380, 382, and 385 to the bill and referred them to the committee for consideration. We agreed to

consider the three supplementary order papers alongside the main bill.

The amendments to the Income Tax Act 2004 and the Tax Administration Act 1994 sought in Supplementary Order Paper 380 related to the extension of the Australian wine equalisation tax into New Zealand. The paper sought legislative change to enable the Inland Revenue Department to accept applications from New Zealand wine producers for producer rebates payable by the Government of Australia. The House gave leave to include the wine equalisation tax issue in the Taxation (Annual Rates and Urgent Measures) Bill, which was introduced on 8 November 2005 and received the Royal assent on 21 December 2005.

Supplementary Order Paper 382 seeks to correct an error in the depreciation amendments in the bill; and Supplementary Order Paper 385 seeks to prevent an imputation credit arising in relation to a dividend that is deductible expenditure under Australian tax law. The amendments are intended to remove an opportunity to stream imputation credits. We have considered the amendments proposed in Supplementary Order Papers 382 and 385 and have agreed to the appropriate amendments being made to the bill.

As introduced, Part 1 of the bill proposed an amendment of the Income Tax Act 2004 to set the income tax rates that are to apply for the 2005–06 tax year. Confirmation of the annual rates for 2005–06 was, however, moved into the Taxation (Annual Rates and Urgent Measures) Bill.

Technical amendments

The bill proposes a raft of technical amendments, which we make no comment on in this report. Officials advised that tax practitioners and Inland Revenue Department field staff frequently propose such amendments as they recognise the need for them in the course of using tax legislation. It has been considered sound practice to rectify such matters promptly, using the first available legislative vehicle. Remedial tax bills like this one provide such a vehicle.

A second group of amendments to the Income Tax Act 2004 recommended by officials typically respond to unintended changes discovered by taxpayers and by the Rewrite Advisory Panel. There are a small number in this bill.

The rest of this commentary addresses the issues we considered.

Tax depreciation rules

Clauses 53, 54, 55, 56, 57, 58, 80, 151, 168, 169 and 194 of the bill and Supplementary Order Paper 382 introduce a number of changes to the tax depreciation rules, intended to align depreciation rates more closely with the commercial reality of an asset's economic life. An increase of the low-value asset threshold is proposed, which will allow taxpayers to write off the value of an asset immediately, from $200 to $500. Submitters generally supported the changes to increase the tax depreciation rates; criticised the changes seeking to reduce building depreciation rates; and considered that the changes to the low-value asset thresholds do not go far enough.

Application dates

In the interests of making the new depreciation rules for short-lived assets less complex and reducing compliance risks associated with the transition from the old to the new depreciation rates for plant and equipment, we considered whether taxpayers should be able to apply the new depreciation rates for short-lived assets from 1 April 2005, regardless of the taxpayer's balance date. Submitters also suggested that the new depreciation rates should be mandatory only from the 2006–07 income year.

The proposed application date rules for plant and equipment are complex. The complexity is increased by the requirements that the new provisions apply to assets acquired from 1 April 2005, but from the start of the 2005–06 income year.

This complexity results from efforts to manage competing objectives, the first of which is to ensure that the new rules do not create tax incentives to delay investment decisions. We understand that this is a reason that the higher depreciation rates should not apply only to assets acquired after the start of the 2005–06 income year. The proposal to introduce double declining balance depreciation was announced by the Government in the 2005 Budget. Making the proposed change apply to assets purchased after 1 April 2005 reduced a concern that most late balance date taxpayers (those whose 2004–05 tax year ends between 31 May and 30 September 2005) would have incentives to delay capital expenditure if the change were to apply to assets acquired at the beginning of the 2005–06 income year.

An alternative suggested by one submitter was to apply the new higher rates to all assets from 1 April 2005 and to allow late-balance-

date taxpayers higher depreciation rates in their 2004–05 income tax years. However, this proposal is not without problems. By the time this bill is enacted almost all late-balance-date filers will have already filed their 2004–05 income tax returns in compliance with the current law. They would need to apply to the Commissioner to have their assessments amended in order to apply any new depreciation rates, incurring compliance issues and costs.

We believe that the proposed application date is the one that best manages these concerns, and that changing the application date at this stage is likely to lead to additional compliance costs.

Application date for new depreciation method for plant and equipment

However, we recommend that taxpayers be given the option of using old depreciation rates for plant and equipment acquired in the 2005–06 income year and the new depreciation method only be required for plant and equipment acquired from the beginning of the 2006–07 income year. This measure would eliminate the cost of having to re-enter the new higher depreciation rates for assets already in the books for the 2005–06 income year. Such a rule would also reduce the cost of the transition from the old rules to the new rules for some taxpayers. Taxpayers would elect not to apply the new depreciation method to plant and equipment purchased in the 2005–06 income year.

Lower depreciation rates for buildings

Clause 54 of the bill sets out a proposed amendment of the way tax depreciation rates for buildings are to be calculated. The amendment introduces a straight-line depreciation formula. This formula and its diminishing value equivalent are likely to produce a present value for depreciation deductions that more closely mirrors the way buildings decline in value over their useful life than the previous formula. Applying the new formula, we are advised, will have the effect of decreasing depreciation rates for buildings.

Most submitters do not, however, support the reduction in depreciation rates for buildings. They reason that the pace of change (in technology and consumers' preferences) means that the useful life of some buildings is shorter than the 50 years currently assumed; therefore building depreciation rates ought to be higher than those provided for in current legislation rather than lower.

Nevertheless, government valuation data provided to the committee by officials seems to suggest that buildings are appreciating, not depreciating. We therefore support these changes which will affect buildings acquired on or after 19 May 2005, and will apply from the 2005–06 and subsequent income years.

Transfers of buildings between associated parties

We recommend that a concession (in limited circumstances) be provided for transfers of buildings between associated persons that occur after 19 May 2005, to preserve the current building depreciation rates for buildings transferred to associated persons.

As introduced, the bill provides that the transfer of a building to another person means that the new owner uses the proposed lower building depreciation rate. However, the current law prevents an increase in depreciation rates when assets, other than buildings, are transferred between associated persons. We considered that this proposal lacked even-handedness.

We were also advised that the proposed legislation may lead to economic inefficiencies, as the change to the building depreciation rates triggered by the transfer of an asset from one taxpayer to another may affect the reorganisation of assets within a group of companies.

On the other hand, we did not consider it appropriate, for example, to allow a daughter who buys a rental property previously owned by her parents to continue to depreciate the building at the current depreciation rates. We believe to do so would provide an artificial bias in favour of property being traded within families.

We suggest that relief be allowed in the case of transfers between companies where there is 100 percent common ownership. For individuals we suggest that relief be allowed only for transfers of relationship property between wives and husbands, de facto couples or same-sex partners. The transfer of property from a parent to a son or daughter would not be eligible for relief.

Changes to the low-value asset thresholds

Clause 56 of the bill proposes changes to the low-value asset thresholds. The first new threshold allows an immediate deduction for capital expenditure of less than $500. The second threshold, known as the single supplier rule, allows an immediate deduction for capital

expenditure of up to $500 on items with low depreciation rates that are purchased at the same time from a single supplier.

While submitters support the increase in the low-value asset thresholds from $200 to $500, they consider that this does not go far enough. Suggestions for an appropriate low-value threshold range from $1,000 to $5,000, and for the single supplier threshold from $5,000 to $10,000. While we understood the submitter's concerns, we do not recommend any change to the low-value asset thresholds.

The proposal to increase the low-value assets threshold arose because inflation had eroded the resulting compliance cost savings since the threshold was set 1993. The proposed $500 threshold represents more than an inflation adjustment. [1]

We consider it also makes sense for the low-value asset threshold and the single supplier-rule threshold to remain aligned, as it would be difficult to manage the risk that a single asset might be purchased from a single supplier at the higher threshold. The single supplier threshold requires that the costs over a certain total value of simultaneous purchases of assets with the same depreciation rate, from a single supplier be capitalised. We understand that this threshold is designed to counter a tax-avoidance opportunity that arises because of the low-value asset threshold. The concern is that taxpayers might be able to structure capital expenditure into $200 units, when they are in fact purchasing a single more expensive asset.

We were also concerned that the fiscal cost of the suggested thresholds is likely to be high. Officials estimate the cost of increasing the thresholds from $200 to $500 to be $350 million over the next five years. Increasing the threshold from $500 to $1,000 would add a further $450 million over the next five years to the cost of the current proposal.

Assets with tax book values below the thresholds

We considered whether the rules should allow an immediate deduction when the tax value of an asset falls below the low-value asset threshold. One submitter argued that if such a rule were introduced it would reduce the compliance costs of tracking large numbers of

[1] Indexing the low-value asset thresholds to the average inflation rate of 2.1 percent for the period 1993 to 2005 suggests thresholds of approximately $260.

low-value assets. We were understanding of the submitter's request but did not recommend an amendment in this bill.

Most compliance costs are incurred when a business acquires an asset. Once an asset has been acquired, the business must record the asset and set up the asset register to ensure the correct amount of depreciation is deducted. From this point the process is largely automatic. While periodic checks of assets may be needed, over time assets become less important and less valuable to the business and checks are less frequent. The result is that some assets remain in asset registers as a source of annoyance, rather than a compliance cost, for most businesses. Nevertheless, there is a cost involved for firms that periodically clean out their asset registers.

Officials did not have sufficient information to provide us with a reasonable estimate of the cost of this proposal. However, we believe that allowing an immediate deduction when the tax value of an asset falls below the low-value asset threshold policy would have a fiscal cost greater than the cost of the proposed increase to the low-value asset thresholds. In the first year, the existing stock of assets with book values below the low-value asset threshold would be immediately deductible. We agreed with officials that the cost of this proposal outweighs any benefits but would like to see other options to reduce compliance costs in this area explored between small business and officials.

Alignment of payment dates for provisional tax and GST

To reduce tax impediments for businesses, changes to the way provisional tax and GST are paid and the way provisional tax is calculated are included in the bill. The due dates for payments of provisional tax and GST are aligned—both will now be required on the 28th day of the month. The bill also proposes that taxpayers be able to calculate their provisional tax using the ratio method, based on a percentage of their taxable supplies, in order to align their provisional payments with cash flow.

Qualifying criteria for the provisional tax ratio method

While most submitters support the proposed changes to align provisional tax with GST, to change the GST due date and to allow the

calculating of provisional tax as a percentage of GST taxable supplies, some submitters proposed amendments to the eligibility criteria for the provisional tax ratio method. While we have not recommended any change to these criteria, we noted the submission that the ratio method should be extended to partnerships, close companies, trusts, new businesses and businesses in a loss situation, and recommend that it be considered when the ratio method is reviewed.

Application dates of GST and provisional tax provisions

As introduced, clause 2 of the bill provides for the application dates of the GST and provisional tax changes to be staggered:

- 1 April 2006 for the GST due date change
- the 2007–08 income year for provisional tax payments, to be paid on GST due dates.

However, for Inland Revenue to implement the GST and provisional tax changes by 1 April 2006, legislation would need to have been enacted by January 2006, so that Inland Revenue could make the necessary system changes and notify taxpayers, and so that taxpayers could make the necessary changes to their systems in time.

We therefore agreed to the Government's request to delay the application date of the GST and provisional tax proposals by one year. We recommend new application dates:

- 1 April 2007 for the GST due date change
- the 2008-09 income year for provisional tax payments to be paid on GST due dates and using the provisional tax rate method.

Subsidy for payroll agents—application date

We recommend clauses 2 and 119(3) be amended, deferring the application of the proposed payroll subsidy from 1 April 2006 to 1 October 2006. The proposal introduces a legislative framework that provides for the payment of a subsidy where small businesses voluntarily make use of a PAYE intermediary. Provisions in the bill detail the eligibility criteria for payroll agents to be listed, and a process for revoking a listing; the obligations on PAYE intermediaries; the process and conditions that must be met when claiming the subsidy; and the administrative process to be followed when an agreement between an employer and an intermediary is terminated.

The payroll subsidy provisions will require regulations to give full effect to the policy intent of the proposal, and we considered that enactment of the legislation in March 2006 would not allow sufficient time for the necessary regulations to be prepared and promulgated 28 days before the intended commencement date of 1 April 2006. There were also indications that a 1 April 2006 commencement date would not provide sufficient time for all the system changes that payroll intermediaries and the Inland Revenue Department would need to make.

Fringe benefit tax

Clauses 14 to 16, 24 to 33, 40, 81, 121 to 132, 143, 145, and 148 in the bill introduce a number of measures to reduce compliance costs and remove anomalies in the fringe benefit tax regime. The key issues we considered related to the application of fringe benefit tax to motor vehicles, and in particular the proposal to address the avoidance of fringe benefit tax by employees leasing their own vehicles to their employers and "suspending" the leases during private use. The bill proposes that such "suspension" be legislatively overridden for tax purposes so that private use is treated as a fringe benefit. We also considered concerns raised by submitters regarding the valuation of re-leased vehicles for fringe benefit tax purposes. The legislation was unclear on this matter.

"Suspended" leases by shareholder-employees

We considered whether the current treatment of "suspended" leases should be retained, given the argument raised by submitters that such leases enabled shareholder-employees to allocate business and private vehicle costs in the same way as sole traders and partners. We agreed that the changes to permissible leasing arrangements are necessary to achieve the intention of the current legislation that shareholder-employees should come within the ambit of the fringe benefit tax rules, rather than the rules applying to sole traders and partners. We have, however, recommended that a full deduction of fixed and variable motoring costs (both business and private) should be allowed in relation to the vehicles covered by the "nine-to-five" or "flip flop" leases, as it is in other situations where fringe benefit tax is applied.

Officials advised that over the past decade an increasing number of employees (usually shareholder-employees) have entered into

arrangements to lease their own vehicles to their employers for business use during specified hours in exchange for a market rental.

In earlier cases, Inland Revenue could apply fringe benefit tax to such leases when there was evidence that the vehicle was available for private use during the "business lease" period (for example, evidence that taxpayers have used the vehicle to pick-up children from school). The arrangements then evolved into "flip-flop" leases, where the lease agreement does not specify a "business lease" time, but instead says that the vehicle is not available for private use whenever it is being used for business purposes, and vice versa. We understand this has had the effect of creating a legal fiction that technically gets around the concept of availability for private use underpinning the fringe benefit tax rules, to allow unlimited private use and the apportionment of fixed costs between private and business use. While the employee owns the vehicle, Inland Revenue considers it undesirable that the arrangement allows the employer to subsidise the fixed costs of the employee's vehicle and thus provide a form of untaxed remuneration.

The submitters' main concern is that this change inappropriately biases the tax system in favour of operating under a self-employed structure, such as a sole trader or partnership, and against incorporating as a company. Submitters would prefer that the self-employed model also apply to shareholder-employees, which is what the flip-flop leases achieve. We are advised that under that model, there is a straight apportionment of expenses between business and private purposes, only the business portion being deductible against income—a company can deduct all expenditure against its income but fringe benefit tax is applied to any private benefit that the company provides.

We did accept, however, that a full deduction of all costs, not just the business portion, should be allowed when fringe benefit tax is paid. This would replicate the treatment of a company that owns or leases the vehicle and pays fringe benefit tax on making it available to an employee for their private use.

Officials have undertaken to include in the Tax Information Bulletin a summary of mileage reimbursement rates that can be used by close companies for business use of a shareholder-employee's vehicle. These rates are to be the same as those available to "arms-length"employees.

Re-leased vehicles

We recommend that clause 148 be amended so that the cost price for a re-leased vehicle would be calculated as its market value at the start of the lease, provided the lessee and any previous lessee (or owner) of the vehicle are not associated persons. We consider this amendment will address the concerns of some submitters that the policy intent of aligning the treatment of leased vehicles with that of owned vehicles is achieved. It is reasonable that a lessee who leases a previously leased vehicle should be able to use, for the purposes of determining its cost price, its market value at the start of the new lease provided the lessee is not associated with the previous lessee.

Taxation of share-lending transactions

Clauses 13, 18, 35, 36, 39, 48, 50, 51, 63, 64, 67, 82, 91, 93, 104, 105, 107 to 109, 133 to 140, 143, 153 and 157 of the bill contain provisions governing the taxation of securities lending transactions. Specific securities lending rules are introduced to allow qualifying share lending transactions to be taxed on the basis of economic substance (as a loan) rather than legal form (as a sale of shares), meaning they will not be treated as a taxable disposal. In addition, the tax rules are strengthened to prevent an unintended fiscal cost from arising out of non-qualifying share-lending transactions.

Application dates

As introduced, the bill proposes that the new share-lending rules have two application dates. We recommend, however, that there be a single application date set for the share-lending legislation, and a deferred application date of 1 July 2006 be used to give the industry time to comply with the new rules.

The base maintenance changes for non-qualifying share-lending transactions were to apply from the date the bill received the Royal assent, and the other share-lending changes were to apply to income years beginning on or after enactment. We agreed with submitters that it would be impractical and not commercially prudent to have different application dates depending on a person's balance date. We were also concerned that having based the application date on a taxpayer's balance date would mean that certain taxpayers would be given a commercial advantage, as they would be able to enter earlier into qualifying share-lending arrangements.

Qualifying securities

We considered the request of some submitters that the share-lending rules be expanded to cover securities other than shares listed on a recognised exchange or ordinarily available for subscription or purchase by the public, such as derivatives. We did not, however, support expanding the list of qualifying securities. We consider that limiting the new rules to listed shares makes the breadth of the regime more certain, particularly as most lending arrangements should relate to listed shares. We did agree to amendments to the definition of a returning securities transfer and a share-lending arrangement to clarify the scope of the rules.

While we understand that this change may disadvantage some participants by limiting the number of qualifying transactions, we consider the impact to be minor and outweighed by the advantage of added certainty. We also consider that any future change to the qualifying securities should be open to proper consultation, using the generic tax policy process.

Links between share-lending rules and general tax rules

A number of submitters raised technical issues about the relationship between the proposed share-lending rules and other parts of the tax legislation. The majority of these matters were agreed and have led to a revision of the rules and a simplification of their relationship with other parts of the tax legislation.

Replacement payments and tax credits

The issue of replacement payments and their tax treatment was considered. It was agreed that the definition of replacement payments be linked to dividend substitutes and any unnecessary duplication be removed. The request to treat replacement payments as dividends with the resulting tax treatment was, however, not agreed.

Anti-avoidance provisions

We did not agree with those submitters who called for the separate consideration of the share-lending and anti-avoidance rules. Officials advised that any change in the tax treatment of share-lending must simultaneously address the risk to the tax base of adopting an economic substance over legal form. We did, however, agree to remove the non-resident withholding tax rules until the tax rates review of non-resident withholding tax is completed.

Corporate migration

The bill introduces amendments to ensure that migrating companies pay tax on their income earned world-wide while resident in New Zealand, and that the rules are consistent with the tax rules that apply on liquidation. The changes are intended to remove incentives for companies to migrate for tax reasons. A company resident in New Zealand is liable for New Zealand tax on its world-wide income. However, a company may currently emigrate without having paid tax on income that was earned while it was resident.

Under the changes in the bill, a migrating company will be treated as if it had realised and liquidated all assets, and fully distributed the proceeds to shareholders before migration. The changes will apply to companies migrating on or after 21 March 2005.

We have agreed to a limited grandparenting provision for companies that had done everything within their control to migrate by 21 March 2005, but had not yet become non-resident. While, we note, realised capital gains will generally be excluded from the distribution that is taxed, a consequence of alignment with the liquidation rules is that they will be included for non-resident related corporate shareholders.

Tax exemption for new migrants and returning New Zealanders

The bill introduces a number of amendments to remove the tax barriers inhibiting international recruitment to New Zealand. A two-tiered exemption will be introduced. The first tier proposes a five-year exemption for employees and the second tier a three-year exemption for all new migrants. Both exemptions would cover all foreign income except dividends, interest, employment income and business income relating to the supply of services. To qualify, an individual must not have been tax resident in New Zealand for at least ten years.

While most submitters welcomed the overall proposal, they considered that some specific proposals did not go far enough or were too compliance-intensive. In particular, it was argued that the scope and length of the exemption should be extended.

Exemption—residence definition

We were advised that the exemption period for an immigrant newly recruited to a New Zealand business should begin on the day of arrival for work in New Zealand. The definition of "residence" under New Zealand law is based on physical presence in New Zealand. If a person is present in New Zealand for more than 183 days in any 12-month period, they are deemed to be resident from the first date on which they were present in New Zealand.

This may mean that the first date of residence of some new migrants or returning New Zealanders may be backdated to a previous visit before 1 April 2006, making them ineligible for the exemption. Amendments to the bill provide for the period of exemption to begin before the new migrant or returning New Zealander actually moves permanently to New Zealand. We considered that this result would be counter to the policy objectives of the exemption and have therefore recommended an amendment to ensure that the exemption period begins on the first day of arrival for work in New Zealand. This will be achieved by disabling the 183-day test and relying on the permanent place of abode test in section OE 1.

We note that "permanent place of abode" is not defined in the Income Tax Act 2004. Officials advise that for Inland Revenue purposes a person will be deemed a transitional resident from when they acquire a permanent place of abode in New Zealand. Further, case law indicates that whether a person has a permanent place of abode in New Zealand is a question of fact, with continuity, the duration of person's presence in New Zealand and durability of a person's association with New Zealand being the material factors to consider.

One class of exemption

We recommend that there be one class of exemption for all and that the length of the exemption be four years. As introduced, the bill proposed to exempt employees only. We did not consider it appropriate to differentiate between employees and others, in particular independent contractors. We were concerned that the different treatment between employees and others may send an adverse signal that New Zealand is only interested in attracting employees and not the self-employed.

Officials advised us that the proposed exemption of five years represents a compromise between an exemption that is longer but narrower in application and an exemption that is shorter and wider in application. We noted the concern of officials that any exemption on foreign-sourced income could encourage taxpayers to represent onshore income as foreign-sourced.

Nevertheless, we considered that the period of exemption be kept as short as practicable, to four years, to minimise this risk. Further, we agreed that the four-year time limit strikes a balance between achieving the desired policy objectives and avoiding unnecessarily conceding revenue.

Tax years

One submitter argued that the period permitted for the exemption could potentially be restricted to two years given that the exemption is tied to tax years. In this situation a person might become a New Zealand resident on 29 March 2006, to have the exemption expire on 31 March 2008. Officials confirmed that the tax year test could result in a taxpayer receiving the exemption for only three and a bit years, rather the full the four years.

To address these concerns, we recommend that a month test rather than a tax year test be used in relation to the time period for exemption. This would result in the exemption applying for the first 48 months following the person's arrival for work in New Zealand.

Extending exemption to all foreign-sourced income

We recommend that the exemption period for a new recruit be extended to cover other types of foreign-sourced income, namely dividends, interest, and bonus payments from employment performed overseas before coming to New Zealand. Officials advised us that whether to include dividends and interest in the exemption has always been a close call. In essence, it is necessary to trade off the benefits of continuing to tax income that is generally taxable in all countries (and so should not be a deterrent to migrants) against those of signalling an across-the-board exemption.

We note that Australia recently announced details of a similar proposal, under which dividends and interest would be exempt. We understand it is argued that this encourages people to repatriate their income, allowing individuals to rearrange their affairs in the light of

international tax rules, without being penalised by tax. We consider there is merit in aligning our proposed exemption with Australia.

Apparently it is not uncommon for people who arrive in New Zealand to receive bonus payments from overseas employment. We accept that it would be inappropriate to tax bonus payments simply because they are often not determined until after the recipients have arrived in New Zealand.

Certification process

We have also recommended the removal of the certification process—an individual will now be required to "self-assess" their eligibility. As introduced, the bill proposed that individuals who rely on the exemption should comply with New Zealand's tax laws once the period of exemption expired. To this end, a certification requirement was included in the bill. An individual would apply for a certificate of exemption, and Inland Revenue would issue a certificate confirming that the individual met the residence criteria for the exemption. This process would have required unnecessary contact by taxpayers with Inland Revenue and we were assured that Inland Revenue's current risk management approach regarding those eligible for the exemption will be adequate.

Foreign trusts—information-reporting and record-keeping

Clauses 87, 155(2), (12) and (14), 156, 162 and 182 introduce new information reporting and record-keeping requirements for foreign trusts. The requirements introduced in the bill impose obligations on New Zealand-resident trustees of foreign trusts to disclose limited information to Inland Revenue and to keep financial and other records relating to each foreign trust for New Zealand tax purposes.

Legality of providing information to Australia

We heard from two submitters who questioned the legality of automatically providing foreign trust information to Australia, and asked whether New Zealand has a current legal obligation to provide foreign trust information in response to an exchange-of-information request under its double taxation agreements. We were assured by officials that the new foreign trust requirements are consistent with current tax law, the exchange-of-information provisions in New Zealand's double taxation agreements, and international standards

governing transparency and the effective exchange of information between foreign tax authorities.

Amendment of new requirements

Most submitters were critical of the new requirements. In particular, submitters complained that the requirement for each foreign trust to have at least one qualifying New Zealand-resident trustee was too onerous, and that the sanctions for non-compliance were illogical, misdirected and unfair.

In view of these criticisms, we have recommended amendments to the information-reporting and record-keeping requirements for foreign trusts proposed in the bill to improve their overall fairness and balance. The new requirements for foreign trusts take into account the need to create incentives for New Zealand-resident trustees to comply with the requirements, while protecting trustees who genuinely do not know these requirements from potentially onerous tax and compliance costs. The recommendations for change are outlined below.

New Zealand-resident trustee

Under the requirements originally proposed in the bill, a New Zealand-resident trustee would have been required to disclose limited information and keep certain financial and other records and provide these records to Inland Revenue, if requested. The foreign trust was also required to have at least one qualifying New Zealand-resident trustee. If the trustee did not comply with the requirements, sanctions would have applied and, in some instances, the foreign trust would have been subject to tax on its world-wide income.

We considered that these requirements would have been particularly harsh for non-professional trustees of family trusts or private estates, or trustees who are not in the business of providing trustee services. For example, a person who migrated to New Zealand from the United Kingdom before 1 April 2006 (the proposed date the new requirements come into effect) and who is also a trustee of his or her parent's estate would have been caught by the new requirements. Most people in this situation would not have been aware that the new requirements applied to them.

We have therefore recommended that there be no requirement for a trustee to become a qualifying New Zealand-resident trustee; and a New Zealand-resident trustee should be subject to sanctions only if

he or she knowingly fails to disclose information or keep or provide records to Inland Revenue, as required under the law. Whether the trustee is aware of his or her tax responsibilities is a question of fact to be determined case by case, although officials advise that it will be assumed that "professional" trustees or those trustees who are in the business of providing trustee services will be aware of the new requirements.

If a New Zealand-resident trustee knowingly does not comply with the new requirements, Inland Revenue can prosecute the trustee under section 143A of the Tax Administration Act 1994 and, if convicted, the trustee will be subject to a monetary fine and a term of imprisonment or both. The world-wide income of the foreign trust will also be subject to tax in New Zealand until the information requested is provided to Inland Revenue. This penalty would be removed once Inland Revenue received the information. The penalty for non-compliance and the tax penalty are considered necessary to deal with seriously recalcitrant trustees.

If the New Zealand-resident trustee is a qualifying New Zealand-resident trustee, or a co-trustee who meets the qualifying status has been appointed to the trust, we have recommended that the trust will never be subject to tax on its world-wide income. These trusts will effectively enjoy a safe-harbour treatment from the tax penalty. A New Zealand-resident trustee will be able to become a "qualifying New Zealand-resident trustee", or appoint a co-trustee who meets the criteria, at any time to qualify for the safe-harbour treatment.

We agreed with officials that the possibility of conviction under section 143A of the Tax Administration Act 1994 would provide the necessary incentive for qualifying New Zealand-resident trustees to comply with the new requirements. We understand that if a qualifying New Zealand-resident trustee were to be convicted of an offence under this Act, it will become a matter of public record and Inland Revenue will bring the matter to the attention of the trustee's professional body.

Application date for new requirements

We recommend that the application date for the new information-reporting and record-keeping requirements for foreign trusts be deferred from 1 April 2006 to 1 October 2006. We agreed with submitters that the application date of 1 April 2006 did not allow enough time for Inland Revenue to publicise the new requirements,

implement the necessary internal procedures, or publish guidelines for organisations seeking "approved organisation" status.

Existing trustees of foreign trusts will need to develop an appreciation of the new obligations, decide whether the trust should continue to be administered in New Zealand and, if so, make the required disclosure to Inland Revenue within 60 days of the date of the commencement of the new requirements. Trustees appointed on or after 1 April 2006 will have 30 days to make the required disclosure.

Trans-Tasman imputation credit streaming

Clauses 106, 107B, and 143 of the bill introduce provisions to counteract the inappropriate use of the trans-Tasman imputation rules to stream imputation credits to those shareholders who are able to use them to the most advantage. Officials advised that wider work is being undertaken on who may use imputation credits.

Resident withholding tax deductions

We considered the request of one submitter that the bill be amended so that an Australian company would not be required to deduct and account for resident withholding tax from the dividends paid to its New Zealand shareholders. We accepted this request and have recommended that the anti-avoidance rule apply where the non-resident company has a fixed establishment in New Zealand and the company's financial statements are required by generally accepted accounting practices to be presented in New Zealand dollars. We have also recommended that this amendment apply to dividends paid after 1 April 2007. We believe this will allow sufficient time for those affected to be informed of the change.

The rationale for the requirement that a non-resident company with a fixed establishment in New Zealand deduct and account for resident withholding deductions was to address tax avoidance where the non-resident company has no business operations in its home country, but has a branch operation in New Zealand. Officials advised that it should be unnecessary for non-resident companies that have significant business interests in their home country as well as in New Zealand to deduct and account for resident withholding tax.

The problem, we understand, is the confirmation of significant home-country business interests. We are advised that there are several ways this can be done. The present legislation allows an exemption when dividends are not paid in New Zealand dollars. This provision, however, no longer effectively targets such entities because Australian companies now frequently pay dividends to their New Zealand shareholders in New Zealand dollars. It is considered that if a company's financial statements are not required by generally accepted accounting practice to be presented in New Zealand dollars, that is sufficient evidence that avoidance of resident withholding tax should not be a concern. If a company's activities are substantially or entirely denominated in New Zealand dollars, the generally accepted accounting practice will require it to report in New Zealand dollars, which would correctly result in resident withholding tax being deducted from dividends.

Imputation credits and resident withholding tax deductions

We recommend further amendment of clause 134 to allow for a reduction in resident withholding tax deducted, to the extent that a dividend paid by a non-resident is imputed under the trans-Tasman rules. This amendment will match the policy intent that resident withholding tax should complement the imputation system, so that withholding tax is deducted from dividends at source only if there are insufficient imputation credits allocated to the dividend to cover its full tax liability.

Officials advised that when the trans-Tasman imputation rules were introduced a consequential amendment to the resident withholding tax rules that should have allowed trans-Tasman imputations credits to be taken into account was overlooked. We agreed with officials that this anomaly should be corrected retrospectively to the introduction of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (1 April 2003) to the extent that present law has not been complied with by the dividend-paying company.

Deductible distributions from co-operatives

Clauses 7, 10, 47 and 220 of the bill propose that certain types of payouts from co-operatives to their members be excluded from treatment as dividends, allowing a deduction to the co-operative. Submitters asked that co-operatives be allowed to elect whether a

distribution to members is treated as a dividend, with an attached imputation credit, or as a deductible expense. We agreed.

Currently, payouts from co-operatives to members may be treated either as a dividend under the general dividend provisions in subpart CD and the specific co-operative distribution provisions in ME 35, or as a deductible expense to the co-operative under the mutual association provisions in section HF 1.

Officials advised that the proposed dividend exclusion in section CD 24B is designed to clarify the conditions under which a co-operative can deduct payouts as an expense in relation to transactions with a member. This new provision should not therefore preclude a co-operative from distributing under any of the other existing provisions. Rather, section CD 24B should complement the other provisions by allowing the co-operative the choice of excluding the payout as a dividend and obtaining a deduction. However, in the interests of providing clarity and certainty on the treatment of payouts, we agreed that co-operatives should be allowed to elect to apply section CD 24B.

Drafting clarification of section CD 24B(3)

We recommended that section CD 24B(3) be re-drafted to clarify the amount that is to be excluded as a dividend. This issue was raised by a submitter who expressed concern at the current drafting of section CD 24B(3). This relates to the amount of the distribution that is to be excluded as a dividend. While the submitter accepted that the wording attempts to preserve the dividend treatment for transactions between the co-operative and member shareholders whose equity interest bears no relation to the level of transacting between the two parties, the submitter was of the opinion that this section could be drafted more clearly to avoid confusion.

The purpose of section CD 24B is to specify the amount of the distribution by the co-operative to the member shareholder that can be excluded as a dividend under the section. We understand that it is intentionally drafted so that it does not apply to distributions relating to shares held in the co-operative that have no relation to the amount of trading stock supplied to, or by, the co-operative to the member. If a member holds shares in the co-operative and those shares are not required in order to trade with the co-operative, any distribution relating to those shares will be treated as a dividend.

Redrafting of the section will make clear the policy intent that distributions may be excluded from the definition of "dividend" if they relate to shares that members are required to hold in order to trade. Distributions will not be excluded from the definition of "dividend" if they relate to shares that members are not required to hold in order to trade with the co-operative.

Consistency of application dates

We recommend that the application date of sections DV 10B and CD 1B be amended to apply from the 2005–06 and subsequent tax years. As introduced, section DV 10B allows a deduction for those distributions that meet the requirements of section CD 24B. The deduction applies to the tax year in which the payments are made. The application date of the section is currently the 2006–07 and subsequent tax years. However, the application date for the dividend exclusion in section CD 24B is the date of Royal assent.

Co-operatives with late balance dates may be allowed an exclusion for a payment that is made after Royal assent (for example, 1 April 2006) where because of their late balance date (for example, 30 September 2006) they cannot receive a deduction for the payment.

We therefore supported the amendment of the application date of section DV 10B to apply from the 2005–06 and subsequent tax years. This means that a co-operative would be permitted a deduction for payments made under section DV 10B that also met the requirements of section CD 24B on any date after Royal assent.

Reverse takeovers and continuity rules—application date

We considered at some length a request from an organisation that the clarification of the concessionary continuity rules should have retrospective effect from 1 April 1992 (the date on which they first came into force) rather that prospectively. A majority of the committee supported this request, believing that the law as written gave rise to a rational and legitimate expectation on the part of the organisation regarding its application.

The present law requires a company to maintain a continuity of shareholding of 49 percent in order to carry forward tax losses, and a continuity of 66 percent for imputation credits to be allocated to

dividends. These continuity rules, we understand, are based on tracing shareholdings through groups of companies back to non-corporate shareholders. The concessionary continuity rules acknowledge that this is not practicable in some circumstances.

The principle behind those rules is that the benefit of the tax losses should be enjoyed only where the shareholders who owned the company at the time when the losses were generated continue to own a substantial proportion of the shares in the company up to and including the year in which the losses are utilised.

These concessionary rules are not comprehensive in their coverage. In contrast, the underlying tracing rules, while sometimes not practical to apply, are comprehensive.

The concessionary continuity rules do not currently provide continuity when a smaller widely-held company takes over or merges with a larger one (for example, a reverse takeover). From a policy perspective, officials advise that such a takeover or merger should not result in the loss of tax losses or imputation credits when there is clearly a continuity of shareholding through the process of at least 49 percent or 66 percent respectively. This proposal incorporates changes to reflect this advice in the concessionary continuity rules.

We noted advice from Inland Revenue officials that the present concessionary continuity rules are having the effect intended and were generally understood when they were enacted, although some of the outcomes are not appropriate from a policy perspective because the reverse takeover scenario was not specifically considered when the rules were designed.

GST on postal services

Clause 205(1) and (3) of the bill proposes a generic definition of postage stamp for the purposes of the Goods and Services Tax Act. GST will be payable on all stamps whether or not they are used for the conveyance of international mail. Currently, postal operators registered under the Postal Services Act 1998 have to charge GST on the supply of a stamp, whereas operators not regulated by the Postal Services Act can zero-rate stamps issued for international mail.

Submitters argued that the proposed change will create further anomalies in the GST rules, therefore the cost of sending an item whether it be a letter, parcel or other article from New Zealand

should be zero-rated. Alternatively, the provisions which would see couriers excluded from the proposal should be removed. We did not support these proposals.

The arguments for and against imposing GST on postage stamps used to send mail overseas are finely balanced. However, in the context of the market in which postage stamps are used, and when this market is compared with the transportation of goods or the communications market, we accepted the advice of officials that, on balance, GST should apply. This policy is also, we understand, consistent with international agreements on the treatment of charges relating to the delivery of mail, and with policies being developed in the European Union.

We do not accept the arguments of submitters that the amendment will create further anomalies. The purpose of the amendment is to remove GST pricing advantages for postal operators who are not required to register under the Postal Services Act, and who argue that they are not required to charge GST on international outbound mail. The amendment ensures that all suppliers of postage stamps are treated equally for GST purposes and that consumption in New Zealand is appropriately taxed.

Unacceptable tax position shortfall penalty

An unacceptable tax position shortfall penalty of 20 percent is imposed on a taxpayer if, viewed objectively, their tax position fails to meet the standard of being "about as likely as not to be correct". The penalty is only imposed when the tax shortfall is significant, that is over $20,000 and the lesser of either 1 percent of the total tax figure or $250,000. The penalty does not apply to tax shortfalls that arise from mistakes in the calculation or recording of numbers in a return.

In 2003 the penalties legislation was amended. The "unacceptable tax position" penalty was previously the "unacceptable interpretation" penalty. Before the amendment a taxpayer could argue that they had not made an interpretation and therefore the unacceptable interpretation penalty could not be imposed.

Submitters consider that the unacceptable tax position shortfall penalty could penalise most, if not all, errors in excess of the minimum thresholds. If a taxpayer has made and acknowledges an error, by definition, it cannot be "about as likely as not to be correct". The

effect is that errors that should be considered under the reasonable care rules are being penalised under the unacceptable tax position rules. This is adversely influencing taxpayers' behaviour, making them less inclined to disclose errors for correction by Inland Revenue.

Officials advised that this matter involves significant policy issues not addressed in the bill, which officials are seeking to resolve and address by way of a supplementary order paper to this bill introduced at the committee of the whole House stage.

We would support an amendment in this area.

Appendix

Committee process

The Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill was referred to the committee on 9 June 2005. The closing date for submissions was 12 August 2005. We received and considered 56 submissions from interested groups and individuals. We heard 15 submissions. Hearing of evidence took 3 hours 45 minutes and consideration took 4 hours.

We received advice from the Inland Revenue Department and the Treasury.

Committee membership

Shane Jones (Chairperson)

Gordon Copeland

Jeanette Fitzsimons

Craig Foss

Hon Mark Gosche

Hon George Hawkins

Hone Harawira

Rodney Hide

John Key

Dr Hon Lockwood Smith (Deputy Chairperson)

Hon Paul Swain

Chris Tremain

Doug Woolerton

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous) Subject to this Act,	Text struck out unanimously
New (unanimous) Subject to this Act,	Text inserted unanimously
(*Subject to this Act,***)**	Words struck out unanimously
Subject to this Act,	Words inserted unanimously

Hon Peter Dunne

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2005**.

2 Commencement

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

New (unanimous)

(1B) **Sections 191B and 200(4B)** are treated as coming into force on 1 April 1995.

(1C) **Sections 196B and 199B** are treated as coming into force on 1 April 2003.

(1D) **Section 163J** is treated as coming into force on 25 November 2003.

(1E) **Sections 89C and 89D** are treated as coming into force on 4 June 2004.

(2) **Section(s) 201(,)** is treated as coming into force on 1 July 2004.

(3) **(*Sections 181*) (*is*)Sections 163I(1), 165B, and 193B** are treated as coming into force on 21 December 2004.

(4) **Sections 11(1A), 11B, 35B, 46D, 49B, 61B, 71B, 77B, 77C, (*85,*) 105(4B), 134(1A), (1AB), and (1AC), 140B, 143(6C), (9B), (*143*)(16), (35C), and (45B), 144B, 147D, 150, 153B, 153C, 153D, 155(22B), 156(1A) to (1C) and (1E) to (1G), 156B, 163B to 163H, 167B, 170B, 182D, 204(1A) and (1B), 207(3B) and (3C), and (*218*) 222** are treated as coming into force on 1 April 2005.

(5) **Section(*s*) 56** is treated as coming into force on 19 May 2005.

New (unanimous)

(5B) **Sections 106(1A) and (5B), 107B, and 143(3B)** are treated as coming into force on 21 July 2005.

(6) **Sections 12, (*14(2), 14(3)*) 14(2) and (3), 19, 20, 20B, 22, 43, 44, 46, 52, 57B, 62, 63(2), 65, 66, 68, 69, 72, 73, 76, 77D, 82B, 86, (*87(1), 87(2)*) 87(1) and (2), 89B, 90, 103B, 110B, 141, 143(*(5), (7),*) (8), (*(11),*) (12B), (15), (15B) to (15D), (*(19),*) (32C), (34B), (35), (40), (*and*) (43), and (51B), and 147C (*155(4) to (7), and (11), and 163*) (*come*)** are treated as coming into force on 1 October 2005.

New (unanimous)

(6B) **Section 143(1B) and (53B)** is treated as coming into force on 21 December 2005.

Struck out (unanimous)

(7) **Sections 212, 214, and 219** come into force on 31 March 2006.

(8) **Sections 8(2), 14(1), 15, 16, (*17, 24*) 24B, 25 to 32, (*33,*) 39B, (*40,*) 70, 71, 74, 75, 81, (*87(3),*)92, 94 to 97(*, 99*), 121 to 132, 143(4), (9), (17), (24), (37), and (52), 145(1)(*, 145*) and (2), (*148, 155(2), (12), (14), (19), and (20), 156, 158, 159, 162, 182, and 188,*) 147B(a), and 148** come into force on 1 April 2006.

New (unanimous)

(8B) **Sections 7B, 8(1), 13, 18, 35, 36, 39, 48, 50, 51, 63(1), 67, 80B, 82, 91, 93 to 93C, 104, 105(1) and (3), 107, 108(2) and (4), 109(1) and (3), 111B, 111C, 111E, 111F, 133, 134(1) and (2), 135 to 138, 139(1), 140, 143(6B), (21B), (21C), (30), (31B), (32B), (38), (41), (44), and (45), 147B(b), 153, and 157** come into force on 1 July 2006.

(9) **Sections 6, (*7,*) 37, 38, (*47,*) 77, 79, 87(3), 89, 143(35B), (40B), and (51), (*and 144*) 155(2), (15) and (15C), 156(1), (1D), (1F), (1G)(a), and (2), 162, 163, 163I(2), 182, 182B, and 182C** come into force on 1 October 2006.

Struck out (unanimous)

(10) **Sections 203(3) and (4), 211, 213, and 215 to 217,** come into force on 1 April 2007.

(11) **Sections 59, 83, 84, 88, 100 to 103, 105(2), 105(4), 108(1), 108(3), 109(2), 109(4), 110, 114 to 118, 120, 142, 143(2), (3), (6), (14), (21) to (23), (33), (34), (36), (42), (46), and (48) to (50), 145(3), 152, 155(3), (8) to (10), (13), (15B), (16), (18), (21), and (22), 160, 161, 171 to 180, 183 to 185, and 221** come into force on 1 October 2007.

New (unanimous)

(10) **Sections 212, 214, and 219(1)(a)** come into force on 31 March 2007.

(11) **Section 134(2B)** comes into force on 1 April 2007.

(11B) **Sections 59, 83, 84, 88, 100 to 103, 105(2) and (4), 108(1) and (3), 109(2), 110, 114 to 118, 120, 142, 143(3), (6), (14), (21), (22), (23), (33), (34), (36), (42), (46), and (48) to (50), 145(3), 152, 155(3), (8) to (10), (13), (15B), (16), (18), (21), and (22), 160, 161, 171 to 180, 183 to 185, 203(3) to (4), 211, 213, 215 to 217, and 221** come into force on 1 October 2007.

(12) **Sections 16B, 17, 22B, 41B, 42B, 92C, 144, 158, 159, and 219(1)(b)** come into force on 1 April 2008.

Struck out (unanimous)

Part 1
Annual rates of income tax for 2005–06 tax year

3 Rates of income tax for 2005–06 tax year

(1) Income tax imposed by section BB 1 of the Income Tax Act 2004 must, for the 2005–06 tax year, be paid at the basic rates specified in Schedule 1 of that Act.

(2) The Taxation (Annual Rates of Income Tax 2004–05) Act 2004 is repealed.

Part 2
Amendments to Income Tax Act 2004

4 Income Tax Act 2004

This Part amends the Income Tax Act 2004.

5 Double tax agreements

In section BH 1(4), "any other enactment," is replaced by "any other Inland Revenue Act or the Official Information Act 1982 or the Privacy Act 1993,".

6 Heading for section CD 1 replaced

The heading for section CD 1 is replaced by "**Dividend**".

7 New section CD 1B inserted

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

"**CD 1B Distribution excluded from being dividend**

A distribution, derived by a member of a co-operative company, that is excluded by **section CD 24B** from being a dividend is income of the member.

"Defined in this Act: co-operative company, dividend, income".

(2) **Subsection (1)** applies for income years corresponding to the **(***2006–07***)** 2005–06 and subsequent tax years.

New (unanimous)

7B Tax credits linked to dividends

In section CD 9(2), "section CD 10" is replaced by "sections CD 10 and **CD 10B**".

Struck out (unanimous)

8 New section CD 10B inserted

After section CD 10, the following is inserted:

"**CD 10B Dividend reduced if foreign tax paid on company's income**

"When this section applies

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

"(a) derives a dividend from a company that is—

"(i) a foreign company; and

"(ii) treated as if the company were a partnership by the laws relating to income tax of the country or territory in which the company is resident; and

"(b) is liable in the country or territory for income tax on income of the company; and

"(c) pays the income tax; and

"(d) provides to the Commissioner upon request, within the time allowed by the Commissioner, sufficient information to satisfy the Commissioner as to the amount of income tax paid.

"Amount of dividend reduced

"(2) The amount of the dividend is reduced by the greater of zero and the amount calculated using the formula—

total tax paid – other reductions.

"Definition of items in formula

"(3) In the formula,—

"(a) **total tax paid** is the total amount of income tax on income of the company that the person has paid in the country by the time that the person derives the dividend:

Struck out (unanimous)

"(b) **other reductions** is the total amount of reductions under this section that, by the time that the person derives the dividend, have affected other dividends derived by the person from the company.

"Defined in this Act: branch equivalent method, company, controlled foreign company, dividend, FIF income or loss, foreign investment fund, income, income tax".

New (unanimous)

8 New sections CD 10B and CD 10C inserted

(1) After **section CD 10**, the following is inserted:

"**CD 10B Credit transfer notice**

"When this section applies

"(1) This section applies if a share user under a share-lending arrangement—

"(a) derives a dividend for the original share, with an imputation credit attached; and

"(b) issues a credit transfer notice for the dividend.

"Credit not included

"(2) The dividend derived by the share user does not include the amount of the imputation credit.

"Income

"(3) The amount of the imputation credit is income derived by the share supplier when the credit transfer notice is issued.

"Definition

"(4) In this section, **imputation credit** includes a dividend withholding payment credit.

"Defined in this Act: amount, credit transfer notice, dividend, dividend withholding payment credit, imputation credit, original share, share-lending arrangement, share supplier, share user".

(2) After **section CD 10B**, the following is inserted:

New (unanimous)

"**CD 10C Dividend reduced if foreign tax paid on company's income**

"When this section applies

"(1) This section applies if a person—

"(a) derives a dividend from a company that is a foreign company; and

"(b) has a liability under the laws of a country or territory outside New Zealand for income tax on income of the company corresponding to the liability that the person would have under the laws of New Zealand for income tax on income of the company if the company were a partnership in which the person were a partner; and

"(c) pays the income tax; and

"(d) provides to the Commissioner upon request, within the time allowed by the Commissioner, sufficient information to satisfy the Commissioner as to the amount of income tax paid.

"Amount of dividend reduced

"(2) The amount of the dividend is reduced by the greater of zero and the amount calculated using the formula—

total tax paid – earlier reductions.

"Definition of items in formula

"(3) In the formula,—

"(a) **total tax paid** is the total amount of income tax on income of the company that the person has paid in the country by the time that the person derives the dividend:

"(b) **earlier reductions** is the total amount of reductions under this section that, by the time that the person derives the dividend, have affected other dividends derived by the person from the company.

"Defined in this Act: branch equivalent method, Commissioner, company, controlled foreign company, dividend, FIF income or loss, foreign company, foreign investment fund, income, income tax".

9 Capital distributions on liquidation

(1) In the heading to section CD 18, "**or emigration**" is added after "**liquidation**".

(2) Section CD 18(1), other than the heading, is replaced by the following:

"(1) This section applies if a shareholder—

"(a) is paid an amount in relation to a share on the liquidation of the company:

"(b) is treated under **section FCB 2** (Emigrating company treated as paying distribution to shareholders) as being paid an amount in relation to a share in the company."

(3) In the list of terms defined in the Act, "emigrating company" is inserted.

Struck out (unanimous)

(4) **Subsections (1) to (3)** apply for—

(a) a company that becomes a non-resident on or after 21 March 2005; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(4) **Subsections (1) to (3)** apply for income years corresponding to the 2005–06 and subsequent tax years.

10 New section CD 24B inserted

(1) After section CD 24, the following is inserted:

"CD 24B Distribution to member of co-operative company based on member's transactions

Struck out (unanimous)

"Distribution by co-operative company, company owned by co-operative company

"(1) An amount that is a distribution to a member of a co-operative company by the co-operative company, or by a company (a **subsidiary company**) in which the co-operative company owns voting interests equal to 100%, is not a dividend if—

"(a) the co-operative company is resident in New Zealand for the period to which the elected distribution relates; and

"(b) the distribution is not a foreign-sourced amount for the member; and

"(c) the value of the elected distribution is determined by the value for the period of transactions between the member and the co-operative company or subsidiary company that satisfy **subsection (2)**; and

"(d) the amount is given by **subsection (3)**.

New (unanimous)

"Election by co-operative company that distribution not be dividend

"(1) A co-operative company may choose that an amount of a distribution (**trading distribution**) to a member of the co-operative company is not a dividend if—

"(a) the trading distribution is made by the co-operative company, or by a company (**subsidiary company**) in which the co-operative company owns voting interests equal to 100%; and

"(b) the requirements of **subsection (1B)** are met.

"Further requirements for election

"(1B) A co-operative company may make an election under **subsection (1)** if—

New (unanimous)

"(a) the co-operative company is resident in New Zealand for the period to which the trading distribution relates; and

"(b) the company making the distribution is resident in New Zealand for the period to which the trading distribution relates; and

"(c) the co-operative company believes on reasonable grounds that the member at the time of the distribution—

"(i) is resident in New Zealand:

"(ii) has a fixed establishment in New Zealand; and

"(d) the value of the trading distribution is determined by the value for the period of transactions between the member and the co-operative company or subsidiary company that satisfy **subsection (2)**; and

"(e) the number of shares in the co-operative company held by the member determines the value of the transactions with the co-operative company or subsidiary company that the member has a right to enter.

"*Transactions must involve trading stock*

"(2) A transaction must—

"(a) **(***involve* **)**be the sale and purchase of trading stock of the vendor that is not intangible property; and

"(b) not be subject to section FB 3 (Disposal of trading stock) or FB 4(1) (Income derived from disposal of trading stock together with other assets of business).

"*Amount excluded from being dividend*

Struck out (unanimous)

"(3) The amount of a distribution that is excluded under **subsection (1)** from being a dividend is the lesser of the following:

"(a) the amount of the distribution:

"(b) if the right of the member to enter transactions with the co-operative company does not arise from shares held

Struck out (unanimous)

by the member in the co-operative company, the smallest distribution to which a member of the co-operative company would be entitled if that member—

"(i) were entitled to enter, with the co-operative company or subsidiary company, transactions of the type and value referred to in **subsection (1)(c)**; and

"(ii) entered the transactions referred to in **subparagraph (i)**:

"(c) if the right of the member to enter transactions with the co-operative company arises from shares held by the member in the co-operative company, the amount of the distribution relating to shares in the co-operative company that the member acquires for the purpose of obtaining that right.

New (unanimous)

"(3) The amount of a trading distribution that is excluded under **subsection (1)** from being a dividend for a member is the lesser of the following:

"(a) the amount of the trading distribution:

"(b) the amount of the trading distribution relating to shares in the co-operative company that the member acquires for the purpose of obtaining the right to enter transactions with the co-operative company or subsidiary company.

"Form of election

"(4) The co-operative company makes an election under **subsection (1)** for an income year containing the period to which a trading distribution relates by giving the Commissioner notice of the election when providing the company's return of income for the tax year to which the income year corresponds.

New (unanimous)

"*Period of election*

"(5) The election applies for distributions in the income year referred to in **subsection (4)** and for distributions in later income years.

"Defined in this Act: company, co-operative company, foreign-sourced amount, resident in New Zealand, shareholder".

(2) **Subsection (1)** applies for distributions made on or after the date on which this Act receives the Royal assent.

11 Available subscribed capital amount

New (unanimous)

(1A) Section CD 32(15), other than the heading, is replaced by the following:

"(15) The subscriptions amount for a company that is an amalgamated company resulting from an amalgamation—

"(a) includes an amount, as if it were consideration received at the time of the amalgamation for the issue of the amalgamated company's shares, equal to the available subscribed capital, at the time of the amalgamation, of all shares in the amalgamating companies that are—

"(i) of an equivalent class to the class; and

"(ii) not held directly or indirectly by an amalgamating company; and

"(iii) not shares in the amalgamated company:

"(b) does not include any other amount for the agreement of shareholders of an amalgamating company to the amalgamation and the resulting property acquisitions by the amalgamated company."

(1) After section CD 32(15), the following is inserted:

"*Subscriptions amount: emigrating company*

"(15B) If a company has been treated under **section FCB 2** (Emigrating company treated as paying distribution to shareholders) as paying a distribution to shareholders, the subscriptions

amount includes the amount of the distribution that is **(***assessable income of the shareholders***)** a dividend."

New (unanimous)

(2A) **Subsection (1A)** applies for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

(2) **Subsection (1)** applies for—
- (a) a company that becomes a non-resident on or after 21 March 2005; and
- (b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

11B Available capital distribution amount

(1) In section CD 33(2)(c), "capital gain available" is replaced by "capital gain amounts available".

(2) Section CD 33(7)(b) is replaced by the following:

"(b) after 31 March 1988, it receives a capital gain, including a gift, and no part is assessable income of the company; the capital gain amount is the amount of the capital gain; or".

(3) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

12 When does a person have attributed repatriation from a CFC?

(1) After section CD 34(1)(b), the following is inserted:

"(bb) at any time in the accounting period, the person is a New Zealand resident who is not a **(***certified***)** transitional resident; and".

(2) In section CD 34(2), the formula is replaced by the following:

"income interest × repatriation × $\frac{\text{days}}{\text{days in accounting period.}}$"

(3) After section CD 34(2), the following is added:

"*Definition of items in formula*

"(3) In the formula,—

"(a) **income interest** is the income interest of the person for the period in the accounting period during which the person is a New Zealand resident who is not a **(***certified***)** transitional resident:

"(b) **repatriation** is the New Zealand repatriation amount for the CFC and the accounting period:

"(c) **days** is the number of days in the accounting period during which the person is a New Zealand resident who is not a **(***certified***)** transitional resident:

"(d) **days in accounting period** is the number of days in the accounting period."

(4) In section CD 34, in the list of terms defined in the Act,—

Struck out (unanimous)

(a) "certified resident" is inserted:

(b) "New Zealand resident" is inserted**(.)**:

New (unanimous)

(c) "transitional resident" is inserted.

(5) **Subsections (1) to (4)** apply for—

(a) a person who becomes a **(***New Zealand* **)**transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(6) The law that would apply if **subsections (1) to (4)** did not come into force applies for—

New (unanimous)

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

13 New heading and sections CD 43 and CD 44 added

(1) After section CD 42, the following is added:

"*Returning securities transfers*

"**CD 43 Replacement payment**

A replacement payment derived by a person under a returning securities transfer is assessable income of the person if the replacement payment is intended to be economically equivalent to a reward of ownership, in relation to an original share, that would be assessable income for the person if derived by the person.

"Defined in this Act: assessable income, original share, replacement payment, returning securities transfer

"**CD 44 Purchase of replacement share in share-lending arrangement**

"*When this section applies*

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

"(a) is a share user under a share-lending arrangement; and

"(b) returns a replacement share to the share user.

"*Income*

"(2) The person derives income equal to the market value of the original share at the date of acquisition by the share user.

"Defined in this Act: income, original share, replacement share, share-lending arrangement, share supplier, share user, returning securities transfer".

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent

New (unanimous)

13 New heading and section CD 43 added

After section CD 42, the following is added:

"***Returning share transfers***

"**CD 43 Replacement payments**

The amount of a replacement payment derived by a person under a returning share transfer is income of the person when it is paid to the person.

"Defined in this Act: income, pay, replacement payment, returning share transfer".

14 Value and timing of benefits under share purchase agreements

(1) After section CE 2(7), the following is added:

"*Disposal of rights under share purchase option*

"(8) For the purposes of subsection (3), a disposal of rights under a share purchase agreement includes the cancellation of a share option in return for a cash payment."

(2) After section CE 2(8)(, *as added by*)(*subsection (1)*)(,) the following is added:

Struck out (unanimous)

"*If benefit to certified resident relating to employment when non-resident*

"(9) The value of a benefit, or a part of a benefit, of a type referred to in **subsections (2) to (5)** is zero if—

"(a) the employee is a certified resident when the employee acquires the shares under the share purchase agreement or disposes of the rights under the share purchase agreement; and

"(b) the employee is a non-resident during the period of employment that gives rise to the benefit or part of the benefit.

New (unanimous)

"*Reduction of value of benefit in circumstances relating to non-resident*

"(9) The value of a benefit arising from a period of employment is reduced, from the value that the benefit would have in the absence of this subsection,—

"(a) if, when the employee acquires the shares under the share purchase agreement or disposes of the rights under the share purchase agreement, the employee is a transitional resident; and

"(b) by an amount given by the following formula:

$$\text{value before reduction} \times \frac{\text{period employed as non-resident}}{\text{period employed.}}$$

(3) In section CE 2, in the list of terms defined in the Act,—

Struck out (unanimous)

(a) "certified resident" is inserted:

(b) "non-resident" is inserted**(.)**:

New (unanimous)

(c) "transitional resident" is inserted.

(4) **Subsection (1)** applies for **(***a person's liability for fringe benefit tax for a period***)** income years beginning on or after 1 April 2006.

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

(a) a person who becomes a **(***New Zealand* **)**transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(6) The law that would apply if **subsections (2) and (3)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

15 Meaning of expenditure on account of an employee

(1) In section CE 5,—

(a) in subsection (3)(i), ''scheme.'' is replaced by "scheme**(***; or***)**:" and the following is added:

"(j) a premium for income protection insurance that an employer is liable to pay or make a contribution towards for the benefit of an employee.":

(b) in the list of defined terms, "contribution" is inserted.

Struck out (unanimous)

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

16 New heading and section CE 11 inserted

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

New (unanimous)

"***Income protection insurance***

"**CE 11 Proceeds from claims under policies of income protection insurance**

"*When this section applies*

"(1) This section applies **(***when* **)**if an employer is liable to pay, or contribute to the payment of, a premium under a policy of income protection insurance for the benefit of a person who is their employee.

"*Income*

"(2) An amount that is or would be derived under the policy is income of the person.

"Defined in this Act: amount, employee, employer, income, pay".

Struck out (unanimous)

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

16B New heading and section CE 12 inserted

After section CE 11, the following is added:

"***Tax credits***

"**CE 12 Tax credits under section LD 1B added to caregiver's income**

"*When this section applies*

"(1) This section applies if a person is allowed under **section LD 1B** (Tax deductions from certain accident compensation payments: credit allowed to caregiver) a credit against the person's income tax liability for payments that the person receives for providing attendant care (as defined in Schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act 2001) for a period in an income year.

"*Income*

"(2) An amount equal to the credit is income of the person in the income year.

"Defined in this Act: income, income year, payment".

17 Benefits, pensions, compensation, and government grants

In section CF 1(2), in paragraph (f) of the definition of **accident compensation payment**, "of that Act" is replaced by "of that Act**(***; or***)**:" and the following is added:

Struck out (unanimous)

"(g) a payment made by the Corporation under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 1991, if the total amount of such payments in an income year exceeds the total amount of payments made in that income year by the claimant to a caregiver in respect of attendant care (as defined in Schedule 1, clause 12 of that Act)

New (unanimous)

"(g) a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 paid by the Corporation (as defined in that Act) to a claimant for an income year".

Struck out (unanimous)

18 Adjustment for closing values of trading stock, livestock, and excepted financial arrangements

(1) In section CH 1(1)(c), "arrangements)." is replaced by "arrangements):" and the following is added:

"(d) a right as a share supplier under a share-lending arrangement to acquire original shares or replacement shares, if the original shares are excepted financial arrangements described in paragraph (c)."

(2) In section CH 1(4), "arrangements," is replaced by "arrangements or right,"

(3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

18 Adjustment for closing values of trading stock, livestock, and excepted financial arrangements

(1) In section CH 1(1)(c), "arrangements)." is replaced by "arrangements):" and the following is added:

"(d) a share supplier's share-lending right, if the original shares that relate to the right are excepted financial arrangements described in paragraph (c)."

(2) In section CH 1(4), "arrangements," is replaced by "arrangements or share-lending right,".

(3) In section CH 1, in the list of terms defined in the Act,—

(a) "original share" is inserted:

(b) "share-lending right" is inserted:

(c) "share supplier" is inserted.

19 When attributed CFC income arises

(1) Section CQ 2(1)(d) is replaced by the following:

"(d) at any time in the accounting period, the person is a New Zealand resident who is not a **(***certified***)** transitional resident; and".

(2) In section CQ 2(1)(e), "accounting period" is replaced by "part of the accounting period during which the person is a New Zealand resident who is not a **(***certified***)** transitional resident".

Struck out (unanimous)

(3) In section CQ 2, in the list of terms defined in the Act,—

(a) "certified resident" is inserted:

(b) "New Zealand resident" is inserted.

New (unanimous)

(3) In section CQ 2, in the list of terms defined in the Act, "transitional resident" is inserted.

(4) **Subsections (1) to (3)** apply for—

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(5) The law that would apply if **subsections (1) to (3)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

20 When FIF income arises

(1) In section CQ 5(1)—

(a) paragraph (c)(iv) is replaced by the following:

"(iv) the exemption for a non-resident or (*certified*) transitional resident in **section EX 35** (Income interest of non-resident or (*certified*)transitional resident):":

(b) paragraph (e) is replaced by the following:

"(e) at any time in the year, the person is a New Zealand resident who is not a (*certified*) transitional resident and holds the attributing interest; and".

(2) In section CQ 5 "(*certified*)transitional resident" is inserted in the list of terms defined in the Act.

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

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(4) The law that would apply if **subsections (1) and (2)** did not come into force applies for—

New (unanimous)

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

20B Exclusion of withdrawal when member ends employment

(1) In section CS 7, subsection (4B) is repealed and the following is inserted after subsection (4):

"*Increases in employer contributions considered consistent by Commissioner*

"(4B) A withdrawal satisfies this subsection if, at the time of the withdrawal, specified superannuation contributions have been made for the member by the employer, or another employer, such that—

"(a) the contributions relate to some or all of the period that—

"(i) starts on the 1st day of the tax year that starts 2 tax years before the tax year in which the member ends their employment; and

"(ii) ends on the day on which the member ends their employment; and

"(b) the Commissioner considers that the contributions are consistent in size and frequency with the employer's specified superannuation contributions for other employees in comparable positions; and

"(c) the Commissioner considers that the contributions are consistent in size and frequency during the period or periods to which the employer's specified superannuation contributions for the member relate."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

21 New section CW 11C inserted

(1) After section CW 11B, the following is inserted:

"**CW 11C Proceeds from share or option acquired under venture investment agreement**

"Exempt income: proceeds from share or option

"(1) An amount of income that a non-resident derives from the sale or other disposal of a share, or option to buy a share, in a company is exempt income if the requirements of **subsections (2) to (5)** are satisfied.

"Requirement(s) relating to company at time of acquisition

"(2) (*When the non-resident acquires the share or option,*)The first requirement is that, when the non-resident first acquires a share, or option to buy a share, in the company in a way that satisfies **subsection (3)**, the company must have in New Zealand—

"(a) more than 50% in value of the company's assets; and

"(b) more than 50% in number of the company's employees.

Struck out (unanimous)

"Requirements relating to acquisition of share or option

"(3) A person (a **venture capital manager**) must acquire, as required by a venture investment agreement,—

"(a) on behalf of the non-resident, the share or option; and

"(b) on behalf of the Venture Investment Fund or a company owned by the Venture Investment Fund, another share or option that confers the same rights and imposes the same obligations as the share or option.

New (unanimous)

"Requirement relating to acquisition of first share or option

"(3) The second requirement is that, when the non-resident first acquires a share or option to buy a share (**first interest**) in the company, a person (**venture capital manager**) must acquire, at the same time and on the same terms,—

"(a) the first interest, on behalf of the non-resident; and

New (unanimous)

"(b) another share or option that confers the same rights and imposes the same obligations as the first interest—

"(i) on behalf of the Venture Investment Fund or a company owned by the Venture Investment Fund; and

"(ii) under a venture investment agreement.

"Continuing requirement(s) relating to company

"(4) *(While)*The third requirement is that, while the non-resident holds the share or option, the company must not have 1 or more of the following as a main activity:

"(a) land development:

"(b) land ownership:

"(c) mining:

"(d) provision of financial services:

"(e) insurance:

"(f) construction of public infrastructure assets:

"(g) acquisition of public infrastructure assets:

"(h) investing with a main aim of deriving, from the investment, income in the form of interest, dividends, rent, or personal property lease payments that are not royalties.

"Requirement(s) relating to situation at disposition of share or option

"(5) *(When)*The fourth requirement is that, when the non-resident disposes of the share or option,—

"(a) the venture capital manager must have complied with the venture capital manager's obligations under the venture investment agreement; and

"(b) the non-resident must have complied with the non-resident's obligations under any agreement between the non-resident and the Venture Investment Fund or a company owned by the Venture Investment Fund; and

"(c) *(the Venture Investment Fund must be satisfied on reasonable grounds that)* no person who is resident in New Zealand and no group of associated persons who are resident in New Zealand has a direct or indirect interest of more than 10% in the share or option.

"*Venture investment agreement*

"(6) In this section, **venture investment agreement** means an agreement that—

"(a) is an agreement, relating to investment in companies, between parties that include—

"(i) a venture capital manager; and

"(ii) the Venture Investment Fund or a company owned by the Venture Investment Fund; and

"(b) provides for investments under the agreement to be managed by the venture capital manager; and

"(c) provides that an investment under the agreement must be in a company that, when the first investment in the company under the agreement is made, has in New Zealand—

"(i) more than 50% in value of the company's assets; and

"(ii) more than 50% in number of the company's employees.

"Defined in this Act: employee, income, interest, non-resident, resident in New Zealand, share, venture investment agreement, Venture Investment Fund".

(2) **Subsection (1)** applies for shares or options purchased for a non-resident by a venture capital manager (*under*)in relation to a venture investment agreement made on or before 31 March (*2008*) 2010.

22 New section CW 22B inserted

(1) After section CW 22, the following is inserted:

"***Certain income of (certified)transitional resident***

"**CW 22B Certain income derived by (certified)transitional resident**

Income derived (*in a period of time*) by a person who is a (*certified*)transitional resident (*for the period*) is exempt income if the income is a foreign-sourced amount that is none of the following:

Struck out (unanimous)

"(a) a dividend:

Struck out (unanimous)

"(b) interest within the meaning given by paragraph (a) of the definition of that term in section OB 1:

"(c) employment income of a type described in section CE 1(a) to (c) and (e) to (g):

New (unanimous)

"(c) employment income of a type described in section CE 1 (Amounts derived in connection with employment) in connection with employment or service performed while the person is a transitional resident:

"(d) income from a supply of services.

"Defined in this Act: (*certified resident, dividend,*)employment income, exempt income, foreign-sourced amount, income, transitional resident".

(2) **Subsection (1)** applies for—

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(3) The law that would apply if **subsection (1)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

22B New section CW 28B inserted

After section CW 28, the following is inserted:

"**CW 28B Payment to claimant of certain accident compensation payments**

"*When this section applies*

"(1) This section applies if a person receives a payment referred to in **paragraph (g)** of the definition of the term **accident compensation payment** in section CF 1(2) (Benefits, pensions, compensation, and government grants).

"*Exempt income*

"(2) The payment is exempt income of the person if the total amount of payments referred to in **subsection (1)** paid for the income year to the person is equal to or less than the total amount of payments paid for the income year by the person for attendant care (as defined in Schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act 2001).

"Defined in this Act: accident compensation payment, exempt income, income year, payment".

23 New section CW 40B inserted

After section CW 40, the following is inserted:

"**CW 40B Income from conducting gaming-machine gambling**

An amount of income derived by a person that is gross gambling proceeds from gaming-machine gambling is exempt income if—

"(a) the person is authorised to conduct the gaming-machine gambling under the Gambling Act 2003 by a gaming-machine operator's licence and a gaming-machine venue licence; and

"(b) the person complies with the Gambling Act 2003 in applying and distributing the net gambling proceeds from the gaming-machine gambling.

"Defined in this Act: exempt income, gaming-machine gambling, gaming-machine operator's licence, gaming-machine venue licence, gross gambling proceeds, net gambling proceeds".

Struck out (unanimous)

24 Meaning of fringe benefit

(1) In section CX 2(1)(b)(i), "CX 15" is replaced by "**CX 15B**".

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

24B Private use of motor vehicle

Section CX 6(1)(b) is replaced by the following:

"(b) the person who makes the vehicle available to the employee—

"(i) owns the vehicle:

"(ii) leases or rents the vehicle:

"(iii) has a right to use the vehicle under an agreement or arrangement with the employee or a person associated with the employee."

Struck out (unanimous)

25 New sections CX 6B and CX 6C inserted

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

"**CX 6B Meaning of lease in relation to motor vehicle**

In the FBT rules, in relation to the use of a motor vehicle, a **lease** includes an agreement or arrangement between an employer and an employee transferring a right to use a motor vehicle under terms agreed between the parties.

"Defined in this Act: arrangement, employer, employee, FBT rules, motor vehicle

"**CX 6C Suspension of right to use vehicle disregarded if applies when private use**

In the application of the FBT rules to a lease of a motor vehicle between an employer and an employee, a suspension under the lease of the right to use the motor vehicle is disregarded if a result of the suspension would be—

"(a) a use of the vehicle by a party to the lease is private:

Struck out (unanimous)

"(b) a party to the lease has a right to use the vehicle privately.

"Defined in this Act: employer, employee, FBT rules, lease, motor vehicle".

New (unanimous)

25 New section CX 6B inserted

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

"**CX 6B Employer or associated person treated as having right to use vehicle under arrangement**

"*When this section applies*

"(1) This section applies for the application of the FBT rules to an agreement or arrangement—

"(a) between an employer, or a person associated with the employer, and an employee, or a person associated with the employee; and

"(b) transferring to the employer or person associated with the employer a right to use a motor vehicle under terms agreed between the parties.

"*Person treated as having right to use vehicle*

"(2) The employer or associated person is treated as having a right to use the motor vehicle for a period during which the employee—

"(a) uses the vehicle privately:

"(b) has a right to use the vehicle privately.

"Defined in this Act: employee, employer, FBT rules, lease, motor vehicle".

Struck out (unanimous)

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

(2) **Subsection (1)** applies for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

25B Employment-related loans

In section CX 9(2)(c), "fund)." is replaced by "fund):" and the following is added:

"(d) as an advance of salary and wages, if—

"(i) in the period for which the employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax), the total outstanding of such advances to the employee is not more than $2,000; and

"(ii) the contract of employment does not require the employer to make the advance."

(2) **Subsection (1)** applies for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

Struck out (unanimous)

26 New section CX 15B inserted

(1) After section CX 15, the following is inserted:

"**CX 15B Contributions to income protection insurance**

A fringe benefit arises when an employer has a liability to pay, or contribute to the payment of, a premium for income protection insurance for the benefit of an employee.

"Defined in this Act: contribution, employee, employer, fringe benefit".

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

27 Benefits provided instead of allowances

Struck out (unanimous)

(1) Section CX 17 is renumbered as section CX 17(1) and "*When not fringe benefit*" is inserted as the subsection heading.

(2) After section CX 17(1), the following is added:

New (unanimous)

(1) In section CX 17, "*When not fringe benefit*" is inserted as a subsection heading after the section heading and the following is added as subsection (2):

"*Temporary change in workplace*

"(2) A benefit that an employer provides to an employee is not a fringe benefit if it **(***is an allowance that***)**—

"(a) is in substitution for an allowance **(***under***)** described in subsection (1)(b); and

"(b) is brought about because the employee has a temporary change in their place of work while in the same employment; and

"(c) reimburses the employee for transport costs that would have been incurred relating to travel by one or more of the employee's spouse, civil union partner, or de facto partner **(***or relative***)**, and relatives for the purpose of visiting the employee in the temporary place of work; and

"(d) has a value that is no more than the amount that would be **(***reimbursed***)**provided under the allowance described in subsection (1)(b)."

(3) In the list of defined words in CX 17, ", relative" is added.

Struck out (unanimous)

(4) **Subsections (1) to (3)** apply for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

(4) **Subsections (1) to (3)** apply for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

28 New section CX 18B inserted

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

"**CX 18B Business tools**

Struck out (unanimous)

"When business tool not fringe benefit

"(1) A business tool that an employer provides to an employee is not a fringe benefit if—

"(a) the business tool is provided mainly for business use; and

"(b) the cost of the business tool to the employer is not more than $5,000.

"Private use or availability for private use of business tool not fringe benefit

"(2) The private use of a business tool that an employer provides to an employee, and the availability for private use of such a business tool, is not a fringe benefit if the business tool satisfies **subsection (1)(a) and (b)**.

New (unanimous)

"When use of business tool not fringe benefit

"(1) The private use of a business tool that an employer provides to an employee, and the availability for private use of such a business tool, is not a fringe benefit if—

"(a) the business tool is provided mainly for business use; and

New (unanimous)

"(b) the cost of the business tool to the employer, including the amount of any deduction for the cost of the business tool that the employer may make under section 20(3) of the Goods and Services Tax Act 1985, is not more than $5,000.

"Use away from employer's premises

"(3) For the purposes of **subsection (1)**, a business tool that is not taken to and used on the employer's premises may nevertheless be provided mainly for business use if the employee performs a significant part of the employee's employment duties away from the premises.

"Defined in this Act: business use, business tool, employee, employer, fringe benefit".

Struck out (unanimous)

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

(2) **Subsection (1)** applies for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

29 Benefits provided on premises

(1) Section CX 20(1), other than the subsection heading, is replaced by the following:

"(1) A benefit, other than free, discounted, or subsidised travel, accommodation, or clothing, is not a fringe benefit if the benefit is—

"(a) provided to the employee by the employer of the employee and received or used by the employee on the premises of—

"(i) the employer (*of the employee*):
"(ii) a company that is in the same group of companies as the employer (*of the employee*):

"(b) provided to the employee by a company that is in the same group of companies as the employer of the employee and received or used by the employee on the premises of—
"(i) the employer (*of the employee*):
"(ii) the company that provides the benefit."

(2) Section CX 20(2) is replaced by the following:

"*Premises of person*

"(2) In this section, the premises of a person—
"(a) include premises that the person owns or leases:
"(b) include premises, other than those referred to in **paragraph (a)**, on which an employee of the person is required to perform duties for the person:
"(c) does not include premises occupied by an employee of the person for residential purposes."

(3) In the list of defined terms for section CX 20, "company", and "group of companies" are inserted.

Struck out (unanimous)

(4) **Subsections (1) to (3)** apply for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

(4) **Subsections (1) to (3)** apply for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

30 New section CX 20B inserted

(1) After section CX 20, the following is inserted:

"**CX 20B Benefits related to health(and) or safety**

A benefit that an employer provides to an employee is not a fringe benefit to the extent to which it—

"(a) is related to the employee's health (*and*)or safety; and
"(b) is aimed at (*the elimination of hazards*)hazard management in the workplace as contemplated in the Health and Safety in Employment Act 1992; and
"(c) would be excluded by **section CX 20** from being a fringe benefit if provided on the employer's premises.

"Defined in this Act: employee, employer, employment, fringe benefit".

Struck out (unanimous)

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

(2) **Subsection (1)** applies for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

31 Benefits provided by charitable organisations

Struck out (unanimous)

(1) Section CX 21 is renumbered as section CX 21(1) and "*When not fringe benefit*" is inserted as the subsection heading.

(2) After section CX 21(1), the following subsections are added:

New (unanimous)

(1) In section CX 21, "*When not fringe benefit*" is inserted as a subsection heading after the section heading and the following is added as subsections (2) and (3):

"*When employer provides* (*credit*)*charge facilities*

"(2) Subsection (1) does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term (*credit*)charge facilities

and the value of the benefit from the short-term **(***credit* **)**charge facilities for the employee in **(***an income year of the employee***)** a tax year exceeds 5% of the employee's salary or wages for the **(***income***)** tax year.

"*Meaning of short-term* **(***credit* **)***charge facilities*

"(3) For the purposes of **(***this section***)** the FBT rules, a **short-term (*credit*)charge facility** means an arrangement that—

"(a) enables an employee of a charitable organisation to obtain goods or services that have no connection with the organisation or its operations by buying or hiring the goods or services or charging the cost of the goods or services to an account; and

"(b) places the liability for some or all of the payment for the goods or services on the organisation; and

"(c) is not a fringe benefit under section CX 9."

Struck out (unanimous)

(3) **Subsections (1) and (2)** apply for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

(2) **Subsection (1)** applies for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

31B New section CX 26B inserted

(1) After section CX 26, the following is inserted:

"**CX 26B Contributions to income protection insurance**

An employer who satisfies a liability to pay, or contribute to the payment of, a premium for income protection insurance for the benefit of an employee does not provide a fringe benefit to the employee if a payment of the insurance to the employee would be assessable income of the employee.

"Defined in this Act: contribution, employee, employer, fringe benefit".

New (unanimous)

(2) **Subsection (1)** applies for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

32 New section CX 27B inserted

(1) After section CX 27, the following is inserted:

"**CX 27B Goods provided at discount by third parties**

"*When this section applies*

"(1) This section applies (*when*)if an employer and a person who is not associated with the employer have an arrangement through which goods are provided by the person at a discount.

"*When not fringe benefit*

"(2) A discount provided by the person to an employee in a group of employees is not a fringe benefit if—

"(a) the person offers a discount to a group of persons that—

"(i) negotiates the discount on an arm's-length basis; and

"(ii) does not include the group of employees; and

"(iii) is comparable in (*size*)number to the group of employees; and

"(b) the discount offered to the group of employees is the same or less than the discount offered to the group described in **paragraph (a)**.

New (unanimous)

"Defined in this Act: arrangement, associated person, employee, employer, fringe benefit".

Struck out (unanimous)

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

(2) **Subsection (1)** applies for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

Struck out (unanimous)

33 Meaning of unclassified benefit

(1) In section CX 31(a), "CX 15" is replaced by "**CX 15B**".

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

34 Government grants to businesses

(1) Section CX 41(3) is replaced by the following:

"*Exclusions*

"(3) This section does not apply to—

"(a) a large budget screen production grant:

"(b) a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent that the grant (*is made in respect of*) relates to expenditure—

"(i) incurred by the recipient before the grant; and

"(ii) for which the recipient would be allowed a deduction in the absence of section DF 1 (Government grants to businesses)."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

35 New sections CX 44B and CX 44C inserted

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

Struck out (unanimous)

"**CX 44B Disposal of original share to share user by share supplier**

"*When this section applies*

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

"(a) acquires a share—

"(i) for the purposes of a business:

"(ii) for the purposes of an undertaking or scheme that the person enters or devises with the purpose of making a profit:

"(iii) for the purpose of disposing of the share:

"(iv) when in a business of dealing in shares; and

"(b) is the share supplier for a share-lending arrangement; and

"(c) disposes of the share to the share user as an original share under the share-lending arrangement.

"*Proceeds from disposal of original share*

"(2) The consideration derived by the person for the original share is excluded income.

"*Exclusion*

"(3) This section does not apply to a share lending fee or a replacement payment.

"Defined in this Act: excluded income, original share, share, share-lending arrangement, share supplier, share user

"**CX 44C Replacement payment**

A replacement payment derived by a person under a returning securities transfer is excluded income of the person if the replacement payment is not intended to be economically equivalent to a reward of ownership, in relation to an original share, that would be assessable income for the person if derived by the person.

"Defined in this Act: assessable income, original share, replacement payment, returning securities transfer.".

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

35 New heading and section CX 44B inserted

After section CX 44, the following is inserted:

"*Share-lending arrangements*

"**CX 44B Share-lending collateral under share-lending arrangements**

An amount of share-lending collateral derived by a person under a share-lending arrangement is excluded income of the person.

"Defined in this Act: amount, excluded income, share-lending arrangement, share-lending collateral".

35B New section DB 9B inserted

(1) After section DB 9, the following is inserted:

"**DB 9B Base price adjustment under old financial arrangements rules**

A person is allowed a deduction for an amount that is a deduction under section EZ 34(6) (Cash basis holder) or EZ 35(3) or (4) (Income and expenditure where financial arrangement redeemed or disposed of)."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

36 New heading and sections DB 12B to DB 12E inserted

After section DB 12, the following is inserted:

"*Returning securities transfers*

"**DB 12B Share supplier: cost of acquiring share after share-lending arrangement**

"*When this section applies*

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

"(a) is the share supplier for a share-lending arrangement; and

Struck out (unanimous)

"(b) acquires an original share or a replacement share—
"(i) under the share-lending arrangement:
"(ii) when the share-lending arrangement ends.

"*Expenditure in purchase of replacement share*

"(2) The person is not allowed a deduction for the cost of the acquisition referred to in **subsection (1)(b)**.

"*Link with subpart DA*

"(3) This section overrides the general permission.

"Defined in this Act: deduction, general limitation, general permission, replacement share, share, share-lending arrangement, share supplier, share user

"**DB 12C Share user: cost of acquiring share in share-lending arrangement**

"*When this section applies*

"(1) This section applies to a person who—
"(a) is the share user for a share-lending arrangement; and
"(b) acquires a share under the share-lending arrangement.

"*Expenditure in purchase of replacement share*

"(2) The person is allowed a deduction for the expenditure incurred by the person in acquiring the share—
"(a) the market value of the share, if the share is an original share acquired from the share supplier:
"(b) the cost of the share, if the share is a replacement share.

"*Link with subpart DA*

"(3) This section overrides the general permission. The general limitations still apply.

"Defined in this Act: deduction, general limitation, general permission, replacement share, share, share-lending arrangement, share supplier, share user

Struck out (unanimous)

"**DB 12D Replacement payment under returning securities transfer**

"When this section applies

"(1) This section applies to a share user who incurs expenditure as a replacement payment under a returning securities transfer.

"No deduction in some circumstances

"(2) A share user is not allowed a deduction for the replacement payment if—

"(a) the share supplier is a non-resident for whom—

"(i) the replacement payment is not assessable income; and

"(ii) the replacement payment is intended to be economically equivalent to a reward of ownership, in relation to an original share, that would be assessable income for the share supplier if derived by the share supplier; and

"(iii) the returning securities transfer is not a share-lending arrangement:

"(b) the replacement payment is not intended to be economically equivalent to a reward of ownership, in relation to an original share, that would be assessable income for the share supplier if derived by the share supplier.

"Link with subpart DA

"(3) This section overrides the general permission.

"Defined in this Act: assessable income, deduction, general permission, non-resident, original share, replacement payment, share-lending arrangement, share supplier, share user, returning securities transfer

"**DB 12E Imputation credits attached to replacement payment under share-lending arrangement**

"When this section applies

"(1) This section applies to a share user who makes a replacement payment under a share-lending arrangement and attaches an imputation credit to the replacement payment under **section ME 6B**.

Struck out (unanimous)

"*Deduction*

"(2) A share user is allowed a deduction for the amount of the imputation credit if the share user is allowed a deduction for the replacement payment.

"*Link with subpart DA*

"(3) This section supplements the general permission. The general limitations still apply.

"Defined in this Act: deduction, general limitation, general permission, imputation credit, replacement payment, share-lending arrangement, share user".

New (unanimous)

36 New heading and sections DB 12B and DB 12C inserted

After section DB 12, the following is inserted:

"*Share-lending arrangements*

"DB 12B Share-lending collateral under share-lending arrangements

"*No deduction*

"(1) A person is denied a deduction for the amount of expenditure incurred as share-lending collateral under a share-lending arrangement.

"*Link with subpart DA and other subject matter*

"(2) This section overrides—

"(a) the general permission:

"(b) sections DB 17 to DB 19.

"Defined in this Act: amount, deduction, general permission, share-lending arrangement, share-lending collateral

New (unanimous)

"**DB 12C Replacement payments and imputation credits under share-lending arrangements**

A person is allowed a deduction for—

"(a) the amount of expenditure incurred as a replacement payment under a share-lending arrangement:

"(b) the amount of imputation credit attached under **sections ME 6B and NF 8B** (which relate to imputation credits) to the replacement payment.

"Defined in this Act: amount, deduction, imputation credit, replacement payment, share-lending arrangement".

37 Research or development

(1) After section DB 26(6), the following is inserted:

"*Choice for allocation of deduction*

"(6B) A person who (*has*)is allowed a deduction under this section for expenditure that is not interest may choose to allocate all or part of the deduction—

"(a) to an income year after the income year in which the person incurs the expenditure; and

"(b) in the way required by **section EJ 21** (Allocation of deductions for research, development, resulting market development)."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

38 Some definitions

(1) In section DB 27(1), "section DB 26" is replaced by "sections DB 26, EE 1 (What this subpart does), **EJ 20** (Deductions for market development—product of research, development), and **EJ 21** (Allocation of deductions for research, development, resulting market development)".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

39 Adjustment for opening values of trading stock, livestock, and excepted financial arrangements

(1) In section DB 40(1)(c), "arrangements)." is replaced by "arrangements):" and the following is added:

"(d) a right as a share supplier under a share-lending arrangement to acquire original shares or replacement shares, if the original shares are excepted financial arrangements described in paragraph (c)."

(2) In section DB 40(4), "arrangements had" is replaced by "arrangements or right had".

(3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

39 Adjustment for opening values of trading stock, livestock, and excepted financial arrangements

(1) In section DB 40(1)(c), "arrangements)." is replaced by "arrangements):" and the following is added:

"(d) a share supplier's share-lending right, if the original shares that relate to the right are excepted financial arrangements described in paragraph (c)."

(2) In section DB 40(4), "arrangements had" is replaced by "arrangements or share-lending right had".

(3) In section DB 40, in the list of terms defined in the Act,—

(a) "original share" is inserted:

(b) "share-lending right" is inserted:

(c) "share supplier" is inserted.

39B New heading and section DB 45 added

(1) After section DB 44, the following is added:

New (unanimous)

"*Use of motor vehicle under certain arrangements*

"**DB 45 Expenditure incurred in operating motor vehicle under agreement or arrangement affected by section CX 6B**

"*Deduction*

"(1) A party to an agreement or arrangement referred to in **section CX 6B** (Employer or associated person treated as having right to use vehicle under arrangement), is allowed a deduction for expenditure incurred in operating a motor vehicle during a period for which an employer or associated person is treated under that section as having a right to use the vehicle.

"*Link with subpart DA*

"(2) This section overrides the private limitation and exempt income limitation. The general permission must still be satisfied and the other general limitations still apply.

"Defined in this Act: arrangement, deduction, exempt income limitation, FBT rules, general limitation, general permission, lease, motor vehicle".

(2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2006.

Struck out (unanimous)

40 New section DC 15 inserted

(1) After section DC 14, the following is inserted:

"**DC 15 Contributions to employees' income protection insurance**

"*When this section applies*

"(1) This section applies when an employer has a liability to pay, or contribute to the payment of, a premium under a policy of income protection insurance for the benefit of a person who is their employee.

Struck out (unanimous)

"Expenditure

"(2) An amount equal to the amount that the employer pays or contributes is treated as expenditure incurred by the person in deriving their assessable income. The amount is allocated to the income year in which the employer makes the payment.

"Link with subpart DA

"(3) The general permission must be satisfied and the general limitations still apply.

"Defined in this Act: amount, employee, employer, general permission, income year, pay".

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

41 Deductions for business use

In section DE 2(1)**(**, *in paragraph* **)**(a), "; or" is replaced by ":".

New (unanimous)

41B Heading to subpart DF

In the heading to subpart DF, "**grants**" is replaced by "**grants and compensation**".

42 Government grants to businesses

(1) In section DF 1(1)**(**, *in paragraph* **)**(d), "exist." is replaced by "exist; and" and the following is added:

"(e) the payment is excluded income under **section CX 41** (Government grants to businesses)."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

42B New section DF 4 added

After section DF 3, the following is added:

"**DF 4 Payment for attendant care by claimant receiving type of accident compensation payments**

"*When this section applies*

"(1) This section applies if a person receives for an income year a payment of assessable income that is an accident compensation payment under **paragraph (g)** of the definition of that term in section CF 1(2) (Benefits, pensions, compensation, and government grants).

"*Deduction*

"(2) The person is allowed a deduction for the amount of a payment paid for the income year by the claimant to a caregiver for attendant care (as defined in Schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act 2001).

"*Link with subpart DA*

"(3) This section supplements the general permission and overrides the capital limitation and private limitation for the amount described in **subsection (2)**. The other general limitations still apply.

"Defined in this Act: accident compensation payment, assessable income, capital limitation, general limitation, general permission, income year, payment, private limitation".

43 When attributed CFC loss arises

(1) Section DN 2(d) is replaced by the following:

"(d) at any time in the accounting period, the person is a New Zealand resident who is not a **(***certified***)** transitional resident; and".

(2) In section DN 2, "**(***certified* **)**transitional resident" is inserted in the list of terms defined in the Act.

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

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(4) The law that would apply if **subsections (1) and (2)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

44 When FIF loss arises

(1) Section DN 6(1)(c)(iv) is replaced by the following:

"(iv) the exemption for a non-resident or (*certified resident*) transitional resident, in **section EX 35** (Income interest of non-resident or (*certified*)transitional resident):".

(2) Section DN 6(1)(e) is replaced by the following:

"(e) at any time in the year, the person is a New Zealand resident who is not a (*certified*) transitional resident and holds the attributing interest; and".

(3) In section DN 6, "(*certified*)transitional resident" is inserted in the list of terms defined in the Act.

(4) **Subsections (1) to (3)** apply for—

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(5) The law that would apply if **subsections (1) to (3)** did not come into force applies for—

New (unanimous)

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

45 Enhancements to land, except trees

(1) In section DO 1(1),—

(a) In the words preceding paragraph (a), "A person" is replaced by "Unless **subsection (1B)** applies, a person":

(b) In paragraph (f), "rabbit-proof." is replaced by "rabbit-proof:" and the following is added:

"(g) the regrassing and fertilising of all types of pasture, if the expenditure is not amortised under **section DO 4**."

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

"*Exclusion*

"(1B) Despite **subsection (1)(g)**, and except to the extent that the expenditure relates to a type of pasture with an estimated useful life of 1 year or less, a person is not allowed a deduction under this section for an amount of expenditure that is incurred in the course of a significant capital activity."

(3) **Subsections (1) and (2)** apply to expenditure incurred on and after 1 April 2005.

New (unanimous)

45 Enhancements to land, except trees

(1) In section DO 1(1), in paragraph (f), "rabbit-proof." is replaced by "rabbit-proof:" and the following is added:

"(g) the regrassing and fertilising of all types of pasture, if the expenditure is not incurred in the course of a significant capital activity."

(2) **Subsection (1)** applies to expenditure incurred on and after 1 April 2005.

46 Improvements to farm land

(1) After section DO 4(7) **(***(Link with subpart DA)***)**, the following is inserted:

*"Order in Council to amend***(** *Schedule 7***)** *schedule 7*

"(8) The Governor-General may from time to time by Order in Council, make regulations **(***to amend Schedule 7 so as* **)**amending schedule 7 to vary the categories of improvements and percentages of diminished value of those improvements allowed as a deduction."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

46B Improvement destroyed or made useless by qualifying event

(1) In the heading to section DO 5B, "**by qualifying event**" is omitted.

(2) Section DO 5B(1), other than the heading, is replaced by the following:

"(1) This section applies if in an income year of a person—

"(a) the person owns land, or operates a business on land, to which an improvement described in schedule 7 (Expenditure on farming, aquacultural, and forestry improvements) has been made for the purposes of the business; and

"(b) the improvement is destroyed or irreparably damaged and made useless for the purpose of deriving income; and

"(c) the person would be entitled for the income year to a deduction under section DO 4 or DO 5 for expenditure on the improvement if the improvement had not been destroyed or irreparably damaged and made useless; and

"(d) the damage occurs in an income year that corresponds to the 2005–06 or a subsequent tax year; and

"(e) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person."

New (unanimous)

(3) In section DO 5B, in the list of terms defined in the Act, "qualifying event" is omitted.

46BB New section DO 7 added

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

"**DO 7 Improvement destroyed or made useless**

"*When this section applies*

"(1) This section applies if in an income year of a person—

"(a) the person carries on an aquacultural business in New Zealand—

"(i) that satisfies section DO 6(1)(b); and

"(ii) for the purposes of which an improvement described in schedule 7 (Expenditure on farming, aquacultural, and forestry improvements) has been made; and

"(b) the improvement is destroyed or irreparably damaged and made useless for the purpose of deriving income; and

"(c) the person would be entitled for the income year to a deduction under section DO 6 for expenditure on the improvement if the improvement had not been destroyed or irreparably damaged and made useless; and

"(d) the damage occurs in an income year that corresponds to the 2005–06 or a subsequent tax year; and

"(e) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.

"*Deduction: diminished value of expenditure*

"(2) The person is allowed a deduction of the amount of the diminished value, for the income year, of the expenditure on the improvement.

New (unanimous)

"*Link with subpart DA*

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

"Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year".

46C Improvement destroyed or made useless by qualifying event

(1) In the heading to section DP 3B, "**by qualifying event**" is omitted.

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

"(b) the improvement is destroyed or irreparably damaged and made useless for the purpose of deriving income—

"(i) in an income year that corresponds to the 2005–06 or a subsequent tax year; and

"(ii) other than as a result of the action or failure to act of the person, an agent of the person, or an associated person; and".

(3) In section DP 3B, in the list of terms defined in the Act, "qualifying event" is omitted.

46D Disposal of property

(1) In section DR 2(4), "section EY 46(6)" is replaced by "section EY 46(3)".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

47 New section DV 10B inserted

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

"**DV 10B Distribution to member of co-operative company, excluded from being dividend**

"*Deduction*

"(1) A co-operative company, or a company owned by a co-operative company, is allowed a deduction for a distribution made for an income year to a member of the co-operative company

if an amount of the distribution is excluded by **section CD 24B** (Distribution to member of co-operative company based on member's transactions) from being a dividend.

"*Amount of deduction*

"(2) The amount of the deduction **(***for the distribution* **)**is the amount of the distribution that is excluded by **section CD 24B** from being a dividend.

"*Timing of deduction*

"(3) The deduction for the distribution is allocated to the income year for which the distribution is made.

"*Link with subpart DA*

"(4) This section supplements the general permission. The general limitations still apply.

"Defined in this Act: company, co-operative company, deduction, general permission, general limitation, income year, shareholder".

(2) **Subsection (1)** applies for income years corresponding to the **(***2006–07***)** 2005–06 and subsequent tax years.

Struck out (unanimous)

48 Trading stock, livestock, and excepted financial arrangements

(1) In section EA 1(1)(c), "arrangements)." is replaced by "arrangements):" and the following is added:

"(d) a right as a share supplier under a share-lending arrangement to acquire original shares or replacement shares, if the original shares are excepted financial arrangements described in paragraph (c)."

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

48 Trading stock, livestock, and excepted financial arrangements

(1) In section EA 1(1)(c), "arrangements)." is replaced by "arrangements):" and the following is added:

"(d) a share supplier's share-lending right, if the original shares that relate to the right are excepted financial arrangements described in paragraph (c)."

(2) In section EA 1, in the list of terms defined in the Act,—

(a) "original share" is inserted:

(b) "share-lending right" is inserted:

(c) "share supplier" is inserted.

49 New section EC 5B inserted

(1) After section EC 5, the following is inserted:

"**EC 5B Transfer of livestock because of self-assessed adverse event**

"When this section applies

"(1) This section applies **(***in an income year* **)**to livestock that is donated, or supplied for consideration **(***worth* **)**with a value that is less than the market value of the livestock, to a recipient—

"(a) for use in a farming or agricultural business that is affected by a self-assessed adverse event; and

"(b) by a donor or supplier who is not associated with the recipient.

"Treatment by donor or supplier

"(2) The donor or supplier must treat the livestock as having on the day of the transfer of the livestock—

"(a) no value, if the livestock is donated to the recipient:

"(b) the value of the consideration provided by the recipient, otherwise.

"Treatment by recipient

"(3) The recipient must treat the livestock as having on the day of the transfer of the livestock—

"(a) no value, if the livestock is donated to the recipient:
"(b) the value of the consideration provided by the recipient, otherwise.

"Defined in this Act: market value, self-assessed adverse event".

(2) **Subsection (1)** applies for transfers of livestock in income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

49B Replacement breeding stock

(1) In section EC 48(1)(a)(ii), "applies the proceeds in buying" is replaced by "buys".

(2) In section EC 48(1)(b)(ii), "applies the payment in buying" is replaced by "buys".

(3) In section EC 48(2), "of the proceeds of sale under subsection (1)(a) or payment under subsection (1)(b)" is repealed.

(4) **Subsections (1) to (3)** apply for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

50 Valuation of excepted financial arrangements

(1) The heading to section ED 1(1) is replaced by "*Valuation method for excepted financial arrangement*".

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

"*Valuation method for right to acquire share under share-lending arrangement*

"(1B) For a person who has a right as a share supplier under a share-lending arrangement to acquire revenue account property that is an excepted financial arrangement, the value of the right at the end of each income year is the cost of the original share at the time the person entered the share-lending arrangement.

"*Valuation method for share acquired by share supplier under share-lending arrangement*

"(1C) For a person who is a share supplier under a share-lending arrangement and acquires an original share or replacement

Struck out (unanimous)

share from the share user under the share-lending arrangement, the value of the share at the end of each income year is the cost of the original share at the time the person entered the share-lending arrangement."

(3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

50 Valuation of excepted financial arrangements

(1) The heading to section ED 1(1) is replaced by "*Valuation methods for excepted financial arrangements*".

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

"*Valuation method for right to acquire share under share-lending arrangement*

"(1B) Despite subsection (1), a share supplier's share-lending right has the value at the end of each income year that is equal to the amount described in **subsection (1D)**.

"*Valuation method for share acquired by share supplier under share-lending arrangement*

"(1C) Despite subsection (1), the original share or an identical share acquired by a share supplier from a share user under a share-lending arrangement, has the value at the end of each income year that is equal to the amount described in **subsection (1D).**

"*Amount*

"(1D) For **subsections (1B) and (1C)**, the amount is the value of the original share at cost, determined by applying this section to the share immediately before the share supplier's disposal of the share under the relevant share-lending arrangement."

(3) In section ED 1, in the list of terms defined in the Act,—

(a) "identical share" is inserted:

(b) "original share" is inserted:

(c) "share-lending arrangement" is inserted:

(d) "share-lending right" is inserted:

New (unanimous)

(e) "share supplier" is inserted:
(f) "share user" is inserted.

51 Transfers of certain excepted financial arrangements within wholly-owned groups

(1) In section ED 2(1), the following is inserted after paragraph (a):

"(ab) the transfer of the excepted financial arrangement is not made under a share-lending arrangement; and".

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

52 What this subpart does

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

"Choice for allocation of deduction for depreciation loss—property used for research, development, market development

"(4B) A person who in an income year usesan item for research or development (*in an income year*) or for market development that gives rise to a deduction allocated under **section EJ 20** (Deductions for market development—product of research, development), and as a result hasan amount of depreciation loss for the item for the income year, may choose to allocate all or part of the deduction for the depreciation loss—

"(a) to an income year after the income year for which the person has the depreciation loss; and

"(b) in the way required by **section EJ 21** (Allocation of deductions for research, development, resulting market development)."

New (unanimous)

(1B) In section EE 1, in the list of terms defined in the Act—

New (unanimous)

(a) "development" is inserted:
(b) "research" is inserted.

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

53 Economic rate

(1) After section EE 25(5), the following is added:

"Application of section: acquisition date for depreciable property

"(6) This section applies to economic depreciation rates required to be set for items of depreciable property that are—
"(a) plant or equipment acquired before 1 April 2005:
"(b) buildings acquired before 19 May 2005."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

53 Section EE 25 replaced

(1) Section EE 25 is replaced by the following:

"**EE 25 Setting of economic depreciation rate**

"Relevant provisions

"(1) The economic depreciation rate that applies to a kind of item of depreciable property is set under—
"(a) **section EE 25B**, for items that—
"(i) are not buildings, fixed life intangible property, excluded depreciable property, or property for which an economic rate is given by **section EE 25D** or set under **section EE 25E**; and
"(ii) are acquired on or after 1 April 2005:
"(b) **section EE 25C**, for items that are buildings and—
"(i) are acquired on or after 19 May 2005; and

New (unanimous)

"(ii) do not have an economic depreciation rate set under **section EZ 21B**:

"(c) **section EE 25D**, for certain aircraft and motor vehicles acquired on or after 1 April 2005:

"(d) **section EE 25E**, for items that—

"(i) have an estimated residual market value greater than 13.5% of cost:

"(ii) would, in the absence of **section EE 25E**, have an economic depreciation rate set under **section EE 25B or EE 25C**:

"(e) **section EZ 21B** (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005) for items that—

"(i) are not buildings, fixed life intangible property, or excluded depreciable property and are acquired before 1 April 2005:

"(ii) are buildings acquired before 19 May 2005:

"(iii) are buildings acquired on or after 19 May 2005, as relationship property or from a company in the same wholly-owned group of companies, from a person who applied to the item an economic depreciation rate set under **section EZ 21B** or a corresponding provision.

"No rate for fixed life intangible property or excluded depreciable property

"(2) An economic depreciation rate must not be set for a kind of item of depreciable property that is fixed life intangible property or excluded depreciable property.

"Overriding effect of election under section EE 26B

"(3) **Subsection (1)(a)** is subject to **section EE 26B**.

"Defined in this Act: depreciable property, economic rate, estimated residual market value, excluded depreciable property, fixed life intangible property".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

54 New sections EE 25B (*and EE 25C*)to EE 25E inserted

(1) After section EE 25, the following are inserted:

"**EE 25B Economic rate for certain depreciable property (*acquired on or after 1 April 2005*)**

"*What this section is about*

"(1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property.

"*Exclusion*

Struck out (unanimous)

"(2) This section does not apply to buildings, fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set.

New (unanimous)

"(2) This section does not apply to buildings, fixed life intangible property, excluded depreciable property, or property for which an economic rate is given by **section EE 25D** or set under **section EE 25E**.

"*Rate set by Commissioner*

"(3) The Commissioner sets the rate from time to time by—

"(a) following the procedure set out in this section; and

"(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

"*Procedure for setting economic rate*

"(4) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—

"(a) gets a figure by applying the formula in **subsection (5)** to items of that kind; and

"(b) rounds the figure up or down to the nearest rate specified in **schedule 11B, column 1** (Banded rates of depreciation); and

"(c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if

the Commissioner thinks it is appropriate to do so having regard to—

"(i) the rate calculated for each kind; and

"(ii) the reduction in compliance costs that is likely to be achieved.

"*Formula*

"(5) The formula is—

$$\frac{2}{\text{estimated useful life}}$$

"*Definition of item in formula*

"(6) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.

"Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property

"**EE 25C Economic rate for (*depreciation of building acquired on or after 19 May 2005*) buildings**

"*What this section is about*

"(1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property that is a building and for which an economic rate is not set under **section EE 25E** or **EZ 21B**.

"*Rate set by Commissioner*

"(2) The Commissioner sets the rate from time to time by—

"(a) following the procedure set out in this section; and

"(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

"*Procedure for setting economic rate*

"(3) To set the (*diminishing value*) straight-line rate for a kind of item of depreciable property, the Commissioner—

"(a) gets a figure by applying the formula in **subsection (4)** to items of that kind; and

"(b) rounds the figure up or down to the nearest rate specified in **schedule 11B, column 4** (Banded rates of depreciation); and

"(c) sets the same rate for some or all of the kinds of buildings that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—

"(i) the rate calculated for each kind; and

"(ii) the reduction in compliance costs that is likely to be achieved.

"*Formula*

"(4) The formula is—

$$\frac{1}{\text{estimated useful life}}$$

"*Definition of item in formula*

"(5) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.

"*Contracts existing at 19 May 2005*

Struck out (unanimous)

"(6) Despite **subsection (1)**, a building that is the subject of a contract that was entered into before 19 May 2005 must be treated on the basis of the ownership of the building immediately before 19 May 2005.

New (unanimous)

"(6) Despite **subsection (1)**, a person who before 19 May 2005 enters into a binding contract for the purchase or construction of a building must apply to the building the economic rate for the type of the building determined under **section EZ 21B** (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005).

"Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property

New (unanimous)

"**EE 25D Economic rate for certain aircraft and motor vehicles**

"*What this section does*

"(1) This section gives the economic depreciation rate for certain aircraft and motor vehicles.

"*Rate for certain aircraft*

"(2) The economic rate for an aircraft is a diminishing value rate of 10% or a straight-line rate of 7% if the aircraft—

"(a) is self-propelled; and

"(b) has fixed wings; and

"(c) is not an international aircraft; and

"(d) is not a helicopter.

"*Rate for certain motor vehicles*

"(3) The economic rate for a motor vehicle having seats for no more than 12 persons is a diminishing value rate of 30% or a straight-line rate of 21% if the motor vehicle—

"(a) is not available for hire:

"(b) is available for hire for a hire period of more than 1 month:

"(c) is a taxi:

"(d) is a minibus.

"Defined in this Act: diminishing value rate, economic rate, international aircraft, minibus, straight-line rate

"**EE 25E Economic rate for plant, equipment, or building, with high residual value**

"*What this section is about*

"(1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—

"(a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and

"(b) the items are—

"(i) plant or equipment acquired before 1 April 2005:

New (unanimous)

"(ii) buildings acquired before 19 May 2005.

"Rate set by Commissioner

"(2) The Commissioner sets the rate from time to time by—

"(a) following the procedure set out in this section; and

"(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

"Procedure for setting economic rate

"(3) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—

"(a) gets a figure by applying the formula in **subsection (4)** to items of that kind; and

"(b) rounds the figure up or down to the nearest rate specified in schedule 11, column 1 (Banded rates of depreciation); and

"(c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—

"(i) the rate calculated for each kind; and

"(ii) the reduction in compliance costs that is likely to be achieved.

"Formula

"(4) The formula is—

$$1 - \left(\left(\frac{\text{residual value}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}} \right).$$

"Definition of item in formula

"(5) In the formula,—

"(a) **residual value** is the greater of—

"(i) estimated residual market value, which is defined in section EE 58:

"(ii) 13.5% of cost:

"(b) **cost** is the cost of items of the kind to which the formula is applied:

New (unanimous)

"(c) **estimated useful life** is defined in section EE 54.

"Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated residual market value, estimated useful life, excluded depreciable property, fixed life intangible property".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

54B Annual rate for item acquired in person's 1995–96 or later income year

(1) In section EE 26(1), after "a person acquires", ", other than under **section FCB 3** (Emigrating company treated as disposing of property and immediately reacquiring property)," is inserted.

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

55 New section EE 26B inserted

After section EE 26, the following is inserted:

"**EE 26B Election in respect of certain depreciable property acquired on or after 1 April 2005(and before 2005–06 income year)**

Struck out (unanimous)

"Election

"(1) Subject to **subsection (2)**, a person who acquired an item of depreciable property that is not a building on or after 1 April 2005 and before the commencement of the person's income year corresponding to the 2005–06 tax year may elect to calculate the depreciation loss for that item for income years corresponding to the 2005–06 and subsequent tax years in accordance with the economic depreciation rate determined under sections EE 25B.

Struck out (unanimous)

"Election to be made in return of income

"(2) For an item of depreciable property, an election under **subsection (1)** must be made in the person's 2005–06 return of income.

"Defined in this Act: depreciation loss, depreciable property, economic depreciation rate, income year

New (unanimous)

"When this section applies

"(1) This section applies if a person acquired an item of depreciable property that is not a building—

"(a) on or after 1 April 2005; and

"(b) before the commencement of the person's income year corresponding to the 2006–07 tax year.

"Election to use economic depreciation rate determined under section EZ 21B

"(2) The person may elect to calculate the depreciation loss for the item of depreciable property for income years corresponding to the 2005–06 and subsequent tax years in accordance with the economic depreciation rate determined for the type of item under **section EZ 21B** (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005).

"Election to be made in return of income

"(3) The person must make an election under **subsection (2)** in the person's return of income for the 2005–06 tax year.

"Defined in this Act: depreciation loss, depreciable property, economic depreciation rate, income year, return of income, tax year".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

56 Items of low value

(1) In section EE 31(1) the subsection heading is replaced by "*Assets acquired on or before 19 May 2005*".

(2) In section EE 31(1)(a), "(on or before 19 May 2005)" is inserted after "acquires".

(3) After section EE 31(1), the following is inserted:

"*Assets acquired after 19 May 2005*

"(1B) This section applies when—

"(a) a person acquires (after 19 May 2005), in an income year, an item of property for a total cost of $500 or less; and

"(b) the person uses the item, or has the item available for use, in the income year; and

"(c) the item would be depreciable property if the person did not deal with it under this section; and

"(d) the item has not and will not become part of any other property that is depreciable property; and

"(e) the person is denied a deduction for the cost of the item if the person does not deal with the item under this section; and

"(f) the item is not acquired at the same time and from the same supplier as any other items to which the same depreciation rate would apply if they were all treated as items of depreciable property, although this paragraph does not apply if—

"(i) the total cost of all the items is $500 or less; or

"(ii) the total cost of all the items that are not treated by the person solely as trading stock, when the items generally constitute the person's trading stock, is $500 or less."

New (unanimous)

56 Items of low value

(1) Section EE 31(1), other than the heading, is replaced by the following:

New (unanimous)

"(1) This section applies for an item of property that a person acquires, in an income year, if—

"(a) the total cost for the item is equal to or less than the threshold value given for the item by **subsection (1B)**; and

"(b) the person uses the item, or has the item available for use, in the income year; and

"(c) the item would be depreciable property if the person did not deal with it under this section; and

"(d) the item has not been and will not become part of any other property that is depreciable property; and

"(e) the person is denied a deduction for the cost of the item if the person does not deal with the item under this section; and

"(f) when the item is one of a group of items, acquired at the same time and from the same supplier, to which the same depreciation rate would apply if they were all treated as items of depreciable property,—

"(i) if **subparagraph (ii)** does not apply, the total cost for all the items in the group is equal to or less than the threshold value given for the item by **subsection (1B)**:

"(ii) if the items generally constitute the person's trading stock, the total cost for all the items in the group not treated by the person solely as trading stock is equal to or less than the threshold value given for the item by **subsection (1B)**.

"*Threshold value for item*

"(1B) The threshold value for an item is—

"(a) $200, if the item is acquired before 19 May 2005:

"(b) $500, if the item is acquired on or after 19 May 2005."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

57 Consideration for purposes of section EE 37

(1) After section EE 38(1), the following is added:

"Amount derived may be nil or negative

"(1B) For the purposes of section EE 37, an amount that a person derives as consideration may be nil or a negative amount."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

57B Effect of disposal or event

(1) In section EE 41(3), "This section" is replaced by "Subsection (2)".

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

58 Other definitions

(1) In section EE 58, in the definition of **economic rate**, "section EE 25" is replaced by "**(***section EE 25,* **)(*25B, or 25C*)sections EE 25B to EE 25E**".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

59 ACC levies and premiums

(1) In section EF 3(3), "column E (Months for payment of provisional tax and terminal tax) is to be treated as if it were due and payable on the relevant date in column D of that part of the schedule" is replaced by "column H (Dates for payment of provisional tax) is treated as if it were due and payable on the relevant date in schedule 13, part A, column G for the person's corresponding income year".

(2) Section EF 3(4), other than the heading, is replaced by the following:

"(4) For the purposes of subsection (3), references to the date in schedule 13, part A, columns G and H (which refer to months only and not days) are references to the day in the relevant month that is fixed by the following:

"(a) the definition of **instalment date** in section OB 1 (Definitions); and

"(b) **sections MB 1(3), and MB 19 to 23** (which relate to provisional tax instalments in transitional years), and **MC 1** (Payment of terminal tax)."

(3) In the list of defined terms for section EF 3, the references to "first instalment date", "second instalment date", and "third instalment date" are omitted.

(4) **Subsections (1) to (3)** apply for income years corresponding to the (*2007–08*) 2008–09 and subsequent tax years.

60 Meaning of self-assessed adverse event

(1) Section EH 36 is repealed.

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

61 Meaning of self-assessed adverse event

(1) Section EH 63 is repealed.

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

61B Leases: income derived in anticipation

(1) Section EI 6(3)(b) is replaced by the following:

"(b) the person must give the notice in the tax year following the tax year to which the income year of derivation corresponds:".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

62 New heading and sections EJ 20 and EJ 21 inserted

(1) After section EJ 19, the following is inserted:

"***Research, development, and resulting market development***

"**EJ 20 Deductions for market development—product of research, development**

Struck out (unanimous)

"*Deduction affected*

New (unanimous)

"*When this section applies*

"(1) This section applies (*to*)if a person (*who has*)is allowed a deduction for expenditure that is not interest and is incurred—

"(a) on market development for a product that has resulted from expenditure incurred by the person on research or development; and

Struck out (unanimous)

"(b) before the person first derives assessable income from the use of the product; and

"(c) before the person begins commercial production or commercial use of the product.

"*Choice for allocation of deduction*

"(2) The person may choose to allocate all or part of the deduction to an income year—

"(a) after the income year in which the person incurs the expenditure; and

"(b) in the way required by **section EJ 21**.

"Defined in this Act: assessable income, deduction, development, income year, research

"**EJ 21 Allocation of deductions for research, development, resulting market development**

Struck out (unanimous)

"*Deduction affected*

New (unanimous)

"*When this section applies*

"(1) This section applies (*for*) if a person (*to*) has—

"(a) a deduction, for expenditure incurred on research or development, that the person chooses to allocate under **section DB 26(6B)** (Research or development):

"(b) a deduction, for depreciation losses for an item used (*in the*) for research or development, that the person chooses to allocate under **section EE 1(4B)** (What this subpart does):

"(c) a deduction, for expenditure incurred on market development for a product that has resulted from expenditure incurred on research or development, that the person chooses to allocate under **section EJ 20(2)**.

"*Timing of* (*allocated*) *deduction*

"(2) The person must allocate (*a*) the deduction to an income year—

"(a) in which the person derives assessable income that the person would not have derived but for—

"(i) expenditure that gives rise to a deduction that may be allocated under this section:

"(ii) the use or disposal of an item for which the person has a depreciation loss that may be allocated under this section:

"(b) to which the person would be permitted by Part I (Treatment of net losses) to carry forward a net loss for the income year in which the expenditure or depreciation loss was incurred.

"Amount of deduction allocated to income year

"(3) **(***A* **)**The person must allocate to an income year an amount of deductions referred to in **subsection (1)** that is **(***not less***)** equal to or greater than the lesser of—

"(a) the amount of assessable income referred to in **subsection (2)(a)** that the person derives in the income year:

"(b) the amount of the deductions that has not been allocated to earlier income years.

"Defined in this Act: assessable income, deduction, depreciation losses, development, income year, research".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

62B Refund

In the heading to section EK 12, "**if request or excess balance**" is added after "**Refund**".

63 What is an excepted financial arrangement?

(1) After section EW 5(11), the following is inserted:

New (unanimous)

"Share-lending arrangement

"(11B) A share-lending arrangement is an excepted financial arrangement."

(2) After section EW 5(15), the following is inserted:

"Certain arrangements to which **(***certified* **)***transitional resident is party*

"(15B) An arrangement to which a **(***certified***)** transitional resident is a party is an excepted financial arrangement for the **(***certified***)** transitional resident if—

Struck out (unanimous)

"(a) the certified resident is a non-resident when becoming a party to the arrangement; and

"(b) no other party to the arrangement is a New Zealand resident; and

"(c) the arrangement is not for a purpose of a business carried on in New Zealand by a party to the arrangement."

New (unanimous)

(2B) In section EW 5, in the list of terms defined in the Act,—

(a) "New Zealand resident" is inserted:

(b) "non-resident" is inserted:

(c) "share-lending arrangement" is inserted:

(d) "transitional resident" is inserted.

Struck out (unanimous)

(3) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

(4) **Subsection (2)** applies for—

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(5) The law that would apply if **subsection (2)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

64 Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease

(1) Section EW 32(7), other than the heading, is replaced by the following:

"(7) This section does not apply if the agreement, option, or lease—

"(a) has lapsed or does not proceed:

"(b) is a transaction—

"(i) that is part of share-lending arrangement; and

"(ii) to which **section EW 34B or EW 34C** applies."

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

65 Consideration when person enters rules: accrued obligation

(1) Section EW 37(1), other than the heading, is replaced by the following:

"(1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued obligation to pay consideration under the arrangement, 1 or more of the following situations arise:

"(a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

"(b) the person is a non-resident who—

"(i) becomes a New Zealand resident who is not a **(***certified***)** transitional resident; and

"(ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

"(c) the person is a **(***certified* **)**transitional resident for whom the arrangement ceases to be an excepted financial arrangement described in **section EW 5(15B)**:

"(d) the person is a (*certified*)transitional resident who becomes a New Zealand resident who is not a (*certified*)transitional resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in **section EW 5(15B)**:

"(e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of section EW 5(16) to (18)."

(2) In section EW 37, in the list of terms defined in the Act,—

Struck out (unanimous)

(a) "certified resident" is inserted:

(b) "New Zealand resident" is inserted:

(c) "non-resident" is inserted:

(d) "resident in New Zealand" is omitted(.):

New (unanimous)

(e) "transitional resident" is inserted.

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

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(4) The law that would apply if **subsections (1) and (2)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

66 Consideration when person enters rules: accrued entitlement

(1) Section EW 42(1), other than the heading, is replaced by the following:

"(1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued entitlement to receive consideration under the arrangement, 1 or more of the following situations arise:

"(a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

"(b) the person is a non-resident who—

"(i) becomes a New Zealand resident who is not a **(***certified***)** transitional resident; and

"(ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

"(c) the person is a **(***certified resident* **)**transitional resident for whom the arrangement ceases to be an excepted financial arrangement described in **section EW 5(15B)**:

"(d) the person is a **(***certified* **)**transitional resident who becomes a New Zealand resident who is not a **(***certified* **)**transitional resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in **section EW 5(15B)**:

"(e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of section EW 5(16) to (18)."

(2) In section EW 42, in the list of terms defined in the Act,—

Struck out (unanimous)

(a) "certified resident" is inserted:

(b) "New Zealand resident" is inserted:

(c) "non-resident" is inserted:

(d) "resident in New Zealand" is omitted**(.)**:

New (unanimous)

(e) "transitional resident" is inserted.

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

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(4) The law that would apply if **subsections (1) and (2)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

67 New heading and section EW 52B inserted

(1) After section EW 52, the following is inserted:

"***Treatment of original share acquired under financial arrangement***

"**EW 52B Share supplier under share lending arrangement**

"When this section applies

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

"(a) acquires a share under a financial arrangement (the **original financial arrangement**); and

"(b) is the share supplier for a share lending arrangement; and

"(c) disposes of the share to the share user as an original share under the share lending arrangement.

Struck out (unanimous)

"*Treatment of reacquisition of original share*

"(2) If the person reacquires the original share under the share lending arrangement, for the purposes of applying the financial arrangements rules to the original financial arrangement—

"(a) the person did not dispose of the original share to the share user; and

"(b) the person continued to own the original share until the time that the person reacquired the original share.

"*Treatment of acquisition of replacement share*

"(3) If the person acquires a replacement share under the share lending arrangement, for the purposes of the financial arrangements rules in relation to the original financial arrangement—

"(a) the replacement share is the share that the person acquired under the original financial arrangement; and

"(b) the person continued to own the replacement share until the time that the person acquired the replacement share.

"Defined in this Act: financial arrangement, financial arrangements rules, original share, replacement share, share, share lending arrangement, share supplier, share user".

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

67 New heading and section EW 52B inserted

After section EW 52, the following is inserted:

"***Treatment of original share acquired under financial arrangement***

"**EW 52B Share supplier under share-lending arrangement**

"*When this section applies*

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

"(a) acquires a share under a financial arrangement (**original financial arrangement**); and

New (unanimous)

"(b) is the share supplier for a share-lending arrangement; and

"(c) disposes of the share to the share user as an original share under the share-lending arrangement.

"*Treatment of reacquisition of original share*

"(2) If the person reacquires the original share under the share-lending arrangement, for the purposes of applying the financial arrangements rules to the original financial arrangement—

"(a) the person did not dispose of the original share to the share user; and

"(b) the person continued to own the original share until the time that the person reacquired the original share.

"*Treatment of acquisition of replacement share*

"(3) If the person acquires an identical share under the share-lending arrangement, for the purposes of the financial arrangements rules in relation to the original financial arrangement—

"(a) the identical share is the share that the person acquired under the original financial arrangement; and

"(b) the person continued to own the identical share until the time that the person acquired the replacement share.

"Defined in this Act: financial arrangement, financial arrangements rules, identical share, original share, share, share-lending arrangement, share supplier, share user".

68 Income interests on days of non-residence

(1) The heading to section EX 16 is replaced by "**Income interests for certain purposes**".

(2) Section EX 16(1), other than the heading, is replaced by the following:

"(1) This section applies for the purposes of determining the attributed CFC income or loss of a person for a period if the person holds an income interest in the CFC on a day in the period."

(3) Section EX 16(2), other than the heading, is replaced by the following:

"(2) For the purposes of calculating the attributed CFC income or loss of a person for a period, the person has an income interest in a CFC of zero on a day in the period if, on the day, the person is—

"(a) a non-resident:

"(b) a (*certified*)transitional resident."

(4) In section EX 16, "(*certified*)transitional resident" is inserted in the list of terms defined in the Act.

(5) **Subsections (1) to (4)** apply for—

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(6) The law that would apply if **subsections (1) to (4)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

69 Section EX 17 replaced

(1) Section EX 17 is replaced by the following:

"**EX 17 Income interest(for period) if variations within period**

Struck out (unanimous)

"Section applies if income interest varies within period

New (unanimous)

"When this section applies

"(1) This section applies if a person's income interest in a CFC, calculated under sections EX 8 to EX 16, varies between days in a period.

"Weighted average

"(2) The person's income interest for the period is the total of the amounts for the period, each of which is calculated using the formula in **subsection (3)** for a day in the period.

"Formula

"(3) The formula is—

$$\frac{\text{income interest for day}}{\text{days in period.}}$$

"Definition of items in formula

"(4) In the formula,—

"(a) **income interest for day** is—

"(i) the income interest during the day, if the income interest does not vary during the day:

"(ii) the income interest at the start of the day, if the income interest varies during the day:

"(b) **days in period** is the number of days in the period.

"Defined in this Act: CFC, income interest".

Struck out (unanimous)

(2) **Subsection (1)** applies for—

(a) a person who becomes a New Zealand resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

69B Taxable distribution from non-qualifying trust

(1) In section EX 19(5), "2006–07" is replaced by "2011–12".

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

69C Branch equivalent income or loss: calculation rules

(1) In section EX 21(35), "2006–07" is replaced by "2011–12".

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

70 Residence in grey list country

Section EX 24(1), except for the heading, is replaced by the following:

"(1) For the purposes of this subpart and subparts CQ (Attributed income from foreign equity) **(***and***)**, DN (Attributed losses from foreign equity), and LF (Underlying foreign tax credits), a CFC is resident in a country listed in schedule 3, part A (International tax rules: grey list countries) if—

"(a) the CFC is liable in the country to income tax on the CFC's income because the CFC—

"(i) is domiciled in the country:

"(ii) is resident in the country:

"(iii) is incorporated in the country:

"(iv) has its place of management in the country:

"(b) the CFC is organised under the laws of the country and the country—

"(i) imposes on persons holding income interests in the CFC the liability for income tax on the CFC's income; and

"(ii) under the laws of the country, is the source of 80% or more of the income of the CFC."

New (unanimous)

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

71 Grey list exemption

Section EX 33(1), except for the heading, is replaced by the following:

"(1) A person's rights in a FIF in an income year are not an attributing interest if, at all times in the income year—

"(a) the FIF is not an entity described in schedule 4, part B (Foreign investment funds); and

"(b) **(***there is* **)**a country listed in schedule 3, part A (International tax rules: grey list countries) **(***that* **),** in relation to the FIF, satisfies at least 1 of the grounds for exemption given by **subsections (1B) and (1C)**.

"*First ground for exemption*

"(1B) The country—

"(a) is the residence of the FIF under section OE 2(3) to (6) (Determination of residence of company); and

"(b) imposes on the FIF liability for income tax on the FIF's income because the FIF—

"(i) is domiciled in the country:

"(ii) is resident in the country:

"(iii) is incorporated in the country:

"(iv) has its place of management in the country**(:)**.

"*Second ground for exemption*

"(1C) The country—

"(a) is the country under whose laws the FIF is organised; and

"(b) imposes on persons holding income interests in the FIF liability for income tax on the FIF's income; and

"(c) under the laws of the country, is the source of 80% or more of the income of the FIF."

New (unanimous)

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

New (unanimous)

71B Foreign exchange control exemption

(1) In section EX 34, in the list of provisions for comparison, "CG 15(2)(c), (e)" is replaced by "CG 15(2)(e)".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

72 Section EX 35 replaced

(1) Section EX 35 is replaced by the following:

"**EX 35 Income interest of non-resident or certified resident**

A person's rights in a FIF at any time are not an attributing interest if—

"(a) the person is a natural person; and

"(b) the person acquires the rights when a non-resident or certified resident; and

"(c) the person is a non-resident or certified resident at the time.

"Defined in this Act: attributing interest, certified resident, FIF, New Zealand resident, non-resident".

(2) **Subsection (1)** applies for—

(a) a person who becomes a New Zealand resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

72 Immigrant's 4 year exemption

(1) The heading to section EX 35 is replaced by "**Income interest of non-resident or transitional resident**".

(2) Section EX 35(2) is replaced by the following:

"*Exemption for non-resident or transitional resident*

A person's rights in a FIF at any time are not an attributing interest if—

New (unanimous)

"(a) the person is a natural person; and
"(b) the person acquires the rights when a non-resident or transitional resident; and
"(c) at the time, the person is a non-resident or transitional resident."

(3) In section EX 35, in the list of terms defined in the Act, "non-resident" and "transitional resident" are inserted.

(4) **Subsection (2)** applies for—
(a) a person who becomes a transitional resident on or after 1 April 2006; and
(b) income years corresponding to the 2005–06 and subsequent tax years.

(5) The law that would apply if **subsection (2)** did not come into force applies for—
(a) a person who becomes a transitional resident before 1 April 2006; and
(b) income years corresponding to the 2005–06 and subsequent tax years.

73 (*New resident's*)Immigrant's accrued superannuation entitlement exemption

New (unanimous)

(1A) In the heading to section EX 36, "**Immigrant's**" is replaced by "**New resident's**".

(1) Section EX 36(2) is replaced by:

"*Rights accruing before or after becoming resident*

"(2) The rights must have accrued during a period—
"(a) for which the person is not a New Zealand resident:
"(b) for which the person is a New Zealand resident and that—
"(i) begins (*with the time at which*)when the person becomes a New Zealand resident; and
"(ii) ends before the (*commencement*)first day of the fifth income year following the income year in

which the person becomes a New Zealand resident."

Struck out (unanimous)

(2) In section EX 36(3), "before the person first became a resident" is omitted.

(3) In section EX 36(4)(a), "on the day on which the person first became a New Zealand resident" is replaced by "described in subsection (2)".

New (unanimous)

(2) Section EX 36(3), other than the heading, is replaced by the following:

"(3) The extent to which the rights have accrued during a period referred to in **subsection (2)** is calculated using the formula—

closing value – opening value."

(3) In section EX 36(4), paragraphs (a) and (b) are replaced by the following:

"(a) **closing value** is the market value of the rights on the day that ends the period:

"(b) **opening value** is the market value of the rights on the day that begins the period."

(4) **Subsections (1) to (3)** apply for—

(a) a person who becomes a New Zealand resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(5) The law that would apply if **subsections (1) to (3)** did not come into force applies for—

(a) a person who becomes a New Zealand resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

73B Accounting profits method

(1) In section EX 42(1), the formula is replaced by the following:

"(accounting profits or losses – foreign tax) × income interest."

(2) After section EX 42(3), the following is inserted:

"(3B) **Foreign tax** is the total for the accounting period of income tax on the income of the FIF—

"(a) for which the person is liable under the laws of a country or territory outside New Zealand; and

"(b) paid by the person in the accounting period."

(3) **Subsections (1) and (2)** apply for income years corresponding to the 2006–07 and subsequent tax years.

74 Comparative value method

Struck out (unanimous)

In section EX 44(6), "including income tax on the income of the FIF for which the person is liable in the country in which the FIF is resident" is inserted after "interest".

New (unanimous)

(1) In section EX 44(6), the definition of **costs** is replaced by the following:

"**Costs** is the total for the income year of—

"(a) all expenditure, if any, that the person incurs in acquiring or increasing the interest:

"(b) income tax on the income of the FIF—

"(i) for which the person is liable under the laws of a country or territory outside New Zealand; and

"(ii) paid by the person in the income year."

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

75 Deemed rate of return method

Struck out (unanimous)

In section EX 45(6)(b), ", including income tax on the income of the FIF for which the person is liable in the country in which the FIF is resident," is inserted after "interest".

New (unanimous)

(1) In section EX 45(6)(b), the definition of **costs** is replaced by the following:

"**costs** is the total for the part of the income year of—

"(i) all expenditure, if any, that the person incurs in acquiring or increasing the interest:

"(ii) income tax on the income of the FIF for which the person is liable under the laws of a country or territory outside New Zealand and which is paid by the person in the part of the income year:".

(2) In section EX 45(8)(b), the definition of **costs** is replaced by the following:

"**costs** is the total for the income year or part of the income year of—

"(i) all expenditure, if any, that the person incurs in acquiring or increasing the interest:

"(ii) income tax on the income of the FIF for which the person is liable under the laws of a country or territory outside New Zealand and which is paid by the person in the income year or part of the income year:".

(3) **Subsections (1) and (2)** apply for income years corresponding to the 2006–07 and subsequent tax years.

75B Additional FIF income or loss if CFC owns FIF

(1) In section EX 46(7), "2006–07" is replaced by "2011–12".

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

76 Migration of persons holding FIF interests

(1) Section EX 52(3)(a) is replaced by the following:

"(a) is a non-resident or a (*certified*)transitional resident; and

"(ab) becomes a New Zealand resident who is not a (*certified*)transitional resident; and".

(2) In section EX 52(3)(c), "change of residence" is replaced by "change of residence or status".

(3) Section EX 52(5)(a) is replaced by the following:

"(a) ceases to be—

"(i) a New Zealand resident who is not a (*certified*)transitional resident, and becomes a non-resident:

"(ii) a non-resident (*or a certified resident*), and becomes a New Zealand resident who is not a(*certified resident; and*) transitional resident:

New (unanimous)

"(iii) a transitional resident, and becomes a New Zealand resident who is not a transitional resident; and".

(4) In section EX 52, in the list of terms defined in the Act,—

Struck out (unanimous)

(a) "certified resident" is inserted:

(b) "New Zealand resident" is inserted:

(c) "non-resident" is inserted:

(d) "resident of New Zealand" is omitted(.):

New (unanimous)

(e) "transitional resident" is inserted.

(5) **Subsections (1) to (4)** apply for—

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(6) The law that would apply if **subsections (1) to (4)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

76B New section EZ 21B inserted

(1) After section EZ 21, the following is inserted:

"**EZ 21B Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005**

"*What this section is about*

"(1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—

"(a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and

"(b) the items are—

"(i) plant or equipment acquired before 1 April 2005:

"(ii) buildings acquired before 19 May 2005:

"(iii) buildings acquired on or after 19 May 2005, as relationship property or from a company in the same wholly-owned group of companies, from a person who applied to the item an economic depreciation rate set under this section or a corresponding provision.

"*Rate set by Commissioner*

"(2) The Commissioner sets the rate from time to time by—

"(a) following the procedure set out in this section; and

"(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

New (unanimous)

"Procedure for setting economic rate

"(3) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—

"(a) gets a figure by applying the formula in **subsection (4)** to items of that kind; and

"(b) rounds the figure up or down to the nearest rate specified in schedule 11, column 1 (Banded rates of depreciation); and

"(c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—

"(i) the rate calculated for each kind; and

"(ii) the reduction in compliance costs that is likely to be achieved.

"Formula

"(4) The formula is—

$$1 - \left(\left(\frac{\text{residual value}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}} \right).$$

"Definition of item in formula

"(5) In the formula,—

"(a) **residual value** is the greater of—

"(i) estimated residual market value, which is defined in section EE 58 (Other definitions):

"(ii) 13.5% of cost:

"(b) **cost** is the cost of items of the kind to which the formula is applied:

"(c) **estimated useful life** is defined in section EE 54 (Meaning of estimated useful life).

"Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated residual market value, estimated useful life, excluded depreciable property, fixed life intangible property".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

77 Section EZ 29 replaced

(1) Section EZ 29 is replaced by the following:

"**EZ 29 Disclosure restrictions on grey list CFCs before 2011–12**

"No attributed CFC income from taxable distribution

"(1) No attributed CFC income arises under section EX 19 (Taxable distribution from non-qualifying trust) in respect of a person's income interest in a CFC if **subsection (4)** applies.

"No branch equivalent income or loss

"(2) No branch equivalent income or loss arises under section EX 21 (Branch equivalent income or loss: calculation rules) in respect of a person's income interest in a CFC if **subsection (4)** applies.

"No FIF income or loss

"(3) No FIF income or loss arises under section EX 46 (Additional FIF income or loss if CFC owns FIF) in respect of a person's income interest in a CFC if **subsection (5)** applies.

"Application of subsections (1) and (2)

"(4) **Subsection (1) or (2)** applies in respect of a person's income interest for an accounting period in a CFC if—

"(a) the income interest arises from an interest of the person in a CFC that satisfies **subsection (6)**; and

"(b) the person holds information that would, if considered by the Commissioner, satisfy the Commissioner under **subsection (7)**.

"Application of subsection (3)

"(5) **Subsection (3)** applies in respect of a person's income interest for an accounting period in a CFC if—

"(a) the income interest satisfies **subsection (6)**; and

"(b) the person holds information that would, if considered by the Commissioner, satisfy the Commissioner under **subsection (7)**.

"*Relevant grey list CFC*

"(6) An interest in a CFC satisfies this subsection for an accounting period if the CFC is, throughout the accounting period,—

"(a) resident in a country on the grey list; and

"(b) quoted on the official list of a recognised exchange in the country; and

"(c) under the (*rules*) law of the country or the rules of the exchange,—

"(i) prevented from disclosing to the person information necessary for calculating attributed CFC income or loss or FIF income or loss:

"(ii) required, as a result of the disclosure, to make a further disclosure of information that would be harmful to the commercial interests of the CFC.

"*Person must satisfy Commissioner*

"(7) For this section to apply in respect of a person's income interest for an accounting period in a CFC, the person must hold information that would satisfy the Commissioner that, for the accounting period, an effect of the law or rules referred to in **subsection (6)** is that the person cannot calculate the attributed CFC income or loss or FIF income or loss in respect of the income interest.

"*Section terminates after 2010–11 income year*

"(8) This section does not apply to the tax on income derived by a person in an income year after (*the 2010–11 income year*) the income year that corresponds to the 2010–11 tax year.

"Defined in this Act: accounting period, attributed CFC income, attributed CFC income or loss, branch equivalent income or loss, Commissioner, CFC, FIF, FIF income or loss, grey list, income, income interest, income year, recognised exchange, tax, tax year".

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 (*to 2010–11 income years*) and subsequent tax years.

New (unanimous)

77B Apportionment of income derived partly in New Zealand and partly elsewhere

(1) In section FB 2(2)(a), "section OE (1)" is replaced by "section OE 4(1)".

(2) In section FB 2(2)(b), "section OE (1)(a)" is replaced by "section OE 4(1)(a)".

(3) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

77C Liability to make return and pay income tax

(1) In section FC 16(7), "section NF 9(1)(a) to (c)" is replaced by "section NF 9(1)(a) and (b)".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

77D New heading and sections FC 22 to FC 24 added

(1) After section FC 21, the following is added:

"***Transitional residents***

"**FC 22 Tax treatment of foreign-sourced amounts derived by transitional resident**

The intended effect of this section and **sections FC 23 and FC 24**, and related provisions of the Act is that, for the purposes of the Act, a person who derives a foreign-sourced amount is treated as being a non-resident in relation to the amount if the person derives the amount when the person is a transitional resident.

"**FC 23 General requirements for being transitional resident**

A person satisfies the general requirements for being a transitional resident if—

"(a) the person has a permanent place of abode in New Zealand; and

"(b) immediately before acquiring a permanent place of abode in New Zealand, the person was a non-resident

New (unanimous)

for a continuous period (**non-residence period**) of at least 10 years; and

"(c) the person was not a transitional resident before the non-residence period.

"**FC 24 Transitional resident**

A natural person who satisfies the general requirements given by **section FC 23** is a **transitional resident** for a period—

"(a) beginning from the first day of the month in which the person acquires a permanent place of abode in New Zealand; and

"(b) ending on the day that is the earlier of the following:

"(i) the day before the person ceases to be a New Zealand resident:

"(ii) the last day of the 48th month after the month in which the person acquires a permanent place of abode in New Zealand."

(2) **Subsection (1)** applies for a person who becomes a transitional resident on or after 1 April 2006.

(3) The law that would apply if **subsection (1)** did not come into force applies for a person who satisfies the requirements to be a transitional resident before 1 April 2006.

78 New subpart FCB inserted

(1) After subpart FC, the following is inserted:

"Subpart FCB—Emigration of resident companies

"**FCB 1 Tax effects of company becoming non-resident to reflect tax effects of liquidation**

"(1) This subpart applies to an **emigrating company**, which is a company that—

"(a) is a New Zealand resident; and

"(b) ceases to be a New Zealand resident.

"(2) The intended effect of this subpart and related provisions of the Act is that, for the purposes of the Act, the effects on an emigrating company and its shareholders when the emigrating

company becomes a non-resident reflect the effects that would have resulted if—

"(a) immediately before the emigration time—

"(i) the emigrating company disposed of its property at market value; and

"(ii) the emigrating company went into liquidation; and

"(iii) the amount available for distribution in the liquidation were distributed as dividends to the shareholders of the emigrating company; and

"(b) at the emigration time, the emigrating company were reformed as a foreign company that—

"(i) had the same ownership and business activities as those of the emigrating company immediately before the emigration time; and

"(ii) had acquired at market value the property of the emigrating company immediately before the emigration time.

"**FCB 2 Emigrating company treated as paying distribution to shareholders**

Immediately before the emigration time for an emigrating company—

"(a) the emigrating company is treated as paying, as dividends, a distribution in money to shareholders of the amount that would be available for distribution to the shareholders if, immediately before the emigration time, the emigrating company—

"(i) disposed of its property at market value; and

"(ii) went into liquidation; and

"(b) each shareholder in the emigrating company is treated as being paid by the emigrating company, as a dividend, a distribution in money of the amount to which the shareholder would be entitled in such a liquidation.

"**FCB 3 Emigrating company treated as disposing of property and immediately reacquiring property**

An emigrating company is treated as, immediately before the emigration time for the emigrating company,—

"(a) disposing of the property of the emigrating company to another person for consideration equal to the market value of the property at the emigration time; and

"(b) acquiring the property referred to in **paragraph (a)** from the other person for consideration equal to the amount referred to in **paragraph (a)**."

(2) **Subsection (1)** applies for—

Struck out (unanimous)

(a) a company that becomes a non-resident on or after 21 March 2005; and

New (unanimous)

(a) a company that becomes a non-resident on or after 21 March 2005 and does not—

(i) before 21 March 2005, satisfy the requirements of sections 351(c), 352, 353, and 354 of the Companies Act 1993 for deregistration under that Act; and

(ii) before 21 March 2005, apply for incorporation under the laws of another country or territory; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(3) The law that would apply if **subsection (1)** did not come into force applies for—

(a) a company that—

(i) becomes a non-resident before 21 March 2005:

(ii) becomes a non-resident on or after 21 March 2005 and for which **subsection (1)** does not apply; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

79 Amalgamation of companies: purpose

(1) In section FE 1(2)(a), "MB 11" is replaced by "**MB 34**".

(2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

80 Arrangement to defeat application of depreciation provisions

Struck out (unanimous)

(1) In section GC 6, "For the purposes of sections EZ 16 to EZ 18 and FF 15, where" is replaced by "If".

New (unanimous)

(1) In section GC 6,—

(a) "For the purposes of sections EZ 16 to EZ 18 and FF 15, where" is replaced by "If":

(b) "a deduction so" is replaced by "a deduction for an amount of depreciation loss so".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

80B New section GC 14G inserted

After section GC 14F , the following is inserted:

"**GC 14G Arrangement to avoid application of rules for returning share transfers**

If a person enters into an arrangement that has an effect of avoiding a requirement of the definition of **returning share transfer** in section OB 1 so as to defeat the intention and application of this Act, the Commissioner may, despite the arrangement, treat—

"(a) the arrangement as a returning share transfer; and

"(b) a person affected by the arrangement as a share user or a share supplier, under the returning share transfer."

81 New section GC 17B inserted

(1) After section GC 17, the following is inserted:

"**GC 17B Fringe benefit tax: arrangement void**

"(1) If an arrangement is void under section BG 1, the amount of excluded income under section CX 3 of a person affected by the arrangement may be adjusted by the Commissioner in the manner the Commissioner thinks appropriate, so as to counteract any tax advantage obtained by that person from or under the arrangement, and without limiting the generality of this subsection, the Commissioner may have regard to—

"(a) the amount of excluded income as, in the Commissioner's opinion, the person would have, or might be expected to have, or would in all likelihood have, had if the arrangement had not been made or entered into; or

"(b) the amount of excluded income as, in the Commissioner's opinion, the person would have had if they had been allowed the benefit of some or all the excluded income, as the Commissioner considers proper, derived by any other person or persons as a result of the arrangement.

"(2) If an amount of excluded income is included in the income of a person under **subsection (1)**, then, for the purposes of this Act, that amount is not included in the income of any other person."

Struck out (unanimous)

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

(2) **Subsection (1)** applies for a person and a period beginning on or after 1 April 2006 for which the person or the person's employer is required to forward a return to the Commissioner under subpart ND (Fringe benefit tax).

82 Sale or other disposition of trading stock for inadequate consideration

(1) In section GD 1(1), "subsection (2)" is replaced by "subsections **(1B)** and (2)".

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

"*Exclusion*

"(1B) Subsection (1) does not apply to a share disposed of by a share user to a share supplier, or by a share supplier to a share user, under a share-lending arrangement."

(3) Section GD 1(4)(b) is replaced by the following:

"(b) is donated, or supplied for consideration worth less than the market value of the trading stock, to a person—

"(i) for use in a farming, agricultural, or fishing business that is affected by a self-assessed adverse event; and

"(ii) by a donor or supplier who is not associated with the person."

Struck out (unanimous)

(4) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

(5) **Subsection (3)** applies for transfers of trading stock in income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

82B Distribution of property to policyholders

In section GD 7, in the words before paragraph (a), "sections GD 1 and GD 2 (which relate to the sale of trading stock for inadequate consideration, and the distribution of trading stock to shareholders of companies)" is replaced by "section GD 1".

83 Returns, assessments, and liability of consolidated group

(1) In section HB 1(5)(b), "section MB 7(1) does" is replaced by "**sections MB 29 and MB 30** do".

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

84 Payment of qualifying company election tax

(1) In section HG 12(2)(c), "section 120K" is replaced by "**sections 120KB to 120KE**".

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

Struck out (unanimous)

85 Interpretation

In section HH 1(7), "paragraph (b) of" is inserted before "the definition".

86 Trusts settled by persons before becoming resident

(1) Section HH 2(1) is replaced by the following:

"(1A) This section applies to a trust if—

Struck out (unanimous)

"(a) a settlor of the trust is a natural person who on a day (the **transition day**) becomes a New Zealand resident who is not a certified resident; and

New (unanimous)

"(a) a settlor of the trust is a natural person who on a day (the **transition day**)—

"(i) becomes a New Zealand resident who is not a transitional resident:

"(ii) ceases to be a transitional resident and continues to be a New Zealand resident; and

"(b) the trust would be a foreign trust in relation to a distribution made from property of the trust if the distribution were made on the day immediately before the settlor became a New Zealand resident.

"(1) **(***If this section applies to a trust, a* **)**A settlor, trustee, or beneficiary of the trust may, within 12 months of the transition day, elect under section HH 4(7) to satisfy the income tax liability in respect of the taxable income of the trustee of the trust."

(2) In section HH 2(3)(a), "the day on which the settlor first became resident in New Zealand" is replaced by "the transition day".

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

(a) a person who becomes a **(***New Zealand* **)**transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(4) The law that would apply if **subsections (1) and (2)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

87 Trustee income

(1) Section HH 4(3)(a) is replaced by the following:

"(a) any settlor of the trust is a New Zealand resident who is not a **(***certified***)** transitional resident; or".

(2) In section HH 4(3B), in the words before paragraph (a), "resident in New Zealand at any time during the tax year" is replaced by "at any time in the tax year a New Zealand resident who is not a **(***certified***)** transitional resident".

(3) After section HH 4(3B), the following is inserted:

Struck out (unanimous)

"(3BB) Subsection (3B) does not apply for an income year to a New Zealand resident trustee of a foreign trust to which **sections 22(2)(fb) and (m) and 59B** of the Tax Administration Act 1994 apply if—

"(a) the New Zealand resident trustee, having been given notice of the Commissioner's intention to prosecute the trustee under **section 143(1)(d)** of the Tax Administration Act 1994, fails to become a qualifying New Zealand resident trustee within 30 days of the notice:

"(b) there is no qualifying New Zealand resident trustee of the foreign trust for the income year and there is a record for the income year that—

"(i) section 22 of the Tax Administration Act 1994 requires the New Zealand resident trustee to keep; and

"(ii) the Commissioner requests be produced for inspection; and

"(iii) is not produced for inspection.

New (unanimous)

"(3BB) Subsection (3B) does not apply for an income year to the resident foreign trustees of a foreign trust to which **sections 22(2)(fb) and (m) and 59B** of the Tax Administration Act 1994 apply if a resident foreign trustee—

"(a) is not a qualifying resident foreign trustee for the income year; and

"(b) is convicted of an offence under section 143A of the Tax Administration Act 1994; and

"(c) has committed the offence in relation to information relating to the income year.

"(3BC) **Subsection (3BB)** does not apply for an income year to the resident foreign trustees of a foreign trust if a resident foreign trustee is convicted of an offence under section 143A(1)(b) of the Tax Administration Act 1994 if—

New (unanimous)

"(a) the conviction is in relation to information relating to the income year; and

"(b) the information is supplied to the Commissioner after the conviction is entered."

(4) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

88 Application of other provisions to withdrawal tax

(1) In section IZ 7(b), "section 120K" is replaced by "**sections 120KB to 120KE**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

89 Rebate in certain cases for children

(1) Section KC 2(e) is replaced by the following:

"(e) $351:".

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

New (unanimous)

89B Rebates in respect of gifts of money

(1) In section KC 5(1)(co), "Trust." is replaced by "Trust:" and the following is added:

"(cp) Habitat for Humanity New Zealand Limited."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

89C Calculation of subpart KD credit

(1) In section KD 2(6), as the provision applies for an income year corresponding to the 2005–06 tax year, in the definition of **full-year abatement**—

(a) in paragraph (a), "spouse" is replaced by "spouse, civil union partner, or de facto partner":

(b) in paragraph (b)—

New (unanimous)

(i) in the words before subparagraph (i), "spouse" is replaced by "spouse, civil union partner, or de facto partner":

(ii) in subparagraph (i), "their spouse's specified income" is replaced by "the specified income of the person's spouse, civil union partner, or de facto partner":

(iii) in subparagraph (ii), "their spouse's specified income" is replaced by "the specified income of the person's spouse, civil union partner, or de facto partner":

(iv) in subparagraph (iii), "their spouse's specified income" is replaced by "the specified income of the person's spouse, civil union partner, or de facto partner".

(2) In section KD 2(6), as the provision applies for income years corresponding to the 2006–07 and subsequent tax years, in the definition of **full-year abatement**,—

(a) in paragraph (a), "spouse" is replaced by "spouse, civil union partner, or de facto partner":

(b) in paragraph (b),—

(i) in the words before subparagraph (i), "spouse" is replaced by "spouse, civil union partner, or de facto partner":

(ii) "their spouse's specified income", wherever it appears, is replaced by "the specified income of the person's spouse, civil union partner, or de facto partner".

(3) In section KD 2(6B), as the provision applies for an income year corresponding to the 2005–06 tax year, in the definition of **full-year abatement**—

(a) in paragraph (a), "spouse" is replaced by "spouse, civil union partner, or de facto partner":

(b) in paragraph (b), "spouse" is replaced in both places that it occurs by "spouse, civil union partner, or de facto partner".

New (unanimous)

(4) In section KD 2(6B), as the provision applies for income years corresponding to the 2006–07 and subsequent tax years, in the definition of **full-year abatement**—

(a) in paragraph (a), "spouse" is replaced by "spouse, civil union partner, or de facto partner":

(b) in paragraph (b), "spouse" is replaced in both places that it occurs by "spouse, civil union partner, or de facto partner".

(5) **Subsections (1) and (3)** apply for an income year corresponding to the 2005–06 tax year.

(6) **Subsections (2) and (4)** apply for income years corresponding to the 2006–07 and subsequent tax years.

89D In-work payment

In section KD 2AAA(5)(a)(ii), "of the Schedule" is inserted after "Part E".

90 Calculation of family tax credit

(1) In section KD 3(1), after paragraph (b) of the definition of **qualifying person**, the following is inserted:

"(bb) is not a (*certified*)transitional resident; and

"(bc) is not the spouse, civil union partner, or de facto partner of a (*certified*)transitional resident; and".

Struck out (unanimous)

(2) **Subsection (1)** applies for—

(a) a person who becomes a New Zealand resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(3) The law that would apply if **subsection (1)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

91 Credit of tax for imputation credit

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

"(1B) A taxpayer who receives an imputation credit as a share user in a returning **(***securities***)** share transfer is not entitled under subsection (1) to a credit of tax.

New (unanimous)

"(1C) A taxpayer who is issued with a credit transfer notice is entitled under subsection (1) to a credit of tax equal to the amount of imputation credit shown in the notice."

92 Foreign tax credits: CFCs

Section LC 4(1) is replaced by the following:

"(1) Subject to this section, a person who has attributed CFC income for an income year in respect of an income interest in a controlled foreign company is allowed a credit against the person's income tax liability for—

"(a) income tax paid or payable in New Zealand or another country or territory by the controlled foreign company in respect of the attributed CFC income:

"(b) withholding tax paid or payable in New Zealand or another country or territory on behalf of the controlled foreign company in respect of the attributed CFC income:

"(c) income tax paid or payable in a country or territory **(***other than* **)**outside New Zealand by the person in respect of the attributed CFC income.

"(1B) For the purposes of this section, income tax or withholding tax paid or payable in a currency other than New Zealand currency must be converted into New Zealand currency by, at the option of the person who has the attributed CFC income,—

"(a) applying the close of trading spot exchange rate applicable on the date when the income tax or withholding tax was paid or became payable; or

"(b) applying the average of the close of trading spot exchange rates for the 15th day of each complete month falling within the period to which the attributed CFC income relates.

"(1C) The Commissioner must amend an assessment of a person for an income year to reflect the amount of a credit under **subsection (1)** to which the person is entitled if—

"(a) the amount of the credit cannot be determined before the time by which the person must file a return of income for the income year; and

"(b) the Commissioner receives a written request for the amended assessment from the person within 4 years after the end of the income year."

New (unanimous)

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 tax years.

92B Tax deductions to be credited against tax assessed

(1) In section LD 1(2), the words before paragraph (a) are replaced by "If, for a tax year, the Commissioner has received an employer monthly schedule showing tax deductions from source deduction payments in relation to an employee, the amount of the tax deductions must be credited successively against—".

(2) In section LD 1(2A), the words before paragraph (a) are replaced by "The amount credited or refunded must not exceed the amount of the tax deductions received by the Commissioner, if—" and the following is inserted:

"(aa) the employee is employed by a close company; and".

(3) Section LD 1(6)(b) is replaced by the following:

New (unanimous)

"(b) exceeds the amount of the tax deductions received by the Commissioner, if subsection (2A) applies to the employee,—".

92C New section LD 1B inserted

After section LD 1, the following is inserted:

"**LD 1B Tax deductions from certain accident compensation payments: credit allowed to caregiver**

"(1) This section applies if a person—

"(a) receives payments—

"(i) that are accident compensation payments, under **paragraph (g)** of the definition of that term in section CF 1(2), in respect of attendant care (as defined in Schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act 2001) for a period; and

"(ii) from which a tax deduction is made under the Income Tax (Withholding Payments) Regulations 1979; and

"(b) pays to a caregiver payments for the provision to the person of attendant care for the period.

"(2) The caregiver is allowed a credit against the caregiver's income tax liability for the tax year corresponding to the caregiver's income year that includes the period.

"(3) The amount of the credit allowed under **subsection (2)** is the total tax deductions corresponding to the amount of the payments referred to in **subsection (1)(a)** that, excluding the tax deductions, equals the lesser of the following:

"(a) the total for the period of payments referred to in **subsection (1)(a)**, excluding tax deductions:

"(b) the total for the period of payments referred to in **subsection (1)(b)**, excluding adjustments under **section CE 12**."

93 Resident withholding tax(deductions) payments to be credited against income tax assessed

New (unanimous)

(1A) In section LD 3(1), "other than a replacement payment," is inserted after "Where a person derives an amount of resident withholding income".

(1) In section LD 3(2), in the words before paragraph (a), ", not being a replacement payment made under a share-lending arrangement," is inserted after "any amount of resident withholding income".

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

93B Credit of tax for dividend withholding payment credit in hands of shareholder

After section LD 8(1), the following is inserted:

"(1B) A taxpayer who receives a dividend withholding payment credit is not entitled under subsection (1) to a credit of tax if they issue a credit transfer notice in respect of the dividend withholding payment credit.

"(1C) A taxpayer who is issued with a credit transfer notice is entitled under subsection (1) to a credit of tax equal to the amount of dividend withholding payment credit shown in the notice."

93C Refund to non-resident or exempt shareholders

(1) After section LD 9(1) the following is inserted:

"(1B) The Commissioner must, except as otherwise provided in this section, pay to a person by way of a refund of dividend withholding payment credit an amount equal to the amount of

New (unanimous)

the dividend withholding payment credit shown in a credit transfer notice issued to the person if—

"(a) the person is not resident in New Zealand:

"(b) the person is resident in New Zealand and the dividend is exempt income otherwise than by virtue of sections CW 9 to CW 11."

(2) In section LD 9(2)(b), "tax." is replaced by "tax:" and the following is added:

"(c) in the case of an amount of the dividend withholding payment credit shown in a credit transfer notice, must be reduced by any amount of dividend withholding payment credit applied in accordance with section NG 2(2) to reduce an amount of non-resident withholding tax in respect of the dividend to which the credit transfer notice relates."

94 Underlying foreign tax credits generally, and interpretation

Section LF 1(1)(a) is replaced by the following:

"(a) allows in certain circumstances a company resident in New Zealand to claim a credit against a liability to pay a dividend withholding payment in respect of a foreign withholding payment dividend paid by a foreign company; and

"(ab) provides that the amount of the credit, in general terms, be calculated to reflect a proportionate share of the New Zealand and foreign income tax paid, or deemed to be paid,—

"(i) on the income of the foreign company that gives rise to the foreign withholding payment dividend; and

"(ii) by the company, the foreign company, or another company directly or indirectly funding the foreign withholding payment dividend; and".

95 Amount of underlying foreign tax credit

In section LF 3(1)—

(a) in the definition of **item a**, "and without any reduction under (*section*) **section CD 10B**" is inserted after "withholding tax":

(b) in the definition of **item b**, "by the company" is replaced by "on the income of the company".

96 Dividends from grey list companies

(1) Section LF 5(1)(b) is replaced by the following:

"(b) for all eligible accounting years, a country or territory specified in schedule 3, part A—

"(i) is the residence of the company under section OE 2(3) to (6) and imposes on the company liability for income tax on the company's income because the company is domiciled in the country, is resident in the country, is incorporated in the country, or has its place of management in the country:

"(ii) is the country under whose laws the company is organised and imposes on persons holding income interests in the company a liability for income tax on the company's income and is the source of 80% or more of the company's income; and"

(2) In section LF 5(1)(c), "the company has in respect of all eligible accounting years, for the purposes of income tax in the country or territory, calculated its income liable to income tax" is replaced by "for all eligible accounting years, the income of the company that is liable to income tax in the country or territory is calculated".

97 Procedures with respect to underlying foreign tax credit

In section LF 6(4), "a company is treated as having no amount of income tax paid or payable with respect to its earnings" is replaced by "no amount of income tax is paid or payable in respect of earnings of a company".

98 Provisional taxpayer affected by qualifying event

(1) In the heading to section MB 3B, "qualifying event" is replaced by "self-assessed adverse event or qualifying event".

(2) Section MB 3B(1) is replaced by the following:

"(1) This section applies to a taxpayer with a farming, agricultural, or fishing business that is significantly affected by a self-assessed adverse event or with a business that is significantly affected by a qualifying event."

(3) In section MB 3B(3),—

(a) paragraph (a) is replaced by the following:

"(a) the taxpayer's business is significantly affected by the self-assessed adverse event or qualifying event; and":

(b) in paragraph (b), in the words before subparagraph (i), "a qualifying event" is replaced by "the self-assessed adverse event or qualifying event".

(4) **Subsections (1) to (3)** apply for income years corresponding to the 2005–06 and subsequent tax years.

99 New section MB 11B inserted

(1) After section MB 11, the following is inserted:

"**MB 11B Transitional provisions relating to alignment of dates of payment for provisional tax and GST**

"Aligning taxable periods

"(1) For a provisional taxpayer with a GST liability, if a change in balance date means that the taxpayer's taxable period is not aligned with the balance date, an adjustment must be made to their taxable period under **section 15AB** of the Goods and Services Tax Act 1985.

"Application of subsections (3) and (4)

"(2) **Subsections (3) and (4)** apply when a provisional taxpayer with a GST liability changes under **section 15AB** of the Goods and Services Tax Act 1985 their cycle of taxable periods.

"When taxable periods aligned

"(3) The change takes effect as described in **section 15AB** of that Act if the following coincide:

"(a) the end of the taxable period in which the taxpayer—

"(i) applies to change the basis on which the taxpayer's taxable period is set:

"(ii) is required to change the basis on which the taxpayer's taxable period is set:

"(b) the start of the taxable period in the taxpayer's new cycle.

"When taxable periods not aligned

"(4) If **subsection (3)** does not apply, the taxpayer must continue to use the taxpayer's existing cycle until the end of the next taxable period for which the end coincides with the start of a taxable period in the new cycle."

(2) **Subsection (1)** applies for income years corresponding to the (*2006–07*)2007–08 income year.

100 Subpart MB replaced

(1) Sections MB 2 to MB 12 are replaced by the following:

"*Introductory provisions*

"MB 1 Outline of subpart

"When this subpart applies

"(1) **Sections MB 2 to MB 38** apply for the purposes of the provisional tax rules to determine—

"(a) who pays provisional tax:

"(b) a taxpayer's provisional tax liability for a tax year, and the methods for calculating the amount payable:

"(c) the number of instalments and the instalment dates for an income year:

"(d) how the amount of an instalment is determined:

"(e) the payment of provisional tax in transitional years:

"(f) the application of the rules relating to use of money interest, late payment penalties, and shortfall penalties.

"Amount treated as income tax

"(2) The provisions of this Act and the Tax Administration Act 1994 apply in relation to an amount that a person is liable to pay under the provisional tax rules as if the amount were income tax imposed under section BB 1 (Imposition of income tax).

"*Instalment dates*

"(3) In this subpart, a reference to an instalment classified by the letters A to H is a reference to a date in the table in **schedule 13, part A** (**(***Dates* **)**Months for payment of provisional tax and terminal tax) on which an instalment of provisional tax (A to F) or terminal tax (G and H) is payable by a provisional taxpayer for an income year that corresponds to a tax year.

"Defined in this Act: amount, income tax, income year, instalment date, pay, provisional tax, provisional tax rules, provisional taxpayer, shortfall penalty, tax year, terminal tax, transitional year

"**MB 2 Who pays provisional tax?**

"*Meaning of provisional taxpayer*

"(1) A provisional taxpayer, for a tax year, means—

"(a) a person whose residual income tax for the tax year is more than $2,500 **(***or more***)**; or

"(b) a person who chooses under **section MB 3** to be a provisional taxpayer.

"*Exclusions*

"(2) The following persons are not provisional taxpayers:

"(a) a company that does not have a fixed establishment in New Zealand and is not treated as resident in New Zealand:

"(b) a person to whom section 33A of the Tax Administration Act 1994 applies:

"(c) a non-resident contractor as defined in regulation 2 of the Income Tax (Withholding Payments) Regulations 1979 who has not been issued with an exemption certificate by the Commissioner for the tax year under regulation 5.

"*No obligation*

"(3) A person has no obligation to pay provisional tax for a tax year if their residual income tax for the preceding tax year is **(***less than* **)**$2,500 or less.

"Defined in this Act: company, fixed establishment, New Zealand, non-resident, provisional taxpayer, resident in New Zealand, residual income tax, tax year

"**MB 3 Becoming provisional taxpayer by election**

A taxpayer, when first providing a return of income for a tax year, may choose to be a provisional taxpayer for the tax year if—

"(a) they have paid provisional tax of more than $2,500 (*or more*) on or before—

"(i) the date of instalment F for the corresponding income year; or

"(ii) the final instalment date in a transitional year; and

"(b) they have, on the day on which the first payment of provisional tax is made for the tax year, a reasonable expectation that they are a provisional taxpayer for the tax year, other than by this election.

"Defined in this Act: corresponding income year, final instalment, instalment date, provisional tax, provisional taxpayer, return of income, tax year, taxpayer, transitional year

"*Calculation of provisional tax liability*

"**MB 4 Methods for calculating provisional tax liability**

"*Choice of method*

"(1) The provisional tax payable by a provisional taxpayer for a tax year must be calculated using 1 of the methods described in **subsections (2) to (6)**.

New (unanimous)

"*Meaning of next affected instalment date*

"(1B) **Next affected instalment date** for a tax year means the instalment date for the tax year that next follows the date on which the calculation is made.

"*Standard method*

Struck out (unanimous)

"(2) As the standard method, the amount of provisional tax payable for the tax year is 105% of the taxpayer's residual income

Struck out (unanimous)

tax for the preceding tax year, determined under **section MB 5**. However, the amount is 110% of the residual income tax for the tax year before the preceding tax year if—

"(a) the taxpayer is required to provide a return of income for the preceding tax year but the return is not due on or before an instalment date through the application of section 37 of the Tax Administration Act 1994 or an extension granted under that section; and

"(b) the taxpayer has not provided the return on or before the instalment date; and

"(c) the instalment date is not the date of instalment F for the corresponding income year.

New (unanimous)

"(2) Under the standard method, the amount of provisional tax payable for the tax year is—

"(a) 105% of the taxpayer's residual income tax for the preceding tax year, determined under **section MB 5**, if **paragraph (b)** does not apply; or

"(b) 110% of the taxpayer's residual income tax for the tax year before the preceding tax year if—

"(i) the taxpayer is required to provide a return of income for the preceding tax year; and

"(ii) the return is not due on or before the first instalment date for the tax year through the application of section 37 of the Tax Administration Act 1994 or an extension granted under that section; and

"(iii) the taxpayer has not provided the return on or before the instalment date; and

"(iv) the instalment date is not the date of instalment F for the corresponding income year.

"Other methods: relationship with standard method

"(3) **Subsections (4) to (6)** override **subsection (2)**.

"Estimation method

"(4) A taxpayer may make an estimate of their residual income tax under **section MB 6** as their provisional tax liability for the tax year.

"GST ratio method

"(5) A taxpayer who is eligible under **section MB 15** may choose to use a GST ratio under **section MB 7** for the purposes of determining their provisional tax liability for the tax year.

"Commissioner's determination

"(6) If the Commissioner determines a taxpayer's provisional tax liability under **section 119** of the Tax Administration Act 1994, the amount is that last determined by the Commissioner and notified to the taxpayer at least 30 days before the instalment date. The 30 day requirement does not apply in a case to which **section 119(1)(d)** applies (which relates to an estimate of residual income tax that is not fair and reasonable).

"Life insurance business

"(7) A provisional taxpayer, who carries on a business of providing life insurance and who is liable for income tax under the life insurance rules, must at the time they determine their provisional tax liability provide the Commissioner with details of the calculation of that liability, in particular, the extent to which the amount of that provisional tax relates to the policyholder base.

"Defined in this Act: amount, business, Commissioner, corresponding income year, GST ratio, instalment date, life insurance, life insurance rules, notify, pay, policyholder base, provisional tax, provisional taxpayer, qualifying event, residual income tax, return of income, tax year, taxpayer

"**MB 5 (Determining residual income tax)Standard method**

"When this section applies

"(1) This section applies for the purposes of **section MB 4(2)** and the calculation of the amount of provisional tax payable for a tax year under the standard method.

"Assessment for preceding tax year

"(2) The taxpayer's residual income tax for a tax year is based on their assessment for the preceding tax year unless the Commissioner has issued a notice of assessment for the tax year at least 30 days before the relevant instalment date, in which case it is based on the Commissioner's assessment for the preceding tax year.

"Commissioner's assessment for preceding tax year

"(3) The taxpayer's residual income tax is based on the Commissioner's assessment for the preceding tax year, whenever the assessment is made, if—

"(a) the taxpayer is required under section 37 of the Tax Administration Act 1994 to provide a return of income for the preceding tax year but has failed to do so by the relevant instalment date; or

"(b) the taxpayer is not required under section 37 to provide a return by the relevant instalment date, and **subsections (2) and (4)** do not apply.

"Residual income tax for preceding tax year

"(4) The amount of provisional tax payable for a tax year is the amount of residual income tax for the preceding tax year if—

"(a) the taxpayer is not required to provide a return of income for the preceding tax year; or

"(b) the taxpayer's residual income tax for that tax year was **(***less than* **)**$2,500 or less and they were not required to provide, and have not provided, a return of income for that tax year by the date of instalment F for the corresponding income year.

"Later increased assessment

"(5) If the Commissioner assesses a taxpayer's income tax liability after the due date for an instalment of provisional tax and the taxpayer's residual income tax is increased by the assessment, the residual income tax is treated for the purposes of the provisional tax rules as if it had not been increased.

"*Transitional years and consolidated groups*

"(6) Residual income tax in transitional years is calculated under **section MB 19**. For consolidated groups of companies, the calculation is made under **section MB 30**.

"Defined in this Act: amount, assessment, Commissioner, consolidated group, corresponding income year, income tax liability, instalment date, notice, pay, provisional tax, residual income tax, return of income, tax year, taxpayer, transitional year

"MB 6 Estimation method

"*When this section applies*

"(1) This section applies for the purposes of **section MB 4(4)** and the calculation of the amount of provisional tax payable for a tax year under the estimation method.

"*Fair and reasonable estimate*

"(2) On or before an instalment date, a provisional taxpayer may make a fair and reasonable estimate of their residual income tax for the tax year by **(***providing a statement of the estimate to the Commissioner***)** informing the Commissioner of the estimate. The estimate may be a revised estimate.

"*Reasonable care in making and maintaining assessment*

"(3) A taxpayer who makes an estimate under **subsection (2)** must take reasonable care in making it, and must revise the estimate for the tax year if, at some time in the tax year, the amount estimated is no longer fair and reasonable.

"*Estimation higher than provisional tax payable*

"(4) If a taxpayer estimates their residual income tax and the estimate is more than the provisional tax that is payable for the tax year, they are treated as having taken reasonable care in making the estimate.

"*Changing determination method from GST ratio*

"(5) If, under **section MB 17(5)**, a taxpayer changes they way they determine the amount of provisional tax after the date of an instalment, they must estimate their residual income tax for the income year, and must pay provisional tax on whichever

of instalment dates B, D, and F for their corresponding income year occur after 30 days from their last ratio instalment date.

"Disaster relief

"(6) A taxpayer who is significantly affected by a self-assessed adverse event may make an estimate of their provisional tax under **section MB 38**, and that section overrides this section.

"Defined in this Act: amount, Commissioner, corresponding income year, GST ratio, income year, instalment date, pay, provisional tax, provisional taxpayer, ratio instalment date, residual income tax, self-assessed adverse event, tax year, taxpayer

"**MB 7 GST ratio method**

"Using GST ratio

"(1) A provisional taxpayer who meets the requirements of **section MB 15** may choose to use a GST ratio to determine the amount of provisional tax payable for a tax year.

"Meaning of GST ratio

"(2) A taxpayer's **GST ratio** is the percentage figure that is obtained by dividing their residual income tax for the preceding tax year by their ~~(~~*total supplies* ~~)~~total taxable supplies for the corresponding income year. The amount of residual income tax and the amount of ~~(~~*total supplies* ~~)~~total taxable supplies are called the **base amounts** in this section.

"When amounts based on tax year before preceding tax year

"(3) If the base amounts for the preceding tax year or corresponding income year have not been assessed, the GST ratio is the percentage based on the assessment for the tax year and corresponding income year that are immediately before the preceding tax year and corresponding income year.

"Commissioner's calculation and notification

"(4) The Commissioner must calculate a taxpayer's GST ratio, notifying them by—

"(a) including the percentage figure on the taxpayer's preprinted GST return form; or

"(b) advising them in writing or by telephone; or

"(c) some other means.

"Adjustment to GST ratio

"(5) The Commissioner must adjust a taxpayer's GST ratio if the base amounts are revised through, among other reasons,—

"(a) an assessment or an amended assessment of the taxpayer's income tax return for the preceding tax year; or

"(b) a change in the value of the total taxable supplies for the corresponding income year; or

"(c) the disposal of an asset to which **section MB 18** applies.

"New GST ratio

"(6) When **subsection (5)** applies, the Commissioner must notify the taxpayer of the new GST ratio. The new ratio applies in relation to the relevant instalment dates that occur 30 days after the date of notification.

"Transitional years

"(7) If a taxpayer has paid instalments of provisional tax in a transitional year, for the tax year that follows the transitional year, for the purposes of this section and **section MB 10**, they must—

"(a) ignore the transitional year when determining their residual income tax or **(***total supplies***)** total taxable supplies; and

"(b) base their determination of residual income tax and **(***total supplies* **)**total taxable supplies on the tax year preceding the transitional year.

Struck out (unanimous)

"Total supplies

"(8) In **subsection (2)**, and in **sections MB 10, MB 18, and MB 32**, **total supplies** means the amount that is the total value of supply in New Zealand of goods and services of the taxpayer, in relation to which GST is charged under section 8 (Imposition of goods and services tax on supply) of the Goods and Services Tax Act 1985 and, for this purpose,—

"(a) the amount includes GST; and

Struck out (unanimous)

"(b) the supply includes a supply that section 11, 11A, 11AB, or 11B (which relate to zero-rating) requires to be charged at the rate of 0%.

New (unanimous)

"Total taxable supplies

"(8) In **subsections (2), (5), and (7)**, and in **sections MB 10, MB 15, MB 18, and MB 32**, **total taxable supplies** for a person and a period means the amount that is the total value, including GST, of taxable supplies of the person for the period.

"Defined in this Act: amount, assessment, base amount, Commissioner, corresponding income year, GST, GST ratio, instalment date, notify, pay, provisional tax, provisional taxpayer, residual income tax, tax year, taxable supply, total taxable supplies, transitional year

"*Instalments of provisional tax*

"MB 8 Provisional tax payable in instalments

"General principle

"(1) The general principle for the standard and estimation methods is that the amount of a taxpayer's residual income tax must be spread evenly over the applicable number of instalments, so that equal amounts are paid on each instalment date. If the amount of residual income tax is not divisible into exactly equal instalments, the final instalment carries the difference.

"Provisional tax payable in 3 instalments

"(2) Provisional tax is payable in 3 instalments on the interest instalment dates for the tax year in the months set out in schedule 13, part A, columns B, D, and F for the taxpayer's corresponding income year. The amount of each instalment is calculated under **section MB 9**. **Subsection (3)** overrides this subsection.

"*Exclusions*

"(3) **Subsection (2)** does not apply—

"(a) to a provisional taxpayer who—

"(i) pays GST on a 6-monthly basis:

"(ii) uses a GST ratio to determine the amount of provisional tax payable, or who changes their determination method under **section MB 17(5)**:

"(iii) changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985:

"(b) to a new provisional taxpayer who—

"(i) pays GST on a 6-monthly basis:

"(ii) pays GST on a monthly or 2-monthly basis, and starts a taxable activity after **(***30 days from* **)**the day that is 30 days before the date of instalment B in their corresponding income year:

"(c) to a provisional taxpayer who has not provided a return of income for the preceding tax year, and whose residual income tax for the tax year immediately before the preceding tax year was **(***less than* **)**$2,500 or less:

"(d) in a transitional year.

"*Provisional tax when GST paid on 6-monthly basis*

"(4) A provisional taxpayer who pays GST on a 6-monthly basis must pay provisional tax on the 2 interest instalment dates for the tax year in the months set out in schedule 13, part A, columns C and F for the taxpayer's corresponding income year. This subsection applies to a new provisional taxpayer other than one who pays GST on a 6-monthly basis and starts a taxable activity **(***within 30 days of* **)**after the day that is 30 days before the date of instalment C.

"*Provisional tax determined using GST ratio*

"(5) A provisional taxpayer who uses a GST ratio to determine the amount of provisional tax payable for a tax year, must pay provisional tax on the 6 ratio instalment dates in the months set out in schedule 13, part A, columns A to F for the taxpayer's corresponding income year. The amount of each instalment is calculated under **section MB 10**.

"Changing determination method

"(6) A provisional taxpayer who is unable or decides not to use a GST ratio, changing their determination method under **section MB 17**, must pay the provisional tax payable for the tax year on the relevant instalment dates under the replacement method. The amount of each instalment is calculated under **section MB 6 or MB 9**, as applicable.

"Changing cycle of taxable periods

"(7) A provisional taxpayer who changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985 must pay provisional tax for the tax year on the instalment dates specified in **section MB 27** after the change in taxable period takes effect under **section MB 26**. The amount of each instalment is calculated under **section MB 9**.

"New provisional taxpayers

"(8) A new provisional taxpayer who starts a taxable activity in a tax year in relation to which they pay GST must pay provisional tax for the tax year—

"(a) in 3 instalments under **subsection (2)** if they start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment B:

"(b) in 2 instalments—

"(i) in a case to which **section MB 13** applies; or

"(ii) if they start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment C:

"(c) in 1 instalment in a case to which **section MB 14** applies.

"Extension of time for return

"(9) A provisional taxpayer who has not provided a return of income for a preceding tax year and whose residual income tax for the tax year before the preceding tax year was **(***less than* **)**$2,500 or less must pay provisional tax for the tax year on the instalment dates set out in **section MB 13 or MB 14**, as applicable.

"*Transitional years*

"(10) In a transitional year, provisional tax is due and payable as set out in **section MB 20** and **schedule 13, part B**. The amount of each instalment is calculated under **sections MB 21 to MB 23**.

"*Voluntary payments*

"(11) A provisional taxpayer may pay an instalment of provisional tax under **section MB 12** at any time.

"Defined in this Act: amount, corresponding income year, GST, GST ratio, income year, instalment date, interest instalment date, new provisional taxpayer, pay, provisional tax, provisional taxpayer, ratio instalment date, residual income tax, return of income, tax year, taxable activity, taxable period, taxpayer, transitional year

"TABLE MB 8

"Categories for payment of provisional tax

Struck out (unanimous)

Categories: ordinary	Variables	Method	Instalments	Instalment dates	Calculation	Interest, penalties
Standard MB 4(2)		MB 5	3 — MB 8(2)	B, D, F	MB 9	120KD(1), (2)
Estimation MB 4(4)		MB 6	3 — MB 8(2)		MB 9	
GST ratio MB 4(5)	1 month	MB 7	6 — MB 8(5)	A to F	MB 10	120KD(3), (4)
	2 month	MB 7	6 — MB 8(5)	A to F	MB 10(2)	139C, 141ED
GST 6-month MB 8(4)	standard	MB 5	2	C and F	MB 9	120KD(1), (2)
	estimation	MB 6	2	C and F	MB 9	
Categories: exceptional	**Variables**	**Method**	**Instalments**	**Instalment dates**	**Calculation**	**Interest, penalties**
New provisional taxpayers		MB 4(2) or (4)	MB 13(2), MB 14(2) (MB 8(8), (9))	D and F,as required	MB 9 (MB 13(3)), MB 9 (MB 14(3))	120KB
Transitional years		MB 19	MB 20 (MB 8(10))	B, D, F, as required	MB 21 - MB 23	120KC
Changing taxable period (or starting and stopping GST registration)		MB 25, MB 26 15C, 15E	MB 27 (MB 8(7))	B, D, F, or C, F as required	MB 9	
Changing determination method		MB 17	MB 4(2) or (4) (MB 6, MB 8(6))	MB 4(2) or (4) (MB 6)	MB 6(6), MB 9	120KD (5) - (7)
Voluntary payments		MB 12				120E

New (unanimous)

Categories: ordinary	Variables	Method	Instalments	Instalment dates	Calculation	Interest, penalties
Standard MB 4(2)		MB 5	3 — MB 8(2)	B, D, F	MB 9	120KE(1), (2)
Estimation MB 4(4)		MB 6	3 — MB 8(2)	B, D, F	MB 9	120 KB
GST ratio MB 4(5)	1 month	MB 7	6 — MB 8(5)	A to F	MB 10	120KE(3), 139C
	2 month	MB 7	6 — MB 8(5)	A to F	MB 10(3)	120KE(3), 139C
GST 6-month MB 8(4)	standard	MB 5	2 — MB 8(4)	C and F	MB 9	120KE(1)
	estimation	MB 6	2 — MB 8(4)	C and F	MB 9	120KB
Categories: exceptional	**Variables**	**Method**	**Instalments**	**Instalment dates**	**Calculation**	**Interest, penalties**
New provisional taxpayers		MB 5 or MB 6	MB 8(8), MB 13(2), MB 14(2)	D and F, or F as required	MB 9 (MB 13(3)), MB 9 (MB 14(3))	120KC
Transitional years		MB 19	MB 20 (MB 8(10))	B, D, F, or C, F as required	MB 21, MB 22	120KD
Changing taxable period (or starting and stopping GST registration)		MB 25, MB 26 and 15C and 15D of GST Act	MB 27 (MB 8(7))	B, D, F, or C, F as required	MB 9	
Changing determination method		MB 17	MB 4(2) or (4) (MB 6, MB 8(6))	B, D, F or C, F as required	MB 9	120KE(5) - (7)
Voluntary payments		MB 12				120E

Note: References in the last column are to sections of the Tax Administration Act 1994.

"MB 9 Calculating amount of instalment under standard and estimation methods

"*When this section applies*

"(1) This section applies for the purposes of—

"(a) **section MB 4(2) and (4)** (which relates to the calculation of a provisional tax liability):

"(b) **section MB 8(2) and (4)** (which relates to payment of instalments):

"(c) **sections MB 13 and MB 14** (which relate to new provisional taxpayers and taxpayers with an extension of time for providing a return)**(***; and***)**:

"(d) **sections MB 25 to MB 27** (which relate to changes in taxable periods).

"Calculation

"(2) The amount of an instalment of provisional tax for a tax year is calculated using the formula—

$$\frac{\text{residual tax} \times \text{instalment number}}{\text{total instalments}} - \text{provisional tax}.$$

"Definition of items in formula

"(3) In the formula,—

"(a) **residual tax** is a provisional taxpayer's residual income tax, as applicable—

"(i) for the preceding tax year, uplifted by 5%; or

"(ii) for the tax year immediately before the preceding tax year, uplifted by 10%; or

"(iii) the amount estimated by the taxpayer:

"(b) **instalment number** is the number of the taxpayer's instalment for the tax year, whether first, second, or third:

"(c) **total instalments** is the total number of the taxpayer's instalments for the tax year:

"(d) **provisional tax** is the amount of the taxpayer's provisional tax liabilities for the tax year to date.

"Instalment amounts after change in balance date or taxable period

"(4) If a change occurs to the balance date or cycle of taxable periods of a provisional taxpayer, the calculation of the amount of an instalment is made under this section, applying the updated figures to the items in the formula.

"Defined in this Act: amount, balance date, new provisional taxpayer, pay, provisional tax, provisional taxpayer, residual income tax, return of income, tax year, taxable period

"**MB 10 Calculating amount of instalment using GST ratio**

"Calculation

"(1) The amount of provisional tax payable on an instalment date by a provisional taxpayer who uses a GST ratio for a tax year is calculated using the formula—

GST ratio for tax year × taxable supplies.

"Item in formula: taxable supplies

"(2) In the formula, **taxable supplies** is the amount of the taxpayer's taxable supplies in the taxable period that matches the instalment period.

"Taxable supplies when taxpayer pays on monthly basis

"(3) For the purposes of **subsection (1)**, a taxpayer who pays GST on a 1-month cycle under section 15 of the Goods and Services Tax Act 1985 must apply the GST ratio to the sum of their taxable supplies in the current taxable period and the preceding taxable period; that is, the **(***total supplies* **)**taxable supplies in the 2-month period matching the instalment period.

"Defined in this Act: amount, GST, GST ratio, instalment period, pay, provisional tax, provisional taxpayer, tax year, taxable period, taxable supply**(**, *total supplies***)**

"**MB 11 Using GST refund to pay instalment of provisional tax**

"Offsetting amount

"(1) If a provisional taxpayer has **(***a GST refund***)** an excess of deductions over aggregate output tax in a taxable period under section 20(5) of the Goods and Services Tax Act 1985, they may choose to use **(***the* **)**an amount of the **(***refund***)** excess to pay some or all of an instalment of provisional tax that is due on the same instalment date.

Struck out (unanimous)

"Reduction in amount of refund

"(2) If the Commissioner reduces the amount of the GST refund before it has been transferred to the instalment of provisional

Struck out (unanimous)

tax under **subsection (1)**, the taxpayer is not liable for a late payment penalty under the Tax Administration Act 1994 in relation to the amount of the discrepancy that arises as a result of the reduction until the expiry of a grace period that ends at least 30 days after the due date.

New (unanimous)

"(2) If a person makes an election under **subsection (1)** affecting an amount of an excess of deductions over aggregate output tax (**elected amount**) and the Commissioner makes an amended assessment reducing the amount of the excess to less than the elected amount, the person's payment of provisional tax arising from the GST refund is the amount of the excess after the reassessment.

"Defined in this Act: amount, Commissioner, GST, instalment date, pay, provisional tax, provisional taxpayer, taxable period

"**MB 12 Voluntary payments**

A taxpayer may at any time make a voluntary payment of an amount of provisional tax that—

"(a) relates to their income tax liability for a tax year in which they are not a provisional taxpayer**(***; or***)**:

"(b) is more than the provisional tax payable by them for the tax year**(.)**:

New (unanimous)

"(c) is more than the income tax payable by them for the tax year.

"Defined in this Act: amount, income tax liability, pay, provisional tax, provisional taxpayer, tax year, taxpayer

"**MB 13 Paying 2 instalments for tax year**

"Who this section applies to

"(1) This section applies for a tax year to—

"(a) a new provisional taxpayer whose first business day occurs in the period that starts 30 days before the date of instalment B and ends 30 days before the date of instalment D; or

"(b) a taxpayer whose return of income for the preceding tax year is provided in the period that starts on the date of instalment B and ends on the date of instalment D if—

"(i) the taxpayer was required to provide a return for the preceding tax year but, under section 37 of the Tax Administration Act 1994 or an extension under that section, the taxpayer is not required to provide the return by the date of instalment B; and

"(ii) their residual income tax for the tax year before the preceding tax year was **(***less than* **)**$2,500 or less.

"Who this section does not apply to

"(2) Despite **subsection (1)**, this section does not apply to a provisional taxpayer who pays GST on a 6-monthly basis.

"When instalments are due

"(3) The instalments are due and payable on the date of instalments D and F for the taxpayer's corresponding income year.

"Formula for amount of instalment

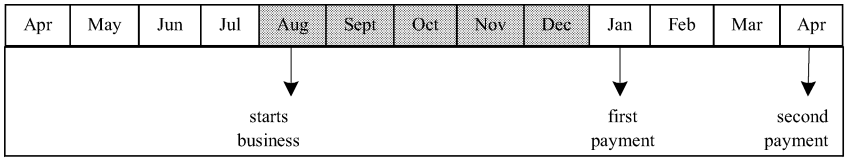
"(4) The amount of each instalment is calculated under **section MB 9**.

"Defined in this Act: amount, corresponding income year, first business day, new provisional taxpayer, pay, residual income tax, return of income, tax year, taxpayer

Struck out (unanimous)

Example: Section MB 13

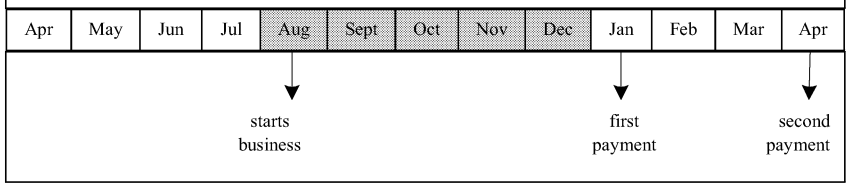
Mr Red, who is not registered for GST, starts business on 20 August and has a March balance date. The first business day falls in the period that starts on 30 July (30 days before instalment B) and ends on 21 December (30 days before instalment D). Mr Red has 2 payments of provisional tax for the year, due on 20 January and 28 April.



New (unanimous)

Example: Section MB 13

Mr Red, who is not registered for GST, starts business on 20 August and has a March balance date. The first business day falls in the period that starts on 29 July (30 days before instalment B) and ends on 21 December (30 days before instalment D). Mr Red has 2 payments of provisional tax for the year, due on 20 January and 28 April.



"**MB 14 Paying 1 instalment for tax year**

"*Who this section applies to*

"(1) This section applies for a tax year to—

"(a) a new provisional taxpayer whose first business day occurs in the period that starts 30 days before the date of

instalment D and ends at the end of the corresponding income year:

"(b) a taxpayer whose return of income for the preceding tax year is not provided on or before the date of instalment D if—

"(i) the taxpayer was required to provide a return for the preceding tax year but, under section 37 of the Tax Administration Act 1994 or an extension under that section, is not required to provide the return by the date of instalment D; and

"(ii) their residual income tax for the tax year before the preceding tax year was **(***less than* **)**$2,500 or less:

"(c) a person who pays GST on a 6-monthly basis if—

"(i) their first business day occurs in the period that starts 30 days before the date of instalment C and ends at the end of the corresponding income year:

"(ii) they meet the requirements of **paragraph (b)(i) and (ii)** as if the reference to instalment D in paragraph (b)(i) were a reference to instalment C.

"*When instalment due*

"(2) The instalment is due and payable on the date of instalment F for the taxpayer's corresponding income year.

"*Amount of instalment*

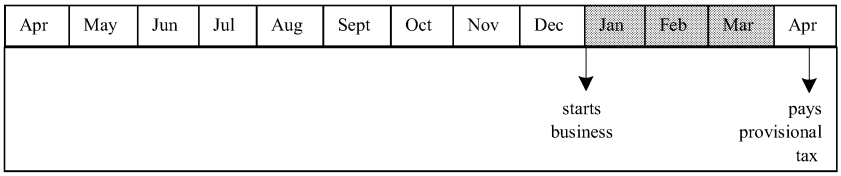
"(3) The amount of the instalment is calculated under **section MB 9**.

"Defined in this Act: amount, corresponding income year, first business day, GST, new provisional taxpayer, pay, provisional tax, residual income tax, return of income, tax year, taxpayer

Struck out (unanimous)

Example: Section MB 14

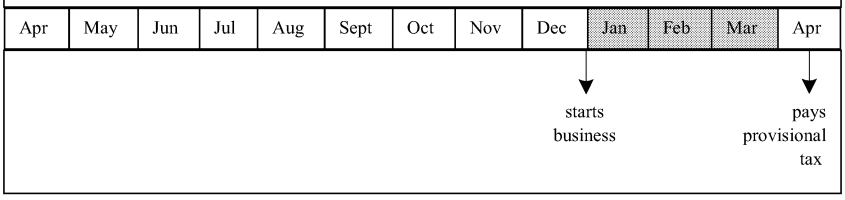
Ms Orange, who is registered for GST on a 2-monthly basis, starts business on 1 January and has a March balance date. Ms Orange is liable to pay GST in 3 instalments aligned with her GST payment dates. The first business day falls in the period that starts on 21 December (30 days before instalment D) and ends on 31 March. Ms Orange has 1 payment of provisional tax for the year, due on 28 April.



New (unanimous)

Example: Section MB 14

Ms Orange, who is registered for GST on a 2-monthly basis, starts business on 1 January and has a March balance date. Ms Orange is ordinarily liable to pay provisional tax in 3 instalments aligned with her GST payment dates (s MB 8(2)). However, because her first business day falls in the period that starts on 21 December (30 days before instalment D) and ends on 31 March, Ms Orange has 1 payment of provisional tax for the year, due on 28 April.



"*Requirements for using GST ratio*

"MB 15 Who may use GST ratio?

"General eligibility

"(1) A provisional taxpayer may choose to use a GST ratio to determine under **section MB 4(5)** the amount of provisional tax payable for a tax year only if they meet all the requirements in **subsections (2) and (3)** in relation to the same entity.

"Requirements for preceding tax year

"(2) For the purposes of determining their eligibility for a tax year, the taxpayer must meet the following requirements in the preceding tax year:

"(a) their residual income tax, as assessed, was more than $2,500 but no more than $150,000; and

"(b) they were a person registered under section 51 of the Goods and Services Tax Act 1985 for the whole tax year, and provided returns under that Act for an entity whose business or taxable activity did not begin operations in that tax year; and

"(c) the ratio of their residual income tax to (*total supplies*) total taxable supplies, as calculated under **section (*MB 10*) MB 7(2)** and expressed as a percentage, is between zero and 100%.

"Requirement for current year

"(3) For the tax year in which the taxpayer uses a GST ratio, they must be liable to file a return under the Goods and Services Tax Act 1985 for a 2-month or a 1-month period under **section 15(1)(b) and (c)** of that Act.

"When election applies

"(4) An election to use a GST ratio applies for the tax year for which the election is made and in later tax years, unless the taxpayer changes their determination method under **section MB 17**. The election is made under **section MB 16**.

"Requirement to discontinue use of GST ratio

"(5) Despite **subsections (1) to (4)**, a taxpayer must discontinue the use of the GST ratio for the tax year and must apply **section MB 17(4) or (5)** if—

"(a) their GST registration ends in the tax year; or

"(b) they no longer qualify under **subsection (2)** as a result of an amended assessment of their income tax liability or their GST liability for the preceding tax year; or

"(c) they no longer qualify under **subsection (3)** as a result of a change in their taxable period.

Struck out (unanimous)

"Failure to provide GST returns

"(6) A taxpayer must not use, or must discontinue the use of, a GST ratio if they do not provide a return under the Goods and Services Tax Act 1985 for a period in which they are liable to provide a return. In this case, for the instalment periods that remain for the tax year or corresponding income year, the taxpayer must—

"(a) pay the amount determined for the previous instalment period; or

"(b) if **paragraph (a)** does not apply, pay an amount calculated by dividing their residual income tax for the preceding tax year by the number of instalments remaining for the tax year or corresponding income year.

New (unanimous)

"Failure to provide GST returns

"(6) A taxpayer must not use, or must discontinue the use of, a GST ratio for a tax year if the taxpayer—

"(a) is liable to provide a return under the Goods and Services Tax Act 1985 for a period in the taxpayer's corresponding income year; and

New (unanimous)

"(b) becomes in default under this subsection by failing to provide the return before the date that is 60 days after the due date for filing the return.

"*Provisional tax instalments for periods following default*

"(6B) If a taxpayer is required by **subsection (6)** to discontinue the use of a GST ratio for a determination method, the taxpayer must make provisional tax instalments as required by **section MB 17** for instalment periods—

"(a) beginning on or after the due date for filing of the return for which the taxpayer becomes in default under **subsection (6)(b)**; and

"(b) not affected by a notice issued by the Commissioner under **subsection (6C)**.

"*Further use of GST ratio*

"(6C) A taxpayer who would otherwise be prohibited by **subsection (6)** from using a GST ratio for a determination method for an instalment period referred to in **subsection (6B)(a)** may nevertheless use that determination method for the instalment period if the taxpayer—

"(a) applies in writing for the Commissioner to issue a notice under this subsection; and

"(b) satisfies the Commissioner that—

"(i) the failure referred to in **subsection (6)(b)** is a result of an event or circumstance beyond the control of the taxpayer; and

"(ii) as a consequence of that event or circumstance, the taxpayer has a reasonable justification or excuse for the failure; and

"(iii) the taxpayer corrected the failure as soon as practicable; and

"(c) is sent a notice in writing by the Commissioner that the taxpayer may use the GST ratio for a determination method for the instalment period.

New (unanimous)

"Standard of satisfaction

"(6D) The taxpayer must satisfy the Commissioner under **subsection (6C)(b)** to a standard that would justify the remission of a penalty under section 183A of the Tax Administration Act 1994.

"Effect of later default

"(6E) A notice to a taxpayer under **subsection (6C)** does not apply to an instalment period if—

"(a) the taxpayer becomes in default under **subsection (6)** in relation to a return for which the due date is after the date of the notice; and

"(b) the default is not expressly anticipated and taken into account in the notice; and

"(c) the instalment period begins on or after the due date referred to in **paragraph (a)**.

"References to preceding tax year

"(7) In this section, a reference to a preceding tax year includes a reference to the tax year immediately before the preceding tax year if that earlier tax year is used for the purposes of calculating a GST ratio.

"Defined in this Act: amount, assessment, business, corresponding income year, GST ratio, income tax liability, instalment period, pay, provisional tax, provisional taxpayer, registered person, residual income tax, tax year, taxable activity, taxable period, **(***total supplies***)** taxable supply

"MB 16 Choosing to use GST ratio

Struck out (unanimous)

"Notifying Commissioner

"(1) Having met the requirements referred to in **section MB 15(1)** for a tax year, a provisional taxpayer who chooses to use a GST ratio must, before the start of the income year corresponding to the tax year, notify the Commissioner of their election to use a GST ratio for the income year.

Struck out (unanimous)

"Manner of notification

"(2) For the purposes of this section, the taxpayer may notify the Commissioner either in writing under section 14B (Giving of notices to Commissioner) of the Tax Administration Act 1994, or by telephone.

New (unanimous)

A taxpayer who meets the requirements referred to in **section MB 15(1)** for a tax year may use a GST ratio for the corresponding income year if the taxpayer, before the start of the corresponding income year, informs the Commissioner of the election to use a GST ratio for the tax year.

"Defined in this Act: Commissioner, corresponding income year, GST ratio, notice, notify, provisional taxpayer, tax year

"MB 17 Changing determination method

"When this section applies

"(1) This section applies if, after having chosen to use a GST ratio for a tax year, a provisional taxpayer either—

"(a) chooses another way to determine the amount of provisional tax payable for the corresponding income year; or

"(b) is required under **section MB 15(5) or (6)** to discontinue the use of a GST ratio for the corresponding income year.

"Notifying Commissioner of decision to change

"(2) The taxpayer must notify the Commissioner of their decision under **subsection (1)(a)**, and may do this either in writing or by telephone. **Subsection (3) or (4)** then applies for the remaining instalments for the income year.

"Date on which use of GST ratio discontinued

"(3) For the purposes of **subsection (1)(b)**, the date on which the taxpayer discontinues their use of a GST ratio is, as applicable,—

"(a) the date their GST registration ends; or
"(b) the date of the amended assessment of their income tax liability or GST liability for the preceding tax year; or
"(c) the effective date of a change in taxable period; or
"(d) the end of the period in which a return is liable to be provided under the Goods and Services Tax Act 1985.

"Changing method before first instalment date

"(4) If the taxpayer is unable or decides not to use a GST ratio before the date of instalment A, they may choose to determine the amount of provisional tax payable under **section MB 4(2) or (4)**, as if the election to use the GST ratio had not been made.

"Changing method after instalment date

"(5) If the taxpayer is unable or decides not to use the GST ratio after an instalment date they must determine the amount of provisional tax payable on instalment for the remainder of the income year under **section MB 4(4)** on the basis of an estimate of their residual income tax for the tax year. For this purpose, the taxpayer may provide the estimate in writing or by telephone.

"Date of application when method changed

"(6) If a taxpayer changes their determination method under **subsection (4) or (5)**, the date on which the change applies may be a future date agreed between the taxpayer and the Commissioner.

"Other consequences of changing method

"(7) For the purposes of this section,—
"(a) the frequency and the instalment dates remaining for an income year depend on—
"(i) the requirements of the determination method chosen by the taxpayer when they stop using the GST ratio; and
"(ii) the cycle of taxable periods chosen by the taxpayer, being either a monthly or 2-monthly basis:
"(b) a taxpayer may change from using a GST ratio to a 6-monthly cycle of taxable periods only if—
"(i) the requirements in **section 15C** of the Goods and Services Tax Act 1985 are met; and

"(ii) their 6-month taxable period is aligned with their balance date under **section 15B** of the Goods and Services Tax Act 1985:

"(c) **section 120KE(5) to (7)** (Provisional tax and rules on use of money interest) of the Tax Administration Act 1994 applies to determine whether and when use of money interest is payable in relation to instalments under the new determination method.

"Defined in this Act: amount, balance date, Commissioner, corresponding income year, GST ratio, income year, instalment date, notify, pay, provisional tax, provisional taxpayer, residual income tax, tax year, taxable period

"MB 18 Disposal of assets

"When this section applies

"(1) This section applies if, as part of the business of an entity described in **section MB 15(1)**, a provisional taxpayer disposes of an asset—

"(a) that is not revenue account property; and

"(b) the value of the supply of which is not less than the greater of—

"(i) an amount equal to 5% of the total taxable supplies of the business for the previous 12 months:

"(ii) $1,000.

"Adjustment to GST ratio for current and next income year

"(2) The taxpayer may choose to take the disposal of the asset into account by adjusting their taxable supplies for the relevant taxable period and income year. The adjustment must be made to both—

"(a) the amount of the taxpayer's taxable supplies for the purposes of the formula in **section MB 10(1)**, by subtracting an amount that equals the value of the supply of the asset (as determined under section 10 of the Goods and Services Tax Act 1985) from the amount of **(***total supplies* **)**taxable supplies for the relevant **(***income year or***)** taxable period; and

"(b) the base amount of the taxpayer's taxable supplies for the next income year, by subtracting the amount that equals the value of the supply of the asset referred to in

paragraph (a) from (*total supplies*)total taxable supplies in working out the GST ratio under **section MB 7(2)**.

"*Notifying Commissioner*

"(3) For the purposes of **subsection (2)**, the taxpayer must notify the Commissioner of both the disposal of the asset and the value of its supply, and may do this either in writing or by telephone.

"*Rounding percentages*

"(4) In the determination of the value of the supply of the asset under **subsection (1)(b)(i)**, the amount must be rounded to a whole percentage number.

"Defined in this Act: amount, base amount, business, Commissioner, GST ratio, income year, instalment date, notify, provisional taxpayer, revenue account property, taxable period, taxable supply(, *total supplies*)

"*Transitional years*

"MB 19 Calculating residual income tax in transitional years

"*Calculation for transitional year*

Struck out (unanimous)

"(1) This section applies for the purposes of **section MB 4(2)** and the calculation of a taxpayer's residual income tax for a tax year that precedes a transitional tax year or is the tax year before that preceding tax year. The amount of residual income tax for the transitional year must be increased or decreased to reflect the amount that would apply in a 12-month period.

New (unanimous)

"(1) This section applies for the purposes of **section MB 4(2)** and the calculation of a taxpayer's residual income tax for a tax year if—

"(a) the preceding tax year is a transitional tax year:

"(b) the tax year before the preceding tax year is a transitional tax year.

New (unanimous)

"*Calculation for transitional year*

"(1B) The amount of residual income tax for the transitional year must be increased or decreased by the amount given by the formula in **subsection (2)** so as to reflect the amount that would apply in a 12-month period.

"*Formula*

"(2) The amount is calculated using the formula—

$$\frac{\text{residual income tax} \times \text{days in current tax year}}{\text{days in transitional year}}.$$

"Defined in this Act: amount, first business day, new provisional taxpayer, residual income tax, tax year, taxpayer, transitional year

"**MB 20 Paying provisional tax in transitional years**

"*Total amount payable*

"(1) The total amount of provisional tax payable in a transitional year is the sum of all instalments of provisional tax due in the transitional year.

"*When instalments due*

"(2) Instalments other than a final instalment of provisional tax are due on—

"(a) the 28th day of the months set out in **schedule 13, part B** (Months for payment of provisional tax and terminal tax), reflecting the instalment dates set out in **part A of the schedule**, unless **paragraph (b)** applies:

"(b) the (*20th*)15th day of January, when the month set out in **schedule 13, part A** is December.

"*When final instalment due*

"(3) Payment of the final instalment is due on—

"(a) the 28th day of the month following the final month in the transitional year; or

"(b) the (*20th*)15th day of January, when November is the final month.

"Modifications to instalment dates

"(4) For the purposes of **subsection (2)**, provisional tax is not due and payable on—

"(a) the date of instalment B, if **section MB 13** would have applied had the tax year not been a transitional year; or

"(b) the dates of instalments B and D, if **section MB 14(1)(a) and (b)** would have applied had the tax year not been a transitional year; or

"(c) the dates of instalments B, D, and F, if the taxpayer is a new provisional taxpayer whose first business day occurs **(***within 30 days of* **)**after the day that is 30 days before the date of instalment F; or

"(d) the date of instalment C, if **section MB 14(1)(c)** would have applied had the tax year not been a transitional year; or

"(e) the dates of instalments C and F, if the taxpayer is a new provisional taxpayer who pays GST on a 6-monthly basis whose first business day occurs **(***within 30 days of* **)**after the day that is 30 days before the date of instalment F.

"Counting months in transitional years

"(5) In this section, and in **sections MB 21 to MB 24**, and in **schedule 13, part B** (Months for payment of provisional tax and terminal tax), the number of months in a transitional year is determined as follows:

"(a) the first month in a taxpayer's transitional year is the first whole month in the transitional year:

"(b) the final month in a transitional year is the month in which the taxpayer's new **(***return* **)**balance date under section 39 of the Tax Administration Act 1994 occurs:

"(c) each month falling between the first and final months must be included in determining the length of the transitional year.

"Defined in this Act: amount, final instalment, first business day, new provisional taxpayer, pay, provisional tax, tax year, transitional year

"**MB 21 Calculating instalments in transitional years: standard method**

"When this section applies

"(1) This section applies to instalments of provisional tax payable in a transitional year under **section MB 20** by a provisional taxpayer using the standard method to calculate their provisional tax liability.

"Instalment other than final instalment

"(2) The amount payable on an instalment date other than the final instalment date is calculated using the formula—

$$\left(\frac{\textit{provisional tax} \times \textit{instalments due} - \textit{tax previously due}}{\textit{total instalments}}\right)$$

$$\frac{\text{provisional tax} \times \text{instalments due}}{\text{total instalments}} - \text{tax previously due.}$$

"Definition of items in formula in subsection (2)

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

"(a) **provisional tax** is the provisional tax liability under **section MB 4(2)**:

"(b) **instalments due** is the number of instalments due in the transitional year on or before the instalment date:

"(c) **total instalments** is whichever of the following applies:

"(i) 3, for provisional taxpayers who pay on instalment dates B, D, and F; or

"(ii) 2, for provisional taxpayers who pay on instalment dates C and F:

"(d) **tax previously due** is the amount for the transitional year of provisional tax that is due and payable before the instalment date.

"Final instalment

"(4) The amount payable on a final instalment date is calculated using the formula—

$$\left(\frac{\textit{provisional tax} \times \textit{transitional year days} - \textit{tax previously due}}{\textit{preceding year days}}\right)$$

$$\frac{\text{provisional tax} \times \text{transitional year days}}{\text{preceding year days}} - \text{tax previously due.}$$

"*Definition of items in formula in subsection (4)*

"(5) In the formula in **subsection (4)**,—

"(a) **provisional tax** is the provisional tax liability under **section MB 4(2)**:

"(b) **transitional year days** is the number of days in the transitional year:

"(c) **preceding year days** is the number of days in the preceding tax year:

"(d) **tax previously due** is the amount for the preceding tax year of provisional tax that is due and payable before the instalment date.

"Defined in this Act: amount, instalment date, final instalment date, pay, provisional tax, provisional taxpayer, tax year, transitional year

"**MB 22 Calculating instalments in transitional years: estimation method**

"*When this section applies*

"(1) This section applies to instalments of provisional tax payable in a transitional year under **section MB 20** by a provisional taxpayer using the estimation method to calculate their provisional tax liability.

"*Instalment other than final instalment*

"(2) The amount payable on an instalment date other than the final instalment date is calculated using the formula—

$$\frac{(\textit{tax estimate} \times \textit{instalments due} - \textit{tax previously due}}{\textit{transitional months}})$$

$$\frac{\text{tax estimate} \times \text{instalments due}}{\text{transitional months}} \quad \underline{\text{– tax previously due.}}$$

"*Definition of items in formula in subsection (2)*

"(3) In the formula,—

"(a) **tax estimate** is the provisional tax liability last estimated by the taxpayer under **section MB 4(4)**:

"(b) **instalments due** is either—

"(i) 4 multiplied by the number of instalments in the transitional year that are due on or before the instalment date, for provisional taxpayers who

pay on the equivalent of instalment dates B, D, and F; or

"(ii) 6 multiplied by the number of instalments in the transitional year that are due on or before the instalment date, for provisional taxpayers who pay on the equivalent of instalment dates C and F:

"(c) **transitional months** is the number of months in the transitional year:

"(d) **tax previously due** is the amount for the transitional year of provisional tax that is due and payable before the instalment date.

"Final instalment

"(4) The amount payable on a final instalment date is the amount of provisional tax determined under **section MB 4(4)** less the amount of any instalment previously due and payable.

"Defined in this Act: amount, instalment date, final instalment date, pay, provisional tax, provisional taxpayer, transitional year

"MB 23 Calculating instalments in transitional years: GST ratio method

"What this section applies to

"(1) This section applies to instalments of provisional tax payable in a transitional year by a provisional taxpayer using a GST ratio.

"Adjustment if required

"(2) The taxpayer must apply the GST ratio under **section MB 10** to any period or part period before the start of the new income year on whichever dates of instalments A to F for their corresponding income year occur in the transitional year.

"Defined in this Act: GST ratio, income year, pay, provisional tax, provisional taxpayer, transitional year

"MB 24 Consequences of a change in balance date

"Continuing frequency

"(1) If a provisional taxpayer changes their balance date, until the new balance date is reached, the taxpayer must continue to use

the instalment dates that applied before the change in balance date was approved.

"How amounts determined

"(2) **Sections MB 19 to MB 23** and **schedule 13, part B** (Months for payment of provisional tax and terminal tax) apply for the transitional year in **subsection (1)** to determine the amount and due date of the instalments.

"Estimation method

"(3) In a transitional year, a provisional taxpayer who uses the estimation method must,—

"(a) before the date on which the Commissioner notifies a change in balance date, estimate the residual income tax as if no change in balance date is or will be approved; and

"(b) after the date on which the Commissioner notifies a change in balance date, re-estimate the residual income tax.

"GST ratio method

"(4) **Subsection (5)** applies when a provisional taxpayer who uses a GST ratio to determine the provisional tax payable for a tax year, changes their balance date and moves from—

"(a) a set of instalment dates in even-numbered months to a set of instalment dates in odd-numbered months; or

"(b) a set of instalment dates in odd-numbered months to a set of instalment dates in even-numbered months.

"Adjustment to liability

"(5) The taxpayer must adjust their provisional tax liability for the income year for the part-period of 1 month before the start of the new income year. The part-period is their final taxable period, and the instalment of provisional tax is due 28 days after the end of that period.

"Aligning taxable periods

"(6) For a provisional taxpayer with a GST liability, if a change in balance date means that the taxpayer's taxable period is not aligned with the balance date, an adjustment must be made to

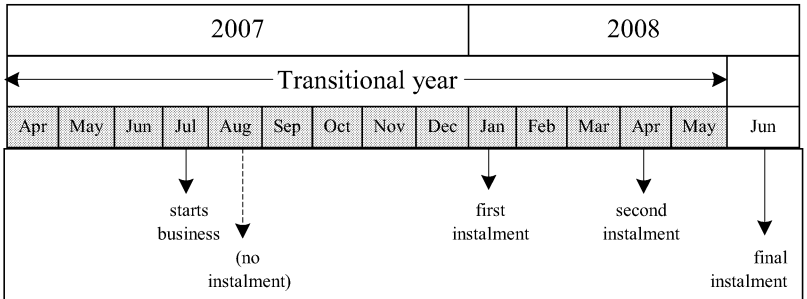
their taxable period under **section 15B(3) or 15C** of the Goods and Services Tax Act 1985.

"Defined in this Act: amount, balance date, Commissioner, GST ratio, income year, instalment date, notify, pay, provisional tax, provisional taxpayer, residual income tax, tax year, taxable period

Struck out (unanimous)

Example: Sections MB 20 to MB 24

Mr Yellow, who has a March balance date, decides to change to a May balance date. The transitional year is 14 months long. He starts business and becomes a new provisional taxpayer on 31 July, estimating provisional tax at $15,000 for the income year. At the end of the year, Mr Yellow's residual income tax is $20,000.



Instalments in transitional year: 28th day of 5th, 9th, and 13th months after balance date, and final instalment on 28th day of month following final month in transitional year (s MB 22 and schedule 13, part B). But the first business day falls within 30 days of the date that would be the first instalment, 28 August (s MB 13), so no instalment is due.

Amounts payable on the instalment dates are calculated under s MB 22.

First instalment due 20 January: $15,000 x 4/14 = $4,285

Second instalment due 28 April: $15,000 x 8/14 - $4,285 = $4,286

Final instalment due 28 June: $15,000 - $8,571 = $6,429

New (unanimous)

Example: Sections MB 20 to MB 24

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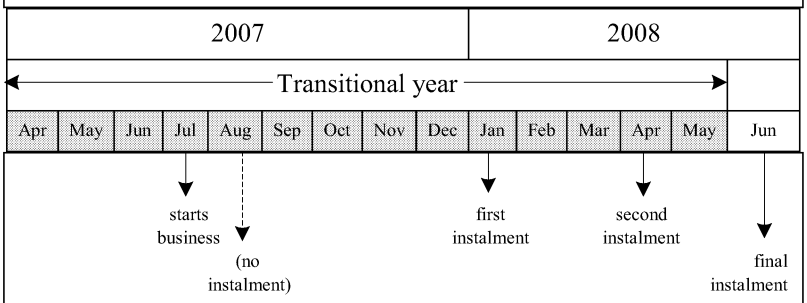


Instalments in transitional year: 28th day of 5th, 9th, and 13th months after balance date, and final instalment on 28th day of month following final month in transitional year (s MB 22 and schedule 13, part B). But the first business day falls within 30 days of the date that would be the first instalment, 28 August (s MB 13), so no instalment is due.

Amounts payable on the instalment dates are calculated under s MB 22.

First instalment due 20 January: $15,000 x 4/14 = $4,285

Second instalment due 28 April: $15,000 x 8/14 - $4,285 = $4,286

Final instalment due 28 June: $15,000 - $8,571 = $6,429

"*When provisional taxpayers start or stop paying GST, or change taxable periods*

"MB 25 Registering for GST or cancelling registration

"*When this section applies*

"(1) This section applies if a provisional taxpayer who uses the standard or estimation method to determine the amount of provisional tax payable for a tax year—

"(a) applies to the Commissioner to become a registered person under section 51 of the Goods and Services Tax Act 1985; or

"(b) is treated as registered under section 51B of that Act; or

"(c) asks the Commissioner to cancel their GST registration, or has their GST registration cancelled under section 52 of that Act.

"Starting or ending GST registration: monthly or 2-monthly basis

"(2) For a taxpayer who becomes registered for GST paying on a monthly or 2-monthly basis, or who cancels or has their GST registration cancelled having paid on that basis, the instalments of provisional tax payable by them for the tax year are unaffected.

"Starting GST registration: 6-monthly basis

"(3) For a taxpayer who becomes registered for GST paying on a 6-monthly basis, instalments of provisional tax are due and payable on whichever dates of instalments C and F for their corresponding income year coincide with the cycle of their taxable periods after they become a registered person.

"Ending GST registration: 6-monthly basis

"(4) For a taxpayer who pays GST on a 6-monthly basis and cancels their GST registration or has their registration cancelled, instalments of provisional tax are due and payable on whichever dates of instalments B, D, and F for their corresponding income year occur after 30 days from the date of cancellation.

"Date of cancellation

"(5) For the purposes of **subsection (4)** and the provisional tax rules, the date of cancellation is the date on which the cancellation of GST registration is notified.

"Formula for amount of instalment

"(6) The amount of each instalment is calculated under **section MB 9**.

"Defined in this Act: amount, corresponding income year, GST, pay, provisional tax, provisional taxpayer, registered person, tax year, taxable period

"**MB 26 Changing GST cycle**

"When this section applies

"(1) This section applies when a provisional taxpayer with a GST liability changes under **section 15C** of the Goods and Services Tax Act 1985 their cycle of taxable periods.

"When taxable periods aligned

"(2) The change takes effect as described in **section 15D** of (*that Act*) the Goods and Services Tax Act 1985 if the following coincide:

"(a) the end of the taxable period in which the taxpayer—

"(i) applies to change the basis on which the taxpayer's taxable period is set:

"(ii) is required to change the basis on which the taxpayer's taxable period is set:

"(b) the start of the taxable period in the taxpayer's new cycle.

"When taxable periods not aligned

"(3) If **subsection (2)** does not apply, the taxpayer must continue to use the taxpayer's existing cycle until the end of the next taxable period for which the end coincides with the start of a taxable period in the new cycle. This section overrides **section 15D(2)** of the Goods and Services Tax Act 1985.

"Defined in this Act: instalment dates, interest instalment date, provisional tax, provisional taxpayer, tax year, taxable period

"**MB 27 Payment of provisional tax instalments when GST cycle changed**

"When subsection (2) applies

"(1) **Subsection (2)** applies in a tax year to a provisional taxpayer who—

"(a) uses the standard or estimation method to determine the amount of provisional tax payable; and

"(b) has been paying GST on a monthly or 2-monthly basis; and

"(c) changes to a 6-monthly basis under **section 15C(1)** of the Goods and Services Tax Act 1985.

"When instalments are due: changing to 6-monthly basis

"(2) Instalments of provisional tax are due and payable on whichever dates of instalments C and F for the taxpayer's corresponding income year occur after the change in taxable period takes effect under **section MB 26**.

"When subsection (4) applies

"(3) **Subsection (4)** applies in a tax year to a provisional taxpayer who—

"(a) uses the standard or estimation method to determine the amount of provisional tax payable; and

"(b) has been paying GST on a 6-monthly basis; and

"(c) changes to a monthly or 2-monthly basis under **section 15C(2) or (3)** of the Goods and Services Tax Act 1985.

"When instalments due: changing to monthly or 2-monthly basis

"(4) Instalments of provisional tax are due and payable on whichever dates of instalments B, D, and F for the taxpayer's corresponding income year occur after the change in taxable period takes effect under **section MB 26**.

"Interest instalment dates in new cycle

"(5) If an instalment of provisional tax due on an instalment date in the new cycle is payable in relation to a period in the taxpayer's original cycle and was, under that original cycle, an interest instalment date, it remains an interest instalment date in the new cycle. However, if the instalment is due and payable on an instalment date other than an interest instalment date, the change does not affect the nature of the instalment.

"Formula for amount of instalment

"(6) The amount of each instalment is calculated under **section MB 9**.

"Defined in this Act: amount, corresponding income year, GST, provisional tax, provisional taxpayer, tax year, taxable period

Struck out (unanimous)

Examples: Sections MB 26 and MB 27 (using March balance dates)

Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr

1 Professor Green starts the income year registered for GST on a monthly basis, and on 10 June asks to change to a 6-monthly basis:

- the change takes effect on 30 September (s MB 26(2))
- provisional tax instalment payable on old cycle on 28 August
- provisional tax instalment due on 28 April (s MB 27(2))

2 Ms Blue starts the income year registered for GST on a 6-monthly basis, and on 10 June asks to change to a monthly basis:

- the change takes effect on 30 September (s MB 26(2))
- provisional tax instalment payable on old cycle on 28 October
- provisional tax instalments due on 20 January, 28 April (s MB 27(4))

3 Mr Indigo starts the income year registered for GST on a monthly basis, and on 20 October asks to change to a 6-monthly basis:

- the change takes effect on 31 March
- provisional tax instalments paid on old cycle on 28 August, 20 January, 28 April (ss MB 26(2), MB 27(5))

4 Miss Violet starts the income year registered for GST on a 6-monthly basis, and on 10 June ends her GST registration:

- the change takes effect for provisional tax purposes on 10 June
- provisional tax instalments due on 28 August, 20 January, 28 April

New (unanimous)

Examples: Sections MB 26 and MB 27 (using March balance dates)

Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr

1 Professor Green starts the income year registered for GST on a monthly basis, and on 10 June asks to change to a 6-monthly basis:

- the change takes effect on 30 September (s MB 26(2))
- provisional tax instalment payable on old cycle on 28 August
- provisional tax instalment due on 28 April (s MB 27(2))

2 Ms Blue starts the income year registered for GST on a 6-monthly basis, and on 10 June asks to change to a monthly basis:

- the change takes effect on 30 September (s MB 26(2))
- provisional tax instalment payable on old cycle on 28 October
- provisional tax instalments due on 20 January, 28 April (s MB 27(4))

3 Mr Indigo starts the income year registered for GST on a monthly basis, and on 20 October asks to change to a 6-monthly basis:

- the change takes effect on following 31 March
- provisional tax instalments paid on old cycle on 28 August, 20 January, 28 April (ss MB 26(3), MB 27(5))

4 Miss Violet starts the income year registered for GST on a 6-monthly basis, and on 10 June ends her GST registration:

- the change takes effect for provisional tax purposes on 10 June (s MB 25(5))
- provisional tax instalments due on 28 August, 20 January, 28 April (s MB 25(4))

"*Penalties and interest provisions*

"MB 28 Application of provisions of Tax Administration Act 1994

"Safe harbour for standard method

"(1) If a provisional taxpayer meets the requirements in **section 120KE(1)** of the Tax Administration Act 1994, their residual income tax is treated as due and payable in 1 instalment on their terminal tax date.

"GST ratio method

"(2) A provisional taxpayer who uses a GST ratio in a tax year to determine the amount of an instalment of provisional tax is liable to pay an amount of use of money interest, a late payment penalty, or a shortfall penalty only in the circumstances set out in, as applicable, the following sections of the Tax Administration Act 1994:

"(a) **sections 120KB to 120KE** (*(which relate to due dates for provisional tax and use of money interest)*):

"(b) **section 139C(1B)** (*(Late payment penalty and provisional tax)*):

"(c) **section** (*141ED*)**141EA**(*(Shortfall penalty and provisional tax)*).

"Defined in this Act: amount, GST ratio, pay, provisional taxpayer, residual income tax, shortfall penalty, tax year, terminal tax date

"*Treatment of groups of companies and amalgamated companies*

"MB 29 Provisional tax rules and consolidated groups

"Single company

"(1) The provisional tax rules apply, with the necessary modifications, to a consolidated group of companies as if it were a single company.

"Joint and several liability

"(2) Each company in a consolidated group in a tax year is jointly and severally liable for the amount of provisional tax payable by the consolidated group to be credited against the income

tax liability of the group for the tax year. The individual liability of a company for income tax for the tax year is substituted by that joint and several liability to the extent to which the liability arises while the company is a member of the consolidated group.

"*Relationship with section HB 1*

"(3) **Section HB 1(5)** (Returns, assessments, and liability of consolidated group) overrides this section.

"Defined in this Act: amount, company, consolidated group, income tax, income tax liability, pay, provisional tax, provisional tax rules, tax year

"**MB 30 Residual income tax of consolidated groups**

"*When this section applies*

"(1) This section applies for the purposes of the provisional tax rules if a company is a member of a consolidated group of companies in a tax year but was not a member of the group for all or part of the preceding tax year.

"*Increased residual income tax*

"(2) The residual income tax of the consolidated group for the preceding tax year is treated as increased by an amount equal to the residual income tax of the company for the preceding tax year. If the company is a member of the group for part of the current tax year, the amount of residual income tax is increased as a proportion on the basis of the part of the tax year during which the company is a member of the group.

"*Instalments due after company becomes member*

"(3) If the company is a member of a group for part of the tax year, this section applies only to instalments of provisional tax payable after the date on which the company becomes a member.

"Defined in this Act: amount, company, consolidated group, pay, provisional tax, provisional tax rules, residual income tax, tax year

"**MB 31 Consolidated groups using estimation method**

"When subsection (2) applies

"(1) **Subsection (2)** applies for the purposes of the provisional tax rules if a company is a member of a consolidated group of companies for all or part of a tax year but is not a member of the group for all or part of the following tax year.

"Estimation before final instalment date

"(2) The company must estimate its residual income tax on or before the date of instalment F for the following income year that corresponds to the tax year, and the company is treated as a provisional taxpayer to which **section MB 6** applies for the purposes of its estimate.

"When company member of another consolidated group

"(3) The consolidated group, in the case of a company that is a member of another consolidated group, must make an estimate of residual income tax on or before the date of instalment F for the following income year that corresponds to the tax year, and the consolidated group is treated as a provisional taxpayer to which **section MB 6** applies for the purposes of its estimate.

"When company no longer member

"(4) If a company stops being a member of the consolidated group in the following tax year, the company's estimate applies only to instalments of provisional tax payable after the date on which it stopped being a member.

"Defined in this Act: company, consolidated group, corresponding income year, pay, provisional tax rules, provisional taxpayer, residual income tax, tax year

"**MB 32 Consolidated groups using GST ratio method**

Sections MB 7, MB 8(5), MB 10, and MB 15 to MB 18 apply to a consolidated group of companies with the following modifications:

"(a) if a consolidated group that is eligible to use, or is using, a GST ratio for a tax year is joined by a new member, the following subparagraphs apply:

"(i) if the new member joins at the start of the tax year and, as a result, the threshold in **section MB 15(2)(a)** is exceeded, the group is no longer eligible to use a GST ratio:

"(ii) if the new member joins at the start of the tax year, and the group, allowing for the inclusion of the new member, is eligible under **section MB 15(1)**, the group may use a GST ratio, subject to the recalculation of the ratio under **paragraph (c)**:

"(iii) if the new member joins at some time in the tax year, the group may continue to use a GST ratio for the tax year, as recalculated under **paragraph (c)**, provided the requirements for eligibility other than the threshold in **section MB 15(2)(a)** are met:

"(b) if a consolidated group that does not determine provisional tax payable for a tax year using a GST ratio, is joined by a new member that is using a GST ratio for the tax year, the group may not start using a GST ratio for this purpose for the tax year:

"(c) for the purposes of **paragraph (a)**,—

"(i) the group must recalculate the GST ratio applying for a tax year to include the residual income tax of the new member for the preceding tax year and the (*total supplies*)total taxable supplies of the new member for the corresponding income year, applying **section MB 7(3)** if required; and

"(ii) the recalculated GST ratio applies to provisional tax payments made for the corresponding income year on or after the date on which the new member joins the group:

"(d) **section MB 15(3) and section MB 17(4) or (5)**, as applicable, (*and*)(***subsection (3)***) apply to a company that leaves a consolidated group at some time in a tax year.

"Defined in this Act: consolidated group, corresponding income year, GST ratio, pay, provisional tax, residual income tax, tax year, (*total supplies*) taxable supply

"**MB 33 Wholly-owned groups of companies**

"When this section applies

"(1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 in relation to a company (**company A**) that is a member in a tax year of a wholly-owned group of companies that includes another company (**company B**). **Section MD 2** (Limits on refunds and allocations of tax) overrides this section.

"Company A allocating overpayment to company B

"(2) If, for a tax year, company A has paid an amount of provisional tax that is more than the residual income tax payable for the tax year, the company may allocate some or all of the overpayment to company B to the extent to which the amount of provisional tax paid by company B is less than their residual income tax for the tax year. Company A must notify the Commissioner under **subsection (4)**.

"When allocation made

"(3) Company A may allocate an amount under **subsection (2)** on or after the later of—

"(a) the day on which company A overpays the provisional tax; or

"(b) the day on which the first instalment of provisional tax for the tax year becomes payable by company B.

"Notice

"(4) A notice under **subsection (2)** must—

"(a) name company B, and the amount to be allocated; and

"(b) state the date on which the overpayment is treated as allocated to company B; and

Struck out (unanimous)

"(c) be provided to the Commissioner within the time for providing a return of income for the tax year for company B.

New (unanimous)

"(c) be provided to the Commissioner—

"(i) within the time for providing a return of income for the tax year for company B:

"(ii) within any extension of time that the Commissioner allows.

"When allocation made, and how allocation treated

"(5) For the purposes of this section,—

"(a) an allocation under **subsection (2)** is treated as made on the date stated in the notice; and

"(b) provisional tax allocated to company B by company A is treated as provisional tax paid by company B and not by company A.

"Defined in this Act: amount, Commissioner, company, notice, notify, pay, provisional tax, provisional tax rules, residual income tax, return of income, tax year, wholly-owned group of companies

"MB 34 Amalgamated companies: calculating residual income tax

Struck out (unanimous)

If, in a tax year, an amalgamating company ceases to exist on an amalgamation, the residual income tax of the amalgamated company for the preceding tax year is treated as the amount that would have been the residual income tax if the amalgamating company and the amalgamated company had been 1 company. The subsection applies for the purposes of the provisional tax rules only in relation to instalments of provisional tax payable after the amalgamation.

New (unanimous)

"*When this section applies*

"(1) This section applies if an amalgamating company ceases to exist on an amalgamation occurring in an income year of the amalgamated company that corresponds to a tax year.

"*Residual income tax for preceding tax year*

"(2) The residual income tax of the amalgamated company for the preceding tax year is the amount that would have been the residual income tax of the amalgamated company for the preceding tax year if the amalgamating company and the amalgamated company had always been 1 company.

"*Exception: instalments of provisional tax*

"(3) **Subsection (2)** does not apply for the purposes of the provisional tax rules in relation to instalments of provisional tax payable before the amalgamation.

"Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, company, pay, provisional tax, provisional tax rules, residual income tax, tax year

"*Attribution rule for services*

"MB 35 Attribution rule for services

"*When this section applies*

"(1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 for provisional tax paid for income from personal services to which **section GC 14B** (Attribution rule for personal services) may apply.

"*Person B allocating amount to person C*

"(2) If, in a tax year, person B pays an amount of provisional tax that is more than the residual income payable for the tax year, person B may allocate some or all of the overpayment to person C to the extent to which the amount of provisional tax

paid by person C is less than their residual income tax for the tax year.

"Person C allocating amount to person B

"(3) If, in a tax year, person C pays an amount of provisional tax that is more than the residual income payable for the tax year, person C may allocate some or all of the overpayment to person B to the extent that the amount of provisional tax paid by person B is less than their residual income tax for the tax year.

"When allocation made

"(4) Persons B and C may allocate an amount under **subsection (2) or (3)** on or after the later of—

"(a) the day on which the overpayment of provisional tax is paid by person B or person C, as applicable; or

"(b) the day on which the first instalment of provisional tax payable for the tax year becomes payable by—

"(i) person C, if person B is making the allocation; or

"(ii) person B, if person C is making the allocation.

"Notice

"(5) The Commissioner must be notified of an allocation under **subsection (2) or (3)** in a notice that—

"(a) names the person to whom an allocation is made, and the amount to be allocated; and

"(b) states the date on which the overpayment is treated as allocated to person B or person C, as applicable; and

"(c) is provided within the time for providing a return of income for the tax year for the person to whom the allocation is made.

"When allocation made, and how allocation treated

"(6) For the purposes of this section,—

"(a) an allocation under **subsection (2) or (3)** is treated as made on the day stated in the notice; and

"(b) provisional tax allocated to person C by person B for a tax year is treated as provisional tax paid by person C and not by person B; and

"(c) provisional tax allocated to person B by person C is treated as provisional tax paid by person B and not by person C.

"Defined in this Act: amount, Commissioner, notice, notify, pay, provisional tax, provisional tax rules, residual income tax, return of income, tax year

"*Overpayments and credits*

"MB 36 Overpaid provisional tax

"When this section applies

"(1) This section applies when the amount of provisional tax payable by a provisional taxpayer for a tax year is reduced by the taxpayer, or by the Commissioner under **section 119(2)** of the Tax Administration Act 1994.

"Reduction in amount of provisional tax payable

"(2) If the taxpayer applies (*in writing*) for a refund of the amount of provisional tax already paid that is as a result of the reduction more than the amount that would have been payable in relation to earlier instalment dates for the tax year, the Commissioner must—

"(a) apply the overpayment as the taxpayer asks under section 173T of the Tax Administration Act 1994 or, if no request is made, in a way that the Commissioner determines in payment of tax or another amount that is payable by them; and

"(b) refund any balance of the overpayment.

"Reduction in assessment

"(3) If the taxpayer's residual income tax is assessed as not more than $2,500, and they apply (*in writing*) for the refund of an amount of provisional tax that has been determined under **section MB 8** and already paid (other than on a final instalment), the Commissioner must—

"(a) apply the amount as the taxpayer asks under section 173T of the Tax Administration Act 1994 or, if no request is made, in a way the Commissioner determines in payment of tax or another amount that is payable by them; and

"(b) refund any balance of the amount.

"Treatment of amount refunded or credited

"(4) When an overpayment or amount of provisional tax for a tax year has been applied or refunded under **subsection (2) or (3)**—

"(a) a later instalment payable under **section MB 9 or MB 10**, as applicable, is calculated as if the total instalments previously payable were reduced by the amount of the overpayment or amount; and

"(b) the overpayment or amount applied or refunded is, from the date of action taken by the Commissioner, treated as not being provisional tax paid for the tax year.

"Defined in this Act: amount, Commissioner, instalment date, pay, provisional tax, provisional taxpayer, residual income tax, tax, tax year

"MB 37 Further income tax credited to provisional tax liability

"When this section applies

"(1) This section applies for the purposes of **sections MB 8 to MB 10** if, under **section ME 9** (**(***Allocation rules for imputation credits***)**Further tax payable where end of year debit balance or when company ceases to be imputation credit account company), a company applies an amount of further income tax to pay an instalment of provisional tax for which the company becomes liable after the date of payment of the further income tax.

"Amount treated as provisional tax

"(2) The instalment is satisfied to the extent of the amount of further income tax. The amount is treated as provisional tax paid on the date on which the instalment was due and payable.

"Order

"(3) The Commissioner must credit the amount of the further income tax in payment successively of—

"(a) the instalment of provisional tax that is first due and payable after the date of payment of the further income tax; and

"(b) to the extent of the amount of further income tax, to later instalments in the order in which they are due and payable.

"Defined in this Act: amount, company, further income tax, pay, provisional tax

"*Disaster relief*

"MB 38 Provisional taxpayer affected by self-assessed adverse event or qualifying event

"Who this section applies to

"(1) This section applies to a provisional taxpayer with a **(***farming, agricultural, or fishing* **)**business that is significantly affected by a self-assessed adverse event or qualifying event. This section overrides **section MB 6**.

"Taxpayer's request

"(2) The provisional taxpayer may ask the Commissioner to accept an estimate or a revised estimate of the residual income tax payable by them for a tax year.

"Acceptance of estimate

"(3) The Commissioner may accept an estimate or revised estimate described in **subsection (2)** if all the following requirements are met:

"(a) the business is significantly affected by the self-assessed adverse event or qualifying event; and

"(b) it is not reasonable to require the taxpayer to provide under **section MB 6** an estimate or revised estimate of residual income tax payable by them for the tax year; and

"(c) the basis on which the taxpayer has chosen to pay provisional tax is now inappropriate; and

"(d) the taxpayer asks to revise their estimate as soon as practicable.

"*Treatment of revised estimate*

"(4) If a revised estimate is accepted under **subsection (3)**, it is treated as the estimate applying on the date of instalment F.

"Defined in this Act: Commissioner, provisional tax, provisional taxpayer, qualifying event".

(2) **Subsection (1)** applies for provisional tax payments for the income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

101 Payment of terminal tax

(1) In section MC 1(1),—

(a) in paragraph (a), "part A for the payment of terminal tax for the tax year, unless January is specified; and" is replaced by "part A, column G or H, for the person's corresponding income year, unless January is specified:":

(b) paragraph (b) is replaced by the following:

Struck out (unanimous)

"(b) the 20th day of January, if December is specified in schedule 13, part A, column G or H for the person's corresponding income year.

New (unanimous)

"(b) the 15th day of January, if January is specified in schedule 13, part A, column G or H for the person's corresponding income year."

(2) Section MC 1(2) is replaced by the following:

"(2) For the purposes of **subsection (1)**, the month specified in schedule 13, part A**(**, *column G or H***)** for the taxpayer's corresponding income year is—

"(a) the month in column H, if—

"(i) the person's return of income for the **(***income year***)** tax year was linked to a tax agent**(***; or***)**:

Struck out (unanimous)

"(ii) the person has asked for an income statement under section 80C of the Tax Administration Act 1994 or has been issued an income statement under section 80D of that Act, the Commissioner has been notified that a tax agent will respond to the income statement issued to the person; or

New (unanimous)

"(ii) the Commissioner has been notified that a tax agent will respond to an income statement for the tax year that the person has requested under section 80C of the Tax Administration Act 1994 or that the Commissioner has issued under section 80D of that Act:

"(b) the month in column G, in any other case."

(3) **Subsections (1) and (2)** apply for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

102 Limit on refunds and allocations of tax

(1) In section MD 2—

(a) in subsections (1) to (4) and (5A), "section MB 9" is replaced by "**section MB 33**" in all the places it occurs:

(b) in subsection (4), "the date of payment of the first instalment of provisional tax for that tax year" is replaced by "the date of instalment B specified in **schedule 13, part A**, for the company's income year that corresponds to that tax year".

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

103 Limits on refunds of tax in relation to Maori authorities

(1) In section MD 2B(3), "the date of the first instalment of provisional tax for the tax year" is replaced by "the date of instalment B specified in schedule 13, part A, for the authority's income year that corresponds to the tax year".

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*) 2008–09 and subsequent tax years.

New (unanimous)

103B Companies required to maintain imputation credit account

(1) Section ME 1(2)(a) is repealed.

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

104 Credits arising to imputation credit account

(1) In section ME 4(1), the following is inserted after paragraph (ea):

"(eb) the amount of any imputation credit attached under **section ME 6B** to a replacement payment (*made*)paid under a share-lending arrangement to the company during the (*income*)imputation year:

"(ec) the amount of any imputation credit treated under **section NF 8B** as being attached to a replacement payment (*made*)paid under a share-lending arrangement to the company during the (*income*)imputation year:

New (unanimous)

"(ed) the amount of imputation credit shown in a credit transfer notice that the company is issued with during the imputation year:".

(2) In section ME 4(2), the following is inserted after paragraph (cb):

"(cc) in the case of the credits referred to in subsection (1)(eb) and (ec), on the date the replacement payment is (*made*) paid:

New (unanimous)

"(cd) in the case of the credit referred to in **subsection (1)(ed)**, on the date the credit transfer notice is issued:".

Struck out (unanimous)

(3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

105 Debits arising to imputation credit account

(1) In section ME 5(1), the following is inserted after paragraph (a):

"(ab) the amount of any imputation credit attached under **section ME 6B** to a replacement payment (*made*)paid under a share-lending arrangement by the company during the (*income*) imputation year:

Struck out (unanimous)

"(ac) the amount of any imputation credit attached to a dividend that—

"(i) is paid to the company during the imputation year; and

"(ii) is received by the company as the holder of a share that the company acquired as a share user under a returning securities transfer that is not a share-lending arrangement:

New (unanimous)

"(ac) the amount of any imputation credit attached to a dividend that is paid to the company during the imputation year as a share user or as a person associated with a share user, in a returning share transfer that is not a share-lending arrangement:

"(ad) the amount of any imputation credit attached to a dividend that is paid to the company during the imputation year, if the imputation credit is shown in a credit transfer notice issued by the company:".

(2) In section ME 5(1)(d), "section MB 9" is replaced by "**section MB 33**".

(3) In section ME 5(2), the following is inserted after paragraph (a):

"(ab) in the case of a debit referred to in **subsection (1)(ab)**, on the date the replacement payment is (*made*) paid:

"(ac) in the case of a debit referred to in **subsection (1)(ac) or (ad)**, on the date the relevant dividend is paid:".

(4) In section ME 5(2)(d), "section MB 9" is replaced by "**section MB 33**".

New (unanimous)

(4B) In section ME 5(2)(ia), "subsection (1)(jb)" is replaced by "subsection (1)(ja)".

Struck out (unanimous)

(5) **Subsections (1) and (3)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

(6) **Subsections (2) and (4)** apply for income years corresponding to the (*2007–08*) 2008–09 and subsequent tax years.

New (unanimous)

(7) **Subsection (4B)** applies for income years corresponding to the 2005–06 and subsequent tax years.

106 Company may attach imputation credit to dividend

New (unanimous)

(1A) After section ME 6(1), the following is inserted:

"(1B) Notwithstanding subsection (1), an imputation credit account company is not allowed to attach an imputation credit to a dividend if—

"(a) the Income Tax Assessment Act 1997 (Aust) applies to the payment of the dividend by the company; and

New (unanimous)

"(b) the dividend is paid in relation to a share that is, or forms part of, a debt interest under that Act; and

"(c) the payment of the dividend is included in a return of income made by the company to the Australian Federal Commissioner of Taxation.

"(1C) **Subsection (1B)** does not apply in relation to a share issued before 21 July 2005 if, when the dividend is paid,—

"(a) the shareholder and the imputation credit account company are not in the same group of companies:

"(b) the shareholder and the imputation credit account company are—

"(i) in the same wholly-owned group of companies; and

"(ii) not resident in New Zealand.

"(1D) **Subsection (1B)** does not apply in relation to a share issued before 21 July 2005 if—

"(a) the shareholder and the imputation credit account company are in the same group of companies; and

"(b) the shareholder acquired the share—

"(i) as part of a business of sharebroking:

"(ii) as an investment held by the shareholder as part of a business of insurance:

"(iii) as security for a loan given as part of a business of lending money:

"(iv) as a trustee for a beneficiary who is not a company in the same group of companies as the shareholder:

"(v) for reasons not including the fact that the shareholder and the imputation credit account company were members of the same group of companies."

(1) Section ME 6(2) is replaced by the following:

Struck out (unanimous)

"(2) Notwithstanding subsection (1), an imputation credit account company may retrospectively attach an imputation credit to a

Struck out (unanimous)

dividend arising from a transfer pricing adjustment or under **subpart FCB** if—

"(a) the company pays a non-cash dividend and is subject to an adjustment under section GD 13(3) or (4) in respect of the arrangement giving rise to the dividend:

"(b) the company is an emigrating company that is treated under **section FCB 2** as paying a distribution to shareholders.

New (unanimous)

"(2) Notwithstanding subsection (1), a company may retrospectively attach an imputation credit to a dividend arising from a transfer pricing adjustment or under **subpart FCB** if—

"(a) the company is an imputation credit account company that—

"(i) pays a non-cash dividend; and

"(ii) is subject to an adjustment under section GD 13(3) or (4) in respect of the arrangement giving rise to the dividend:

"(b) the company is an emigrating company that—

"(i) is an imputation credit account company immediately before the emigration time; and

"(ii) is treated under **section FCB 2** as paying a distribution to shareholders."

(2) In section ME 6(3), "subsection (2)" is replaced by "**subsection (2)(a)**".

(3) After section ME 6(3), the following is inserted:

"(3B) The amount of imputation credit attached retrospectively under **subsection (2)(b)** must not exceed the credit balance, if any, in the company's imputation credit account immediately before the emigration time."

(4) In section ME 6(5)(a), "subsection (2)" is replaced by "**subsection (2)(a)**".

(5) After section ME 6(5), the following is added:

"(6) If an amount of tax paid by an emigrating company is attributable to income derived before the emigration time by the emigrating company or to the application of **subpart FCB** to the emigrating company, the amount of tax is treated for the purposes of this subpart as being paid immediately before the **(***emigrating company becomes a non-resident***)** emigration time if—

"(a) the company determines under **subsection (2)(b)** to attach an imputation credit to a dividend; and

"(b) the imputation credits that the company attaches are not less than the amount of tax; and

"(c) the company notifies the Commissioner **(***with***)** when providing the company dividend statement required by subsection (4)(b)."

New (unanimous)

(5B) **Subsection (1A)** applies for a dividend that is paid by an imputation credit account company to a shareholder—

(a) in relation to a share issued on or after 21 July 2005:

(b) on or after 1 April 2006 in relation to a share issued before 21 July 2005, if, when the dividend is paid, the shareholder is in the same group of companies as the imputation credit account company.

(6) **Subsections (1) to (5)** apply for the 2005–06 and subsequent imputation years.

107 New section ME 6B inserted

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

"**ME 6B Share user may attach imputation credit to replacement payment**

A share user under a share-lending arrangement may, on making a replacement payment, attach to the replacement payment an imputation credit of an amount less than or equal to the amount of any imputation credits attached to dividends—

"(a) received by the share user before the replacement payment is made; and

"(b) to which the replacement payment relates."

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent

New (unanimous)

107B Allocation rules for imputation credits

After section ME 8(5), the following is added:

"(6) Nothing in subsections (2) to (4) applies to an imputation credit account company in relation to a dividend to which the imputation credit account company is not allowed to attach an imputation credit."

108 Credits arising to imputation credit account of group

(1) In section ME 11(1)(b), "section MB 9" is replaced by "**section MB 33**".

(2) In section ME 11(1), the following is inserted after paragraph (e):

"(eb) the amount of any imputation credit attached under **section ME 6B** to a replacement payment (*made*)paid under a share-lending arrangement to a company that is at the time of the payment a member of the consolidated imputation group:

"(ec) the amount of any imputation credit treated under **section NF 8B** as being attached to a replacement payment (*made*)paid under a share-lending arrangement to a company that is at the time of the payment a member of the consolidated imputation group:

New (unanimous)

"(ed) the amount of imputation credit shown in a credit transfer notice a company is issued with, if the company is a member of the consolidated imputation group at the time the credit transfer notice is issued:".

(3) In section ME 11(2)(b), "section MB 9" is replaced by "**section MB 33**".

(4) In section ME 11(2), the following is inserted after paragraph (c(*b*)):

"((*cc*)cb) in the case of the credits referred to in **subsection (1)(eb) and (ec)**, on the date the replacement payment is (*made*) paid:

New (unanimous)

"(cc) in the case of the credit referred to in **subsection (1)(ed)**, on the date the credit transfer notice is issued:".

(5) **Subsections (1) and (3)** apply for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

Struck out (unanimous)

(6) **Subsections (2) and (4)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

109 Debits arising to imputation credit account of group

(1) In section ME 12(1), the following is inserted after paragraph (a):

"(ab) the amount of any imputation credit attached under **section ME 6B** to a replacement payment (*made*)paid under a share-lending arrangement during the imputation year by a company that is at the time of the payment a member of the consolidated imputation group:

Struck out (unanimous)

"(ac) the amount of any imputation credit attached to a dividend that—

"(i) is paid during the imputation year to a company that is at the time of the payment a member of the consolidated group; and

"(ii) is received by the company as the holder of a share that the company acquired as a share user under a returning securities transfer that is not a share-lending arrangement:

New (unanimous)

"(ac) the amount of any imputation credit attached to a dividend that is paid during the imputation year to a company, if—

"(i) at the time of the payment, the company is a member of the consolidated imputation group; and

"(ii) the dividend is paid to the company as a share user or as a person associated with a share user, in a returning share transfer that is not a share-lending arrangement:

"(ad) the amount of any imputation credit attached to a dividend that is paid during the imputation year to a company that is, at the time of the payment, a member of the consolidated imputation group, if the imputation credit is shown in a credit transfer notice issued by the company:".

(2) In section ME 12(1)(c), "section MB 9" is replaced by "**section MB 33**".

(3) In section ME 12(2), the following is inserted after paragraph (a):

"(ab) in the case of a debit referred to in **subsection (1)(ab)**, on the date the replacement payment is **(***made***)** paid:

"(ac) in the case of a debit referred to in **subsection (1)(ac) or (ad)**, on the date the relevant dividend is paid:".

Struck out (unanimous)

(4) In section ME 12(1)(c), "section MB 9" is replaced by "**section MB 33**".

(5) **Subsections (1) and (3)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

(6) **Subsections (2) and (4)** apply for income years corresponding to the 2007–08 and subsequent tax years.

New (unanimous)

(4) **Subsection (2)** applies for income years corresponding to the 2008–09 and subsequent tax years.

110 Debiting and crediting between consolidated imputation group and individual companies

(1) In section ME 13(6)(e), "section MB 10" is replaced by "**section MB 37**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 **()**and subsequent tax years.

New (unanimous)

110B Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability

(1) Section MF 5(7) is replaced by the following:

"(7) If an election under subsection (4) relates to an amount that exceeds the income tax liability, for the income year, of the company that receives the offset under subsection (6), the excess amount is treated as giving rise to a net loss of the company for the purpose of subparts IF and IG.

"(8) The amount of the net loss under **subsection (7)** is given by the following formula:

$$\frac{a}{b}$$

where—

a is the amount of the excess:

b is the rate of income tax, expressed as a percentage, stated in—

(a) schedule 1, part A, clause 5, if the company is not a Maori authority; or

(b) schedule 1, part A, clause 2, if the company is a Maori authority."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

111 Company may elect to maintain dividend withholding payment account

(1) In section MG 2(5)(a), "account" is inserted after "dividend withholding payment".

(2) After section MG 2(5), the following is added:

"(6) If an emigrating company is a dividend withholding payment account company immediately before the emigration time for the emigrating company, the emigrating company ceases to be a dividend withholding payment account company at the emigration time.

"(7) A company that ceases to be a dividend withholding payment account company as a result of **subsection (6)** must—

"(a) furnish, within the time limit in section 71 of the Tax Administration Act 1994, the annual dividend withholding payment account return required from the company as a dividend withholding payment account company for the imputation year in which the company becomes a non-resident; and

"(b) pay any further dividend withholding payment that may be payable under section MG 9 by the company as a dividend withholding payment account company for the imputation year."

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

New (unanimous)

111B Credits arising to dividend withholding payment account

(1) In section MG 4(1), the following is inserted after paragraph (bc):

"(bd) the amount of dividend withholding payment credit shown in a credit transfer notice that the company is issued with during the imputation year:".

(2) In section MG 4(2), the following is inserted after paragraph (bc):

"(bd) in the case of the credit referred to in **subsection (1)(bd)**, on the date the credit transfer notice is issued:".

New (unanimous)

111C Debits arising to dividend withholding payment account

(1) In section MG 5(1), the following is inserted after paragraph (a):

"(ab) the amount of any dividend withholding payment credit attached to a dividend that is paid to the company during the imputation year, if the dividend withholding payment credit is shown in a credit transfer notice issued by the company:".

(2) In section MG 5(2), the following is inserted after paragraph (a):

"(ab) in the case of a debit referred to in **subsection (1)(ab)**, on the date the relevant dividend is paid:".

111D Dividend withholding payment accounts and consolidated groups

(1) In section MG 13(5)(c)(i), "account" is inserted after "dividend withholding payment".

(2) After section MG 13(5), the following is added:

"(6) **Subsection (7)** applies to a consolidated group that maintains a group dividend withholding payment account if—

"(a) a member of the consolidated group is an emigrating company; and

"(b) the emigrating company is a dividend withholding payment account company immediately before the emigration time for the emigrating company.

"(7) The consolidated group must—

"(a) cease to maintain a group dividend withholding payment account at the emigration time for the member; and

"(b) if there is a debit balance in the group dividend withholding payment account immediately before the emigration time of the member, pay to the Commissioner a further dividend withholding payment of an amount equal to the debit balance; and

New (unanimous)

"(c) furnish, within the time limit under sections 71 and 73 of the Tax Administration Act 1994, the annual dividend withholding payment account return required from the group for the imputation year in which the member becomes a non-resident."

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

111E Credits arising to group dividend withholding payment account

(1) In section MG 14(1), the following is inserted after paragraph (b):

"(bb) the amount of dividend withholding payment credit shown in a credit transfer notice a company is issued with, if the company is a member of the consolidated group at the time the credit transfer notice is issued:".

(2) In section MG 14(2), the following is inserted after paragraph (a):

"(ab) in the case of the credit referred to in **subsection (1)(bb)**, on the date the credit transfer notice is issued:".

111F Debits arising to group dividend withholding payment account

(1) In section MG 15(1), the following is inserted after paragraph (a):

"(ab) the amount of any dividend withholding payment credit attached to a dividend that is paid during the imputation year to a company that is, at the time of the payment, a member of the consolidated group, if the dividend withholding payment credit is shown in a credit transfer notice issued by the company:".

(2) In section MG 15(2), the following is inserted after paragraph (a):

"(ab) in the case of a debit referred to in **subsection (1)(ab)**, on the date the relevant dividend is paid:".

112 Company may elect to be conduit tax relief company and maintain conduit tax relief account

(1) After section MI 2(7), the following is added:

"(8) A company that ceases to be a dividend withholding payment account company as a result of **section MG 2(6)**—

"(a) ceases to be a conduit tax relief company; and

"(b) must furnish, within the time limit in section 69 of the Tax Administration Act 1994, the annual imputation return required from the company for the imputation year in which the company becomes a non-resident; and

"(c) must pay any dividend withholding payment that may be payable under section MI 10(3) by the company as a dividend withholding payment account company for the imputation year."

(2) **Subsection (1)** applies for the 2005–06 and subsequent imputation years.

113 Further dividend withholding payment payable in respect of conduit tax relief account debits

(1) In the heading to section MI 10, "**Further dividend**" is replaced by "**Dividend**".

(2) In section MI 10(1), "a further amount" is replaced by "an amount".

(3) In section MI 10(2), "further amount" is replaced by "amount".

(4) **Subsections (1) to (3)** apply for the 2005–06 and subsequent imputation years.

New (unanimous)

113B Further dividend withholding payment payable in respect of conduit tax relief account debits

(1) The heading to section MI 21 is replaced by "Dividend withholding payment payable in respect of group conduit tax relief account debits".

(2) In section MI 21(1), "a further amount" is replaced by "an amount".

New (unanimous)

(3) In section MI 21(2), "further amount" is replaced by "amount".

(4) **Subsections (1) to (3)** apply for the 2005–06 and subsequent imputation years.

114 Credits arising to Maori authority credit account

(1) In section MK 4(1)(b), "section MB 9(5)" is replaced by "**section MB 33(5)(b)**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

115 Debits arising to Maori authority credit account

(1) In section MK 5—

(a) in subsection (1)(b), "section MB 9(5)" is replaced by "**section MB 33(5)(b)**":

(b) in subsection (2)(b), "section MB 9" is replaced by "**section MB 33(4)**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

Struck out (unanimous)

116 Further tax payable for end of year debit balance or when Maori authority ceases to exist

(1) In section MK 8(5), "section MB 10" is replaced by "**section MB 37**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

117 New section MZ 8 added

(1) After section MZ 7, the following is added:

"**MZ 8 Certain elections to become provisional taxpayer**

Struck out (unanimous)

"(1) This section applies when a taxpayer has a non-standard income year and has filed a return of income for the 1998–99 or a subsequent income year between 10 October 2000 and the date on which the Taxation (Relief, Refunds, and Miscellaneous Provisions) Act 2002 received the Royal assent.

"(2) If the taxpayer has filed their return of income on the basis that **section MB 3(a)** applied (being section MB 2A(1)(a)(i) as it was before the enactment of section 50(1) of the Taxation (Relief, Refunds, and Miscellaneous Provisions) Act 2002), the taxpayer may elect to be a provisional taxpayer for the income year for which the return was filed if the taxpayer has paid provisional tax of $2,500 or more on or before the date of instalment F for the non-standard income year that corresponds to the tax year for which the return was filed.

New (unanimous)

"(1) This section applies if a taxpayer has a non-standard income year and has, between 10 October 2000 and the date on which the Taxation (Relief, Refunds, and Miscellaneous Provisions) Act 2002 received the Royal assent, filed a return of income for the 1998–99 or a later income year on the basis that **section MB 3(a)** applied (being section MB 2A(1)(a)(i) as it was before the enactment of section 50(1) of the Taxation (Relief, Refunds, and Miscellaneous Provisions) Act 2002).

"(2) The taxpayer may elect to be a provisional taxpayer for the income year for which the return was filed if the taxpayer has paid provisional tax of more than $2,500 on or before the date of instalment F for the non-standard income year that corresponds to the tax year for which the return was filed."

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

118 New section MZ 9 added

(1) After section MZ 8, as added by **section 117**, the following is added:

"**MZ 9 Amount of provisional tax based on 1997–98 or earlier tax year**

For the purposes of **sections MB 4 and MB 5** (other than **section MB 5(3) and (4)**), and for a taxpayer who is a New Zealand superannuitant for the 1997–98 tax year, the taxpayer's residual income tax for that tax year or for an earlier tax year is the amount that would have been the taxpayer's residual income tax if the taxpayer—

"(a) had not been liable to pay the New Zealand superannuitant surcharge; and

"(b) had not paid any New Zealand superannuitant surcharge by way of surcharge deduction."

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08***)** 2008–09 and subsequent tax years.

119 New subpart NBB inserted

(1) After subpart BA of Part N, the following is inserted:

"Subpart NBB—Subsidy payable to certain listed PAYE intermediaries

"**NBB 1 Purpose**

The purpose of this subpart is to prescribe the requirements for a listed PAYE intermediary to receive a subsidy payment under this subpart.

"**NBB 2 Accreditation of listed PAYE intermediary**

"(1) The Commissioner may list an applicant as a listed PAYE intermediary if the Commissioner is satisfied that,—

"(a) the applicant is an accredited PAYE intermediary under subpart NBA, the listing of which is consistent with section 6(1) of the Tax Administration Act 1994; and

"(b) the period for which the applicant requests listing as a listed PAYE intermediary does not exceed the period for which the applicant is an accredited PAYE intermediary; and

"(c) the applicant has completed and provided the tax returns required from the applicant; and

"(d) the applicant has made the required payments of tax due from the applicant; and

"(e) in the case of an applicant who acted as an accredited PAYE intermediary for an employer or who made PAYE payments for an employer before the date of the application,—

"(i) the applicant completed and provided the required tax returns by their due dates; and

"(ii) the applicant made the payments of tax by their due dates; and

"(f) the applicant has available the administrative (including information technology) systems necessary to perform the obligations of a listed PAYE intermediary; and

"(g) if the application is approved, the applicant will, before acting as a listed PAYE intermediary for an employer, inform each employer who contracts the services of the applicant as a listed PAYE intermediary that the Commissioner does not guarantee payments by the applicant to employees of the employer or the performance of any part of the services provided by the applicant.

"(2) The Commissioner may specify a period for which a person is accredited as a listed PAYE intermediary.

"**NBB 3 Obligations of listed PAYE intermediaries**

"(1) A listed PAYE intermediary must, throughout the period of their listing,—

"(a) maintain the status of an accredited PAYE intermediary under subpart NBA; and

"(b) perform in a timely manner the obligations of an accredited PAYE intermediary; and

"(c) continuously meet the standards listed in **sections NBB 2(1)(c) to (g)**.

"(2) A listed PAYE intermediary must, throughout the period of their listing, maintain working access to administrative and information technology systems that will enable the listed PAYE intermediary to correctly return by electronic means a listed PAYE intermediary claim form that,—

"(a) employs the electronic format prescribed by the Commissioner; and

"(b) correctly calculates the amount of subsidy claimed under **section NBB 5**.

"(3) For the purposes of section 22 of the Tax Administration Act 1994, a listed PAYE intermediary must keep such records as are necessary to verify the information contained in each listed PAYE intermediary claim form.

"**NBB 4 Revocation of listing**

"(1) The Commissioner may revoke the listing of a listed PAYE intermediary if—

"(a) the person's accreditation as a PAYE intermediary is revoked:

"(b) the person does not provide a listed PAYE intermediary claim form by the date and in the format prescribed by the Commissioner:

"(c) the person fails to comply with any of the obligations of a listed PAYE intermediary or ceases to be a person which the Commissioner may list under **section NBB 2**:

"(d) the Commissioner considers revocation is necessary in order to protect the integrity of the tax system.

"(2) The Commissioner must give 30 days of his intention to revoke an accreditation under **subsection (1)** and of the reasons for the intended revocation.

"(3) If the listed PAYE intermediary does not resolve the matters listed in the notice of intended revocation to the satisfaction of the Commissioner, the Commissioner may give 14 days notice of revocation.

"(4) At the expiration of a notice under **subsection (3)**, the listing of the listed PAYE intermediary is revoked.

"(5) A decision made by the Commissioner under this section may not be challenged."

(2) After **section NBB 4**, as inserted by **subsection (1)**, the following is added:

"**NBB 5 Listed PAYE intermediary claim form**

"(1) A listed PAYE intermediary claim form must be filed within one month of the date of filing of the employer monthly schedule to which it relates.

"(2) The Commissioner may, within 2 years of receipt of a listed PAYE intermediary claim form, amend the particulars in

order to rectify an error in the particulars supplied by the listed PAYE intermediary.

"(3) The Commissioner must give the listed PAYE intermediary who provided the listed PAYE intermediary claim form 14 days notice of the amendment proposed under **subsection (2)** before making the amendment.

"(4) An overpayment or underpayment that results from the amendment must be paid by the listed PAYE intermediary or the Commissioner, as the case may be, within 30 days of the giving of the Commissioner's notice under **subsection (3)**.

"(5) Despite **subsection (3)**, the Commissioner may elect to offset an overpayment that results from an amendment under that subsection against a claim for payment of subsidy made after expiry of the 14 day period prescribed in that subsection.

"**NBB 6 Calculation and payment of subsidy to certain listed PAYE intermediaries**

"(1) The Commissioner may pay a subsidy to a listed PAYE intermediary in respect of payroll services provided to an employer to whom sections NC 15(1)(c) or (d) applies if the listed PAYE intermediary —

"(a) has contracted with the employer for the provision of those services; and

"(b) has met the obligations of the listed PAYE intermediary under subpart NBA; and

"(c) files a correct listed PAYE intermediary claim form under **section NBB 5**.

"(2) Within 14 days of the date on which the Commissioner pays a subsidy to a listed PAYE intermediary under **subsection (1)**, the Commissioner must give notice by electronic means to the listed PAYE intermediary of **(***the***)**—

"(a) the amount of subsidy paid in respect of each employer; and

Struck out (unanimous)

"(b) pay frequency of each employee in relation to whom the subsidy was paid; and

"(c) (*PAYE*) the period to which the amount (*paid*) relates(.); and

New (unanimous)

"(d) other information relevant to the payroll services provided by the listed PAYE intermediary that the Commissioner considers appropriate.

"(3) The amount of the subsidy must be calculated in the manner provided by regulations made under this section and a payment of a subsidy under this section must be made electronically to a bank account—

"(a) nominated by the listed PAYE intermediary for the purpose; or

"(b) if an overpayment has been made to the listed PAYE intermediary, to the Listed PAYE Intermediary Bank Account.

"(4) A claim for payment of an amount of subsidy calculated under this section is to be made in the manner provided in **section NBB 5**.

"(5) The Commissioner must pay the amount of subsidy that is payable in respect of a listed PAYE intermediary claim form within 30 days of receipt the last of—

"(a) the employer monthly schedule to which the listed PAYE intermediary claim form relates:

"(b) payment of the PAYE deductions to which the listed PAYE intermediary claim form relates:

"(c) the listed PAYE intermediary claim form.

"(6) The Governor-General may from time to time, by Order in Council, prescribe the amount of the subsidy to be paid in respect of each employee of an employer who contracts the services of a listed PAYE intermediary under this subpart.

"**NBB 7 Termination of employer arrangements with listed PAYE intermediary**

"(1) An employer or a listed PAYE intermediary may end an arrangement by giving notice to the other party and to the Commissioner.

"(2) A notice must state the date on which the arrangement will end, being a date that occurs not less than 14 days after the date on which the notice is given.

"(3) A person who, for whatever reason, ceases to be a listed PAYE intermediary for an employer has the rights and obligations under the PAYE rules and SSCWT rules of a listed PAYE intermediary in relation to funds that—

"(a) the employer pays to the person as a listed PAYE intermediary; and

"(b) the person is holding at the time that the person ceases to be a listed PAYE intermediary for the employer."

Struck out (unanimous)

(3) **Subsection (2)** applies for pay periods beginning on or after 1 April 2006.

New (unanimous)

(3) **Subsection (2)** applies for pay periods beginning on or after 1 October 2006.

120 Application of other provisions to amounts payable under PAYE rules

(1) In section NC 20(1), "section 120K" is replaced by "**sections 120KB to 120KE**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 **()**and subsequent tax years.

121 Private use of motor vehicle: value of benefit

(1) After section ND 1A(1), the following is inserted:

Struck out (unanimous)

"(1B) The value of the benefit may be calculated using either of the valuation methods set out in **schedule 2, part A**.

"(1C) The value of the benefit may be calculated using the tax value of the vehicle in the first return relating to the vehicle under

Struck out (unanimous)

whichever is applicable of **sections ND 2, ND 9, ND 10, ND 13, and ND 14**.

"(1D) The value of the benefit may be calculated using the tax value of the vehicle from—

"(a) the end of a period of 5 or more years starting on the date of the first return for the vehicle, if that return gives the value of the benefit based on the cost price of the vehicle:

"(b) the end of a period of 1 or more years—

"(i) starting immediately after a period in which the value of the benefit is calculated using the tax value of the vehicle; and

"(ii) in which the value of the benefit is calculated using the cost price of the vehicle.

"(1E) If the value of the benefit is calculated using the tax value of the vehicle in a return relating to the vehicle, the valuation method must continue to be used until the first of the following events:

"(a) the disposal of the vehicle:

"(b) the vehicle ceases to be leased:

"(c) the end of a period of 5 or more years starting on the date of the first return relating to the vehicle, if the valuation method is used under **subsection (1C)**:

"(d) the end of a period of 1 or more years starting after the end of a period referred to in **subsection (1D)**.

New (unanimous)

"(1B) In the first return under this subpart (**initial return**) by an employer for a vehicle, the employer may calculate the value of the benefit using either of the valuation methods set out in **schedule 2, part A**.

"(1C) The employer must use the method from the initial return in calculating the value of the benefit in a return for the vehicle for a period beginning—

"(a) after the end of the period of the initial return; and

"(b) before the earliest of the following:

New (unanimous)

"(i) the date of disposal of the vehicle:
"(ii) the date on which the vehicle ceases to be leased:
"(iii) the date 5 years after the beginning of the period of the initial return.

"(1D) In a return for the vehicle for a period beginning 5 years or more after the beginning of the period of the initial return, the employer may calculate the value of the benefit using either of the valuation methods set out in **schedule 2, part A**."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

122 New section ND 1AB inserted

(1) After section ND 1A, the following is inserted:

"**ND 1AB Private use of motor vehicle: 24-hour period**

"(1) This section applies for the purposes of the calculation of the value of a benefit under section ND 1A.

"(2) In section ND 1A(5)(a) and (b), in relation to a motor vehicle and the item **days** in the formulas in sections ND 1A(2) and (4), a day is—

"(a) a 24-hour period starting at midnight, if the person who owns or leases the motor vehicle does not make an election under **paragraph (b)**:

"(b) a 24-hour period starting from the time in a day that is elected under this section by the person who owns or leases the motor vehicle.

"(3) For the purposes of **subsection (2)(b)**, the person must—

Struck out (unanimous)

"(a) choose an hour in the 24-hour period starting at midnight as the starting point of the day; and

New (unanimous)

"(a) choose a starting point for the day that is a whole number of hours after midnight; and

"(b) notify the Commissioner of the election (*in*) when providing the next return that relates to the motor vehicle.

"(4) An election under **subsection (3)** is effective from the start of the quarter, income year, or tax year to which the return relates, and applies to all motor vehicles in relation to which the person provides a return.

"(5) If the person chooses a particular hour in the 24-hour period as the starting point of the day under **subsection (3)**, that hour continues to apply to the use of the motor vehicle or vehicles from the start of the relevant quarter, income year, or tax year as applicable, for a minimum period of 2 income years.

"(6) An employer may apply to the Commissioner to amend the starting point of the 24-hour period or to treat the election as revoked if the employer's circumstances have changed in a way that—

"(a) is more than minor; and

"(b) makes the starting point no longer relevant to the employer's business."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

Struck out (unanimous)

123 Employment-related loans: value of benefit

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

"(1) The value of a benefit provided by way of an employment-related loan in a period is the amount by which, as the employer chooses, either the prescribed interest or the market interest on the loan is more than—

"(a) the amount of interest that accrued on the loan in that period; or

"(b) when the loan is a financial arrangement and it is appropriate having regard to the nature of the loan, the

Struck out (unanimous)

income that would have accrued to the employer's benefit in that period as calculated under the yield to maturity method.

"(2) Having chosen a method under **subsection (1)**, an employer must use the method for the income year to which the choice relates and for the next following income year.

"(3) An employer may not change the method of calculating the value of the benefit for an income year unless the employer notifies the Commissioner of the proposed change at least 1 year before the beginning of the income year in which the change is to occur.

"(4) In this section, **market interest** means the amount of interest calculated at the interest rate that would apply to a borrower belonging to a group of persons to whom a loan of the kind provided to the employee is offered when that group meets the following requirements:

"(a) the group is assessed as having a comparable credit risk to the group to which the employee belongs; and

"(b) the group is employed by a person who is not associated with the employer; and

"(c) the group is of sufficient size to ensure a transaction on an arm's-length basis.

"(5) For the purposes of a calculation under **subsection (3)**, the amount of interest is the amount accrued on the loan during the quarter or tax year calculated on the daily balance of that loan at the rate referred to in that subsection.

Example A bank provides loan facilities to its employees on terms that are not those offered to the general public, but are identical to those that the bank offers to a group of employees of a government department. The market interest rate would be the rate offered to the group of employees of the department."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

123 Employment-related loans: value of benefit

(1) In the heading to section ND 1D, "**using prescribed interest**" is inserted after "**benefit**".

(2) In section ND 1D, in the words before paragraph (a), "by an employer who does not make an election under **section ND 1DB**" is inserted after "employment-related loan".

(3) **Subsections (1) and (2)** apply for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

123B New section ND 1DB inserted

(1) After section ND 1D, the following is inserted:

"**ND 1DB Employment-related loans: election to value benefit using market interest**

"(1) An employer in the business of lending money to members of the public may choose that the value of a benefit provided by the employer by way of an employment-related loan be determined using the market interest on the loan.

"(2) If an employer makes an election under **subsection (1)**, the value of a benefit provided by the employer by way of an employment-related loan in a period is the amount by which the market interest on the loan is more than—

"(a) the amount of interest that accrued on the loan in that period; or

"(b) when the loan is a financial arrangement and it is appropriate having regard to the nature of the loan, the income that would have accrued to the employer's benefit in that period as calculated under the yield to maturity method.

"(3) Having made an election under **subsection (1)**, an employer must use the method for the income year to which the choice relates and for the next following income year.

"(4) An employer may not change the method of calculating the value of the benefit for an income year unless the employer notifies the Commissioner of the proposed change at least 1 year before the beginning of the income year in which the change is to occur.

New (unanimous)

"(5) In this section, **market interest** means the amount of interest calculated at the interest rate that would apply to a borrower belonging to a group of persons to whom a loan of the kind provided to the employee is offered when that group meets the following requirements:

"(a) the group is assessed as having a comparable credit risk to the group to which the employee belongs; and

"(b) membership of the group arises from factors that do not include a link between a member and the employer; and

"(c) the group is of sufficient number to ensure a transaction on an arm's-length basis.

"(6) For the purposes of a calculation under **subsection (5)**, the amount of interest is the amount accrued on the loan during the quarter or tax year calculated on the daily balance of that loan at the rate referred to in that subsection."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

124 New section ND 1IB inserted

(1) After section ND 1I, the following is inserted:

"**ND 1IB Benefits provided by charitable organisations**

The value under **section CX 21(2)** of a benefit provided by a charitable organisation by way of a short-term **(***credit* **)**charge facility is the sum of—

"(a) the amount that the organisation pays for or towards the purchase or the hire of the goods and services obtained by the employee under the short-term **(***credit* **)**charge facility:

"(b) any interest incurred in relation to the purchase or hire of the goods and services:

"(c) if the short-term **(***credit* **)**charge facility is a credit card or charge card provided for an employee's use solely for purposes unconnected with the organisation or its operations, the associated account or service fees."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

125 Services: value of benefit

(1) After section ND 1K(1), the following is inserted:

"(1B) For the purposes of subsection (1), a person providing services to an employee belonging to a group of employees is to be treated as providing the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms if the person provides the same or similar services to a group of persons that—

"(a) negotiates the transaction on an arm's-length basis; and

"(b) is comparable in (*size*) number to the group of employees."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

126 Unclassified benefits

(1) In section ND 1Q,—

(a) in subsection (2),—

(i) in paragraph (a), "$75" is replaced by "$200":

(ii) in paragraph (b), "the quarter" is replaced by "the last four quarters including the current quarter":

(iii) in paragraph (b), "$450" is replaced by "$15,000":

(b) in subsection (3),—

(i) in paragraph (a), "$300" is replaced by "$800":

(ii) in paragraph (b), "$1,800" is replaced by "$15,000"(.):

(c) in subsection (4),—

(i) in paragraph (a), "$300" is replaced by "$800":

(ii) in paragraph (b), "$1,800" is replaced by "$15,000".

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

127 Election to pay fringe benefit tax(by) per quarter

(1) In section ND 2, subsection (3) is replaced by the following:

"(3) An employer may make an election under this section by providing a return stipulating the rate chosen."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

Struck out (unanimous)

128 Attributed fringe benefits

(1) In section ND 3(1)(b), (4)(a), and (7), "CX 15" is replaced by "**CX 15B**" in each place where it appears.

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

129 Calculation of fringe benefit tax on non-attributed fringe benefits

(1) In section ND 6(1)(a), "CX 15" is replaced by "**CX 15B**".

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

130 Special rule for employer who stops employing staff during tax year

(1) In section ND 8, the following is added:

"(3) As an alternative to the application of section ND 5(4) or ND 6(2), an employer may choose to pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit provided or granted to an employee,—

"(a) making the calculation in relation to the period from the start of the tax year to the date on which the employer stops employing staff; and

"(b) taking into account any earlier payments of fringe benefit tax made in relation to the employee."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

130B New section ND 8B inserted

(1) After section ND 8, the following is added:

New (unanimous)

"**ND 8B Special rule for employer who is charitable organisation providing short-term charge facility**

"(1) This rule applies to an employer who is a charitable organisation if—

"(a) the employer provides to an employee in a tax year a benefit by way of a short-term charge facility that is a fringe benefit under **section CX 21(2)**; and

"(b) the employer is required to pay fringe benefit tax for the tax year on a quarterly basis; and

"(c) the value of the benefits by way of short-term charge facilities provided by the employer to the employee in the first quarter of the tax year does not exceed 5% of the employee's salary or wages for the tax year.

"(2) The employer's liability to pay fringe benefit tax on the benefits provided in a quarter of the tax year depends on whether the taxable value of the benefits (**accumulated benefit value**) provided by the employer to the employee in the period from the beginning of the tax year to the end of the quarter exceed 5% of the employee's salary or wages for the tax year (**threshold benefit value**).

"(3) The employer is liable to pay fringe benefit tax for a quarter of the tax year on—

"(a) nil, if the accumulated benefit value for the quarter does not exceed the threshold benefit value; or

"(b) the accumulated benefit value, if the quarter is the earliest in the tax year for which the accumulated benefit value exceeds the threshold benefit value; or

"(c) the taxable value of the benefits provided to the employee in the quarter, if neither of **paragraphs (a) and (b)** applies."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

131 Payment of fringe benefit tax on annual basis for employees who are not shareholder-employees

(1) In section ND 13(2), "Commissioner" is replaced by "Commissioner, either in writing or by telephone,".

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

132 Payment of fringe benefit tax on income year basis for shareholder-employees

(1) In section ND 14,—

(a) in subsection (2), "Commissioner" is replaced by "Commissioner, either in writing or by telephone,":

(b) after subsection (2), the following is inserted:

"(2B) If an employer has been paying fringe benefit tax on a quarterly basis under sections ND 2, ND 9, and ND 10 and elects under this section to change to payment on an income year basis, a calculation must be made under section ND 10 for the period—

"(a) beginning immediately after the end of the last full tax year for which the employer pays fringe benefit tax on a quarterly basis:

"(b) ending immediately before the beginning of the first income year for which the election applies."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

133 Application of RWT rules

(1) In section NF 1(2), the following is inserted after paragraph (c):

"(d) a replacement payment, **(***made* **)**paid to a person under a share-lending arrangement:".

(2) In the proviso to section NF 1(2), "paragraphs (a), (b) and (c)" is replaced by "paragraphs (a) to **(d)**".

Struck out (unanimous)

(3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent

134 (Deduction of)Liability to pay resident withholding tax

New (unanimous)

(1A) In section NF 2(1)(b), item c is replaced by the following:

"c is the total of the following amounts:

"(i) if the dividend is paid in relation to shares issued by an imputation credit account company, the amount of any imputation credit attached to the dividend:

"(ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of the amount of the dividend:

"(iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of any dividend withholding payment credit attached to the dividend; and".

(1AB) In section NF 2(1)(c), item c is replaced by the following:

"c is the total of the following amounts:

"(i) if the dividend is paid in relation to shares issued by an imputation credit account company, the amount of any imputation credit attached to the dividend:

"(ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of the amount of the dividend:

"(iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of any dividend withholding payment credit attached to the dividend; and".

(1AC) In section NF 2(1)(d), item c is replaced by the following:

"c is the total of the following amounts:

"(i) if the dividend is paid in relation to shares issued by an imputation credit account company, the amount of any imputation credit attached to the dividend:

New (unanimous)

"(ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of the amount of the dividend:

"(iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of any dividend withholding payment credit attached to the dividend; and".

(1) In section NF 2(1)(, *in paragraph*)(f), "(*distribution:*)zero." is replaced by "(*distribution*)zero; and" and the following is added:

"(g) to the extent that the payment is a replacement payment (*made*)paid to a person under a share-lending arrangement, of an amount calculated according to the formula—

$$\frac{a \times b}{1 - a} - c - d - e$$

where—

a is the rate of resident withholding tax, expressed as a percentage, specified in **schedule 14, clause 2**:

b is the amount of the replacement payment, not including imputation credits attached under **section ME 6B**:

c is the amount of imputation credits attached to the replacement payment under **section ME 6B**:

New (unanimous)

d is the amount of imputation credits shown in a credit transfer notice that relates to the replacement payment:

e is the amount of dividend withholding payment credit shown in a credit transfer notice that relates to the replacement payment."

New (unanimous)

(1B) In section NF 2(4)(a), subparagraph (ii) and the proviso are replaced by the following:

"(ii) not resident in New Zealand for the purposes of this Act but—

"(A) carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand; and

"(B) not prevented by **subsection (4B)** from satisfying this paragraph; and".

(2) In section NF 2(4)(b)**(**, *in subparagraph* **)**(iv), "distribution." is replaced by "distribution; or" and the following is added:

"(v) that payment is a replacement payment **(***made* **)**paid under a share-lending arrangement."

New (unanimous)

(2B) After section NF 2(4), the following is inserted:

"(4B) A person (**payer**) who is not resident in New Zealand for the purposes of this Act and is carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand is treated as not satisfying **subsection (4)(a)** in relation to a payment if,—

"(a) in the case of a payment of interest or of dividends payable in respect of shares issued by another person, the payer satisfies the Commissioner that—

"(i) the payment is attributable to or effectively connected with a fixed establishment of the payer outside New Zealand; and

"(ii) the amounts payable in relation to the money lent or shares to which the payment relates are payable in a currency other than New Zealand currency:

New (unanimous)

"(b) in the case of a payment of dividends payable in respect of shares issued by the payer, the payer satisfies the Commissioner that the payer is not required by generally accepted accounting practice to express its financial statements in New Zealand currency."

Struck out (unanimous)

(3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

135 Election to apply higher rate of deduction

(1) In section NF 2A(1), "section NF 2(1)" is replaced by "section NF 2(1), other than section NF 2(1)(g),".

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

136 Companies to notify interest payer

(1) In section NF 2B(1), "section NF 2(1)" is replaced by "section NF 2(1), other than section NF 2(1)(g),".

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

137 Election rates of deduction for companies

(1) In section NF 2D(1), "section NF 2(1)" is replaced by "section NF 2(1), other than section NF 2(1)(g),".

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

138 Requirements for agents or trustees to make resident withholding tax deductions on receipt of payments

(1) Section NF 3(2) is replaced by the following:

"(2) Subsection (1) does not apply to require a recipient of a payment of resident withholding income to make a deduction of resident withholding tax if—

"(a) the recipient—

"(i) holds at the time of payment a valid certificate of exemption; and

"(ii) receives the payment as trustee of a trust that is not a bare trust:

"(b) the payment is a replacement payment under a share-lending arrangement."

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

139 Payment of deductions of resident withholding tax to Commissioner

(1) In section NF 4(4), "dividends" is replaced by "dividends, replacement payments,".

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

(2) After section NF 4(6), the following is inserted:

New (unanimous)

"(6B) An emigrating company who is treated under **section FCB 2** as paying a distribution to shareholders must, on or before the date that is 3 months after the emigration date, pay to the Commissioner all resident withholding tax deductions made by the company from the distribution."

(3) **Subsection (2)** applies for income years corresponding to the 2005–06 and subsequent tax years.

140 New section NF 8B inserted

(1) After section NF 8A, the following is inserted:

"**NF 8B Resident withholding tax deductions from replacement payments treated as imputation credits**

If a share user under a share-lending arrangement deducts resident withholding tax in accordance with the RWT rules from a replacement payment, the deduction—

"(a) is treated for the share supplier as an imputation credit attached to the replacement payment in addition to any imputation credit that the share user attaches to the replacement payment under **section ME 6B**; and

"(b) does not give rise under section LD 3 to a credit of tax or refund for the share supplier."

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

140B Application of NRWT rules

(1) In section NG 1(2), in the words before paragraph (a), "apply to income" is replaced by "apply to assessable income".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

141 Non-resident withholding tax imposed

(1) After section NG 2(1)(b)(i), the following is inserted:

"(ib) interest, other than interest to which paragraph (ab) applies, that is paid by a **(***certified***)** transitional resident in respect of money borrowed by the **(***certified***)** transitional resident when the **(***certified***)** transitional resident was a non-resident, and not in relation to a business carried on by the **(***certified***)** transitional resident through a fixed establishment in New Zealand, and is derived by a person who is not an associated person of the **(***certified***)** transitional resident; or".

(2) **Subsection (1)** applies for—

(a) a person who becomes a **(***New Zealand* **)**transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(3) The law that would apply if **subsection (1)** did not come into force applies for—

(a) a person who becomes a transitional resident before 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

141B Payment of deductions of non-resident withholding tax to Commissioner

(1) After section NG 11(4), the following is inserted:

"(4B) An emigrating company who is treated under **section FCB 2** (Emigrating company treated as paying distribution to shareholders) as paying a distribution to shareholders must, on or before the date that is 3 months after the emigration date, pay to the Commissioner all non-resident withholding tax deductions made by the company from the distribution."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

142 Application of other provisions to non-resident withholding tax

(1) In section NG 17(2), "section 120K" is replaced by "**sections 120KB to 120KE**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 **()**and subsequent tax years.

143 Definitions

(1) This section amends section OB 1.

New (unanimous)

(1B) After the definition of **attributing interest**, the following is inserted:

"**Australian financial year** is defined in section CV 4 (Regulations: Australian wine producer rebate) for the purposes of that section".

Struck out (unanimous)

(2) In the definition of **balance date**, "and terminal tax" is omitted.

New (unanimous)

(2) In the definition of **balance date**, after "purposes of", "**subpart MB** and" is inserted.

(3) After the definition of **banking company**, the following is inserted:

"**base amount** is defined in **section MB 7(2)** (GST ratio method) for the purposes of that section".

New (unanimous)

(3B) The definition of **benchmark dividend** is replaced by the following:

New (unanimous)

"**benchmark dividend** means the first dividend paid by a company in an imputation year that is not 1 of the following kinds:

"(a) a distribution of a co-operative company for which the company has made a determination under section ME 35 (Co-operative company may make annual determination to attach imputation credit to certain distributions):

"(b) a dividend to which the company is not allowed by section ME 6 (Company may attach imputation credit to dividend) to attach an imputation credit".

(4) After the definition of **business purposes**, the following is inserted:

Struck out (unanimous)

"**business tool** means a portable item that is used by an employee in the performance of their work duties

New (unanimous)

"**business tool** means an item that is used by an employee in the performance of their work duties and in the absence of **section CX 18B** (Business tools) would give rise to an unclassified benefit".

Struck out (unanimous)

(5) After the definition of **certificate of exemption**, the following is inserted:

"**certified dependent resident** for a period of time means a person who—

"(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period a dependent resident certificate; and

Struck out (unanimous)

"(b) holds a dependent resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

"**certified employed resident** for a period of time means a person who—

"(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period an employed resident certificate; and

"(b) holds an employed resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

"**certified general resident** for a period of time means a person who—

"(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period a general resident certificate; and

"(b) holds a general resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

"**certified resident** for a period of time means a person who for the period is—

"(a) a certified dependent resident:

"(b) a certified employed resident:

"(c) a certified general resident".

(6) In the definition of **consolidation rules**, in paragraph (a)(vii), "section MB 7 (Provisional tax of consolidated group members)" is replaced by "**sections MB 29 to MB 32** (relating to provisional tax of consolidated group members)".

New (unanimous)

(6B) After the definition of **credit of tax**, the following is inserted:

"**credit transfer notice** means a credit transfer notice issued under **section 30C of the Tax Administration Act 1994**".

(6C) In the definition of **Crown Research Institute**, "section 12" is replaced by "section 2".

Struck out (unanimous)

(7) After the definition of **dependent child**, the following is inserted:

"**dependent resident certificate** means a dependent resident certificate issued by the Commissioner under **section 91M** of the Tax Administration Act 1994".

(8) In the definition of **development**, "and DB 27" is replaced by ", DB 27, EE 1 (What this subpart does), **EJ 20** (Deductions for market development—product of research, development), and **EJ 21** (Allocation of deductions **(***and depreciation losses***)** for research, development, resulting market development)".

(9) In the definition of **dispose**, after paragraph (c), the following is inserted:

"(cb) is defined in section CE 2 for the purposes of that section:".

New (unanimous)

(9B) In the definition of **eligible accounting year**, paragraphs (a) and (b) are replaced by the following:

"(a) an accounting year in which the person has at all times in the accounting year a sufficient interest in the company and that is—

"(i) the accounting year in which the dividend is paid:

"(ii) the accounting year immediately before the accounting year in which the dividend is paid:

"(iii) the accounting year immediately before an eligible accounting year:".

(10) After the definition of **emergency call**, the following is inserted:

"**emigrating company** is defined in **section FCB 1(1)** (Tax effects **(***for***)** of company becoming non-resident to reflect tax effects of liquidation)

"**emigration time**, for an emigrating company, is the time at which the emigrating company becomes a non-resident".

Struck out (unanimous)

(11) Before the definition of **employee**, the following is inserted:

"**employed resident certificate** means an employed resident certificate issued by the Commissioner under **section 91M** of the Tax Administration Act 1994".

(12) In the definition of **estimated useful life**, after paragraph (c), the following is added:

"(d) for a type of pasture, means the period of time over which the pasture might reasonably be expected to be useful to a person in deriving income or carrying on a farming or agricultural business on land in New Zealand".

New (unanimous)

(12B) After the definition of **excess expenditure**, the following is inserted:

"**excess tax payment**—

"(a) is defined in section ME 9B(10) (Imputation credit account company leaving wholly-owned group) for the purposes of that section:

"(b) is defined in section ME 9C(10) (Imputation credit account company joining wholly-owned group) for the purposes of that section".

Struck out (unanimous)

(13) In the definition of **finance lease**, in paragraph (b)(iii), "section EE 25(4)" is replaced by "sections EE 25(4), **25B and 25C**".

(14) The definition of **first instalment date** is repealed.

(15) In the definition of **fishing business**, paragraph (a) is replaced by the following:

"(a) is defined in section EH 37 (Other definitions) for the purposes of this Act except the provision to which paragraph (b) refers:".

New (unanimous)

(15B) In the definition of **foreign exempt entity**, "section CW 11B(3)" is replaced by "section CW 11B(4)".

(15C) In the definition of **foreign exempt partnership**, "section CW 11B(3)" is replaced by "section CW 11B(4)".

(15D) In the definition of **foreign exempt person**, "section CW 11B(3)" is replaced by "section CW 11B(4)".

(16) In the definition of **foreign trust**, in paragraph (b), "settler" is replaced by "settlor".

(17) In the definition of **fringe benefit tax rules**, in paragraph (a)(ii), "GC 17" is replaced by "GC 17B".

(18) After the definition of **futures contract**, the following is inserted:

"**gaming-machine gambling** means class 4 gambling, as defined in section 30 of the Gambling Act 2003, that utilises or involves a gaming machine

"**gaming-machine operator's licence** means a class 4 operator's licence as defined in section 4 of the Gambling Act 2003

"**gaming-machine venue licence** means a class 4 venue licence as defined in section 4 of the Gambling Act 2003".

Struck out (unanimous)

(19) Before the definition of **general insurance**, the following is inserted:

"**general resident certificate** means a general resident certificate issued by the Commissioner under **section 91M** of the Tax Administration Act 1994".

New (unanimous)

(19B) The definition of **grey list company** is replaced by the following:

New (unanimous)

"**grey list company** means a company that is resident in a company or territory specified in schedule 3, part A (International tax rules: grey list countries)—

"(a) for the purposes of the international tax rules other than those referred to in **paragraph (b)**, under section OE 2 (Determination of residence of company):

"(b) for the purposes of subparts CQ (Attributed income from foreign equity), DN (Attributed losses from foreign equity), EX (Controlled foreign company and foreign investment fund rules), and LF (Underlying foreign tax credits), under section EX 24 (Residence in grey list country)".

(20) After the definition of **gross**, the following is inserted:

"**gross gambling proceeds** means gross proceeds, as defined in regulation 3(1) of the Gambling (Class 4 Net Proceeds) Regulations 2004, plus prizes".

(21) After the definition of **GST payable**, the following is inserted:

"**GST ratio** has the meaning given in **section MB 7(2)** (GST ratio method)".

New (unanimous)

(21B) After the definition of **identical goods**, the following is inserted:

"**identical share** means a share that confers the same rights and imposes the same obligations on a holder as an original share".

(21C) In the definition of **imputation credit**, after paragraph (b), the following is added:

"(c) is further defined in **section CD 10C(4)** (Credit transfer notice) for the purposes of that section".

(22) The definition of **instalment date** is replaced by the following:

"**instalment date** means a date for payment of provisional tax for a tax year that is the day and month specified for a provisional taxpayer in schedule 13 part A (Dates for payment of provisional tax)".

(23) After the definition of **interest**, the following is inserted:

"**interest instalment date** means an instalment date—

"(a) on which an instalment of provisional tax is due and payable under **section MB 8** (Provisional tax payable in instalments); and

"(b) after which, except in a case to which **section 120KC(1)** applies, an instalment amount that is overpaid or underpaid attracts use of money interest, a late payment penalty, or a shortfall penalty, as applicable".

(24) In the definition of **lease**, after paragraph (a), the following is inserted:

"(ab) is defined in **section CX 6(6)** (Private use of motor vehicle) for the purposes of the FBT rules:".

(25) The definition of **limited attribution company** is replaced by the following:

"**limited attribution company** is a company that is—

"(a) a building society:

"(b) a co-operative company registered under the Co-operative Companies Act 1956, Part 2 or 3 of the Co-operative Companies Act 1996, the Co-operative Dairy Companies Act 1949, the Co-operative Freezing Companies Act 1960, or the Co-operative Forestry Companies Act 1978:

"(c) a listed company:

"(d) a widely-held company:

"(e) a foreign company that is not a closely-held company".

(26) The definition of **limited attribution foreign company** is repealed.

(27) The definition of **listed company** is replaced by the following:

"**listed company** means, at any time, a company any shares in which are at that time quoted on **(***the* **)**an official list of a recognised exchange".

(28) After the definition of **listed(*company*) horticultural plant**, the following are inserted:

"**listed PAYE intermediary** means a person which the Commissioner may list under **section NBB 2(1)** (Accreditation of listed PAYE intermediary)

"**listed PAYE intermediary claim form** means a form that a listed PAYE intermediary must provide to the Commissioner in an electronic format prescribed by the Commissioner, showing—

"(a) the tax file number of the listed PAYE intermediary; and

"(b) the tax file number and name of each employer in respect of which a subsidy is claimed; and

"(c) the tax file number and name of each employee of each employer in respect of which a subsidy is claimed under **section NBB 3** (Obligations of listed PAYE intermediaries); and

"(d) the (*pay*)period to which the (*claim*)form relates; and

Struck out (unanimous)

"(e) the pay frequency of each employee in that pay period; and

New (unanimous)

"(e) the number of source deduction payments made by the listed PAYE intermediary to each employee in the period to which the form relates; and

"(f) the amount of subsidy that the listed PAYE intermediary claims in respect of the period to which the form relates".

New (unanimous)

(28B) After the definition of **Maori owners**, the following is inserted:

"**market interest** is defined in **section ND 1DB(5)** for the purposes of that section".

(29) After the definition of **(*net balance due*) net equity threshold**, the following is inserted:

"**net gambling proceeds** means net proceeds as defined in section 4 of the Gambling Act 2003".

Struck out (unanimous)

(30) After the definition of **ordering rule**, the following is inserted:

"**original share**, for a returning securities transfer, means a share that under the returning securities transfer—

"(a) must be disposed of, by one party to the returning securities transfer, to a second party to the returning securities transfer; and

"(b) must be returned, or a substitute for which must be returned, to the first party by the second party at a later date".

New (unanimous)

(30) After the definition of **ordering rule**, the following is inserted:

"**original share** means a share in a company that is described as the original share in the definition of **returning share transfer**".

(31) After the definition of **own**, the following is inserted:

"**ownership interest** is defined in **section OD 5AA(7)** (Modifications to voting and market value interests for application of continuity provisions to reverse takeover) for the purposes of that section".

New (unanimous)

(31B) In the definition of **pay**, in paragraph (g), "way" is replaced by "way:", and the following is added:

"(h) for a replacement payment and share-lending collateral, includes, for a person,—

New (unanimous)

"(i) to distribute to them; or
"(ii) to credit to them; or
"(iii) to deal with in their interest or on their behalf in some other way".

(32) In the definition of **PAYE rules**, after paragraph (a)(iv), the following is inserted:

"(ivb) **subpart NBB** (Subsidy payable to certain listed PAYE intermediaries):".

New (unanimous)

(32B) In the definition of **payment**, "(g)" is replaced by "**(h)**".

(32C) In the definition of **principal caregiver**, after paragraph (a), the following is inserted:

"(ab) does not include a transitional resident or the spouse, civil union partner, or de facto partner of a transitional resident; and".

(33) In the definition of **provisional tax rules**,—

(a) in paragraph (a)(iii), "sections MB 2 to MB 6" is replaced by "**sections MB 1 to MB 28**":

(b) in paragraph (a)(iv), "sections MB 8 to MB 10 (which relate to provisional tax):" is replaced by "**sections MB 33, and MB 35 to 38** (which relate to provisional tax):":

(c) paragraph (a)(v) is repealed.

(34) The definition of **provisional taxpayer** is replaced by the following:

"**provisional taxpayer** has the meaning given in section MB 2 (Who pays provisional tax?)".

New (unanimous)

(34B) In the definition of **qualifying foreign equity investor**, "section CW 11B(3)" is replaced by "section CW 11B(4)".

(35) In the definition of **qualifying person**, after paragraph (a)(ii), the following is inserted:

"(iib) is not a **(***certified* **)**transitional resident; and

"(iic) is not the spouse, civil union partner, or de facto partner of a **(***certified* **)**transitional resident; and".

New (unanimous)

(35B) After the definition of **qualifying person**, the following is inserted:

"**qualifying resident foreign trustee** is defined in section 3(1) of the Tax Administration Act 1994".

(35C) In the definition of **qualifying trust**, in paragraph (a)(ii), "section BD 1(2)" is replaced by "section BD 1(4)".

(36) After the definition of **quarter**, the following is inserted:

"**ratio instalment date** means an instalment date of a taxpayer who uses a GST ratio for a tax year, and is an instalment date for a payment in relation to which no amount of use of money interest or penalties apply other than a late payment penalty or a shortfall penalty".

(37) In the definition of **relative**, in paragraph (a), "CX 17 (Benefits provided instead of allowances)," is inserted after "sections".

Struck out (unanimous)

(38) After the definition of **replaced area fraction**, the following is inserted:

"**replacement payment**, for a returning securities transfer, means a transfer of value, including any imputation credits, made under the returning securities transfer that satisfies **paragraph (d)(ii)** of the definition of returning securities transfer".

New (unanimous)

(38) After the definition of **replaced area fraction**, the following is inserted:

New (unanimous)

"**replacement payment** means, for a returning share transfer, a payment to a person of an amount that is—

"(a) economically equivalent to a dividend or part of a dividend for an original share:

"(b) increased by an imputation credit attached to the payment".

Struck out (unanimous)

(39) After the definition of **replacement plant**, the following is inserted:

"**replacement share**, for a returning securities transfer, means a share that a party to the returning securities transfer acquires in replacement of the original share disposed of by that party under the returning securities transfer—

"(a) receives from another party to the returning securities transfer:

"(b) acquires from a person who is not a party to the returning securities transfer if—

"(i) the acquisition is during the term of the returning securities transfer or any further period that the Commissioner allows; and

"(ii) the Commissioner accepts that the share is acquired in replacement of the original share".

(40) In the definition of **research**, "and DB 27" is replaced by ", DB 27, EE 1 (What this subpart does), **EJ 20** (Deductions for market development—product of research, development), and **EJ 21** (Allocation of deductions **(***and depreciation losses***)** for research, development, resulting market development)".

New (unanimous)

(40B) After the definition of **resident**, the following is inserted:

"**resident foreign trustee** is defined in section 3(1) of the Tax Administration Act 1994".

Struck out (unanimous)

(41) After the definition of **return of the taxpayer's income**, the following is inserted:

"**returning securities transfer** means an arrangement under which—

"(a) a person (the **share supplier**) disposes of a share in a company (the **original share**) to a person (the **share user**); and

"(b) the original share is—

"(i) listed on the official list of a recognised exchange:

"(ii) ordinarily available for subscription or purchase by the public; and

"(c) the share user agrees to transfer to the share supplier at a later date—

"(i) the original share; or

"(ii) a share in the company (the **replacement share**) that confers the same rights and imposes the same obligations on the holder as the original share; and

"(d) the share user makes, to the share supplier, transfers of value under the arrangement—

"(i) in the form of valuable consideration (**replacement payments**) or rights and options issued by the company to shareholders of the company; and

"(ii) are intended to be economically equivalent in value to rewards of ownership to which the holder of the original share would be entitled during the term of the arrangement".

New (unanimous)

(41) After the definition of **return of the taxpayer's income**, the following is inserted:

"**returning share transfer** means an arrangement—

"(a) for which—

New (unanimous)

"(i) a share in a company (**original share**) is transferred from a share supplier to a share user; and

"(ii) the original share is listed on an official list of a recognised exchange; and

"(iii) it is conditionally or unconditionally agreed that the share user or an associated person pays a replacement payment to the share supplier or an associated person, if a dividend is payable on the original share; and

"(iv) it is conditionally or unconditionally agreed that the original share or an identical share may be transferred from the share user to the share supplier or an associated person; and

"(b) that is not a warrant or instalment receipt".

(42) The definition of **second instalment date** is repealed.

(43) The definition of **self-assessed adverse event** is replaced by the following:

"**self-assessed adverse event**, for a person and a farming, agricultural, or fishing business of the person, means an event that—

"(a) is one of the following:

"(i) drought, fire, flood, or some other natural event:

"(ii) disease or sickness among livestock; and

"(b) materially affects the business; and

"(c) is described, together with the effect on the business, by the person in a statutory declaration given to the Commissioner".

Struck out (unanimous)

(44) After the definition of **share**, the following is inserted:

"**share-lending arrangement** means a returning securities transfer entered into after **8 December 2005**—

"(a) the term of the returning securities transfer is 12 calendar months or less; and

Struck out (unanimous)

"(b) the share user, during the term of the returning securities transfer,—

"(i) transfers to the share supplier the rights and options that the holder of the original share would be entitled to receive during the term of the financial arrangement, or rights and options that are equivalent to those rights and options; and

"(ii) operates an imputation credit account; and

"(c) the amount of resident withholding tax given by section NF 2(1)(g) for the replacement payments under the returning securities transfer is paid on the replacement payments by the share user; and

"(d) the share supplier acquires the original share or a replacement share—

"(i) from the share user under the returning securities transfer:

"(ii) during the agreed term of the returning securities transfer or within a further period allowed by the Commissioner; and

"(e) the conditions are ordinary commercial conditions consistent with those that would apply between parties negotiating at arm's length".

New (unanimous)

(44) After the definition of **share**, the following is inserted:

"**share-lending arrangement** means an arrangement, entered into on or after 1 July 2006, that is a returning share transfer, and—

"(a) the agreed term of the arrangement is 1 year or less; and

"(b) the terms and conditions of the arrangement, including the share-lending collateral, are ordinary commercial terms and conditions consistent with those that would apply between parties negotiating at arm's length; and

"(c) the amount of resident withholding tax given by **section NF 2(1)(g)** (Liability to pay resident withholding tax) for a replacement payment, if any, is paid; and

New (unanimous)

"(d) the share user disposes of the original share or an identical share to the share supplier during the agreed term of the arrangement or within a further period allowed by the Commissioner; and

"(e) the share user—

"(i) agrees to issue, and issues, a credit transfer notice in relation to a dividend paid for the original share:

"(ii) establishes and maintains an imputation credit account, if a dividend is payable for the original share during the agreed term of the arrangement

"**share-lending collateral** means an amount, or an adjustment to the amount, that—

"(a) is related to the market value of an original share under a share-lending arrangement, and the amount is paid to a person,—

"(i) by a share user or an associated person to secure the transfer of the original share to the share user:

"(ii) by a share supplier or an associated person for the re-transfer of the original share or an identical share to them; and

"(b) is not a replacement payment

"**share-lending right** means, for a share supplier under a share-lending arrangement, a conditional or unconditional right to acquire the original share or an identical share under the share-lending arrangement".

Struck out (unanimous)

(45) After the definition of **share purchase scheme**, the following is inserted:

"**share supplier**, for a returning securities transfer, means a person who disposes of an original share under the returning securities transfer to another party to the returning securities transfer

Struck out (unanimous)

"**share user**, for a returning securities transfer, means a person who receives an original share under the returning securities transfer from another party to the returning securities transfer".

New (unanimous)

(45) After the definition of **share purchase scheme**, the following is inserted:

"**share supplier** means a person, described as a share supplier in the definition of **returning share transfer**, from whom a share user acquires an original share under a returning share transfer

"**share user** means a person, described as a share user in the definition of **returning share transfer**, who acquires an original share under a returning share transfer".

(45B) The definition of **shares of the same class** is replaced by the following:

"**shares of the same class** means any 2 or more shares of a company—

"(a) that carry the same right—

"(i) to exercise voting power and participate in any decision-making at any time concerning the distributions to be made by the company, the constitution of the company, any variation in the capital of the company, and the appointment or election of directors of the company; and

"(ii) in terms of priority, amount payable per share, and otherwise, to receive or have dealt with in the shareholder's interest or on the shareholder's behalf profits that may be distributed at any time by the company and distributions of assets of the company on an acquisition, redemption, or other cancellation by the company of its shares or other reduction in or return of share capital of the company, whether on its liquidation or otherwise:

New (unanimous)

"(b) for which—

"(i) the owner, or the amount paid for the issue, of each share is the same, and

"(ii) each share is part of a group of shares that satisfy **paragraph (a)**; and

"(iii) the company gives notice to the Commissioner, in a form approved by the Commissioner, that the company chooses to treat the shares as a separate class; and

"(iv) the company treats each share as not falling within a class consisting of shares that satisfy **paragraph (a)**; and

"(v) the company can at all times from the time of issue of each share identify and distinguish the share from any other shares in the company".

(46) After the definition of **(*short term trade credit*) shearing shed hand**, the following is inserted:

"**shortfall penalty** is defined in section 3(1) of the Tax Administration Act 1994".

New (unanimous)

(46B) After the definition of **short-term bailment**, the following is inserted:

"**short-term charge facility** is defined in **section CX 21(3)** (Benefits provided by charitable organisations) for the purposes of the FBT rules".

(47) After the definition of **sickness, accident, or death benefit fund**, the following is inserted:

"**significant capital activity**, in **section DO 1(1B)** (Enhancements to land, except trees) and **Schedule 7** (Expenditure on farming, **(***horticultural,***)** aquacultural, and forestry improvements), and in relation to a farming or agricultural business on land in New Zealand,—

"(a) means an activity that enables a change in the nature or character of a farming activity from that undertaken on the land immediately before the change; and

"(b) excludes an activity that enables a change in the intensity of a farming practice employed in a farming activity on the land".

New (unanimous)

(47B) In the definition of **subsidised transport**,—

(a) in the words before paragraph (a), "by an employer to an employee" is replaced by "to an employee by the employer, or by a company (**group company**) in the same group of companies as the employer,":

(b) in paragraphs (a), (b), and (d), "employer" wherever it occurs is replaced by "employer or group company".

(48) The definition of **taxable period** is replaced by the following:

"**taxable period** has the meaning given in section 2(1) of the Goods and Services Tax Act 1985".

(49) The definition of **third instalment date** is repealed.

(50) After the definition of **total debt**, the following is inserted:

"**(*total supplies*) total taxable supplies** is defined in **section MB 7(8)** (GST ratio method) for the purposes of that section and **sections MB (*10*) 15, MB 18, and MB 32** (which relate to the calculation and payment of provisional tax using the GST ratio method)".

(51) In **(*paragraph (a) of*)** the definition of **trading stock**, in paragraph (a), the following is inserted before subparagraph (i):

"(ia) **section CD 24B** (Distribution to member of co-operative company based on member's transactions):".

New (unanimous)

(51B) After the definition of **transitional capital amount**, the following is inserted:

"**transitional resident** is defined in **section FC 24** (Transitional resident)".

(52) In the definition of **trust rules**, in paragraph (b), "section 59" is replaced by "sections 59 **and 59B**".

(53) After the definition of **variation in control or income interests**, the following is inserted:

"**venture investment agreement** is defined in **section CW 11C(6)** (Proceeds from share or option acquired under venture investment agreement) for the purposes of that section

"**Venture Investment Fund** means the company called New Zealand Venture Investment Fund Limited that is listed in the Fourth, Fifth and Sixth Schedules of the Public Finance Act 1989".

New (unanimous)

(53B) After the definition of **windfall credit**, the following is inserted:

"**wine** is defined in section CV 4 (Regulations: Australian wine producer rebate) for the purposes of that section".

Struck out (unanimous)

(54) **Subsection (10)** applies for—

(a) a company that becomes a non-resident on or after 21 March 2005; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

(55) **Subsections (12) and (47)** apply to expenditure incurred on and after 1 April 2005.

(56) **Subsections (6C), (8), (9B), (10), (15B) to (15D), (16), (35B), (35C), (40), and (*(40)*) (45B)** apply for income years corresponding to the 2005–06 and subsequent tax years.

(57) **Subsections (*(5), (7),(11), (19), and*)(35) and (51B)** apply for—

(a) a person who becomes a (*New Zealand*)transitional resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

(58) **Subsections (4), (9), (17), (24), and (37)** apply for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

Struck out (unanimous)

(59) **Subsections (15) and (43)** apply for income years corresponding to the 2005–06 and subsequent tax years.

(60) **Subsection (13)** applies for income years corresponding to the 2005–06 and subsequent tax years.

(61) **Subsections (30), (38), (39), (41), (44), and (45)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

(59) **Subsections (15) and (43)** apply for income years corresponding to the 2005–06 and subsequent tax years.

(60) **Subsections (35B) and (40B)** apply for income years corresponding to the 2006–07 and subsequent tax years.

(62) **Subsections (*(2),*)(3), (6), (14), (21), (22), (23), (33), (34), (36), (42), (46), (48), (49), and (50)** apply for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

144 Meaning of source deduction payment: shareholder-employees of close companies

New (unanimous)

(1A) In section OB 2, the section heading is replaced by "**Meaning of source deduction payment**".

In section OB 2(1), "GC 14D" is replaced by "GC 14D, or an amount paid to a caregiver from monies paid to a claimant in respect of attendant care (as defined in Schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act (*1991*) 2001) from which a tax deduction has been made under the Income Tax (Withholding Payments) Regulations 1979".

New (unanimous)

144B Meaning of qualifying company

(1) In section OB 3(1)(b)(i), "subsection (2)" is replaced by "subsection (3)".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

145 Meaning of income tax

(1) In section OB 6(1)(b), "CD 11, CW 11B, CW 45, EG 1" is replaced by "**CD 10B**, CD 11, CW 11B, CW 45, EG 1, **EX 44, EX 45**".

(2) Section OB 6(3)(a) is replaced by the following:

"(a) Part B, except for—

"(i) sections BB 3(2) and BH 1, if **subparagraph (ii)** does not apply:

"(ii) sections BB 3(1) and (2), BG 1, and BH 1, for the purposes of the fringe benefit tax rules; and".

(3) In section OB 6(3)(k), "MB 7" is replaced by "**MB 29 to MB 32**".

(4) **Subsection (2)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

New (unanimous)

(5) **Subsection (3)** applies for income years corresponding to the 2008–09 and subsequent tax years.

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

Section OD 5(10) is repealed.

147 New section OD 5AA inserted

After section OD 5, the following is inserted:

"**OD 5AA Modifications to voting and market value interests for application of continuity provisions to reverse takeover**

"(1) This section modifies the application of sections OD 3 to OD 5 for the purposes of the continuity provisions.

"(2) (***Subsection (3)*** *applies*) **Subsections (3) and (4)** apply if—

"(a) a limited attribution company (*the* **initial parent**) is treated under section OD 5(6)(b) as holding ownership interests in another company (*the* **subsidiary**); and

"(b) there is a change in the ownership of the initial parent, or the initial parent ceases to exist as the result of an amalgamation, at a time (*the* **changeover**); and

"(c) immediately before the changeover, the initial parent is treated under section OD 5(6)(b) as holding all ownership interests in the subsidiary; and

"(d) immediately after the changeover, another limited attribution company (*the* **new parent**) is treated under section OD 5(6)(b) as holding all ownership interests in the subsidiary; and

"(e) immediately after the changeover, all or part of the ownership interests in the new parent are treated under section OD 5(6)(b) as being held by the persons (*the* **initial owners**) who hold ownership interests in the initial parent immediately before the changeover; and

"(f) each initial owner holds:

"(i) immediately before the changeover, a proportion of the total ownership interests in the initial parent at that time; and

"(ii) immediately after the changeover, a proportion of the total ownership interests in the new parent that the initial owners hold at that time as a result of having held the total ownership interests in the initial parent; and

"(iii) a proportion referred to in **subparagraph (ii)** that is equal to the proportion referred to in **subparagraph (i)**.

"(3) If the initial owners hold a total of 49% or more of the ownership interests in the new parent immediately after the changeover, the new parent is treated for the purposes of Part I as—

"(a) holding, immediately after the changeover, the ownership interests in the subsidiary that the initial parent held immediately before the changeover; and

"(b) having held the ownership interests for the period for which the ownership interests were treated as being held by the initial parent.

"(4) If the initial owners hold a total of 66% or more of the ownership interests in the new parent immediately after the changeover, the new parent is treated for the purposes of subparts ME and MG as—

"(a) holding, immediately after the changeover, the ownership interests in the subsidiary that the initial parent held immediately before the changeover; and

"(b) having held the ownership interests for the period for which the ownership interests were held by the initial parent.

Struck out (unanimous)

"(5) In **subsections (3) and (4)**, if a person is referred to as holding ownership interests in a company, sections OD 3(3)(d) and OD 4(3)(d) apply for the calculation of the interests except when ownership interests held by the person would be attributed to another person by those provisions.

"(6) If the requirements of a continuity provision are not satisfied in relation to a company and would be satisfied but for the application of this section, the requirements of the continuity provision are treated as being satisfied in relation to the company.

"(7) In this section, **ownership interests** for a company means—

"(a) voting interests in the company as determined under section OD 3(3) (d) (*and* ***subsection (5)***), if **paragraph (b)** does not apply:

"(b) market value interests in the company as determined under section OD 4(3)(d) (*and* ***subsection (5)***), if a market value circumstance exists for the company."

New (unanimous)

(2) **Subsection (1)** applies for a person for a change of ownership of a company occurring—

(a) after the date on which this Act receives the Royal assent:

(b) before the date on which this Act receives the Royal assent, if before that date the person files a return of income on the basis that the requirements of a continuity provision are satisfied in relation to the company and the change of ownership.

147B Further definitions of associated persons

In section OD 8(3), in the words before paragraph (a),—

(a) "**CX 6(1)(b), CX 6B**," is inserted before "DB 10":

(b) "sections NH 7," is replaced by "section NH 7, the definitions in section OB 1 of **returning share transfer** and **share-lending arrangement**, and sections".

147C Determination of residence of person other than company

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

"(2B) If, in the absence of subsection (2), a person would become a transitional resident under **section FC 24** on a day, subsection (2) does not apply to the person for the period of 12 months ending before the day."

(2) **Subsection (1)** applies for a person who becomes a transitional resident on or after 1 April 2006.

(3) The law that would apply if **subsection (1)** did not come into force applies for a person who satisfies the requirements to be a transitional resident before 1 April 2006.

New (unanimous)

147D New section YA 5B inserted

(1) After section YA 5, the following is inserted:

"**YA 5B Saving of effect of section 394L(4A) of the Income Tax Act 1976**

Section 394L(4A) of the Income Tax Act 1976 (Further tax payable where end of year debit balance, or when company ceases to be an imputation credit account company) continues to apply in the same manner as it applied immediately before the repeal of that Act by the Income Tax Act 1994."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

148 Schedule 2—Fringe benefit values

(1) Schedule 2, part A is replaced by the following:

"Part A

"Motor vehicles

"1 The following paragraphs apply to determine the value of the benefit that an employee has for a quarter or tax year, or income year when section ND 14 applies, if in the quarter, tax year, or income year, a motor vehicle is provided by a person for the private use of an employee, or is made available for their private use:

"(a) if the vehicle is owned by the person, jointly or otherwise,—

"(i) on the basis of the cost price of the vehicle to the person: for a quarter, 5% of the cost price, and for a tax year or income year, 20% of the cost price:

"(ii) subject to clause 6, on the basis of the tax value of the vehicle to the person: for a quarter, 9% of the tax value, and for a tax year or income year, 36% of the tax value:

"(b) if the vehicle is leased or rented by the person from another person, whether they are associated or not,—

"(i) on the basis of the cost price of the vehicle to its owner at the time the benefit is provided to the employee: for a quarter, 5% of the cost price, and for a tax year or income year, 20% of the cost price:

"(ii) subject to clause 6, on the basis of the tax value of the vehicle to its owner at the time the benefit is provided to the employee: for a quarter, 9% of the tax value, and for a tax year or income year, 36% of the tax value.

"2 If a motor vehicle to which this schedule applies is 1 of a number of motor vehicles, each of which is available for private use as described in **clause 1**, the value of the benefit is determined as follows:

"(a) if the employee mainly uses the same vehicle, **clause 1** applies to that vehicle:

"(b) if **paragraph (a)** does not apply, and the employee is employed in a business engaged in the selling of motor vehicles, and the vehicles available for use are trading stock of the business, **clause 1** applies to the quotient obtained by dividing the sum of either the cost price of the vehicles or their tax value, by the total number of those vehicles:

"(c) if **paragraphs (a) and (b)** do not apply, **clause 1** applies to the highest value of any vehicle used by the employee.

Struck out (unanimous)

3 In this schedule, a motor vehicle's tax value is the value of the vehicle in a quarter or tax year— as determined under subpart EE (Depreciation).

New (unanimous)

"3 In this schedule, a motor vehicle's tax value is the value of the vehicle in a quarter or tax year or income year—

New (unanimous)

"(a) as determined under subpart EE (Depreciation) for the beginning of the tax year or income year, if **paragraph (b)** does not apply; or

"(b) the cost of the vehicle, if the vehicle is acquired after the beginning of the tax year or income year.

"4 To determine the value of a benefit under **clause 1**, any GST paid on the acquisition of a vehicle by the owner or lessor of the vehicle is—

"(a) included in the cost price of the motor vehicle or in the calculation of the motor vehicle's tax value; and

"(b) not reduced by an amount of input tax on the supply of the vehicle to the owner or lessor.

"5 Despite **clause 4**, a person who in a quarter, tax year, or income year provides a benefit that is valued under **clause 1** may choose to value the vehicle on the basis of its cost price exclusive of GST or its tax value calculated exclusive of GST using **clause 1** as modified by **clause 6**.

"6 The following paragraphs apply to a person who values a vehicle on the basis of its cost price exclusive of GST or its tax value calculated exclusive of GST:

New (unanimous)

"(a) the terms 'cost price' and 'tax value' in **clause 1** do not include an amount of GST payable:

"(b) the references to 5% in **clause 1** are treated as if they were references to a percentage calculated using the formula—

"5 + (5 × rate of GST applying on last day of relevant quarter):

"(c) the references to 9% in **clause 1** are treated as if they were references to a percentage calculated using the formula—

"9 + (9 × rate of GST applying on last day of relevant quarter):

"(d) "the references to 20% in the clause are treated as if they were references to a percentage calculated using the formula—

"20 + (20 × rate of GST applying on last day of relevant tax year or corresponding income year):

"(e) the references to 36% in the clause are treated as if they were references to a percentage calculated using the formula—

"36 + (36 × rate of GST applying on last day of relevant tax year or corresponding income year).

New (unanimous)

"6B The cost price of a vehicle that is leased or rented to the person after the vehicle has been leased or rented to another person is the market value of the vehicle if—

"(a) the person is not associated with the other person; and

"(b) the person is not associated with the lessor or owner of the vehicle; and

"(c) the employee is not the lessor or owner of the vehicle; and

"(d) the employee is not associated with the lessor or owner of the vehicle.

Struck out (unanimous)

7 If the vehicle is leased or rented by the person from another person, the lessor must disclose to the lessee the value for whichever is relevant for the lessor of the cost price and tax value of the vehicle.

New (unanimous)

"7 If the vehicle is leased or rented by the person from another person and the lessee requests that the lessor disclose the cost price or tax value of the vehicle for the lessor, the lessor must disclose to the lessee the information requested.

"8 The minimum tax value of a motor vehicle to which this schedule applies is $8,333."

(2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

149 Schedule 3—International tax rules: grey list countries

(1) In schedule 3, part A, the following is added:

"8 Kingdom of Spain".

(2) In schedule 3, part B, the following is added:

"7 In the case of the Kingdom of Spain, any special allowances, reliefs, or exemptions with respect to activities that are carried on in, or by an enterprise registered in, the following:

(a) Canary Islands:
(b) Ceuta:
(c) Melilla:
(d) Alava:
(e) Guipúzcoa:
(f) Vizcaya:
(g) Navarra."

(3) **Subsections (1) and (2)** apply for income years corresponding to the 2006–07 and subsequent tax years.

150 Schedule 7—Expenditure on farming, aquacultural, and forestry improvements

In schedule 7, part A,—

(a) in clause 1, "preparation" is replaced by "unless **clause 1B** applies, preparation"; and

(b) after clause 1, the following is inserted:

"1B	regrassing and fertilising all types of pasture in the course of a significant capital activity that relates to a type of pasture with an estimated useful life of more than 1 year	45".

151 New schedule 11B inserted

(1) After schedule 11, **Schedule 11B** in **Schedule 1** of this Act is inserted.

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

152 Schedule 13—Months for payment of provisional tax and terminal tax

(1) Part A of schedule 13 is replaced by **Schedule 2** of this Act.

(2) Part B of schedule 13 is replaced by **Schedule 3** of this Act.

(3) **Subsections (1) and (2)** apply for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

153 Schedule 14—Rate of resident withholding tax deductions

(1) In schedule 14, clause 2, "being dividends" is replaced by "being dividends or replacement payments".

Struck out (unanimous)

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

New (unanimous)

153B Schedule 18—State enterprises

(1) In schedule 18, "New Zealand Symphony Orchestra Limited" is omitted.

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

153C Schedule 22A—Identified policy changes

(1) In schedule 22A, after the first entry, the following is inserted:

"CB 9(1)(b)	The test of whether or not a person is in business as a builder is applied at the time improvements to land commence, rather than at the time land is acquired."

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

153D Schedule 23—Comparative tables of old and new provisions

In schedule 23,—

(a) in the third column of Part A, the entry corresponding to section CG 15(2)(c) is replaced by "EX 36(1)":

(b) in the second column of Part B, the entry corresponding to section EX 34 is replaced by "CG 15(2)(e)".

Part 3
Amendments to Tax Administration Act 1994

154 Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

155 Interpretation

(1) This section amends section 3**(***(1)***)**.

New (unanimous)

(1B) **Subsections (2) to (22)** amend subsection (1).

(2) After the definition of **(*amount payable*)** **approved advisor group**, the following is inserted:

"**approved organisation** is an organisation—

"(a) whose members include natural persons—

"(i) who are subject to a professional code of conduct; and

"(ii) who are subject to a disciplinary process intended to enforce compliance with the code; and

Struck out (unanimous)

"(b) whose members typically provide trustee services in the course of their business activities; and

New (unanimous)

"(b) whose members—

"(i) typically provide trustee services in the course of their business activities:

"(ii) satisfy other criteria acceptable to the Commissioner; and

"(c) that has been approved by the Commissioner for the purposes of this definition".

(3) After the definition of **bank**, the following is inserted:

"**base amount** has the same meaning as in section OB 1 of the Income Tax Act 2004".

Struck out (unanimous)

(4) After the definition of **certificate of exemption**, the following is inserted:

"**certified dependent resident** for a period of time means a person who—

"(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period a dependent resident certificate; and

"(b) holds a dependent resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

"**certified employed resident** for a period of time means a person who—

"(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period an employed resident certificate; and

"(b) holds an employed resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

"**certified general resident** for a period of time means a person who—

"(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period a general resident certificate; and

Struck out (unanimous)

"(b) holds a general resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

"**certified resident** for a period of time means a person who for the period is—

"(a) a certified dependent resident:

"(b) a certified employed resident:

"(c) a certified general resident".

(5) After the definition of **Department**, the following is inserted:

"**dependent resident certificate** means a dependent resident certificate issued by the Commissioner under **section 91M**".

(6) After the definition of **earnings related compensation**, the following is inserted:

"**employed resident certificate** means an employed resident certificate issued by the Commissioner under **section 91M**".

(7) After the definition of **fringe benefit**, the following is inserted:

"**general resident certificate** means a general resident certificate issued by the Commissioner under **section 91M**".

(8) After the definition of **GST payable**, the following is inserted:

"**GST ratio** has the same meaning as in section OB 1 of the Income Tax Act 2004".

(9) In the definition of **instalment date**, "section 120K" is replaced by "**sections 120KB to 120KE**".

(10) After the definition of **instalment date**, the following is inserted:

"**interest instalment date** has the same meaning as in section OB 1 of the Income Tax Act 2004".

Struck out (unanimous)

(11) After the definition of **Minister**, the following is inserted:

"**new-resident certificate** means—

Struck out (unanimous)

"(a) a dependent resident certificate issued by the Commissioner under **section 91M**:

"(b) an employed resident certificate issued by the Commissioner under **section 91M**:

"(c) a general resident certificate issued by the Commissioner under **section 91M**".

(12) after the definition of **new return date**, the following is inserted:

"**New Zealand resident trustee** means a person who,—

"(a) either alone or jointly with another person, acts as a trustee of a foreign trust; and

"(b) is resident in New Zealand within the meaning of section OE 1 or section OE 2 of the Income Tax Act 2004".

(13) After the definition of **provisional tax payable**, the following is inserted:

"**provisional taxpayer** has the same meaning as in section OB 1 of the Income Tax Act 2004".

Struck out (unanimous)

(14) after the definition of **private dwelling**, the following is inserted:

"**qualifying New Zealand resident trustee** means a trustee who,—

"(a) is a New Zealand resident trustee; and

"(b) if a natural person, the person or their co-trustee is a member of an approved organisation; and

"(c) if not a natural person, a director or manager of the trustee is resident in New Zealand within the meaning of section OE 1 of the Income Tax Act 2004; and

"(d) if **paragraph (c)** applies, the New Zealand resident director or manager of the non-natural person must be a member of an approved organisation".

(15) After the definition of **qualifying person**, the following is inserted:

Struck out (unanimous)

"**ratio instalment date** has the same meaning as in section OB 1 of the Income Tax Act 2004

New (unanimous)

"**qualifying resident foreign trustee** means a person who is a resident foreign trustee and who,—

"(a) if a natural person, is a member of an approved organisation; and

"(b) if not a natural person, has a director, or other natural person in a position allowing significant influence over the management or administration of the person, who is—

"(i) resident in New Zealand within the meaning of section OE 1 of the Income Tax Act 2004; and

"(ii) a member of an approved organisation".

(15B) After the definition of **qualifying resident foreign trustee**, the following is inserted:

"**ratio instalment date** has the same meaning as in section OB 1 of the Income Tax Act 2004".

(15C) After the definition of **relinquishment**, the following is inserted:

"**resident foreign trustee** means a person who,—

"(a) either alone or jointly with another person, acts as a trustee of a foreign trust that is not registered as a charitable entity under the Charities Act 2005; and

"(b) is resident in New Zealand within the meaning of section OE 1 or section OE 2 of the Income Tax Act 2004".

(16) In the definition of **residual income tax**, paragraph (a), "section 120K" is replaced by "section 120KB(4)".

(17) In the definition of **response period**,—

Struck out (unanimous)

(a) paragraph (a)(ii) and (iii) are omitted:

New (unanimous)

(a) paragraph (a) is replaced by the following:

"(a) the 2-month period starting on the date of issue of the initiating notice, if—

"(i) the initiating notice is a notice of proposed adjustment:

"(ii) the initiating notice is a notice of a disputable decision and the notice is not a notice of proposed adjustment issued by a disputant:

"(iii) the initiating notice is a notice revoking or varying a disputable decision that is not an assessment and the notice is not a notice of proposed adjustment issued by a disputant:

"(iv) the initiating notice is a disclosure notice:

"(v) the initiating notice is a notice issued by the Commissioner rejecting an adjustment proposed by a disputant:":

(b) paragraphs (c) and (d) are replaced by the following:

Struck out (unanimous)

"(c) the 4-month period starting on the date of issue of the initiating notice, if—

"(i) the initiating notice is a notice of assessment issued by the Commissioner and the notice is a notice of proposed adjustment issued by the taxpayer under section 89D:

"(ii) the initiating notice is a notice of disputable decision that is not an assessment:

"(iii) the initiating notice is a notice revoking or varying a disputable decision that is not an assessment:

New (unanimous)

"(c) the 4-month period starting on the date of issue of the initiating notice, if—

"(i) the initiating notice is a notice of disputable decision issued by the Commissioner and the notice is a notice of proposed adjustment issued by a disputant:

"(ii) the initiating notice is a notice revoking or varying a disputable decision that is not an assessment and the notice is a notice of proposed adjustment issued by a disputant:

"(d) the 4-month period starting on the date on which the initiating notice is received at an office of the department, if the initiating notice is a notice of assessment issued by the taxpayer and the notice is a notice of proposed adjustment issued by the taxpayer under section 89DA".

(18) The definition of **second instalment date** is repealed.

(19) In the definition of **tax**, after paragraph (a)(xii), the following is inserted:

"(xiii) the amount of a subsidy payable under **section NBB 6** of the Income Tax Act 2004 to a listed PAYE intermediary:".

(20) **(***in* **)**In the definition of **tax position**, after paragraph (n), the following is added:

"(o) the amount of a subsidy claimed under **section NBB 6** of the Income Tax Act 2004 to a listed PAYE intermediary".

(21) The definition of **third instalment date** is repealed.

(22) The definition of **trustee income** is repealed.

New (unanimous)

(22B) **Subsections (3) and (4)** are repealed.

(22C) **Subsection (22B)** applies for income years corresponding to the 2005–06 and subsequent tax years.

(23) **Subsection (17)** applies for an initiating notice that is issued—

(a) in relation to a GST return period commencing on or after 1 April 2005:

(b) on or after 1 April 2005, if the initiating notice is issued other than in relation to a GST return period.

Struck out (unanimous)

(24) **Subsections (4) to (7) and (11)** apply for—

(a) a person who becomes a New Zealand resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

(25) **Subsections (3), (8) to (10), (13), (15B), (16), (18), (21), and (22)** apply for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

156 Keeping of business records

New (unanimous)

(1A) In section 22(1)—

(a) in the words before paragraph (a), "tax year" is replaced by "income year":

(b) in paragraph (c)(iv), "tax year" is replaced by "income year":

(c) in paragraph (e), "tax year" is replaced by "income year".

Struck out (unanimous)

(1) In section 22—

(a) in subsection (2)(f), "credit account person,—" is replaced by "credit account person:", and the following is added:

"(fb) is a New Zealand resident trustee of a foreign trust in any tax year,—".

Struck out (unanimous)

(b) in subsection (2)(l), "making it,—" is replaced by "making it; and" and the following is added:

"(m) the financial position of the foreign trust,—".

New (unanimous)

(1) In section 22(2)—

(a) in the words before paragraph (a), "**(2B)**," is inserted after "subsections".

(b) in paragraph (f), "credit account person,—" is replaced by "credit account person:", and the following is added:

"(fb) is a resident foreign trustee of a foreign trust in any income year,—".

(c) in paragraph (l), "making it,—" is replaced by "making it; and" and the following is added:

"(m) the financial position of the foreign trust,—".

(1B) In section 22(2), in the words after paragraph (l), "tax year" is replaced by "income year, or (for paragraphs (k) and (kb)) imputation year,".

(1C) After section 22(2), the following is inserted:

"(2B) A taxpayer referred to in subsection (2)(e) who is required by subsection (2) to retain records is not required to retain those records for a period of more than 7 years after the end of the income year to which the records relate."

(1D) After section 22(2), the following is inserted:

"(2C) If there are more than one resident foreign trustee of a foreign trust, the resident foreign trustees may appoint one of themselves as an agent for the purposes of keeping the records required by subsection (2)."

(1E) In section 22(3), "tax year" is replaced by "income year".

(1F) In section 22(5), "subsection (2)" is replaced by "subsection (2) or **(2B)**".

(1G) In section 22(6), in the words before paragraph (a)—

New (unanimous)

(a) "or **(2B)**," is inserted after "subsection (2)":
(b) "income year or" is inserted before "tax year".

(2) In section 22(7)(c), "this Act." is replaced by "this Act:", and the following is added:

"(d) in the case of a foreign trust, other than for the period for which **section 59B(3)** applies,—

"(i) documents that evidence the creation and constitution of the foreign trust; and

"(ii) particulars of settlements made on, and distributions made by, the foreign trust, including the date of the settlement or distribution, the name and address (if known) of the settlor of the settlement, the name and address (if known) of the recipient of the distribution; and

"(iii) a record of—

"(A) the assets and liabilities of the foreign trust; and

"(B) all entries from day to day of all sums of money received and expended by the trustee in relation to the foreign trust and the matters in respect of which the receipt and expenditure takes place; and

"(C) if the trust carries on a business, the charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each income year in the administration of the trust."

New (unanimous)

(3) **Subsections (1A), (1B), (1C), (1E), and (1G)(b)** apply for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

156B Keeping of returns where information transmitted electronically

(1) In section 23(1)(a), "tax year" is replaced by "income year".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

156C Shareholder dividend statement to be provided by company

(1) In section 29(1), in the words before paragraph (a), ", shall at the time of payment of the dividend," is replaced by "must".

(2) After section 29(1B), the following is inserted:

"(1C) The company must give the shareholder dividend statement to the shareholder—

"(a) at the time of payment of the dividend, if **paragraph (b)** does not apply; or

"(b) before the date that is 3 months after the emigration date, if the company is treated under **section FCB 2** of the Income Tax Act 2004 (which relates to an emigrating company) as paying the dividend."

(3) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

157 New section 30B inserted

New (unanimous)

157 New sections 30B and 30C inserted

(1) After section 30A, the following is inserted:

"**30B Statement to share supplier when share user makes replacement payment under share-lending arrangement**

A share user under a share-lending arrangement who (*makes*)pays a replacement payment to the share supplier must at the time of (*making*)paying the replacement payment give to the

share supplier a replacement payment statement in a form approved by the Commissioner showing—

"(a) the name of the share user:

"(b) the date on which the replacement payment is (*made*) paid:

"(c) the name and address of the share supplier:

"(d) the amount of any resident withholding tax deducted by the share user:

"(e) the amount of the replacement payment after the deduction of resident withholding tax:

"(f) the amount of any imputation credit attached under **section ME 6B** of the Income Tax Act 2004 to the replacement payment:

"(g) the aggregate of the amount of any imputation credit referred to in paragraph (f) and the amount of the imputation credit arising under **section NF 8B** of the Income Tax Act 2004 for the share supplier from the deduction of resident withholding tax:

"(h) the aggregate of the amount of any imputation credit referred to in paragraph (f) and the amount of the imputation credit arising under **section NF 8B** of the Income Tax Act 2004 for the share supplier and the amount of the replacement payment after the deduction of resident withholding tax.

New (unanimous)

"**30C Credit transfer notice to share supplier and Commissioner when share user transfers imputation credit under share-lending arrangement**

"(1) A credit transfer notice may be issued by a share user under a share-lending arrangement when a dividend is paid for an original share, by complying with this section.

"(2) A credit transfer notice must—

"(a) be in a form approved by the Commissioner:

"(b) show the amount of imputation credit, if any, and the amount of dividend withholding payment credit, if any, attached to the dividend, if the dividend is derived by the share user:

New (unanimous)

"(c) state that any imputation credit and any dividend withholding payment credit is to be transferred to the share supplier, if the dividend is derived by the share user:

"(d) attach a copy of the shareholder dividend statement for the dividend, if the dividend is derived by the share user:

"(e) be given to the relevant share supplier and the Commissioner when the dividend is paid or as soon as possible after it is paid."

Struck out (unanimous)

(2) **Subsection (1)** applies for replacement payments made on or after the day on which this Act receives the Royal assent.

158 Annual returns of income not required

After section 33A(1)(a)(iiib), the following is inserted:

"(iiic) income of a claimant that is a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act **(***1991***)** 2001 in respect of attendant care (as defined in Schedule 1, clause 12 of that Act) from which a tax deduction has been made in accordance with the Income Tax (Withholding Payments) Regulations 1979**(**, *if the caregiver used such tax code as the Commissioner may from time to time prescribe***)**; or".

New (unanimous)

(2) In section 33A(1)(a)(iv), "(iiib)" is replaced by "**(iiic)**".

159 New section 33C inserted

After section 33B, the following is inserted:

"**33C Return not required for certain (*recipients of payments for attendant care*) providers of attendant care services**

"(1) A natural person who derives income in an income year from providing attendant care services is not required to furnish a return of income for the (*attendant care services, to the extent that*) income year if—

"(a) the attendant care services are provided to a claimant who receives a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act (*1991*) 2001; and

"(b) in accordance with the Income Tax (Withholding Payments) Regulations 1979, a tax deduction was made by the Corporation from each payment referred to in **paragraph (a)**; and

"(c) the (*total amount derived by*)taxable income of the natural person (*from providing attendant care services in*)for the income year does not exceed $9,500.

"(2) In this section—

"**attendant care services** means services that (*comprise*)are the provision of attendant care as defined in Schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act (*1991*) 2001

"**Corporation** has the meaning provided in section 6 of the Injury Prevention, Rehabilitation, and Compensation Act (*1991*) 2001."

160 Consequential adjustments on change in balance date

(1) In section 39, "transitional income year" is replaced by "transitional year" in both places it occurs.

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

161 New section 39B inserted

(1) After section 39, the following is inserted:

"**39B Changes in return dates: taxpayers with provisional tax and GST liabilities**

"(1) **Subsection (2)** applies if a provisional taxpayer—

"(a) is a person registered under the Goods and Services Tax Act 1985, and pays GST on a 2-month cycle or a 6-month cycle; and

"(b) elects under section 38(1) to change their balance date at some time in an income year; and

"(c) moves from—

"(i) a balance date in an even-numbered month to a balance date in another even-numbered month; or

"(ii) a balance date in an odd-numbered month to a balance date in another odd-numbered month.

"(2) Until the new balance date is reached, the taxpayer must—

"(a) continue with the due dates for their provisional tax instalments that applied before the change in balance date was approved; and

"(b) apply **sections MB 19 to MB 23**, as relevant, and **schedule 13, part B** of the Income Tax Act 2004 for the transitional period to determine the due date and amount of an instalment.

"(3) **Subsection (4)** applies if a provisional taxpayer—

"(a) is a person registered under the Goods and Services Tax Act 1985, and pays GST on a 2-month cycle or a 6-month cycle; and

"(b) elects under section 38(1) to change their balance date at some time in an income year; and

"(c) moves from—

"(i) a balance date in an even-numbered month to a balance date in an odd-numbered month; or

"(ii) a balance date in an odd-numbered month to a balance date in an even-numbered month.

"(4) Until the new balance date is reached, the taxpayer must—

"(a) continue with the due dates for their provisional tax instalments that applied before the change in balance date was approved; and

"(b) apply **sections MB 20 to MB 23**, as relevant, and **schedule 13, part B** of the Income Tax Act 2004 for the transitional period to determine the due date and amount of an instalment; and

"(c) make an adjustment to their provisional tax liability for the income year for the part of the taxable period in which the new balance date falls.

"(5) If a change in balance date means that the taxpayer's taxable period is not aligned with their balance date, the Commissioner must make an adjustment to the taxable period under section 15B of the Goods and Services Tax Act 1985."

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

New (unanimous)

161B Non-resident withholding tax deduction certificates and annual reconciliations

(1) In section 49(1), in the words between paragraphs (b) and (c), "shall prepare, and shall by not later than 31 May in the following year" is replaced by "must prepare and".

(2) In section 49(4) "shall furnish to the Commissioner within 40 working days after the end of that month" is replaced by "must furnish to the Commissioner".

(3) After section 49(4), the following is inserted:

"(4B) An emigrating company that is treated under **section FCB 2** of the Income Tax Act 2004 as paying a dividend to shareholders must furnish to the Commissioner, as if the emigration date were the end of a year,—

"(a) any non-resident withholding tax deduction certificates required to be prepared by the company; and

"(b) an annual reconciliation statement.

"(4C) A company must furnish to the Commissioner the tax deduction certificates and annual reconciliation statement required under this section for a year—

"(a) by not later than 31 May in the year following the year to which the certificates and statement relate, if **paragraphs (b) and (c)** do not apply; or

"(b) before the date that is 40 working days after the end of the month referred to in subsection (4), if that subsection applies and **paragraph (c)** does not apply; or

"(c) before the date that is 3 months after the emigration date, if the company is an emigrating company."

New (unanimous)

(4) **Subsections (1) to (3)** apply for income years corresponding to the 2005–06 and subsequent tax years.

161C Resident withholding tax deduction reconciliation statements

(1) In section 51(1), in the words after paragraph (b), "shall, by not later than 31 May following the end of that year," is replaced by "must".

(2) In section 51(4) "and within 40 working days after the end of that month" is repealed.

(3) In section 51(5) "and within 40 working days after the end of that month" is repealed.

(4) After section 51(5) the following is inserted:

"(5B) An emigrating company that is treated under **section FCB 2** of the Income Tax Act 2004 as paying a dividend to shareholders must provide to the Commissioner the information required under this section, as if the emigration date were the end of a year.

"(5C) A company must furnish to the Commissioner the information required under subsection (4), (5), or **(5B)**—

"(a) on or before the date that is 40 working days after the end of the month referred to in subsection (4), if that subsection applies and **paragraphs (b) and (c)** do not apply; or

"(b) on or before the date that is 40 working days after the end of the month referred to in subsection (5), if that subsection applies and **paragraph (c)** does not apply; or

"(c) before the date that is 3 months after the emigration date, if the company is an emigrating company."

(5) **Subsections (1) to (4)** apply for income years corresponding to the 2005–06 and subsequent tax years.

162 New section 59B inserted

After section 59, the following is inserted:

"**59B Disclosure of foreign trust particulars**

"(1) A (*New Zealand*)resident foreign trustee for a foreign trust must disclose to the Commissioner the following particulars for the foreign trust—

"(a) the name or other identifying particulars (for example, the date of the settlement on the trust) that relate to (*each*) the foreign trust (*in respect of which the person is a trustee*); and

"(b) the name and contact particulars of the (*New Zealand*)resident foreign trustees; and

"(c) whether a settlor is resident in the Commonwealth of Australia; and

Struck out (unanimous)

"(d) the name of the approved organisation of which a trustee who is a natural person or their co-trustee or, if the trustee is a non-natural person, a director or manager of the non-natural trustee is a member.

New (unanimous)

"(d) if a resident foreign trustee claims to be a qualifying resident foreign trustee,—

"(i) the name of the approved organisation; and

"(ii) the name and contact particulars of the natural person whose membership of the approved organisation is claimed to satisfy the requirements of **paragraph (a) or (b)(ii)** of the definition of **qualifying resident foreign trustee**; and

"(e) if a resident foreign trustee has been appointed by another resident foreign trustee as an agent under **subsection (7)** or **section 22(2C)**,—

"(i) the name of the trustee appointed as agent; and

"(ii) the name of the appointing trustee.

"(2) A (*New Zealand*)resident foreign trustee must disclose to the Commissioner an alteration to a particular to which **subsection (1)** refers.

"(3) The disclosure required by **subsections (1) and (2)** and the application of **section 22 (2)(fb) and (m)** is delayed for a period of 2 years (calculated from the date on which the trustee becomes a New Zealand resident) for a trustee who is a natural person and who was appointed a trustee of the foreign trust before becoming a New Zealand resident if the trustee,—

"(a) becomes a New Zealand resident on or after 1 (*April*) October 2006; and

"(b) is not in the business of providing trustee services; and

"(c) has not been resident in New Zealand on any day in the period of 5 years that ends immediately before the trustee becomes a New Zealand resident.

Struck out (unanimous)

"(4) If **subsection (3)** does not apply, the disclosure required by **subsection (1)** must be made by the date that is—

"(a) 30 days after the date of the person's appointment as a trustee, if the person is appointed on or after 1 April 2006:

"(b) 60 days of the commencement of this section, if the person is appointed before 1 April 2006:

New (unanimous)

"(4) If **subsection (3)** does not apply, the disclosure required by **subsection (1)** must be made by the date that is—

"(a) if the person is appointed on or after 1 October 2006, 30 days after the later of the following:

"(i) the date of the person's appointment as a trustee:

"(ii) the date of the person's arrival in New Zealand; or

"(b) if the person is appointed before 1 October 2006, 60 days after the later of the following:

"(i) the date of the commencement of this section:

"(ii) the date of the person's arrival in New Zealand.

"(5) If **subsection (3)** does apply, the disclosure required by **subsection (1)** must be made by the date that is 30 days after the end of the period of 2 years that begins when the trustee becomes a New Zealand resident.

"(6) The disclosure required by **subsection (2)** must be made by,—

"(a) if **subsection (3)** does not apply, the date that is 30 days after the date on which the alteration becomes known to the trustee:

"(b) if **subsection (3)** does apply, the date that is the later of—

"(i) the date that is 30 days after the end of the period of 2 years that begins when the trustee becomes a New Zealand resident:

"(ii) the date that would be given by **paragraph (a)** if **subsection (3)** did not apply.

New (unanimous)

"(7) If there are more than one resident foreign trustee of a foreign trust, the resident foreign trustees may appoint one of themselves as an agent for the purposes of making disclosure under this section."

Struck out (unanimous)

163 Disclosure of interest in foreign company or foreign investment fund

In section 61(1), in the words before paragraph (a) "has at any time in a tax year" is replaced by "at any time in a tax year is a New Zealand resident who is not a certified resident and has".

New (unanimous)

163 Disclosure of interest in foreign company or foreign investment fund

After section 61(1), the following is inserted:

"(1B) A resident foreign trustee of a foreign trust who makes the disclosure required by **section 59B** is exempt from the requirements of subsection (1)."

New (unanimous)

163B Co-operative company to provide particulars of deemed dividend

(1) In section 64(a), "tax year" is replaced by "income year".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

163C Information to be furnished with return by petroleum mining entity making dispositions of shares or trust interests

(1) In section 65, "tax year" is replaced by "income year".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

163D Annual and other returns for policyholder credit account persons

(1) In section 66(1), "tax year" is replaced by "income year".

(2) In section 66(2)(a), "tax year" is replaced by "income year".

(3) In section 66(2)(b), "tax year" is replaced by "income year".

(4) In section 66(3), "tax year" is replaced by "income year" in both places that it occurs.

(5) In section 66(5), "tax year" is replaced by "income year" in both places that it occurs.

(6) In section 66(6), "a tax year" is replaced by "an income year".

(7) **Subsections (1) to (6)** apply for income years corresponding to the 2005–06 and subsequent tax years.

163E Company dividend statement when imputation credit account company declares dividend

(1) In section 67(2),—

(a) "a tax year" is replaced by "an income year":

(b) "that tax year" is replaced by "that income year".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

163F Annual imputation return

(1) In section 69(1B)(a), "income year" is replaced by "tax year".

(2) In section 69(1B)(b), "income year" is replaced by "tax year".

(3) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

163G Annual dividend withholding payment account return

(1) In section 71, in the words before paragraph (a),—

(a) "a tax year" is replaced by "an income year":

(b) "that tax year" is replaced by "that income year".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

163H Annual and other returns for branch equivalent tax account persons

(1) In section 78(1), "tax year" is replaced by "income year".

(2) In section 78(2)(a), "tax year" is replaced by "income year".

(3) In section 78(2)(b), "tax year" is replaced by "income year".

(4) In section 78(3), "tax year" is replaced by "income year" in both places that it occurs.

(5) In section 78(5), "tax year" is replaced by "income year".

(6) In section 78(6), "a tax year" is replaced by "an income year".

(7) **Subsections (1) to (6)** apply for income years corresponding to the 2005–06 and subsequent tax years.

163I Officers to maintain secrecy

(1) In section 81(4)(f), the portion before subparagraph (i) is replaced by the following:

"(f) communicating to any person, being an officer, employee, or agent of the responsible department or of the Accident Compensation Corporation or of the

New (unanimous)

Department for Courts, any information, being information—".

(2) In section 81(4), after paragraph (m), the following is inserted:

"(mb) publishing a list of organisations that are approved organisations:".

163J Disclosure of information to prevent cessation of benefit payments

In section 82A(5), "section 81(4)(n)" is replaced by "section 81(4)(o)".

164 Notices of proposed adjustment required to be issued by(the) Commissioner

In section 89C(db), "income year" is replaced by "period".

165 Taxpayers and others with standing may issue notices of proposed adjustment

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

"(2D) For the purpose of subsection (2C), section 16(3) of the Goods and Services Tax Act 1985 does not apply."

New (unanimous)

165B Late actions deemed to occur within response period

(1) In section 89K(1), paragraph (a) is replaced by the following:

"(a) the Commissioner considers that an exceptional circumstance has prevented a disputant from, within the applicable response period,—

"(i) rejecting an adjustment contained in a notice of proposed adjustment issued by the Commissioner; or

"(ii) issuing a notice of proposed adjustment under section 89D or 89DA in respect of a disputable decision; or

"(iii) issuing a statement of position; and".

New (unanimous)

(2) **Subsection (1)** applies to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005.

166 (Notices of proposed adjustment required to be issued by the Commissioner)Completing the disputes process

(1) In section 89N(1)(c)(vi),—

(a) "a request under a statute for information" is replaced by "a requirement under a statute to produce information":

(b) "the request" is replaced by "the requirement", in both places that it occurs.

(2) Section 89N(5) is replaced by the following:

"(5) If the Commissioner makes an application under subsection (3), the Commissioner must make an amended assessment by the last day of the period that—

"(a) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment; and

"(b) contains the total of—

"(i) the number of days between the date on which the Commissioner files the application in the High Court and the earliest date on which the application is decided by the High Court or the application or dispute is resolved:

"(ii) the number of days allowed by an order of a court as a result of the application."

167 Test cases

Section 89O(5) is replaced by the following:

"(5) The Commissioner must make an amended assessment, or perform an action, that is the subject of a suspended dispute by the later of the following:

"(a) the day that is 60 days after the last day of the suspension:

"(b) the last day of the period that—

"(i) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment, or perform the action; and

"(ii) contains the same number of days as does the period of the suspension."

New (unanimous)

167B Determinations in relation to financial arrangements

(1) In section 90(1)(c), "tax year" is replaced by "income year".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

168 Determination on economic rate

(1) In section 91AAF(1), "section EE 25" is replaced by "(*section EE 25 or*)(***section EE 25B or section 25C***) **section EE 25B, EE 25C, EE 25E or EZ 21B**".

(2) In section 91AAF(4)(b), "or is an item of property to which ()(***sections EE 25B or EE 25C***) **section EE 25B, EE 25C, EE 25E, or EZ 21B** of the Income Tax Act 2004 (*apply*) applies" is inserted after "reacquired".

(3) After section 91AAF(4), the following is added:

"(5) A determination made under this section may apply to (*items*)an item of depreciable property to which ()(***sections EE 25B or EE 25C***) **section EE 25B, EE 25C, or EE 25E** of the Income Tax Act 2004 (*apply*)applies if the item is acquired or used by a person before the commencement of this section."

(4) **Subsections (1) to (3)** apply for income years corresponding to the 2005–06 and subsequent tax years.

169 Determination on special rates and provisional rates

Struck out (unanimous)

(1) In section 91AAG(2)(a), "section EE 25(4)" is replaced by "sections EE 25, **EE 25B and EE 25C**".

New (unanimous)

(1) Section 91AAG(3) is replaced by the following:

"(3) The Commissioner may issue a determination setting a special rate using—

"(a) the formula in **section EE 25B**; or

"(b) the formula in **section EE 25C**; or

"(c) the formula in **section EE 25E**; or

"(d) the straight-line method other than under **paragraph (b)**."

(2) In section 91AAG(4)(b), "or **schedule 11B**" is inserted after "schedule 11".

(3) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

Struck out (unanimous)

170 New Part 5B inserted

(1) After section 91J, the following is inserted:

"Part 5B
"Certificates

"**91K Eligibility for new-resident certificate**

"(1) A natural person is eligible for a period of time in a tax year to hold a general resident certificate if—

"(a) the person satisfies for the period the general requirements for a new-resident certificate given by **subsection (6)**; and

"(b) the period begins on or after the day on which the person last became a New Zealand resident; and

"(c) the tax year is—

"(i) the tax year in which the person last became a New Zealand resident; or

"(ii) one of the next 2 tax years.

"(2) A natural person is eligible for a period of time in a tax year to hold an employed resident certificate if—

"(a) the person satisfies for the period the general requirements for a new-resident certificate given by **subsection (6)**; and

Struck out (unanimous)

"(b) the person has not held a general resident certificate or dependent resident certificate since last becoming a New Zealand resident; and

"(c) the period begins on or after the day on which the person last became a New Zealand resident; and

"(d) the tax year is—

"(i) the tax year in which the person last became a New Zealand resident; or

"(ii) one of the next 4 tax years; and

"(e) the person engages during the tax year in an activity that gives rise to an entitlement to a source deduction payment other than—

"(i) a payment of a kind referred to in paragraph (b)(iii), (v), (ix), and (xi) of the definition of **salary or wages** in section OB 1 of the Income Tax Act 2004:

"(ii) a payment of a kind referred to in paragraph (b)(viii) of the definition of **salary or wages** in section OB 1 of the Income Tax Act 2004 that is not an accident compensation payment referred to in section CF 1(1)(a) of the Income Tax Act 2004 or a parental leave payment referred to in section CF 1(1)(f) of that Act:

"(iii) a withholding payment of the kind specified in part E of the schedule of the Income Tax (Withholding Payments) Regulations 1979:

"(iv) a payment made by a close company to the person as a major shareholder of the close company:

"(v) a payment made to the person by a person who is a relative of the person under paragraphs (c) and (d) of the definition of that term in section OB 1 of the Income Tax Act 2004:

"(vi) a payment made to the person from a business carried on by 2 or more persons jointly, whether in partnership or otherwise, who include a person who is a relative of the person under paragraphs (c) and (d) of the definition of that term in section OB 1 of the Income Tax Act 2004; and

Struck out (unanimous)

"(f) the person—

"(i) during not less than 94% of the period, is under a contractual obligation to engage in the activity for not less than 37.5 hours in the week, including reasonable provisions for sick leave and annual leave:

"(ii) during the months in the tax year that include or follow the day on which the person last became a New Zealand resident, derives total source deduction payments satisfying **paragraph (e)** equal to or more than the amount given by the formula in **subsection (3)**.

"(3) The amount of source deduction payments required by **subsection (2)(f)(ii)** is given by the formula—

$$\$70{,}000 \times \frac{\text{months}}{12}.$$

"(4) In the formula, **months** is the number of months in the tax year that include or follow the day on which the person last became a New Zealand resident.

"(5) A natural person is eligible at a time to hold a dependent resident certificate if at the time the person is—

"(a) less than 20 years of age; and

"(b) financially dependent on a person who at the time is a certified employed resident or a certified general resident; and

"(c) being maintained as a member of the family of the certified resident.

"(6) A person satisfies the general requirements for a new-resident certificate if—

"(a) the person is a New Zealand resident; and

"(b) the person last became a New Zealand resident immediately after being a non-resident for a continuous period of at least 10 years; and

"(c) the person has not held a new-resident certificate before last becoming a New Zealand resident.

Struck out (unanimous)

"**91L Application for new-resident certificate**

"(1) A natural person may apply to the Commissioner for a new-resident certificate for the person for a time in a tax year if—

"(a) the person is or will be eligible at the time to hold the new-resident certificate; and

"(b) the application is made at or before the end of the tax year.

"(2) An application under this section must—

"(a) be in the prescribed form; and

"(b) specify the tax file number of the person or be accompanied by an application by the person for a tax file number; and

"(c) be signed by the person making the application; and

"(d) specify the type of certificate sought; and

"(e) specify the period for which the certificate is sought; and

"(f) provide all the facts that are relevant to the application; and

"(g) specify all assumptions that are relevant to the application; and

"(h) provide all other information required by the Commissioner.

"**91M Issuing new-resident certificate**

"(1) The Commissioner may issue a new-resident certificate for a period to a natural person who makes an application under **section 91L(2)** if the Commissioner is satisfied that the person is or will be eligible to hold the resident certificate for the period.

"(2) A certificate issued under this section must state—

"(a) the type of certificate; and

"(b) the person to whom the certificate is issued; and

"(c) the period for which the certificate is issued; and

"(d) any assumptions made by the Commissioner when issuing the certificate.

Struck out (unanimous)

"**91N Change in situation**

A person to whom a new-resident certificate has been issued must notify the Commissioner in writing of any circumstances that affect the eligibility of the person, or of a dependent of the person, to hold a new-resident certificate.

"**91O Withdrawal or surrender of new-resident certificate**

"(1) The Commissioner may withdraw a new-resident certificate if the Commissioner is satisfied that the certificate is incorrect.

"(2) The holder of a new-resident certificate may surrender the new-resident certificate by returning the certificate to the Commissioner.

"(3) A withdrawal of a new-resident certificate is effective from the date nominated by the Commissioner in a notice sent to the last known address of the holder of the certificate.

"(4) A surrender of a new-resident certificate is effective from the date on which the Commissioner receives the certificate.

"(5) The Commissioner may require the return of a new-resident certificate that is withdrawn under **subsection (1)**."

(2) **Subsection (1)** applies for a person who becomes a New Zealand resident on or after 1 April 2006.

New (unanimous)

170B Assessment of fringe benefit tax

(1) In section 93(1), "tax year" is replaced by "income year".

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

171 Commissioner may determine amount of provisional tax

(1) In section 119(1),—

(a) "section MB 3" is replaced by "**section MB 6**":

(b) in paragraph (d)(ii) "date." is replaced by "date; or" and the following is added:

"(e) the person is required, under sections MB 6(5) and MB 17(5) of the Income Tax Act 2004, to estimate their residual income tax for a tax year, and fails to provide an estimation or re-estimation to the Commissioner."

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

172 Definitions

(1) In section 120C(1), in the definition of **date interest starts**—

(a) after paragraph (a)(ii), the following is added:

"(iii) for a provisional taxpayer to whom **section 120KE(7)** applies, the day after whichever dates of instalments B, D, and F for their corresponding income year occur 30 days after their last ratio instalment date; and":

New (unanimous)

(ab) in paragraph (b)(i), the words before subsubparagraph (A), are replaced by "if a taxpayer pays too much tax by or after a due date and **subparagraph (iv)** does not apply":

(b) after paragraph (b)(iii), the following is added:

"(iv) for a provisional taxpayer other than one to whom **section 120KE(1) or (3)** applies, (*means*)the first day of the income year; and

"(v) for a provisional taxpayer to whom **section 120KE(6)** applies, the later of—

"(A) the day after the date set out in **section MB 17(2) or MB 17(3)**, as applicable:

"(B) the day after their last ratio instalment date; and".

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

173 Section 120K replaced

(1) Section 120K is replaced by the following:

"**120KB Provisional tax instalments and due dates generally**

"(1) This section applies—

"(a) in a tax year other than a transitional year:

"(b) to a provisional taxpayer who is not a new provisional taxpayer.

"(2) A provisional taxpayer's residual income tax is due and payable as set out in **section MB 8** of the Income Tax Act 2004.

"(3) If a provisional taxpayer uses a GST ratio to determine the amount of provisional tax payable, and an adjustment to a base amount referred to in **section MB 7** of the Income Tax Act 2004 will, or is likely to, change the amount payable, the taxpayer may ask the Commissioner to make the adjustment and reassess their liability.

"(4) For the purposes of this section and **sections 120KC to 120KE**, residual income tax means a person's residual income tax for a tax year as defined in section OB 1 of the Income Tax Act 2004—

"(a) as increased by an amount calculated in relation to the person and the income year under section KD 4(2)(c) of the Income Tax Act 2004; or

"(b) as reduced by an amount calculated in relation to the person and the income year under section KD 4(2)(d) of the Income Tax Act 2004.

"**120KC Residual income tax of new provisional taxpayer**

"(1) In a tax year other than a transitional year, and for the purposes of this Part, a new provisional taxpayer's residual income tax is treated as due and payable—

"(a) in 3 equal instalments on the interest instalment dates B, D, and F for the taxpayer's corresponding income year, if **section MB 8(8)(a)** of the Income Tax Act 2004 applies:

"(b) in 2 equal instalments on the interest instalment dates C and F for the taxpayer's corresponding income year if **section MB 8(8)(b)** applies:

"(c) in 1 instalment on the interest instalment date F for the taxpayer's corresponding income year, if **section MB 8(8)(c)** applies.

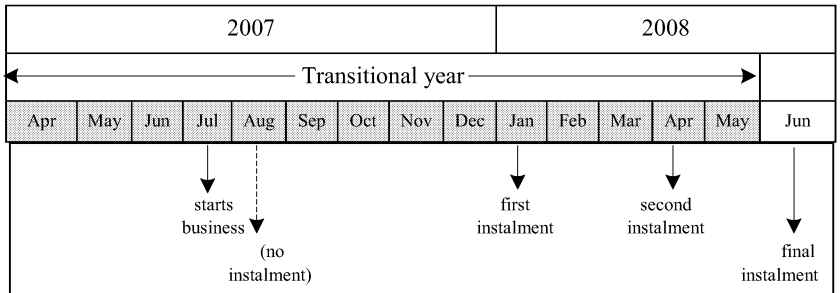
"(2) In this section, a reference to an instalment classified by the letters A to F is a reference to an instalment date in the table in

schedule 13, part A of the Income Tax Act 2004 on which an instalment of provisional tax is payable by a provisional taxpayer for an income year that corresponds to a tax year.

Struck out (unanimous)

Example: Section 120KC

Mr Yellow, who has a March balance date, decides to change to a May balance date. The transitional year is 14 months long. He starts business and becomes a new provisional taxpayer on 31 July, estimating provisional tax at $15,000 for the income year. At the end of the year, Mr Yellow's residual income tax is $20,000.



Instalments in transitional year: 28th day of 5th, 9th, and 13th months after balance date, and final instalment on 28th day of month following final month in transitional year (s MB 22 and schedule 13, part B). But first business day falls within 30 days of the date that would be the first instalment, 28 August (s MB 13), so no instalment is due.

Amounts payable on the instalment dates are calculated under s MB 22.

First instalment due 20 January: $15,000 x 4/14 = $4,285

Second instalment due 28 April: $15,000 x 8/14 - $4,285 = $4,286

Final instalment due 28 June: $15,000 - $8,571 = $6,429

Three interest start dates apply: 21 January, 29 April, and 29 June (s 120KC(2)).

First instalment 20 January on RIT: $20,000 x 4/14 = $5,714

- interest payable from 21 January on: ($5,714 - $4,285) = $1,429

Second instalment 28 April on RIT: $20,000 x 4/14 = $5,714

- interest payable from 29 April on: ($5,714 - $4,286) = $1,428

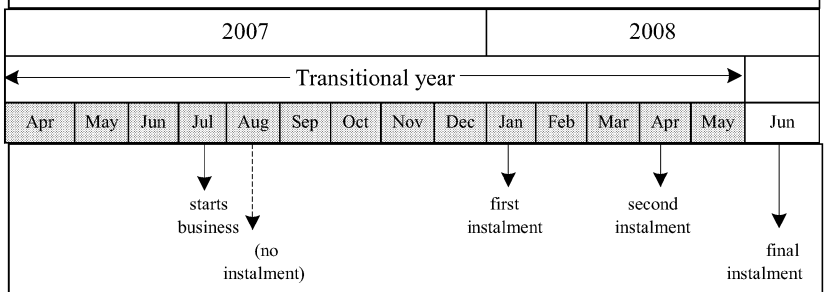
Final instalment 28 June on RIT: $20,000 - ($5,714 + $5,714) = $8,572

- interest payable from 29 June on RIT: ($8,572 - $6,429) = $2,143

New (unanimous)

Example: Section 120KC

Mr Yellow, who has a March balance date, decides to change to a May balance date. The transitional year is 14 months long. He starts business on 31 July, estimating provisional tax at $15,000 for the income year. At the end of the year, Mr Yellow's residual income tax is $20,000. He is not subject to GST.



Instalments in transitional year: 28th day of 5th, 9th, and 13th months after balance date, and final instalment on 28th day of month following final month in transitional year (s MB 20(2) and schedule 13, part B). But first business day falls within 30 days of the date that would be the first instalment, 28 August (s MB 20(4)(a)), so no instalment is due.

Amounts payable on the instalment dates are calculated under s MB 22.

First instalment due 20 January: $15,000 x 4/14 = $4,285

Second instalment due 28 April: $15,000 x 8/14 - $4,285 = $4,286

Final instalment due 28 June: $15,000 - $8,571 = $6,429

Three interest start dates apply: 21 January, 29 April, and 29 June (s 120KD(2)).

First instalment 20 January on RIT: $20,000 x 4/14 = $5,714

- interest payable from 21 January on: ($5,714 - $4,285) = $1,429

Second instalment 28 April on RIT: $20,000 x 4/14 = $5,714

- interest payable from 29 April on: ($5,714 - $4,286) = $1,428

Final instalment 28 June on RIT: $20,000 - ($5,714 + $5,714) = $8,572

- interest payable from 29 June on RIT: ($8,572 - $6,429) = $2,143

"**120KD Provisional tax instalments in transitional years**

"(1) For a transitional year to which **schedule 13, part B** of the Income Tax Act 2004 applies, the residual income tax of a provisional taxpayer, other than a person to whom **section**

120KE(1) applies, is due and payable as determined under **sections MB 20 to MB 23** of the Income Tax Act 2004.

"(2) A provisional taxpayer in a transitional year is liable for use of money interest for unpaid tax in relation to the instalments of provisional tax payable in the months set out in **schedule 13, part B** of the Income Tax Act 2004. The date interest starts is the day after the 28th day of the month on which an instalment is payable.

"(3) For the purposes of calculating the amount of interest due in relation to an instalment of provisional tax other than a final instalment, the amount of residual income tax payable on the instalment date is calculated using the formula—

$$\frac{\text{residual income tax} \times \text{instalment period}}{\text{months in transitional year}}$$

"(4) In the formula, the **instalment period** is either—

"(a) 4, for provisional taxpayers who pay on the equivalent of instalment dates B, D, and F; or

"(b) 6, for provisional taxpayers who pay on the equivalent of instalment dates C and F.

"(5) For the purposes of calculating the amount of interest due in relation to a final instalment of provisional tax, the amount of residual income tax payable is the residual income tax for the tax year minus any amount treated as due on an instalment date referred to in **subsection (3)**.

"(6) In this section, a provisional taxpayer includes a new provisional taxpayer.

Struck out (unanimous)

Example: Section 120KD

Dr Beige starts the income year (March balance date) using a GST ratio to determine the amount of provisional tax payable. He makes payments in June and August. On 10 September 2007, Dr Beige decides to change his determination method. He must then estimate his residual income tax for the income year (s MB 17(5) Income Tax Act 2004), and pay 2 instalments under the estimation method on instalment dates D and F. Dr Beige provides a return for the income year that shows residual income tax of $30,000.

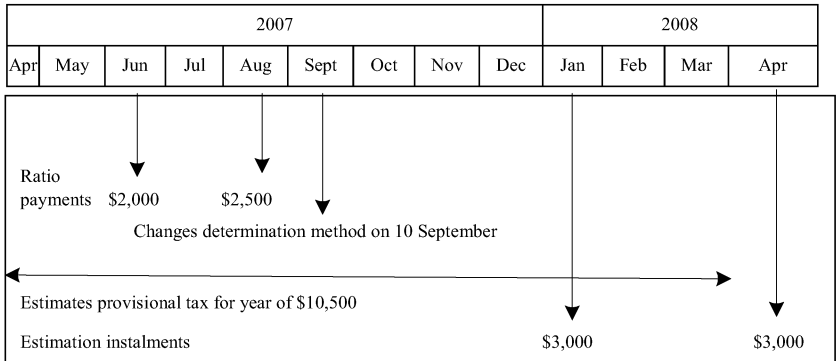
Four interest start dates apply:

- for credit interest, the interest start date is 11 September:
- for debit interest, the interest start dates are:

  11 September for unpaid instalments under the GST ratio method

  21 January 2008 for unpaid instalments under estimation method

  29 April 2008 for unpaid instalments under estimation method.



Files return for year and RIT is $30,000

Balance is $25,500 ($30,000 - $4,500)

Estimation instalments: interest due:

on 21 Jan 2008 on $9,750 ($12,750 - $3,000)

on 29 April 2008 on $9,750 ($12,750 - $3,000)

New (unanimous)

Example: Section 120KD

Dr Beige starts the income year (March balance date) using a GST ratio to determine the amount of provisional tax payable. He makes payments in June and August. On 10 September 2007, Dr Beige decides to change his determination method. He must then estimate his residual income tax for the income year (s MB 17(5) Income Tax Act 2004), and pay 2 instalments under the estimation method on instalment dates D and F (s MB 6(5) of that Act). Dr Beige provides a return for the income year that shows residual income tax of $30,000.

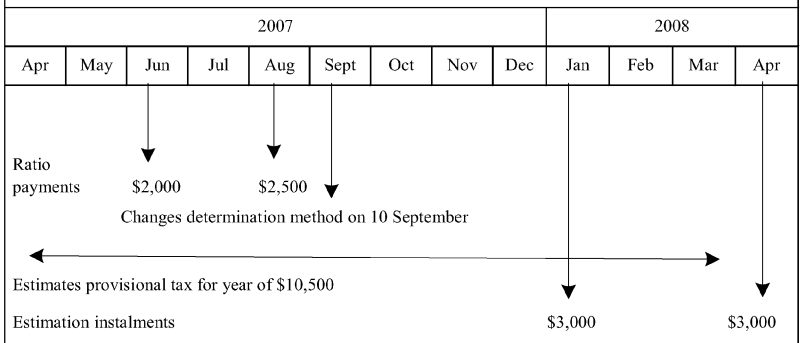
Four interest start dates apply:

- for credit interest, the interest start date is 11 September 2007 (s 120KE(6)):
- for debit interest, the interest start dates are:

  11 September for unpaid instalments under the GST ratio method (s 120KE(7))

  21 January 2008 for unpaid instalments under estimation method (s 120C(1)(a)(i)(A))

  29 April 2008 for unpaid instalments under estimation method (s 120C(1)(a)(i)(A)).



Files return for year and RIT is $30,000

Balance is $25,500 ($30,000 - $4,500)

Estimation instalments: interest calculated on unpaid tax of:

on 21 Jan 2008 on $9,750 ($12,750 - $3,000) (s 120C(2)(b))

on 29 April 2008 on $9,750 ($12,750 - $3,000) (s 120C(2)(b))

"**120KE Provisional tax and rules on use of money interest**

"(1) A provisional taxpayer's residual income tax for a tax year is due and payable in 1 instalment on (*the*)their terminal tax date if—

"(a) they are a natural person, other than in their capacity as trustee; and

"(b) their residual income tax is less than $35,000 for the tax year; and

"(c) they have not estimated their residual income tax under **section MB 6** of the Income Tax Act 2004 for the tax year; and

"(d) they have not used a GST ratio under **section MB 7** of the Income Tax Act 2004 in the tax year to determine the amount of provisional tax payable for the tax year; and

"(e) they have not at any time in the tax year held a valid certificate of exemption under **section NF 9(12)** of the Income Tax Act 2004.

"(2) When **subsection (1)** applies, in relation to the payment of provisional tax under **section MB 8(2) or (4) or MB 20**, the provisional taxpayer—

"(a) is not liable for use of money interest under **section 120D** for unpaid tax until their terminal tax date:

"(b) is not entitled to use of money interest under **section 120D** for overpaid tax until their terminal tax date.

"(3) A provisional taxpayer's residual income tax for a tax year is due and payable in 1 instalment on their terminal tax date if—

"(a) they use a GST ratio to determine the amount of provisional tax payable for the tax year; and

"(b) they use the GST ratio as the determination method for the whole of the corresponding income year.

"(4) When **subsection (3)** applies, in relation to the amount of provisional tax paid or payable for the period in the corresponding income year in which the GST ratio is used, the provisional taxpayer—

"(a) is not liable for use of money interest under **section 120D** for unpaid tax until their terminal tax date:

"(b) is not entitled to use of money interest under **section 120D** for overpaid tax until their terminal tax date.

"(5) **Subsections (6) and (7)** apply if, under **section MB 17** of the Income Tax Act 2004, a provisional taxpayer changes the way they determine the amount of provisional tax.

"(6) For credit interest, the taxpayer is entitled to use of money interest from the later of—

"(a) the day after the date set out in **section MB 17(2) or (3)**, as applicable:

"(b) the day after their last ratio instalment date.

"(7) For debit interest, the taxpayer is liable for use of money interest—

"(a) for the period of the tax year in which they use the GST ratio, from the later of the dates set out in **subsection (6)**:

"(b) for the period of the tax year in which they estimate their provisional tax, from whichever dates of instalments B, D, and F for their corresponding income year occur 30 days after their last ratio instalment date.

"(8) In this section, a reference to an instalment classified by the letters A to F is a reference to a date in the table in **schedule 13, part A** of the Income Tax Act 2004 on which an instalment of provisional tax is payable by a provisional taxpayer for an income year that corresponds to a tax year."

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

174 Meaning of unpaid tax and overpaid tax for provisional tax purposes

(1) In section 120L(1), "section 120K" is replaced by "**section 120KB(4)**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

175 Where provisional tax paid by company does not count as overpaid tax

(1) In section 120M(b), "section MB 10" is replaced by "**section MB 37**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

176 Due date for underestimation penalty tax

(1) In section 120Q, "the taxpayer's third instalment date" is replaced by "the date of instalment F set out in **schedule 13, part A** of the Income Tax Act 2004, for the taxpayer's corresponding income year".

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

177 Late payment penalty and provisional tax

(1) In section 139C(1), "**Subsection (1B)** overrides this subsection." is added.

Struck out (unanimous)

(2) After section 139C(1), the following is added:

"(1B) **Subsection (1)** applies to a provisional taxpayer who uses a GST ratio in a tax year to determine the amount of an instalment of provisional tax payable for the tax year except in the following circumstances:

"(a) when the taxpayer pays an amount determined correctly using the GST ratio, but underpays their liability in comparison with their residual income tax for the tax year:

"(b) when the taxpayer's residual income tax has been reassessed and, based on the new GST ratio, the taxpayer has underpaid an instalment of provisional tax that was due before the date of reassessment."

New (unanimous)

(2) After section 139C(1), the following is inserted:

"(1B) **Subsection (1C)** applies if—

"(a) a person makes an election under **section MB 11** of the Income Tax Act 2004 that an amount of a GST refund (**elected amount**) be used to pay an amount of provisional tax due on an instalment date; and

"(b) the Commissioner reassesses the amount of the GST refund as being less than the elected amount.

New (unanimous)

"(1C) The person is not liable for a late payment penalty in relation to the amount of any shortfall in the person's payment of provisional tax that arises as a result of the reassessment referred to in **subsection (1B)** until—

"(a) the date that is 30 days after the date on which the Commissioner gives notice of the reassessment, if the Commissioner does not set a date under **subparagraph (ii)**; or

"(b) a date set by the Commissioner that is later than the date referred to in **subparagraph (i)**."

(3) In section 139C(2), in the definition of **provisional tax payable**,—

(a) "section MB 5" is replaced by "**section MB 9**" wherever it occurs:

(b) in paragraph (a)(ii), "section MB 2" is replaced by "**section MB 4**":

Struck out (unanimous)

(c) in paragraph (a)(ii), "sections MB 2AA or MB 2AB" is omitted:

(d) in paragraph (aa), "section MB 5A" is replaced by "**sections MB 9 and MB 20**" wherever it occurs:

(e) in paragraph (aa)(ii), "item p of the formulae in section MB 5A(5) and MB 5A(7)" is replaced by "item **residual income tax** in the formula in **section MB 9(2)**"**(.)**:

New (unanimous)

(f) in paragraph (aa), "section MB 5A" is replaced by "**sections MB 9 and MB 20**" wherever it occurs.

(4) **Subsections (1) to (3)** apply for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

178 Application of other provisions of Act to imputation penalty tax and dividend withholding payment penalty tax

(1) In section 140D(2)(d) and (3)(d), "section 120K" is replaced by "**sections 120KB to 120KE**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

179 Application of other provisions of Act to Maori authority distribution penalty tax

(1) In section 140DB(2)(b), "section 120K" is replaced by "**sections 120KB to 120KE**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

180 New section 141EA inserted

(1) After section 141E, the following is inserted:

"**141EA Shortfall penalty and provisional tax**

Despite sections 141A to 141E, a provisional taxpayer who uses a GST ratio in a tax year to determine the amount of an instalment of provisional tax payable for the tax year is not liable to pay a shortfall penalty in the following circumstances:

Struck out (unanimous)

"(a) when the taxpayer with a provisional tax liability at an instalment date pays the amount determined using the GST ratio, but underpays their annual liability:

"(b) when the taxpayer uses the GST ratio that applies at an instalment date but a later reassessment of their residual income tax changes the GST ratio and the amount of the instalment.

New (unanimous)

"(a) the taxpayer pays by the instalment date the amount, determined using the GST ratio, of the instalment but underpays their annual liability:

"(b) the taxpayer pays by the instalment date the amount, determined using the GST ratio, of the instalment but the GST ratio is changed after the instalment date by a reassessment of their residual income tax."

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

Struck out (unanimous)

181 Reduction of penalties for previous behaviour

In section 141FB(5), "subsection (2)" is replaced by "subsections (1) and (2)".

182 Absolute liability offences

In section 143(1)(c), "1985." is replaced by "1985; or" and the following is added:

"(d) unless **section 59B(3)** applies, acts as a New Zealand resident trustee of a foreign trust when the person is not a qualifying New Zealand resident trustee."

New (unanimous)

182 Absolute liability offences

After section 143(1), the following is inserted:

"(1B) No person who is a resident foreign trustee may be convicted of an offence against subsection (1)(a) for not keeping books and documents required to be kept under section 22 if the person proves that—

"(a) the person did not know of the requirements of section 22:

New (unanimous)

"(b) another resident foreign trustee has been appointed under **section 22(2C)** as agent of the resident foreign trustees for the purposes of section 22 and the Commissioner has been notified of the appointment.

"(1C) No person who is a resident foreign trustee may be convicted of an offence against subsection (1)(b) for not disclosing information required to be disclosed under **section 59B** if the person proves that—

"(a) the person did not know of the requirements of **section 59B**:

"(b) another resident foreign trustee has been appointed under **section 59B(7)** as agent of the resident foreign trustees for the purposes of **section 59B** and the Commissioner has been notified of the appointment."

182B Employers and officers

After section 147(2), the following is inserted:

"(2B) A natural person is not liable under this section in relation to an offence by a resident foreign trustee that is a body corporate if **section 147B** imposes liability for an offence relating to the offence of the resident foreign trustee."

182C New section 147B inserted

After section 147, the following is inserted:

"**147B Directors and officers of resident foreign trustee**

"(1) A natural person who is resident in New Zealand commits an offence against this Act if—

"(a) the natural person, in relation to a resident foreign trustee that is not a natural person, is—

"(i) a director of the resident foreign trust:

"(ii) in a position in the resident foreign trustee allowing significant influence over the management or administration of the resident foreign trustee; and

"(b) the resident foreign trustee commits an offence against section 143A (**principal offence**); and

"(c) the cause of the principal offence was—

New (unanimous)

"(i) an act done or carried out by the person:
"(ii) an omission of the person:
"(iii) through knowledge attributable to the person."

182D Recovery of excess tax credits allowed

In section 165A(1), "Income Tax Act 1994" is replaced by "Income Tax Act 2004".

183 Transfer of excess provisional tax if provisional tax paid is more than taxpayer's provisional tax liability, determined before assessment

(1) In section 173P(2)(*(a)*), in paragraph (a) of the item **provisional tax paid**, "section MB 6" is replaced by "**section MB 12**".

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 ()and subsequent tax years.

184 Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment

(1) In section 173Q,—

(a) in subsection (1)(b)(ii), "section MB 2(1)(a) or section MB 2(1)(b)" is replaced by "**section MB 4(2)**":

(b) in subsection (2)(*(a)*), in paragraph (a) of the item **provisional tax paid**, "section MB 6" is replaced by "**section MB 12**":

(c) in subsection (2), in the item **estimated RIT**, "section 120K(4)" is replaced by "**section 120 (*KD(1) and (2)*)KE(1)**".

(2) **Subsection (1)** applies for income years corresponding to the (*2007–08*)2008–09 and subsequent tax years.

185 Transfer of excess tax if provisional tax is more than taxpayer's residual income tax, determined after assessment

(1) In section 173R,—

(a) in subsection (2)**(***(a)***)**, in paragraph (a) of the item **provisional tax paid**, "section MB 6" is replaced by "**section MB 12**":

(b) in subsection (2), in the item **residual income tax**, "section 120K(4)" is replaced by "**section 120 (*KD(1) and (2)*)KE(1)**".

(2) **Subsection (1)** applies for income years corresponding to the **(***2007–08* **)**2008–09 and subsequent tax years.

186 Remission in circumstances of qualifying event

(1) Section 183ABA(2) is replaced by the following:

"(2) If this section applies and an affected taxpayer has been charged with interest under Part VII, the affected taxpayer may request the Commissioner to remit the interest charged."

(2) In section 183ABA(3)—

(a) in the words before paragraph (a), "penalty and" is omitted:

(b) in paragraph (a), "penalty or" is omitted.

(3) In section 183ABA(4), "and section MB 3B of the Income Tax Act **(***1994***)** 2004" is omitted.

(4) **Subsections (1) to (3)** apply for income years corresponding to the 2005–06 and subsequent tax years.

187 Remission on written application

(1) In the heading to section 183H, "**written**" is omitted.

(2) Section 183H(a) is replaced by the following:

"(a) make a written request to the Commissioner, if the requested remission is of—

"(i) imputation penalty tax imposed by section 140B:

"(ii) dividend withholding payment penalty tax imposed by section 140C:

"(iii) Maori authority distribution penalty tax imposed by section 140CB:

"(iv) a shortfall penalty imposed by section 141AA:

"(v) interest under Part VII; and".

Struck out (unanimous)

(3) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

New (unanimous)

(3) **Subsections (1) and (2)** apply for requests made after the day on which this Act receives the Royal assent.

188 Payment out of Crown bank account

In section 185(1)(f), "Income Tax Act 2004—" is replaced by "Income Tax Act 2004; or" and the following is added:

"(g) in accordance with **section NBB 6** of the Income Tax Act 2004—".

189 New sections 185C and 185D inserted

After section 185B, the following is inserted:

"**185C Establishment of Listed PAYE Intermediary Bank Account**

An account called the Listed PAYE Intermediary Bank Account is established by this section.

"**185D Payments into, and out of, Listed PAYE Intermediary Bank Account**

"(1) All payments received by the Commissioner from a listed PAYE intermediary and made under **subpart NBB** of the Income Tax Act 2004 must be paid into the Listed PAYE Intermediary Bank Account.

"(2) Such amount as is necessary to meet the payments required to be made under **section NBB 6** of the Income Tax Act 2004 must be paid into the Listed PAYE Intermediary Bank Account.

"(3) The money standing to the credit of the Listed PAYE Intermediary Bank Account must be applied in making payments under **section NBB 6** of this Act."

Part 4
Amendments to other Acts

Income Tax Act 1994

190 Income Tax Act 1994

Sections 191 to 201 amend the Income Tax Act 1994.

191 Exclusions from term "dividends"

(1) In section CF 3(1)(c), ", or treated under **section FCB 2** as being distributed in respect of any share in the company," is inserted after "liquidation of the company".

Struck out (unanimous)

(2) **Subsection (1)** applies for—

(a) a company that becomes a non-resident on or after 21 March 2005; and

(b) the 2004–05 income year.

New (unanimous)

(2) **Subsection (1)** applies for the 2004–05 income year.

191B Interpretation

In section CG 14(3),—

(a) in the words before the formula, ", or in the period of 4 income years from the end of the income year in which the person becomes resident in New Zealand," is inserted after "New Zealand":

(b) in the definition of item a, "day on which the person first" is replaced by "last day of the fourth income year following the income year in which the person becomes resident in New Zealand".

192 Government grants to businesses

(1) In section DC 1(1)(a), "a payment to which section CC 3 or section DL 3 (except section DL(3)(6)), applies:" is replaced by the following:

"a payment—

"(i) to which section CC 3 applies:

"(ii) to which section DL 3, other than DL 3(6), applies:

"(iii) of a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent that the grant is made in respect of expenditure incurred by the taxpayer before the grant:".

(2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

Struck out (unanimous)

193 Certain expenditure on land used for farming or agricultural purposes

(1) In section DO 3,—

(a) in the words preceding paragraph (a), "Any taxpayer" is replaced by "Unless **subsection (2)** applies, a taxpayer":

(b) in paragraph (g), "rabbit-proof." is replaced by "rabbit-proof:" and the following is added:

"(h) the regrassing and fertilising of all types of pasture, if the expenditure is not amortised under **section DO 4**."

(2) Section DO 3 is renumbered as **section DO 3(1)** and the following is added:

"(2) Despite **subsection (1)(h)**, and except to the extent that the expenditure relates to a type of pasture with an estimated useful life of 1 year or less, a person is not allowed a deduction for an amount of expenditure that is incurred in the course of a significant capital activity."

(3) **Subsections (1) and (2)** apply to expenditure incurred on and after 1 July 2004.

New (unanimous)

193 Certain expenditure on land used for farming or agricultural purposes

(1) In section DO 3(1), in paragraph (g), "rabbit-proof." is replaced by "rabbit-proof:" and the following is added:

"(h) the regrassing and fertilising of all types of pasture, if the expenditure is not incurred in the course of a significant capital activity."

(2) **Subsection (1)** applies to expenditure incurred on and after 1 July 2004.

193B Expenditure on land improvements used for farming or agriculture

(1) In the proviso to subsection DO 4(4), the words before paragraph (a) are replaced by "Provided that this subsection shall not apply to any vines or trees".

(2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

194 Low value asset write-off

(1) In section EG 16(1), the words preceding paragraph (a) are replaced by the following:

"(1) Unless **subsection (1B)** applies, the cost of any low value property that, on or before 19 May 2005, is—".

(2) After section EG 16(1), the following is inserted:

"(1B) For the 2004–05 income year and for a taxpayer with a late balance date, in paragraph (a) of the definition of low value property in section OB 1, "$200" must be read as $500."

Struck out (unanimous)

(3) **Subsections (1) and (2)** apply for the 2004–05 income year.

New (unanimous)

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

New (unanimous)

(a) the 2004–05 income year; and
(b) property acquired on or after 19 May 2005.

195 New subpart FCB inserted

(1) After subpart FC, the following is inserted:

"Subpart FCB—Emigration of resident companies

"**FCB 1 Tax effects of company becoming non-resident to reflect tax effects of liquidation**

"(1) This subpart applies to a company (**emigrating company**) that—
  "(a) is a New Zealand resident; and
  "(b) ceases to be a New Zealand resident.

"(2) The intended effect of this subpart and related provisions of the Act is that, for the purposes of the Act, the effects on an emigrating company and its shareholders when the emigrating company becomes a non-resident reflect the effects that would have resulted if—
  "(a) immediately before the emigration time—
    "(i) the emigrating company disposed of its property at market value; and
    "(ii) the emigrating company went into liquidation; and
    "(iii) the amount available for distribution in the liquidation were distributed as dividends to the shareholders of the emigrating company; and
  "(b) at the emigration time, the emigrating company were reformed as a foreign company that—
    "(i) had the same ownership and business activities as those of the emigrating company immediately before the emigration time; and
    "(ii) acquired at market value the property of the emigrating company at the emigration time.

"**FCB 2 Emigrating company treated as paying distribution to shareholders**

Immediately before the emigration time for an emigrating company—

"(a) the emigrating company is treated as paying, as dividends, a distribution in money to shareholders of the amount that would be available for distribution to the shareholders if, at the emigration time, the emigrating company—

"(i) disposed of its property at market value; and

"(ii) went into liquidation; and

"(b) each shareholder in the emigrating company is treated as being paid by the emigrating company, as a dividend, a distribution in money of the amount to which the shareholder would be entitled in such a liquidation.

"**FCB 3 Emigrating company treated as disposing of property and immediately reacquiring property**

An emigrating company is treated as, immediately before the emigration time for the emigrating company,—

"(a) disposing of the property of the emigrating company to another person for consideration equal to the market value of the property at the emigration time; and

"(b) acquiring the property referred to in **paragraph (a)** from the other person for consideration equal to the amount referred to in **paragraph (a)**."

(2) **Subsection (1)** applies for—

Struck out (unanimous)

(a) a company that becomes a non-resident on or after 21 March 2005; and

New (unanimous)

(a) a company that becomes a non-resident on or after 21 March 2005 and does not—

New (unanimous)

(i) before 21 March 2005, satisfy the requirements of sections 351(c), 352, 353, and 354 of the Companies Act 1993 for deregistration under that Act; and

(ii) before 21 March 2005, apply for incorporation under the laws of another country or territory; and

(b) the 2004–05 income year.

New (unanimous)

(3) The law that would apply if **subsection (1)** did not come into force applies for—

(a) a company that—

(i) becomes a non-resident before 21 March 2005:

(ii) becomes a non-resident on or after 21 March 2005 for which **subsection (1)** does not apply; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

196 Company may attach imputation credit to dividend

(1) Section ME 6(2) is replaced by the following:

Struck out (unanimous)

"(2) Notwithstanding subsection (1), an imputation credit account company may retrospectively attach an imputation credit to a dividend arising from a transfer pricing adjustment or under **subpart FCB** if—

"(a) the company pays a non-cash dividend and is subject to an adjustment under section GD 13(3) or (4) in respect of the arrangement giving rise to the dividend:

"(b) the company is an emigrating company that is treated under **section FCB 2** as paying a distribution to shareholders.

New (unanimous)

"(2) Notwithstanding subsection (1), a company may retrospectively attach an imputation credit to a dividend arising from a transfer pricing adjustment or under **subpart FCB** if—

"(a) the company is an imputation credit account company that—

"(i) pays a non-cash dividend; and

"(ii) is subject to an adjustment under section GD 13(3) or (4) in respect of the arrangement giving rise to the dividend:

"(b) the company is an emigrating company that—

"(i) is an imputation credit account company immediately before the emigration time; and

"(ii) is treated under **section FCB 2** as paying a distribution to shareholders."

(2) In section ME 6(3), "subsection (2)" is replaced by "**subsection (2)(a)**".

(3) After section ME 6(3), the following is inserted:

"(3B) The amount of imputation credit attached retrospectively under **subsection (2)(b)** must not exceed the credit balance, if any, in the company's imputation credit account immediately before the emigration time."

(4) In section ME 6(5)(a), "subsection (2)" is replaced by "**subsection (2)(a)**".

(5) After section ME 6(5), the following is added:

"(6) If an amount of tax paid by an emigrating company is attributable to gross income derived before the emigration time by the emigrating company or to the application of **subpart FCB** to the emigrating company, the amount of tax is treated for the purposes of this subpart as being paid immediately before the **(***emigrating company becomes a non-resident***)** emigration time if—

"(a) the company determines under **subsection (2)(b)** to attach an imputation credit to a dividend; and

"(b) the imputation credits that the company attaches are not less than the amount of tax; and

"(c) the company notifies the Commissioner **(***with***)** when providing the company dividend statement required by **subsection (4)(b)**."

(6) **Subsections (1) to (5)** apply for the 2004–05 imputation year.

New (unanimous)

196B Credits and debits arising to policyholder credit account of company

Section ME 18(1)(a)(i) is replaced by the following:

"(i) under section ME 14 by the nominated company for an imputation group to which the company belongs, if the company is a member of an imputation group and not a member of a consolidated group; or".

197 Company may elect to maintain dividend withholding payment account

(1) After section MG 2(5), the following is added:

"(6) If an emigrating company is a dividend withholding payment account company immediately before the emigration time for the emigrating company, the emigrating company ceases to be a dividend withholding payment account company at the emigration time.

"(7) A company that ceases to be a dividend withholding payment account company as a result of **subsection (6)** must—

"(a) furnish, within the time limit in section 71 of the Tax Administration Act 1994, the annual dividend withholding payment account return required from the company as a dividend withholding payment account company for the imputation year in which the company becomes a non-resident; and

"(b) pay any further dividend withholding payment that may be payable under section MG 9 by the company as a dividend withholding payment account company for the imputation year."

(2) **Subsection (1)** applies for—

(a) a company that becomes a non-resident on or after 1 April 1997; and

(b) the 1997–98 and subsequent imputation years.

198 Company may elect to be conduit tax relief company and maintain conduit tax relief account

(1) After section MI 2(7), the following is added:

"(8) A company that ceases to be a dividend withholding payment account company as a result of **section MG 2(6)**—

"(a) ceases to be a conduit tax relief company; and

"(b) must furnish, within the time limit in section 69 of the Tax Administration Act 1994, the annual imputation return required from the company for the imputation year in which the company becomes a non-resident; and

"(c) must pay any dividend withholding payment that may be payable under section MI 10(3) by the company as a dividend withholding payment account company for the imputation year."

(2) **Subsection (1)** applies for—

(a) a company that becomes a non-resident on or after 1 April 1997; and

(b) the 1997–98 and subsequent imputation years.

199 Further dividend withholding payment payable in respect of conduit tax relief account debits

(1) In the heading to section MI 10, "**Further dividend**" is replaced by "**Dividend**".

(2) In section MI 10(1), "a further amount" is replaced by "an amount".

(3) In section MI 10(2), "further amount" is replaced by "amount".

(4) **Subsections (1) to (3)** apply for the 1997–98 and subsequent imputation years.

New (unanimous)

199B Deduction of resident withholding tax

(1) In section NF 2(1)(b), item c is replaced by the following:

"c is the total of the following amounts:

New (unanimous)

"(i) if the dividend is paid in relation to shares issued by an imputation credit account company, the amount of any imputation credit attached to the dividend:

"(ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of the amount of the dividend:

"(iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of any dividend withholding payment credit attached to the dividend; and".

(2) In section NF 2(1)(c), item c is replaced by the following:

"c is the total of the following amounts:

"(i) if the dividend is paid in relation to shares issued by an imputation credit account company, the amount of any imputation credit attached to the dividend:

"(ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of the amount of the dividend:

"(iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of any dividend withholding payment credit attached to the dividend; and".

(3) In section NF 2(1)(d), item c is replaced by the following:

"c is the total of the following amounts:

"(i) if the dividend is paid in relation to shares issued by an imputation credit account company, the amount of any imputation credit attached to the dividend:

New (unanimous)

"(ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable in respect of the amount of the dividend:

"(iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of any dividend withholding payment credit attached to the dividend; and".

200 Definitions

(1) This section amends section OB 1.

(2) In the definition of **available subscribed capital**—

(a) the formula is replaced by the following:

"a + b – c + d:"

(b) after the definition of item c, the following is added:

"d is—

"(i) in the case of a company that has been an emigrating company, the amount of the company's distribution under **section FCB 2** that is **(***assessable income of the shareholder,***)** a dividend:

"(ii) in any other case, nil:".

New (unanimous)

(2B) The definition of **beneficiary income** is replaced by the following:

"**beneficiary income**, for an income year and for a person who is a beneficiary of a trust that is not a unit trust, means an amount that—

"(a) is derived by a trustee of the trust in the accounting year of the trustee that corresponds to the income year, to the extent that the amount—

New (unanimous)

"(i) is income of the trustee and, in the accounting year, vests absolutely in interest in the beneficiary:

"(ii) is a foreign-sourced amount that would have been income of the trustee had a settlor of the trust been resident in New Zealand at any time in the accounting year and, in the accounting year, vests absolutely in interest in the beneficiary:

"(iii) is income of the trustee and, before the beneficiary income deadline for the income year, is paid or applied by the trustee to the beneficiary or for the benefit of the beneficiary:

"(iv) is a foreign-sourced amount that would have been income of the trustee had a settlor of the trust been resident in New Zealand at any time in the accounting year and, before the beneficiary income deadline for the income year, is paid or applied by the trustee to the beneficiary or for the benefit of the beneficiary; and

"(b) is not income derived by a trustee of the trust in an accounting year of the trustee in which the trust is a superannuation fund; and

"(c) is not income of a trustee of the trust to which section CE 1(1)(c) applies

"**beneficiary income deadline**, for an income year and for a person who is a beneficiary of a trust that is not a unit trust, means the later of the following:

"(a) the date that is 6 months after the end of the accounting year of the trustee that corresponds to the income year:

"(b) the date that is 6 months after the end of the income year".

(3) After the definition of **emergency call**, the following is inserted:

"**emigrating company** is defined in **section FCB 1(1)**:

"**emigration time**, for an emigrating company, is the time at which the emigrating company becomes a non-resident:".

(4) In the definition of **estimated useful life**, after paragraph (c), the following is added:

"(d) for a type of pasture, means the period of time over which the pasture might reasonably be expected to be useful to a person in deriving income or carrying on a farming or agricultural business on land in New Zealand".

New (unanimous)

(4B) In the definition of **interest in an employment-related foreign superannuation scheme**, in the words before paragraph (a), ", or in the period of 4 income years from the end of the income year in which the person becomes resident in New Zealand," is inserted after "New Zealand".

(5) In the definition of **low value property**, "$200" is replaced by "$500".

New (unanimous)

(5B) After the definition of **owner of land**, the following is inserted:

"**ownership interests** is defined in **section OD 5AA(6)** for the purposes of that section".

(6) After the definition of **sick, accident, or death benefit fund**, the following is inserted:

"**significant capital activity**, in **section DO 3** and **Schedule 7**, and in relation to a farming or agricultural business on land in New Zealand,—

"(a) means an activity that enables a change in the nature or character of a farming activity from that undertaken on the land immediately before the change; and

"(b) excludes an activity that enables a change in the intensity of a farming practice employed in a farming activity on the land".

New (unanimous)

(7A) **Subsection (2B)** applies for the 1995–96 and subsequent income years.

(7) **Subsections (4) and (6)** apply to expenditure incurred on and after 1 July 2004.

Struck out (unanimous)

(8) **Subsections (2) and (3)** apply for a company that becomes a non-resident on or after 21 March 2005.

New (unanimous)

(8) **Subsections (2) and (3)** apply for the 2004–05 income year.

(9) **Subsection (5)** applies for an asset acquired after 19 May 2005.

New (unanimous)

(9B) **Subsection (5B)** applies for the 1998–99 and subsequent income years.

200B New section OD 5AA inserted

(1) After section OD 5, the following is inserted:

"**OD 5AA Modifications to voting and market value interests for application of continuity provisions to reverse takeover**

"(1) This section modifies the application of sections OD 3 to OD 5 for the purposes of the continuity provisions.

"(2) **Subsections (3) and (4)** apply if—

"(a) a limited attribution company (**initial parent**) is treated under section OD 5(6)(b) as holding ownership interests in another company (**subsidiary**); and

"(b) there is a change in the ownership of the initial parent, or the initial parent ceases to exist as the result of an amalgamation, at a time (**changeover**); and

New (unanimous)

"(c) immediately before the changeover, the initial parent is treated under section OD 5(6)(b) as holding all ownership interests in the subsidiary; and

"(d) immediately after the changeover, another limited attribution company (**new parent**) is treated under section OD 5(6)(b) as holding all ownership interests in the subsidiary; and

"(e) immediately after the changeover, all or part of the ownership interests in the new parent are treated under section OD 5(6)(b) as being held by the persons (**initial owners**) who hold ownership interests in the initial parent immediately before the changeover; and

"(f) each initial owner holds:

"(i) immediately before the changeover, a proportion of the total ownership interests in the initial parent at that time; and

"(ii) immediately after the changeover, a proportion of the total ownership interests in the new parent that the initial owners hold at that time as a result of having held the total ownership interests in the initial parent; and

"(iii) a proportion referred to in **subparagraph (ii)** that is equal to the proportion referred to in **subparagraph (i)**.

"(3) If the initial owners hold a total of 49% or more of the ownership interests in the new parent immediately after the changeover, the new parent is treated for the purposes of Part I as—

"(a) holding, immediately after the changeover, the ownership interests in the subsidiary that the initial parent held immediately before the changeover; and

"(b) having held the ownership interests for the period for which the ownership interests were treated as being held by the initial parent.

"(4) If the initial owners hold a total of 66% or more of the ownership interests in the new parent immediately after the

New (unanimous)

changeover, the new parent is treated for the purposes of subparts ME and MG as—

"(a) holding, immediately after the changeover, the ownership interests in the subsidiary that the initial parent held immediately before the changeover; and

"(b) having held the ownership interests for the period for which the ownership interests were held by the initial parent.

"(5) If the requirements of a continuity provision are not satisfied in relation to a company and would be satisfied but for the application of this section, the requirements of the continuity provision are treated as being satisfied in relation to the company.

"(6) In this section, **ownership interests** for a company means—

"(a) voting interests in the company as determined under section OD 3(3)(d), if **paragraph (b)** does not apply:

"(b) market value interests in the company as determined under section OD 4(3)(d), if a market value circumstance exists for the company."

(2) **Subsection (1)** applies for a person for a change of ownership of a company occurring in the 1998–99 or a subsequent income year if, before the date on which this Act receives the Royal assent, the person files a return of income on the basis that the requirements of a continuity provision are satisfied in relation to the company and the change of ownership.

201 Schedule 7—Expenditure on Land and Aquacultural Improvements

(1) In Schedule 7, Part A,—

(a) in clause 4, "The preparation" is replaced by "Unless **clause 4B** applies, the preparation"; and

(b) after clause 4, the following is inserted:

"4B.	regrassing and fertilising all types of pasture in the course of a significant capital activity that relates to a type of pasture with an estimated useful life of more than 1 year	45".

Struck out (unanimous)

(2) **Subsection (1)** applies on and after 1 July 2004.

Goods and Services Tax Act 1985

202 Goods and Services Act 1985

Sections 203 to 219 amend the Goods and Services Act 1985.

203 Interpretation

(1) This section amends section 2.

(2) Before the definition of **challenge**, the following is inserted:

"**associated supply** means—

"(a) a supply for which the supplier and recipient are associated persons:

"(b) a supply of a right, under (*a debt security,*)an equity security(,) or participatory security, to receive for no consideration, or consideration at other than the open market value, a supply of goods and services that is—

"(i) not an exempt supply; and

"(ii) not a supply relating to the control of the issuer of the (*debt security,*) equity security(,) or participatory security".

New (unanimous)

(2B) After the definition of **associated supply**, as inserted by **subsection (2)**, the following is inserted:

"**balance date** is defined in **section 15AB** for the purposes of that section".

Struck out (unanimous)

(3) After the definition of **associated supply**, as inserted by **subsection (5)**, the following is inserted:

"**balance date** is defined in **section 15B** (Taxable periods aligned with balance dates) for the purposes of that section".

New (unanimous)

(3) The definition of **balance date**, as inserted by **subsection (2B)**, is replaced by the following:

"**balance date** is defined in **section 15B** for the purposes of that section".

(3B) After the definition of **hospital**, the following is inserted:

"**income year** means an income year as defined in section OB 1 of the Income Tax Act 2004".

(3C) After the definition of **person**, the following is inserted:

"**provisional tax** means provisional tax as defined in section OB 1 of the Income Tax Act 2004".

(3D) After the definition of **return**, the following is inserted:

"**return of income** means a return of income required under section 33 of the Tax Administration Act 1994".

(3E) After the definition of **tax payable**, the following is inserted:

"**tax year** means a tax year as defined in section OB 1 of the Income Tax Act 2004".

(4) In the definition of **taxable period**, "section 15 or section 15A" is replaced by "sections 15 to (*15D*) 15E".

New (unanimous)

(4B) **Subsection (2B)** applies for taxable periods of a registered person that begin on or after the beginning of the person's 2007–08 income year.

(5) **Subsections (3) to (4)** apply for a registered person for—

(a) a taxable period that begins on or after the beginning of the registered person's (*2007–08*) 2008–09 income year, if the registered person derives assessable income in that income year:

(b) a taxable period that begins on or after 1 April (*2007*) 2008, if **paragraph (a)** does not apply.

204 Meaning of term financial services

New (unanimous)

(1A) In section 3(2), the definition of **credit contract** is replaced by the following:

"**credit contract** means a credit contract as defined in section 3 of the Credit Contracts Act 1981 immediately before the repeal of that Act".

(1) Section 3(3)(b) is omitted.

New (unanimous)

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

"(3B) Despite **subsection (2)**, a person who is a party to an arrangement that is a credit contract but is not a credit contract under section 7 of the Credit Contracts and Consumer Finance Act 2003 may elect that the arrangement be treated under this section as not being a credit contract in relation to the person.

"(3C) Despite **subsection (2)**, a person who is a party to an arrangement that is not a credit contract but is a credit contract under section 7 of the Credit Contracts and Consumer Finance Act 2003 may elect that the arrangement be treated under this section as being a credit contract in relation to the person."

(2) **Subsection (1)** applies for supplies of financial services that are made on or after the date on which this Act receives the Royal assent.

205 Meaning of term supply

(1) Section 5(11I)(a) is replaced by the following:

"(a) an adhesive label, or a mark or design, that is—

"(i) issued or sold by a person to another person; and

"(ii) affixed to, impressed on, or printed on stationery; and

"(iii) indicates pre-payment of the fee chargeable for the carriage of a letter, parcel, or other article; and

"(iv) not intended to distinguish the article to which it relates from similar articles carried by the same person:".

(2) After section 5(14), the following is inserted:

"(14B) If part of a supply of **(***a debt security*, **)**an equity security**(,)** or participatory security is the supply of a right to receive supplies of goods and services that are not exempt supplies, the supply of the right is treated as being a supply of goods and services made for a consideration."

(3) **Subsection (1)** applies for supplies that are made on or after the date on which this Act receives the Royal assent.

(4) **Subsection (2)** applies for supplies of financial services that are made on or after the date on which this Act receives the Royal assent.

206 Time of supply

In section 9(2)(a), the words before subparagraph (i) are replaced by the following:

"(a) if the supply is an associated supply,—".

207 Value of supply of goods and services

(1) In section 10(3), in the words before paragraph (a), "(3AB)," is inserted after "subsections (3A),".

(2) Section 10(3)(b) is replaced by the following:

"(b) the supply is an associated supply; and".

(3) After section 10(3A), the following is inserted:

"(3AB) Subsection (3) does not apply to a supply of goods and services if the recipient—

"(a) acquires the supply for no consideration; and

"(b) from the time of the supply, applies the goods and services for the purpose of making taxable supplies."

New (unanimous)

(3B) In section 10(5A), the definition of **credit contract** is replaced by the following:

New (unanimous)

"**credit contract** has the same meaning as in section 3 of the Credit Contracts Act 1981 immediately before the repeal of that Act".

(3C) After section 10(5A), the following is inserted:

"(5B) Despite **subsection (5A)**, a person who is a party to an arrangement that is a credit contract but is not a credit contract under section 7 of the Credit Contracts and Consumer Finance Act 2003 may elect that the arrangement be treated under this section as not being a credit contract in relation to the person.

"(5C) Despite **subsection (5A)**, a person who is a party to an arrangement that is not a credit contract but is a credit contract under section 7 of the Credit Contracts and Consumer Finance Act 2003 may elect that the arrangement be treated under this section as being a credit contract in relation to the person."

(4) **Subsections (1) and (3)** apply for supplies made on or after **(***the date on which this Act receives the Royal assent***)** 1 October 1986.

208 Zero-rating of goods

(1) Section 11(1)(j) is replaced by the following:

"(j) the goods are not situated in New Zealand at the time of supply and—

"(i) the goods are not situated in New Zealand at the time of delivery to the recipient:

"(ii) the recipient pays tax under section 12 on the importation of the goods into New Zealand; or".

(2) **Subsection (1)** applies for supplies made on or after **19 May 2005**.

209 Exempt supplies

(1) In section 14(1)(a),—

(a) "not being—" is replaced by "not being a supply referred to in **subsection (1B)**:":

(b) subparagraphs (i) and (ii) are omitted.

(2) After section 14(1), the following is inserted:

"(1B) The following supplies are excluded from the exemption under subsection (1):

"(a) a supply of financial services that, in the absence of subsection (1)(a), would be charged with tax at the rate of zero per cent under section 11A:

"(b) a supply described in **paragraph (b)** of the definition of **associated supply**:

"(c) a supply of goods and services which (although being part of a supply of goods and services which, but for this paragraph, would be an exempt supply under subsection (1)(a)) is not in itself, as between the supplier of that first-mentioned supply and the recipient, a supply of financial services in respect of which subsection (1)(a) applies."

(3) **Subsection (2)** applies in relation to the insertion of **section 14(1B)(b)** for supplies of financial services that are made on or after the date on which this Act receives the Royal assent.

210 New section 15AB inserted

(1) After section 15A, the following is inserted:

"**15AB Transitional provision: alignment of taxable periods with balance dates**

"(1) This section applies to a registered person who has a provisional tax liability in the person's (*2006–07*)2007–08 income year.

Struck out (unanimous)

"(2) The registered person may pay the person's GST liability on a monthly basis if the person applies to the Commissioner to pay on that basis.

"(3) The registered person must pay the person's GST liability on a monthly basis if the person's total taxable supplies in a 12-month period are more, or are likely to be more, than $24,000,000.

"(4) If neither of **subsections (2) and (3)** applies to the registered person, the registered person must pay a GST liability on either a 2-monthly or 6-monthly basis.

New (unanimous)

"(2) The registered person may have a taxable period that is a 1-month period if the person applies to the Commissioner for such a period.

"(3) The registered person must have a taxable period that is a 1-month period if the person's total taxable supplies in a 12-month period are more, or are likely to be more, than $24,000,000.

"(4) If neither of **subsections (2) and (3)** applies to the registered person, the registered person must have a taxable period that is a 2-month period or a 6-month period.

"(5) The registered person must pay a GST liability in a set of instalments that is aligned with the registered person's balance date under section 33 or 38 of the Tax Administration Act 1994, reflecting the applicable payment dates in **schedule 13, part A** of the Income Tax Act 2004.

"(6) For the purposes of **subsection (5)**, a registered person whose balance date changes during an income year must,—

"(a) before the new balance date, use the payment frequency applying at the start of the income year:

"(b) after the new balance date, use the cycle of taxable periods starting on the first day of the new income year.

"(7) If the registered person's GST cycle is not aligned with the person's balance date and the person has a provisional tax liability for a tax year, the Commissioner must adjust the person's taxable periods by truncating the last taxable period before the balance date so that the taxable period and income year end on the same date.

"(8) The Commissioner may make the adjustment in **subsection (7)** if—

"(a) the registered person's income tax liability indicates that a provisional tax liability is likely to arise:

"(b) the registered person asks for the adjustment.

"(9) If there is a change in the basis on which the registered person's taxable period is set and the change could result in

the person's taxable period not being aligned with the person's balance date, the Commissioner must adjust the effective date of the change in taxable period to produce alignment.

Struck out (unanimous)

"(10) In this section, **balance date** means the registered person's annual balance date for accounts for the tax year or other period for which the person must provide a return of income under section 33 of the Tax Administration Act 1994.

"(11) A person is treated as having a balance date that falls in March if—

"(a) the person does not provide a return of income under section 38 of the Tax Administration Act 1994:

"(b) the person is a non-resident company that does not have a fixed establishment in New Zealand.

New (unanimous)

"(10) In this section, **balance date** for a registered person means—

"(a) if neither of **paragraphs (b) and (c)** apply, the person's annual balance date for their accounts for the income year corresponding to the tax year for which the person must provide a return of income under the Tax Administration Act 1994:

"(b) if the person has an income year that coincides with the tax year or is not required to provide a return of income for the tax year, 31 March:

"(c) if the person is a non-resident company that does not have a fixed establishment in New Zealand, 31 March."

(2) **Subsection (1)** applies for taxable periods of a registered person that begin on or after the beginning of the person's **(***2006–07***)**2007–08 income year.

211 Sections 15 to 15AB replaced

(1) Sections 15 to 15AB are replaced by the following sections:

"**15 Taxable periods**

"(1) A registered person's taxable period must be 1 of the following:

"(a) a 6-month period, if **subsection (2)** applies:
"(b) a 2-month period:
"(c) a 1-month period, if **subsection (3) or (4)** applies.

"(2) **(***A person may pay the person's GST liability on a 6-monthly basis* **)**A person's taxable period may be a 6-month period if—
"(a) the person's **(***total* **)**taxable supplies in a 12-month period are no more, and are not likely to be more, than $250,000; and
"(b) the person applies to the Commissioner to pay on this basis.

"(3) **(***A person may pay the person's GST liability on a monthly basis* **)**A person's taxable period may be a 1-month period if the person applies to the Commissioner to pay on that basis.

"(4) **(***A person must pay the person's GST liability on a monthly basis* **)**A person's taxable period must be a 1-month period if the person's **(***total* **)**taxable supplies in a 12-month period are more, or are likely to be more, than $24,000,000.

"(5) For the purposes of **subsections (2) and (4)**,—
"(a) the 12-month period is a period that starts on the first day of a month and ends on the last day of a month:
"(b) the amount of a person's **(***total* **)**taxable supplies does not include the amount of taxable supplies arising as part of—
"(i) the ending, including a premature ending, of a taxable activity carried on by the person:
"(ii) a substantial and permanent reduction in the size or scale of a taxable activity carried on by the person:
"(iii) the replacement of plant or a capital asset used in a taxable activity carried on by the person:
"(c) the Governor-General, from time to time, may declare by Order in Council another amount as the limit applying to the value of a person's taxable supplies.

"**15B Taxable periods aligned with balance dates**

"(1) Unless **section 15(3) or (4)** applies, a person with a provisional tax liability must **(***pay a GST liability on either a 2-monthly or 6-monthly basis***)** have a taxable period that is either a 2-month period or a 6-month period.

"(2) A person must (*pay a GST liability in a set of instalments*) have a taxable period that is aligned with the person's balance date under section 33 or 38 of the Tax Administration Act 1994, reflecting the applicable payment dates in **schedule 13, part A** of the Income Tax Act 2004.

"(3) For the purposes of **subsection (2)**, a person whose balance date changes during an income year must,—

"(a) before the new balance date, use the payment frequency applying at the start of the income year:

"(b) after the new balance date, use the cycle of taxable periods starting on the first day of the new income year.

"(4) If a person's GST cycle is not aligned with the person's balance date and the person has a provisional tax liability for a tax year, the Commissioner must adjust the person's taxable periods by truncating the last taxable period before the balance date so that the taxable period and income year end on the same date.

"(5) The Commissioner may make the adjustment in **subsection (4)** if—

"(a) the person's income tax liability indicates that a provisional tax liability is likely to arise:

"(b) the person asks for the adjustment.

Struck out (unanimous)

"(6) In this section, **balance date** means the person's annual balance date for accounts for the tax year or other period for which the person must provide a return of income under section 33 of the Tax Administration Act 1994.

"(7) A person is treated as having a balance date that falls in March if—

"(a) the person does not provide a return of income under section 38 of the Tax Administration Act 1994:

"(b) the person is a non-resident company that does not have a fixed establishment in New Zealand.

New (unanimous)

"(6) In this section, **balance date** for a registered person means—

"(a) if neither of **paragraphs (b) and (c)** apply, the person's annual balance date for their accounts for the income year corresponding to the tax year for which the person must provide a return of income under the Tax Administration Act 1994:

"(b) if the person has an income year that coincides with the tax year or is not required to provide a return of income for the tax year, 31 March:

"(c) if the person is a non-resident company that does not have a fixed establishment in New Zealand, 31 March.

"**15C Changes in taxable periods**

"(1) A person to whom **section 15(1)(b) or (c)** applies may apply to the Commissioner, in a way acceptable to the Commissioner, to change the person's taxable period to a 6-month period.

"(2) The factors that the Commissioner must consider in directing a change of taxable period are—

"(a) the person's history in filing returns and paying tax liabilities:

"(b) the person's financial reporting practices:

"(c) the nature and volume of the person's taxable supplies:

"(d) the previous use of a 6-month cycle.

"(3) A person to whom **section 15(1)(a)** applies may apply to the Commissioner, in a way acceptable to the Commissioner, to change the person's taxable period to a 2-month period.

"(4) A person whose taxable period is based on a 6-month or 2-month cycle is treated as having changed to a 1-month cycle if—

"(a) the threshold in **section 15(4)** applies at the end of a taxable period to the person's **(***total* **)**taxable supplies; and

"(b) the person has not notified the Commissioner of a change of status under section 53(1)(ca) before the end of the next taxable period.

"(5) A return provided after a change in taxable period must not include amounts for a period for which a return has already been provided.

"**15D When change in taxable period takes effect**

"(1) This section applies if a registered person, who qualifies under **section 15**,—

"(a) applies under **section 15B(*(4)*)(5)(b), or 15C(1) or (2)** to change the basis on which the person's taxable period is set; or

"(b) is required because of **section 39B** of the Tax Administration Act 1994 to change the basis on which the person's taxable period is set.

"(2) A change in taxable period takes effect at the end of the taxable period in which the person applies or is required to change the basis on which the person's taxable period is set.

"(3) Despite **subsection (2)**, for a person to whom **section 15B** applies, the Commissioner must adjust the effective date of the change in taxable period if, as a result of the change, the person's taxable period is not aligned with the person's balance date.

"(4) **Sections MB 26 and MB 27** of the Income Tax Act 2004 override this section.

New (unanimous)

"**15E Meaning of end of taxable period**

"(1) A taxable period ends on the last day of a month.

"(2) Despite **subsection (1)**, a registered person may apply to the Commissioner to have a taxable period ending on a day that is not more than 7 days before or after the last day of a month.

"(3) **Subsection (4)** applies if 1 or more of the following events occurs in relation to a registered person:

"(a) the natural person dies or is made bankrupt:

"(b) the company goes into liquidation or receivership, or ceases to exist on amalgamation (as defined in section OB 1 of the Income Tax Act 2004).

"(4) Despite **subsection (1)**, if an event referred to in **subsection (3)** occurs, the date of the event is treated as the end of the person's taxable period."

(2) **Subsection (1)** applies for a registered person for—

(a) a taxable period that begins on or after the beginning of the registered person's (*2007–08*)income year corresponding to the 2008–09 tax year, if the registered person derives assessable income in that income year:

(b) a taxable period that begins on or after 1 April (*2007*) 2008, if **paragraph (a)** does not apply.

212 Section 16 replaced

(1) Section 16 is replaced by the following:

"**16 Taxable period returns**

Struck out (unanimous)

"(1) A registered person must provide a return setting out the amount of tax payable by them for a taxable period on or before the 28th day of the month following the end of the taxable period. The amount is calculated under section 20.

"(2) **Subsection (1)** does not apply if the month following the end of a taxable period is December, in which case the person must provide the return by 20th January.

New (unanimous)

"(1) A registered person must provide a return setting out the amount of tax payable by them for a taxable period, calculated under section 20.

"(2) A return required by **subsection (1)** must be provided on or before—

"(a) the 28th day of the month following the end of the taxable period, if **paragraph (b)** does not apply; or

"(b) the 15th day of January, if the month following the end of the taxable period is December.

"(3) If the circumstances of a non-profit body or a particular case mean a variation is required in the date on which a return must be provided, the Commissioner may vary the date.

Struck out (unanimous)

"(4) A registered person who ceases to be registered must provide a final return for the part of the last taxable period for which they were registered on or before the 28th day of the month following the end of that taxable period.

New (unanimous)

"(4) A person who ceases to be a registered person must provide a final return for the part of the last taxable period for which they were registered.

"(5) A return required by **subsection (4)** must be provided on or before—

"(a) the 28th day of the month following the end of the taxable period, if **paragraph (b)** does not apply; or

"(b) the 15th day of January, if the month following the end of the taxable period is December.

"(6) A return must contain a notice of the assessment that must be made under section 92B of the Tax Administration Act 1994."

(2) **Subsection (1)** applies for taxable periods ending on or after 31 March **(***2006***)** 2007.

Struck out (unanimous)

213 New section 16B inserted

(1) After section 16, the following is inserted:

"**16B Meaning of end of taxable period**

"(1) A taxable period ends on the last day of a month.

"(2) Despite **subsection (1)**, a registered person may apply to substitute a day other than the last day of a month as the end of a taxable period, but the day must be within 7 days of the last day of the month, whether earlier or later than that day.

"(3) **Subsection (5)** applies if 1 or more of the following events occurs in relation to a registered person:

"(a) the natural person dies or is made bankrupt:

Struck out (unanimous)

"(b) the company goes into liquidation or receivership, or ceases to exist on amalgamation (as defined in section OB 1 of the Income Tax Act 2004).

"(4) Despite **subsection (1)**, if an event referred to in **subsection (4)** occurs, the date of the event is treated as the end of the person's taxable period."

(2) **Subsection (1)** applies for a registered person for—

(a) a taxable period that begins on or after the beginning of the registered person's 2007–08 income year, if the registered person derives assessable income in that income year:

(b) a taxable period that begins on or after 1 April 2007, if **paragraph (a)** does not apply.

214 Special returns

(1) In section 17(1), "the last working day" is replaced by "the 28th day".

(2) **Subsection (1)** applies for taxable periods ending on or after 31 March **(***2006***)** 2007.

215 Registered person to notify change of status

In section 53(1)(c), "section 15(3)" is replaced by "section 15(2)".

216 Group of companies

In section 55(7)(b), "section 15 or section 15A" is replaced by "sections 15 to **(***15D***)** **15E**".

217 Branches and divisions

(1) In section 56(6), "sections 15, 15A" is replaced by "sections 15 to **(***15D***)** **15E**" in both places where it appears.

(2) **Subsection (1)** applies for a registered person for—

(a) a taxable period that begins on or after the beginning of the registered person's **(***2007–08***)** income year corresponding to the 2008–09 tax year, if the registered person derives assessable income in that income year:

(b) a taxable period that begins on or after 1 April (*2007*) 2008, if **paragraph (a)** does not apply.

Struck out (unanimous)

218 Annual imputation return

In section 69(1)(ea)(ii), "Part MI" is replaced by "subpart MI".

219 Returns to be furnished in 2 parts for taxable period in which change in rate of tax occurs

(1) In section 78A,—

(a) in subsection (4), "section 16(2)" is replaced by "section 16(4)"; and

(b) in subsection (5), "section 15(7)" is replaced by "section (*16B(2)*) **15E**".

(2) (***Subsection (1)***) **Subsection (1)(a)** applies for taxable periods ending on or after 31 March (*2006*) 2007.

New (unanimous)

(3) **Subsection (1)(b)** applies for a registered person for—

(a) a taxable period that begins on or after the beginning of the registered person's income year corresponding to the 2008–09 tax year, if the registered person derives assessable income in that income year:

(b) a taxable period that begins on or after 1 April 2008, if **paragraph (a)** does not apply.

Other Acts and Regulations

New (unanimous)

220A Interpretation

(1) In section 245R(1) of the Income Tax Act 1976, in the definition of **interest in an employment-related foreign superannuation scheme**, in the words before paragraph (a), ", or in the period of 4 income years from the end of the income year

New (unanimous)

in which the person became resident in New Zealand," is inserted after "New Zealand".

(2) In section 245R(4) of the Income Tax Act 1976,—

(a) in the words before the formula, ", or in the period of 4 income years from the end of the income year in which the person becomes resident in New Zealand," is inserted after "New Zealand":

(b) in the definition of item a, "day on which the person first" is replaced by "last day of the fourth income year following the income year in which the person becomes resident in New Zealand".

(3) **Subsections (1) and (2)** apply for income derived in—

(a) the 1991–92 income year for taxpayers with a corresponding non-standard accounting year ending after 2 July 1992:

(b) the 1992-93 and subsequent income years.

220 New section 74D inserted in the Estate and Gift Duties Act 1968

(1) After section 74C of the Estate and Gift Duties Act 1968, the following is inserted:

"**74D Exemption for gifts in respect of distribution by co-operative company or company owned by co-operative company**

No gift shall constitute a dutiable gift if the donor is a co-operative company or a company owned by a co-operative company, the donee is a member of the co-operative company, and the gift is an amount of a distribution that is excluded from being a dividend by **section CD 24B** of the Income Tax Act 2004."

(2) **Subsection (1)** applies for gifts made after 1 October 2005.

221 Interim repayments to be paid in same manner as provisional tax

(1) In section 28(3) of the Student Loan Scheme Act 1992,—

Struck out (unanimous)

(a) "section MB 2 is replaced by "**sections MB 2, MB 4, and MB 5**":"

(b) "section MB 2(1)(b) is replaced by "**section MB 2(3)**"."

New (unanimous)

(a) in paragraph (a), "subsections (1)(a) and (2) of section MB 2" is replaced by "**sections MB 2(3) and MB 4(2)(a)**":

(b) in paragraph (b),—

(i) in the words before subparagraph (i), "section MB 2(1)(b)" is replaced by "**section MB 4(2)(b)**":

(ii) in subparagraph (ii), "date." is replaced by "date; and":

(c) after paragraph (b), the following is added:

"(c) **section MB 7** of the Income Tax Act 2004 (under which a provisional taxpayer may use the GST ratio method to determine an amount of provisional tax payable) shall not apply to any amount of interim payments; and

"(d) **section MB 8(3)(a)(i) and (ii) and (b)(i)** of the Income Tax Act 2004 (which provide for exceptions to the requirements of **section MB 8(2)** of that Act) shall not apply to any amount of interim payments; and

"(e) **section MB 8(4)** of the Income Tax Act 2004 (which provides for payments of provisional tax by a provisional taxpayer who pays GST on a 6-monthly basis) shall not apply to any amount of interim payments; and

"(f) **sections MB 10, MB 15, MB 17, MB 18, MB 23, and MB 32** of the Income Tax Act 2004 (which provide for the use by a provisional taxpayer of the GST ratio method) shall not apply to any amount of interim payments."

(2) **Subsection (1)** applies for student loan repayment obligations relating to the **(***2007–08* **)**2008–09 and subsequent tax years.

New (unanimous)

222 Interpretation

(1) In regulation 2(1) of the Income Tax (Withholding Payments) Regulations 1979, in the definition of **non-resident contractor**, "(within the meaning of section OB 1 of the Act)" is omitted.

(2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

Schedule 1 s 151
New schedule 11B inserted in Income Tax Act 2004

Schedule 11B ss EE 25B, EE 25C
Banded rates of depreciation

Struck out (unanimous)

Other assets (excluding intangible depreciable property and buildings)		Buildings	
Column 1	*Column 2*	*Column 3*	*Column 4*
D.V rate (%)	**Straight-line rate** (%)	**D.V. rate** (%)	**Straight-line rate** (%)
100	100	0	0
67	67	0	0
50	40	0	0
40	30	0	0
30	21	0	0
25	17.5	0	0
20	13.5	0	0
16	10.5	13.5	8
13	8.5	11	6.5
10	7	8.5	5
8	6	6.5	4
6	4	4.5	3
4	3	3	2
2	1.5	1.3	1

Schedule 11B—*continued*

New (unanimous)

Other assets (excluding fixed life intangible property, excluded depreciable property, and buildings)		Buildings	
Column 1	*Column 2*	*Column 3*	*Column 4*
D.V rate (%)	**Straight-line rate** (%)	**D.V. rate** (%)	**Straight-line rate** (%)
100	100	0	0
67	67	0	0
50	40	0	0
40	30	0	0
30	21	0	0
25	17.5	0	0
20	13.5	0	0
16	10.5	13.5	8
13	8.5	11	6.5
10	7	8.5	5
8	6	6.5	4
6	4	4.5	3
4	3	3	2
2	1.5	1.3	1

Schedule 2

s 152(1)

New schedule 13, part A inserted in Income Tax Act 2004

Part A

Struck out (unanimous)

Dates for payment of provisional tax

Month of balance date	A	B	C	D	E	F	G	H
October	28 Jan	28 Mar	28 May	28 Jul	28 Sep	28 Nov	Sep	Nov
November	28 Feb	28 Apr	28 Jun	28 Aug	28 Oct	20 Jan	Oct	Dec
December	28 Mar	28 May	28 Jul	28 Sep	28 Nov	28 Jan	Nov	Jan
January	28 Apr	28 Jun	28 Aug	28 Oct	20 Jan	28 Feb	Dec	Feb
February	28 May	28 Jul	28 Sep	28 Nov	28 Jan	28 Mar	Jan	Mar
March	28 Jun	28 Aug	28 Oct	20 Jan	28 Feb	28 Apr	Feb	Apr
April	28 Jul	28 Sep	28 Nov	28 Jan	28 Mar	28 May	Feb	Apr
May	28 Aug	28 Oct	20 Jan	28 Feb	28 Apr	28 Jun	Feb	Apr
June	28 Sep	28 Nov	28 Jan	28 Mar	28 May	28 Jul	Feb	Apr
July	28 Oct	20 Jan	28 Feb	28 Apr	28 Jun	28 Aug	Feb	Apr
August	28 Nov	28 Jan	28 Mar	28 May	28 Jul	28 Sep	Feb	Apr
September	20 Jan	28 Feb	28 Apr	28 Jun	28 Aug	28 Oct	Feb	Apr

For the purposes of this schedule, **balance date**, in relation to provisional tax or terminal tax payable by a person for a tax year or for another period, means the person's annual balance date for their accounts for the tax year or the other period for which the person must provide a return of income under section 33 of the Tax Administration Act 1994. A person is treated as having a balance date that falls in March if—

"(a) the person does not provide a return of income under section 38 (Returns to annual balance date) of the Tax Administration Act 1994:

"(b) the person is a non-resident company that does not have a fixed establishment in New Zealand."

New (unanimous)

Dates for payment of provisional tax and terminal tax

Part A—*continued*

New (unanimous)

Month of balance date	A	B	C	D	E	F	G	H
October	28 Jan	28 Mar	28 May	28 Jul	28 Sep	28 Nov	Sep	Nov
November	28 Feb	28 Apr	28 Jun	28 Aug	28 Oct	15 Jan	Oct	Dec
December	28 Mar	28 May	28 Jul	28 Sep	28 Nov	28 Jan	Nov	Jan
January	28 Apr	28 Jun	28 Aug	28 Oct	15 Jan	28 Feb	Dec	Feb
February	28 May	28 Jul	28 Sep	28 Nov	28 Jan	28 Mar	Jan	Mar
March	28 Jun	28 Aug	28 Oct	15 Jan	28 Feb	28 Apr	Feb	Apr
April	28 Jul	28 Sep	28 Nov	28 Jan	28 Mar	28 May	Feb	Apr
May	28 Aug	28 Oct	15 Jan	28 Feb	28 Apr	28 Jun	Feb	Apr
June	28 Sep	28 Nov	28 Jan	28 Mar	28 May	28 Jul	Feb	Apr
July	28 Oct	15 Jan	28 Feb	28 Apr	28 Jun	28 Aug	Feb	Apr
August	28 Nov	28 Jan	28 Mar	28 May	28 Jul	28 Sep	Feb	Apr
September	15 Jan	28 Feb	28 Apr	28 Jun	28 Aug	28 Oct	Feb	Apr

For the purposes of this schedule, **balance date**, in relation to provisional tax or terminal tax payable by a person for a tax year to which an income year corresponds, means—

"(a) if neither of **paragraphs (b) and (c)** apply, the person's annual balance date for their accounts for the income year:

"(b) if the person has an income year that coincides with the tax year or is not required to provide a return of income for the tax year, 31 March:

"(c) if the person is a non-resident company that does not have a fixed establishment in New Zealand, 31 March."

Schedule 3

s 152(2)

New schedule 13, part B inserted in Income Tax Act 2004

Part B
Months for payment under sections MB 8 and MB 21 to MB 24

Monthly and 2-monthly non-ratio and non-GST provisional taxpayers

Transitional year length	New instalment months	
0-4 mths	1	month following final month
5-8 mths	2	5th month, month following final month
9-12 mths	3	5th, 9th months, month following final month
13-16 mths	4	5th, 9th, 13th months, month following final month
17-20 mths	5	5th, 9th, 13th, 17th months, month following final month
21-24 mths	6	5th, 9th, 13th, 17th, 21st months, month following final month

6-monthly non-ratio provisional taxpayers

Transitional year length	New instalment months	
0-6 mths	1	month following final month
7-12 mths	2	7th month, month following final month
13-18 mths	3	7th, 13th months, month following final month
19-24 mths	4	7th, 13th, 19th months, month following final month

GST ratio provisional taxpayers

Transitional year length	New instalment months	
0-2 mths	1	month following final month
3-4 mths	2	3rd month, month following final month
5-6 mths	3	3rd, 5th months, month following final month
7- mths	4	3rd, 5th, 7th months, month following final month
9-10 mths	5	3rd, 5th, 7th, 9th months, month following final month
11-12 mths	6	3rd, 5th, 7th, 9th, 11th months, month following final month
13-14 mths	7	3rd, 5th, 7th, 9th, 11th, 13th months, month following final month
15-16 mths	8	3rd, 5th, 7th, 9th, 11th, 13th, 15th months, month following final month
17-18 mths	9	3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th months, month following final month
19-20 mths	10	3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th, 19th months, month following final month
21-22 mths	11	3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th, 19th, 21st months, month following final month
23-24 mths	12	3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th, 19th, 21st, 23rd months, month following final month

For the purposes of counting months under this schedule, the number is reckoned as set out in **section MB 20(5)**.

Legislative history

19 May 2005	Introduction (Bill 268–1)
9 June 2006	First reading and referral to Finance and Expenditure Committee

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