

Taxation (Base Maintenance 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 (Base Maintenance and Miscellaneous Provisions) Bill and recommends that it be passed with the amendments shown.

Thin capitalisation rules

The bill introduces new thin capitalisation rules to prevent foreign-owned registered banks operating in New Zealand from accessing interest deductions if their capital in New Zealand is insufficient to support their operations in this country and their offshore investments made through New Zealand. It is common for banks to use holding companies and bank branches to fund their New Zealand business activities through debt rather than equity, causing the New Zealand groups to be thinly capitalised relative to the worldwide operations. Banks also use cross-border financing arrangements, funded by debt, to generate income that is not subject to New Zealand tax. The banks then claim a deduction for the interest expenses on the resulting debt, which reduces their New Zealand tax liability. The measures contained in the bill are intended to ensure that bank's incomes from their New Zealand-based activities are more accurately measured and reflected in the amount of tax they pay.

During our consideration of the bill, the Minister of Finance invited us to consider the amendments proposed in Supplementary Order Paper 337, which in part concerned the thin capitalisation rules. We recommend that these amendments be included in the bill, subject to amendment as detailed below.

Equity of New Zealand banking group

New section FG 8G in clause 43 details the approach to be taken when determining the New Zealand net equity of the New Zealand banking group. The calculation first determines the accounting values of shareholders' equity and branch equity for the New Zealand banking group (EQV). Total capital gain amounts, intangibles, policyholder liabilities, revaluation reserves, future tax benefits, credit enhancements, capital advances to connected persons, equity in the registered bank held by carved-out life companies and their group, equity in a carved-out life group held by the bank, and offshore investments are then deducted.

We consider that the definition of EQV is unclear, and may be interpreted as requiring the equity to be calculated on an aggregated basis, rather than on a consolidated grouping basis as intended, and we recommend amending new section FG 8G(1) to clarify the intent.

The definition of AEQI, which represents equity investments held by the New Zealand banking group in a carved-out life insurance group or associates, is unnecessarily wide in its use of "associated persons", and would consequently capture more transactions than intended. We therefore recommend amending the definition of AEQI in new section FG 8G(1) by omitting the reference to "associated persons" and referring instead to the "carved-out life insurance group". This will limit the application of the definition to cross holdings between the New Zealand banking group and the carved-out life insurance group. We also recommend similar amendments to the definition of AEQ, which also uses the term "associated persons".

The definition of EOI, which represents equity investments in non-residents, excludes shares held by a member of the New Zealand banking group in a company resident in a grey list country, where the shares are listed on a recognised exchange and held on revenue account. This exclusion was intended to cover small investment holdings by life insurance companies as part of their business, and

was designed to exclude holdings too small to warrant the compliance cost of including them in the calculation. The exclusion was not intended to cover shares held as part of a funding arrangement, but have been captured by the current definition. To address this, we recommend amending the new section FG 8G(1) definition of EOI to refer to the foreign shareholding as not being a “sufficient interest” in the offshore company (as defined in section LF 1(2)), or not being a “sufficient interest” if this were the only class of share issued by the offshore company.

In order for the TXB deduction to match the deduction specified by the Reserve Bank Capital Adequacy Framework, we recommend amending the definition of TXB in new section FG 8G(1) to refer to “net future tax benefits”, rather than “future tax benefits”, to ensure consistency with the Reserve Bank definition. We also note that net future tax benefits form the basis for the equity calculation under the new tax rules.

Interest denial

New section FG 8B in clause 43 seeks to ensure that, if a bank’s net equity falls below the threshold for any quarter, the interest deductions available to the bank will be adjusted to reflect the period during which the bank had insufficient equity. Submitters expressed concern that section FG 8B(3) and (4) make use of accounting concepts of group funding debt and interest, rather than tax definitions. While we recognise the problem they raised, it is difficult to isolate and calculate the debt and interest of the New Zealand banking group for tax purposes, as the banking group is fictional and there is no group consolidation in practice.

Despite this difficulty, we were advised by officials that it is possible to adjust the accounting definition to take into account the differences between accounting and tax concepts. We therefore recommend amending new section FG 8B(3) and (4) to make it clear that taxpayers may adjust group funding debt to take into account amounts that would be considered debt for tax and not accounting purposes, and interest to take into account differences between tax concepts and generally accepted accounting practice. This would mean that, if an amount is included in group funding debt as debt, the interest associated with that debt will be included in the interest amount for the purpose of these rules.

Exclusion of life insurance business

We recommend amending clause 43, new section FG 8C(8) to allow banks to elect to exclude from the New Zealand banking group any fixed establishment operating in this country as a holding company for a life insurance business in New Zealand which is operating out of, for example, a separate company. The section as introduced currently allows banks to elect to exclude New Zealand-resident life insurance companies from the banking group. We consider that, provided they have a fixed establishment in New Zealand, there is no reason why non-resident life insurance companies should not also be eligible for exclusion.

Technical amendments

New section FG 2(1)(b)(ii) as introduced excludes from the scope of the thin capitalisation rules any entities where the aggregated direct ownership interest of a non-resident and any associates is less than 50 percent. This could exclude any widely held non-resident companies, including some of the registered banks intended to be covered by the rules. We therefore recommend amending new section FG 2 to ensure it captures any widely-held foreign-owned registered banks.

Regulation-making power

Amendments to clause 43, contained in Supplementary Order Paper 337, provide a power to specify by regulation whether a particular arrangement is to be regarded as debt or equity for the purposes of the thin-capitalisation rules. As part of this change, a new Schedule 11B is introduced to the Income Tax Act 2004 identifying amounts to be added to, and subtracted from, equity value.

We understand this regulation-making power was included in response to concerns expressed by the banking industry about the need for the legislation to be refined and amended in an expeditious manner. A number of instruments and arrangements used by registered banks may be difficult to classify as debt or equity, as they may share characteristics of both. It was therefore seen as desirable for the bill to include a regulation-making power to classify particular hybrid instruments quickly, rather than waiting for the introduction of an appropriate bill to make the relevant change. This would allow registered banks certainty regarding the eventual treatment of different transactions.

We asked the Regulations Review Committee to consider the appropriateness of the regulation-making power. The committee emphasised the constitutional responsibility of Parliament to impose or vary taxation, and the importance that the authority to amend Acts of Parliament lies with Parliament itself. It recommended that we consider these two principles, and determine whether the regulation-making power would allow the imposition or variation of taxation by Order in Council. If so, this would be a matter more appropriate for parliamentary enactment.

We consider that the regulation-making power currently contained in the Supplementary Order Paper is too wide, and would allow the use of regulations to change the definition of particular items that would form part of net equity. This would be inappropriate under the principles detailed by the Regulations Review Committee, and we therefore recommend that the amendments to clause 43 in Supplementary Order Paper 337, inserting a new section FG 8G(5) and (6), not be included in the bill.

Instead, we recommend amending the bill to include a new section FG 8G(5) and (6). The new section FG 8G(5) and (6) should limit the regulation-making power to clarifying whether particular instruments are debt or equity in situations where there is uncertainty around the correct classification of the instrument. The determination of whether an arrangement is an equity instrument should be made based on accounting and regulatory concepts of equity. Any such regulations would not have retrospective effect, but could apply to pre-existing instruments prospectively from the date of the regulation. We believe this new regulation-making power is more appropriate.

Tax depreciation

The bill includes a number of changes to the rules governing tax depreciation, including changes to the treatment of patents and the special tax depreciation rate rules, and additions to the list of depreciable intangible property. It also extends deductibility for losses on buildings.

Patents

Clause 21 inserts new section EE 27B to allow a patent holder to claim a “catch up” of depreciation for the period between lodging the patent application and the date the patent was granted, to be

incorporated into the first allowable deduction after the patent is granted. This is designed to align the depreciation treatment of patents more closely with their useful life.

We recommend the bill be amended to allow depreciation to be claimed from the time a patent application with a complete specification is lodged, rather than waiting until the patent is granted and then allowing a “catch up” of depreciation to cover the application period. We note that, while the full benefits of the patent do not arise until the application is granted, some economic benefits arise while the application is pending. In particular, an applicant is likely to commence commercial exploitation of an invention during the application period, and legal protection for a patented invention, while not available until the patent is granted, is back-dated to the time of application. While a patent may be lodged with a provisional specification, the legal life of a patent is based on the date the patent is lodged with a complete specification, and we therefore consider this to be the appropriate date from which to permit depreciation. We recommend that this change apply to applications filed on or after 1 April 2005. We consider it would be equitable to apply the provisions in clause 21 as a transitional measure for patent applications lodged before 1 April 2005 and granted in the 2005/06 or subsequent income year, and recommend that the bill be amended accordingly.

As a consequence of this amendment, we recommend amending the bill to provide that the sale of a patent application is taxable. If a patent application is to be treated as a patent for depreciation purposes, we consider it appropriate that it should also be regarded as a patent for other purposes in the Income Tax Act. A relevant provision would be section CB 26 of the Act, which requires any gains on the sale of patents to be returned as gross income. The proposed amendment would mean that any gains on the sale of a patent application would be treated as taxable. Recognising that some taxpayers may have filed for a patent without realising that the sale of the application would then give rise to a taxable event, we consider the amendment should only apply to patent applications with a provisional specification lodged on or after the date of Royal assent, and recommend that the bill be amended to achieve this.

The patent provisions in the bill apply only to patent applications lodged with the Intellectual Property Office of New Zealand. Given that many companies seeking to export or exploit an invention

overseas will seek to lodge an application with an overseas intellectual property authority, we recommend amending the bill to provide that the patent depreciation provisions apply to all patent applications lodged with the appropriate intellectual property office in New Zealand or a foreign jurisdiction.

We also recommend amending clause 21 to clarify that, where the ownership of a patent application changes before the patent is granted, the “catch up” deduction available after the patent is granted is reduced, to reflect the period when the application was held by a different person. While we understand this was always the intent of the provision, we did not consider the current wording of the clause was sufficiently clear.

Plant variety rights

The bill adds plant variety rights and the right to use them to the list of depreciable intangible property in Schedule 17 of the Income Tax Act.

As introduced, the bill would allow a New Zealand taxpayer to claim depreciation in respect of plant variety rights only on rights granted under the New Zealand legislation (the Plant Variety Rights Act 1987). We consider that the costs (such as licensing fees) incurred in gaining such protection overseas should also be depreciable, particularly as the costs of gaining overseas protection are likely to exceed those of obtaining New Zealand plant variety rights. We therefore recommend amending the bill to include plant variety rights secured offshore and licensing fees incurred to maintain plant variety rights offshore in the scope of the change to Schedule 17.

We also recommend amending the bill to allow an applicant to claim a “catch up” of depreciation for the application period for plant variety rights at the time of the first depreciation deduction. The granting of plant variety rights may take a significant time, as it includes a test trial process requiring the growing of sample plants. As the plant variety is provisionally protected after an application is lodged, we consider that it is appropriate to allow depreciation for the application period. Allowing a “catch up” depreciation claim after the plant variety right is granted seems inconsistent with our recommended amendment to the treatment of patents; but we note that the application phase of a plant variety right is not counted as part of its legal life, whereas that of a patent is. As the length of the application period is unpredictable, it is not possible in advance to

assess accurately an appropriate rate of depreciation to be used during the application process. We consider it is therefore appropriate to postpone the calculation of depreciation until the plant variety right is granted.

Losses on buildings

Clause 24 amends section EE 41(2) of the Income Tax Act to allow a taxpayer to claim a deductible loss if a building is destroyed or rendered useless as a result of a qualifying event, such as fire or natural disasters that might cause damage to a building. The event must be unexpected and cannot be caused by an action or failure to act by the taxpayer.

We recommend amending section EE 41(2) to remove the reference to the building's destruction, so that a loss on a building arises if the building is irreparably damaged and rendered useless, where the damage is not caused by the action or inaction of the taxpayer or their agent. We consider that clause 24 as introduced could prevent a loss from being claimed if the taxpayer chooses to demolish the building after it had been irreparably damaged and rendered useless, as the final destruction would have been caused by the taxpayer. For a building to be regarded as irreparably damaged and useless, it must have no continuing economic value to the taxpayer. We also recommend that the bill amend section EE 32 of the Income Tax Act to ensure consistency with section EE 41(2).

The Income Tax Act already contains a definition of "qualifying event". To prevent confusion between the current definition in the Act, and the definition in this bill, we recommend that the definition of "qualifying event" in clause 60(23) be removed from the bill.

A number of submissions recommended that all losses on buildings be made deductible. The submitters commented that the current policy creates a tax bias in favour of repairing, reconfiguring or upgrading existing buildings rather than demolishing them and constructing new buildings, when that may not be commercially or economically desirable. The submissions raise some valid points, and we recommend that officials consider this issue in the ongoing depreciation review.

We also recommend that the depreciation review consider the treatment of losses arising on demolition of a temporary building. While we do not support allowing these losses to be carried back and offset against past income, we recognise that problems arise where there is

no longer an income-earning process against which to claim a deduction.

We also received submissions on the tax treatment of dredging costs. Under current rules, the depreciation of initial dredging costs is not permitted, but “replacement” dredging is fully deductible as incurred. Some of the committee thought this treatment is at variance with normal depreciation practice, which would see initial dredging costs capitalised and depreciated, and subsequent maintenance costs (as distinct from betterment) expensed. We recommend that this issue also be considered in the depreciation review.

Special tax depreciation rates

The bill contains changes to the special tax depreciation rules to increase the flexibility available to the Commissioner of Inland Revenue in considering applications for a special tax depreciation rate for particular assets where the taxpayer considers the prescribed general depreciation rate is inappropriate because of special circumstances.

A taxpayer may often have a number of identical assets, each subject to the same special circumstances that necessitate the application of a special tax depreciation rate. Currently, the taxpayer is required to make a separate application for a special depreciation rate for each individual asset, which is unnecessarily onerous, particularly as the multiple applications would be considered together and the same special rate would be issued for each asset. We therefore recommend amending the bill to allow a taxpayer to apply for a special tax depreciation rate covering a set of identical assets that are subject to the same special circumstances.

The bill contains amendments to allow the extension of the 6-month period allowed for the Commissioner to consider an application, if the taxpayer agrees to the extension. We understand that this is designed to validate current practice, as without an extension the Commissioner may be required to initially decline the application and the taxpayer would need to re-file their application. We considered whether a remedy (in the form of an extension to return filing dates), or a sanction on the Commissioner, should be provided where the time for consideration is extended, but do not consider that this would be appropriate. We note that there is scope for dealing with special tax depreciation rates issued beyond the 6-

month time limit, which impact on tax assessments, under section 113 of the Tax Administration Act 1994.

We recommend that, where an asset is acquired second-hand or where an application for a special tax depreciation rate is made part way through the life of an asset, the Commissioner should take into account factors outside the control of the taxpayer that might curtail the asset's useful life. Over time, various factors may arise that limit the economic life of an asset. The regulatory environment may change to prevent the lawful use of a particular asset after a certain date, the asset may be rendered obsolete faster than expected by technological change, or the availability of raw materials may constrain future use. It is appropriate for the Commissioner to consider the impact of such factors when determining special tax depreciation rates. We note that this is an administrative issue and no change to legislation is needed.

For clarification, we agree that the Commissioner should not be required to issue a special tax depreciation rate for second-hand goods solely on the basis of their age. When setting special tax depreciation rates, we understand that the Commissioner applies a "whole of life" approach, under which an asset is depreciated at a rate based on the assumption that it was purchased new and has its full economic life ahead of it, rather than reducing the estimated useful life by the time already passed in the case of second-hand goods. This approach is intended to reduce incentives for taxpayers to sell and repurchase assets to increase depreciation rates. We would not wish to see it changed.

Resource consent applications

The Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 amended the Income Tax Act to allow a taxpayer to claim a deduction for a cost of a resource consent application that is either unsuccessful or withdrawn. The intent of this change was to allow a deduction for costs that would have been depreciable either in their own right or as part of the cost of other depreciable property, if the application was granted. However, as a result of the drafting of this provision, these costs are not deductible if they would have been part of the cost of other depreciable property had the consent been granted. This was not intended, and we recommend that the bill be amended to correct this effect.

We also recommend amending the bill to provide that consent costs that would have been deductible if a resource consent had been granted are also within the scope of these rules. The costs of failed or withdrawn resource consent applications should be deductible under the rules to the extent that the costs would have been deductible if the application was granted. This amendment ensures this intent is achieved.

Imputation credit shopping

The bill introduces measures intended to prevent “imputation credit shopping” transactions, where imputation credits earned by one group of companies are paid to the shareholders of a different group following the sale of a company. The measures are intended to ensure that the benefits of any prepaid tax remain with the original group of shareholders that paid the tax.

Share splits

We received several submissions expressing concern that the rules preventing share splits from being taxable bonus issues would legislate against a common arrangement where imputation credits are used where it would be inappropriate or impossible to offer a cash dividend. We understand that it is common to use the taxable bonus issue to pass the benefit of imputation credits to shareholders before a breach in continuity of ownership. We see no reason to prevent such arrangements from continuing, and recommend that the bill allow share splits to be taxable bonus issues where they are used to pass imputation credits to shareholders that are not subject to the intercorporate dividend exemption.

Rules governing election to transfer

The bill allows an imputation credit account company leaving a wholly-owned group to elect to transfer an imputation credit account debit balance or prepaid tax to the extent that a credit balance in the account of the receiving company is exceeded. The bill does not include any rules governing the making of this election. We recommend that the bill be amended to detail the acceptable process when electing to transfer debit balances or prepaid tax. We consider that the decision to transfer should be provided in “a form the Commissioner may require”, and should be made by the leaving company:

the receiving company should also be required to notify the Commissioner that they agree to receive the debit balance or amount. The departing company should be required to make the election within 20 working days of leaving the group, but the Commissioner should have discretion to accept late or revised elections.

Payments of further income tax and imputation credit creation

We recommend amending the bill to provide that, where the leaving company elects to make a payment of any further income tax, that payment will create imputation credits for the departing company, applied by the departing group. This treatment is appropriate, as it is likely that a payment of further income tax will be made if the departing group's shareholders have used imputation credits exceeding the tax paid by the shareholder, leaving the group with a debit in its imputation credit account.

Tax advice privilege

The bill introduces a new statutory "privilege", or right to not disclose certain documents, which will apply to communications between tax advisors and their clients for the purpose of requesting or providing tax advice. This right is similar to legal professional privilege, but is subject to restrictions. Like legal professional privilege, it does not apply in matters of fraud. Where the document contains factual information, advice on debt collection, accounting and tax work papers, this information may need to be provided in a statutory declaration to the Inland Revenue Department. In addition, valuation and investment advice are not considered to be tax advice, and may also need to be provided to the department. Privilege applies only to advice provided by members of an approved advisor group, where the group has a significant function of providing tax advice and members are subject to a professional code of conduct and disciplinary processes. It is expected that the Institute of Chartered Accountants of New Zealand will apply to become an approved advisor group. We are advised that the Inland Revenue Department intends to publish detailed guidelines on interpreting and applying the tax advice privilege provisions in the bill in practice.

Tax contextual information statutory declaration

As introduced, new section 20F in clause 84 requires the tax advisor to provide a statutory declaration of tax contextual information otherwise contained in a privileged document. We consider this requirement imposes unnecessary compliance costs on taxpayers and advisors seeking to claim privilege, and consider that, generally, the provision of a statutory declaration should be required only as a last resort. In most cases, only unprivileged material should be provided in response to a request for information, and Inland Revenue should consider that material to assess whether it is sufficient to complete the investigation. A statutory declaration would generally be requested only if the non-privileged documents were not sufficient. In some cases it may be necessary for Inland Revenue to accompany a request for information with a request for a statutory declaration of tax contextual information if the declaration is considered necessary for proper administration of the revenue. The department intends to issue guidelines clarifying the circumstances where such a request may be made. We therefore recommend amending the bill to introduce a 2-step process to ensure that a statutory declaration of tax contextual information is requested by Inland Revenue only when necessary to an investigation.

We do not consider that the bill is sufficiently clear as to the information that must be included in the statutory declaration. We note that some submitters expressed concern that the statutory declaration would be required to record factual information verbatim from a privileged document. We consider it sufficient that the statutory declaration record the tax advisor's understanding of the facts of a particular transaction, and recommend that the bill be amended to clarify this point. We note that this should not prevent the advisor from providing verbatim extracts from the privileged document should the advisor consider this to be the best way to represent the information.

Tax advisor

We recommend amending the definition of "tax advisor" in new section 20B(4) in clause 84 to omit the requirement for the advisor to have a significant function of giving tax advice. We note that some advisors will not be providing tax advice regularly, but consider that, provided the advisor is a member of an approved advisor group and

subject to a code of conduct and disciplinary provisions, there is no reason why any tax advice they provide should not be privileged.

We also note that a chartered accountancy firm may have partners that are not members of the Institute of Chartered Accountants of New Zealand, but that any such non-member partners are subject to the Institute's code of conduct and under the jurisdiction of the Institute's disciplinary process. Because of this, we consider that the non-member partner should be regarded as a member of the approved advisor group, and recommend amending the bill to allow a non-member partner of a chartered accountancy firm to qualify as "tax advisor".

Tax advice document

We consider that the definition of "tax advice document" in new section 20B(3) in clause 84 is too limited, and recommend that the definition be expanded to capture a wider variety of document types. In particular, we consider it should include any documents created to provide a record of tax advice, or to record any research and analysis for the purpose of providing tax advice. It should also extend to any documents prepared wholly or in part by an employee of the tax advisor, even if the employee does not meet the definition of "tax advisor", as a partner of the firm should be able to claim the privilege on the employee's behalf.

Privilege will attach only to confidential communications between a person and their tax advisor, and the taxpayer will not be allowed to disseminate the information. However, we consider it appropriate that the privilege extend to confidential documents that are provided to other parties, such as an agent of the taxpayer, and not just the taxpayer him- or herself.

Process for claiming privilege

New section 20D in clause 84 details the process that a taxpayer must follow when claiming that a document is related to tax advice and is therefore privileged. Section 20D(3)(d) requires that, where the relevant document was prepared by the advisor for the taxpayer, the claim must disclose the areas of law that the advisor intended to give advice on. We consider the reference to "areas of law" is too wide and vague, and recommend new section 20D(3)(d) be amended to require the disclosure of "the statute or other enactment and the type of revenue" being advised on.

Section 20D(5) requires the advisor, when claiming that a document relates to tax advice, to confirm to the Inland Revenue Department their authorisation to act on the taxpayer's behalf, either by providing written confirmation from the taxpayer or by statutory declaration by the advisor. We consider this requirement to be unnecessary and onerous, given the fact that the tax advisor will be a member of an approved advisor group and subject to a code of conduct that should prevent the advisor from misrepresenting their authorisation to act on another's behalf. However, for certainty, we consider that the tax advisor should be required to acknowledge in writing their authority to act on the taxpayer's behalf, and recommend that new section 20D(5) be amended to require this.

Third parties

We recommend amending the bill to clarify that privilege only applies to documents that are confidential, and that the meaning of "confidential" is to be determined in accordance with established case law, particularly as it applies to legal professional privilege. As a general rule, a tax advice document may not be regarded as confidential if it has been provided to a third party. There are, however, instances where a taxpayer may be required to provide confidential information to third parties, such as banks or insurance companies, and privilege in the document will be determined under case law relating to legal professional privilege. Adopting the definition of "confidential" developed in case law relating to legal professional privilege should provide the desired protection for taxpayers whose tax advice documents are held by third parties. We are also advised that Inland Revenue intends to issue guidelines clarifying the treatment of tax advice documents held by third parties.

Definition of "document"

We recommend replacing references to "document" in new section 20B to 20G with the term "book or document". This is already a defined term and the definition is wide enough to include electronic material and information provided in other media.

Death and asset transfers

The bill introduces a number of generic rules covering the income tax treatment of "in kind" or "in specie" distributions and gifts, including transfers of assets and liability following the death of a

taxpayer. Where the property being transferred is within the tax base, disposal and acquisition of the assets and liabilities are deemed to occur at market value on the day of death. On the subsequent distribution of the estate to beneficiaries, “in kind” distributions of assets will be treated as dispositions and acquisitions at market value, and gifts will be treated in the same way. Under the bill, rollover relief applies where the estates are left wholly to the spouse, or where the beneficiaries of forestry assets are close relatives. In addition, if assets are left to charity or close relatives only, rollover relief is available for their subsequent distribution to beneficiaries.

Extension of rollover relief

We consider it desirable that the provisions for rollover relief be extended to cover a further situation, in order to reduce compliance costs. We recommend amending the bill to allow financial arrangements to be valued at their face value, both at the time of death and on distribution, where both the deceased and the estate are cash-basis persons. We also recommend that the bill be amended to extend rollover relief for assets passing to a deceased taxpayer’s spouse or de facto partner unless there are assets within the tax base which pass to persons not related to the deceased taxpayer to within the second degree of relationship.

Cost base for depreciable property

We recommend that the bill amend section EE 34 of the Income Tax Act to ensure that the rollover provisions will fully apply. Section EE 34 imposes an anti-avoidance measure to provide that, where depreciable property is transferred between associated persons, the recipient of the property is unable to claim more depreciation than the original owner. Where property has been transferred to close relatives or charities following death, there is no cause for concern about the transfer being used as an avoidance measure. It is therefore appropriate to amend section EE 34 to ensure that the rollover provisions work effectively. If rollover provisions at death are not applicable, the estate should be able to value the property at market value for depreciation purposes.

Resettlement of assets between family trusts

We recommend amending clause 45 to ensure that the legislation includes arrangements involving the resettlement of assets from one

family trust to another. The policy intention was that these transactions should be caught by the new rules, and it is necessary to amend the bill to ensure that they are.

Application date

The provisions relating to death and asset transfers come into effect on 1 April 2005. We do not consider it appropriate to apply these provisions retrospectively, and therefore recommend amending clause 2(10) and (11) to bring clause 45 into force from 1 October 2005.

Business environmental expenditure

The bill introduces new rules regarding expenditure to avoid, remedy, or mitigate the discharge of contaminants into the environment. These changes are intended to ensure that the calculation of taxable income takes into account all business operating costs, including environmental expenditure, and to ensure that deductions for this expenditure are timed appropriately.

Deduction format

The bill establishes several categories of deductible environmental expenditure, and details the default amortisation deduction rates that will apply where no other deduction is available. As introduced, the bill required the calculation of the available deduction on a diminishing value basis, but we recommend the bill be amended to allow the taxpayer to choose a straight-line deduction. This would ensure that the approach to deducting environmental expenditure is consistent with the tax depreciation regime, where the taxpayer can choose to claim their deduction on either a diminishing value or straight-line basis.

Proposed new section CB 24B in clause 4 includes a claw-back mechanism that will apply where the environmental expenditure tax deduction is obtained for the period of a resource consent, and the consent is subsequently extended or renewed. In such cases, the difference between the tax deductions actually claimed and the deductions that would have applied over the extended consent period are determined to be taxable income. This provision was intended to prevent taxpayers from seeking to obtain a shorter initial consent period in order to claim a faster deduction. We do not

consider it appropriate to include a general claw-back provision in tax legislation, and instead recommend amending clause 4 to include a specific anti-avoidance measure targeting taxpayers who substantially alter the period of consent or renew the resource consent for the purpose of obtaining a faster deduction, and requiring them to return as income the difference between the deductions claimed and those that would have been claimed at the default amortisation rate of 35 years. If the consent period is altered or renewed for normal commercial reasons, the anti-avoidance provision should not apply.

Deductible business environmental expenditure

Proposed new Schedule 6B details the various categories of deductible environmental expenditure, including expenditure relating to activity or improvement to land; expenditure relating to monitoring, remedies, and mitigation; and excluded expenditure.

Part C of Schedule 6B details specific forms of expenditure that are not deductible under the business environmental expenditure provisions, and includes “expenditure relating to dredging” as item 2. While dredging may be undertaken for capital purposes, we note that some dredging may be undertaken for the principal purpose of avoiding, remedying, or mitigating the discharge of contaminants. In such circumstances, we consider it would be consistent with the policy of these provisions that the expenditure should be deductible, and recommend amending proposed Schedule 6B to limit the exclusion under Part C to dredging other than “environmental dredging”. Maintenance dredging will still be tax deductible as normal business operating expenditure.

We recommend amending Part C of Schedule 6C to clarify, as a general rule, that no deduction is available for a loss in the value of land. Submitters requested that section DB 37 be extended to cover reductions in land value where the land has been contaminated. Tax deductions are not, however, normally given for losses in land value. Instead, we note that the bill allows taxpayers to claim a tax deduction for site restoration expenditure incurred in rectifying a loss in land value. We consider this to be the appropriate response to losses in land value resulting from environmental factors.

As an exception to this general rule, we note that, in the case of land that has been used to construct and operate a landfill, site restoration measures will be unable to reverse the loss in land value resulting from the landfill activities. Our recommended amendments allow a

deduction for a loss in land value. This should be achieved by allowing the taxpayer to elect to hold the landfill site on revenue account. We also recommend the bill require that all landfill sites held by a particular taxpayer, along with any associated parties, be given consistent treatment, and that a deduction should not be available for losses resulting from related-party transactions.

Item 1 of Part A in Schedule 6B relates to environmental testing and feasibility expenditure. Such expenditure is allowed a 100 percent deduction. Submitters expressed concern that the current wording, which focuses on expenditure “before a choice between options, of locations and methods” is made, is vague and imprecise. We recommend amending item 1 of Part A in Schedule 6B to omit the current wording, and instead include a reference to expenditure “before a decision has been made to use” a location or method for an activity. The recommended wording is consistent with that used in a draft Inland Revenue interpretation statement on feasibility expenditure.

In some cases, a business may create potential contaminants as a by-product of its operation. A business may choose to store the by-products until it ceases operation before dealing with the by-products appropriately. In these circumstances, we consider the costs of disposal should be considered to be site restoration expenditure. As the by-product will never be regarded as a contaminant if it is stored and dealt with correctly, such expenditure will not come under the definition of “remediation expenditure”, which focuses on the discharge of contaminants. We therefore recommend amending Part B of Schedule 6B to provide that a deduction is available for dealing with by-products that would constitute a contaminant if discharged into the environment.

We also recommend amending the definition of “environmental construction expenditure” in item 2 of Part A of Schedule 6B by replacing the words “expenditure on the construction of an improvement to land” with “expenditure in the construction of an improvement on land”. The amended wording is more consistent with current provisions, and ensures existing commentary, guidance, and judicial interpretation remain relevant.

Environmental restoration account

The bill introduces a mechanism, in the form of a voluntary environmental restoration account, allowing site restoration and monitoring costs to be matched against prior business income. This will resolve

an issue with the tax treatment of restoration costs incurred after the cessation of business. A taxpayer will be able to choose to establish an environmental restoration account with Inland Revenue. While operating a business they can elect to transfer part of its tax payments into the account up to the tax effect of its accounting restoration provision. A refund can then be obtained from the account if restoration and monitoring expenditure is incurred or if the expected liability for restoration decreases. The refund will give rise to taxable income to match tax deductions for restoration and monitoring expenditure.

We recommend that the bill be amended to allow multiple payments and refunds from the environmental restoration account. Initially, it was intended to limit refunds and payments from the account to one each year, to limit potential manipulation of the account and lower compliance and administration costs. We consider this provision to be overly restrictive, and believe that allowing multiple payments and refunds will take better account of the changing circumstances of the taxpayer.

Where a company amalgamates with another company and ceases to exist, new section EK 20 provides for the environmental restoration account of the original company to be transferred to that of the amalgamated company. We note that, in some cases, both companies may have made payments to, or received refunds and transfers from, their accounts during the income year prior to amalgamation.

We recommend amending the bill to treat income from refunds as derived in the year where the refund is received, rather than in the year the refund application is made. While this is an exception to the general principle that income is derived even if it has not actually been received, we consider this amendment is desirable and would increase certainty for taxpayers.

The bill recognises that it may be necessary, where restoration liability for a piece of land has transferred between taxpayers, to also provide for the balance in a restoration account to be transferred. New section EK 15(3) in clause 30 details the requirements that will allow such a transfer to be treated as a payment. We recommend amending new section EK 15(3) to clarify that taxpayers may apply for a transfer from the account only if the restoration liability has also been transferred to another taxpayer. Such transfers would be regarded as a payment up to the level of the transferee's maximum

account balance, and any excess or non-qualifying amount would be transferred back to the transferor.

We recommend new section EK 17 in clause 30 be omitted. This section would have given the Commissioner power to alter an assessment at any time, despite the time bar, to allow a deduction for a payment or transfer, the treatment of a refund as income, or to transfer the balance of the fund on death, bankruptcy, or liquidation. We consider it appropriate to remove the provision.

Interest rules

New section EK 6 in clause 30 provides that the Commissioner is liable to pay interest on amounts contained in an environmental restoration account at a rate of 3% per year. We recommend amending new section EK 6 to provide that interest is paid directly to the taxpayer on an annual basis, rather than forming part of the environmental restoration account balance carried forward each year. We note that carrying forward interest in the restoration account would give rise to significant complications as any refund payment, including interest, would be regarded as part of taxable income at the grossed-up rate. In addition, it is unclear whether the calculation of the maximum deposit amount should include or exclude interest, and whether accumulated interest should be included when transferring account balances to other taxpayers. We consider that requiring interest payments to be paid directly to the taxpayer should resolve this issue. In addition, to clarify the date when interest paid on restoration account deposits is taxable, we recommend the bill provide that interest is paid to the taxpayer on 31 March each year (or on the date the last refund is made from the restoration account), and that the interest forms part of gross income at that date.

The bill provides that interest is calculated from the date receipt of payment is acknowledged. We consider that interest should be calculated from the day after the deposit is paid, and recommend amending new section EK 6(2) to achieve this end. This treatment is comparable with the regime governing payment of use-of-money interest.

Cook Islands National Superannuation Fund

The bill includes provisions intended to treat the Cook Islands National Superannuation Fund as a non-resident for New Zealand tax purposes. As New Zealand's Public Trust is a trustee of the fund,

it is currently treated as a New Zealand resident for tax purposes, and is therefore required to pay tax in New Zealand on its worldwide income. The bill specifies that the fund is exempt from income tax on its foreign-sourced income.

We note that, as currently drafted, the fund would be unable to receive interest on which approved issuer levy or non-resident withholding tax has been paid. This is contrary to the intent of the provisions, as it creates a different result when applied to the fund rather than to a New Zealand tax non-resident (which would be able to receive such interest). We therefore recommend amending the bill to ensure that the Cook Islands National Superannuation Fund can receive interest on which approved issuer levy or non-resident withholding tax has been paid.

Extinguishing of carried-forward imputation credits

Clause 104 specifies that, when writing-off an amount of irrecoverable outstanding tax for a taxpayer with imputation credits that have been carried forward, the Commissioner has discretion to determine the part of the amount extinguished that relates to the net loss and the part that relates to the credit of tax carried forward. We consider that the issue of whether net losses or carried-forward imputation credits are extinguished first will not have a significant impact on taxpayers, but that the provision of the discretion will cause uncertainty for taxpayers, increasing compliance and administrative costs. We therefore consider that the Commissioner's discretion should be removed, and recommend that clause 104 be amended to require that, when writing off an amount of irrecoverable outstanding tax, the Commissioner must extinguish any net loss before any carried-forward excess imputation credits.

GST and the fire service levy

Clause 106 clarifies that the fire service levy, charged under the Fire Service Act 1975, is subject to GST. This levy is collected by insurance companies as part of the fire and general insurance premium, and is then provided to the New Zealand Fire Service.

We recommend clause 106 be redrafted to clarify that the services provided under the levy are provided to the insured, not the insurance company. The Fire Service Act establishes a mechanism for paying the levy, imposing the obligation on the insurance company, but does not define the recipient of the Fire Service activities. We

consider that proposed new section 5(6AB) should clearly state that the services are deemed to be provided to the insured, and that the insurance company is treated as a levy collection agent for the Fire Service.

The definition of “levy” in the Fire Service Act also includes interest and penalties. However, while the actual levy is meant to fund the provision of Fire Service activities for the insured, interest and penalties are imposed on the insurer to ensure the correct and prompt payment of levy funds. We note that new section 5(6AB) currently exempts interest penalties from GST, but does not exempt penalty charges in a similar way. We therefore recommend amending clause 106 to remove penalty charges imposed under the Fire Service Act from the coverage of new section 5(6AB). This amendment will serve only to clarify that this section does not impose a requirement to pay GST on Fire Service levy penalty charges. It will not create a general GST exclusion for levy penalty charges. The GST treatment of penalties should continue to be determined by ordinary principles and the application of the exemption for penalty interest.

GST deregistration of non-residents

Clause 110 provides that, for the purpose of the Commissioner’s power to cancel the GST registration of a non-resident, a taxable activity means one that is carried on in New Zealand. Currently, provided that a non-resident carries on a taxable activity somewhere in the world, it can register for GST and claim a GST refund for New Zealand purchases, even if it only makes supplies for nil consideration in New Zealand, so that it is in effect the final consumer of the goods for which the GST refund was claimed. This amendment is intended to address this issue.

While we recognise that it is appropriate for a non-resident to be deregistered for GST purposes in such circumstances, we are concerned at the potential for an official to use the deregistration power in an inappropriate way. GST deregistration is a significant matter, and we sought assurances from the department that tight controls on the exercise of this power will be implemented. Inland Revenue has reassured us that this power would be delegated only to officials at a high level. We are satisfied with this, and recommend no change to the bill.

Resident withholding tax

The bill amends the rules governing resident withholding tax to allow New Zealand fund managers the option to offer investors the facility to withhold tax caused by the treatment of distributions from offshore unit trusts as dividends. Where an investor elects to use a fund manager's withholding tax facility, the correct marginal tax rate is to be nominated and the requirement for the investor to file an annual income tax return is removed. This is intended to lower compliance and administration costs for individual investors and make it easier for them to accurately meet their tax obligations.

One of the conditions for a person to be a proxy for resident withholding tax is that the recipient must be a natural person. We note, however, that some unit holders will not be natural persons, and may instead be trustees of a qualifying trust. We consider trustees should also be able to be recipients, and recommend that the bill be amended accordingly.

As the bill is currently drafted, the proxy may pay only resident withholding tax that arises out of taxable bonus issues. We consider that the proxy should be able to pay resident withholding tax in respect of all dividends, and recommend that the bill be amended accordingly. We also recommend that the bill be amended to clarify that a proxy pays resident withholding tax on the basis that the recipient receives the net amount of the dividend.

We recommend that the application date for the resident withholding tax provisions should be 21 December 2004. This is the date that the amendment to the treatment of offshore unit trust dividends took effect. These provisions arise in consequence of this change, and it is therefore appropriate that they apply from the same date. We note that the provisions currently amend only the Income Tax Act 2004. As that Act came into force after that date, on 1 April 2005, the Income Tax Act 1994 must also be amended, and we therefore recommend the bill be amended as necessary to achieve this consistency.

Other amendments

We recommend the provisions in Supplementary Order Papers 337 and 360, except as amended as recommended in this commentary, be included in the bill. In addition to the changes to the thin capitalisation provisions already discussed, Supplementary Order Paper 337 also amends the resident withholding tax rules to give recipients

of dividends from offshore unit trusts the option to have resident withholding tax paid by the fund manager at their correct tax rate. Supplementary Order Paper 360 included Habitat for Humanity New Zealand Limited as a listed organisation for which a rebate is available for donations greater than \$5.

We recommend that the bill be amended to make a number of retrospective amendments to the Income Tax Act 2004. These amendments correct unintended adverse policy changes arising out of the Income Tax Act, which was intended to rewrite the tax legislation to ensure that it is clear and uses plain language but was not intended to substantially change policy content. The provisions being amended are sections DZ 13, EH 37, EH 81, LE 3(3), the definition of beneficiary income in section OB 1, and Schedule 22A. All these amendments have been considered and approved by the Rewrite Advisory Panel.

We recommend that the references to the “earth’s crust” in clauses 8 and 66 be omitted. These clauses relate to the provision of a tax exemption for offshore petroleum exploration and development by non-resident companies, and we consider that references to the earth’s crust are unclear, particularly as the crust may be represented as extending to different depths in different offshore permit areas.

We recommend that the amendments to section HK 11, contained in clause 49, come into force on the date the bill receives the Royal assent. They currently come into force on 1 April 2005 but, as the amendments are of a clarifying nature only, we consider that the date of Royal assent is most appropriate for the provisions to come into force.

We recommend amending the bill to make a number of minor amendments to the Income Tax Act 1994, the Income Tax Act 2004, the Tax Administration Act 1994, and the Goods and Services Tax Act 1995. Some of these amendments are consequential, arising out of the enactment of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004; they affect the taxation of offshore unit trusts, the shortfall penalty for employers of non-resident contractors, the allocation deficit debt rules for life insurance companies, the sale and leaseback of intangibles, and the refund of excess tax. Other changes concern the treatment of research or development, months for payment of provisional tax, the calculation of use-of-money interest for income statement recipients, and the reduction of penalties for previous behaviour.

We also recommend a number of other minor, technical, and drafting amendments not detailed in this commentary.

Minority view

ACT New Zealand

This is a very complex bill with measures granting the Inland Revenue Department great power. The level of tax, different tax rates, and different tax treatment for different transactions results in a very complex tax code. The globalisation of the economy has led to further complexity in the tax code as the Government attempts to tax transactions that occur internationally.

ACT has not voted against this bill, accepting that such laws are needed for the integrity of the tax code.

ACT records, first, its scepticism that the tax code will ever match taxpayer ingenuity; secondly, ACT is opposed to the granting of these types of powers to the Executive; and finally, if New Zealand were to adopt a low flat rate of tax, most of this bill would not be necessary.

Appendix

Committee process

The Taxation (Base Maintenance and Miscellaneous Provisions) Bill was referred to the committee on 15 December 2004. The closing date for submissions was 28 February 2005. We received and considered 38 submissions from interested groups and individuals. We heard 8 submissions. Hearing of evidence took 2 hours 19 minutes and consideration took 3 hours 8 minutes.

We received advice from the Inland Revenue Department and the Treasury. The Regulations Review Committee reported to the committee on the powers contained in Supplementary Order Paper 337.

Committee membership

Clayton Cosgrove (Chairperson)

Gordon Copeland (Deputy Chairperson)

Rod Donald

Hon Mark Gosche

John Key

Luamanuvao Winnie Laban

Janet Mackey

Craig McNair

David Parker

Rt Hon Winston Peters

Hon Richard Prebble

Pansy Wong

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 Dr Michael Cullen

Taxation (Base Maintenance 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 (Base Maintenance and Miscellaneous Provisions) Act 2004**.

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) **Subsection 106** is treated as coming into force on 1 October 1986.
- (3) **Section (76(2) and (4)) 75C** is treated as coming into force on 1 April 1995.
- (4) **Sections 65, 78BB, and 79B (is) are** treated as coming into force on 1 July 2001.
- (5) **Section 80(9)** is treated as coming into force on 1 July 2002.
- (6) **Section 66** is treated as coming into force on 1 January 2004.

Struck out (unanimous)

- (7) **Sections 69 to 74 and 80(3), (5) to (8), (10), (12), (14) to (16), and (19)** are treated as coming into force on 1 July 2004.

- (8) **Section 80(2) and (13)** is treated as coming into force on 25 August 2004.
- (9) **Sections 75, 75C, 76(1) and (3), 77(1) and (3), 78, 78B, and 80((4))(1B), (17), and (18), 98B, and 101** are treated as coming into force on 16 November 2004.

New (unanimous)

- (9B) **Sections 75B, 78C to 78F, 80(2B) and (16B), 84B to 84D, 85(1A), (1AA), (1AAB), 87B, 87C, 102B, and 109B** are treated as coming into force on 21 December 2004.

Struck out (unanimous)

- (10) **Sections 38, 45, 49, 52, 53, 55(2), 57, and 60(16)** come into force on 1 April 2005.

New (unanimous)

- (10) **Sections 12B, 17B, 19B, 27B, 29B, 34B, 38, 48BA, 48B, 48C, 52, 52C, 53, 55(2), 57, 60(1B), 60(11B), 60(11C), 60(11D), 60(16), 60(21), 62C(1), 63B, 63C, 82(3B), 87D, 87E, 99(1B), 102C, 104B, 104C, and 110B** come into force on 1 April 2005.

Struck out (unanimous)

- (11) **Sections 4 to 37, 39 to 44, 46 to 48, 50, 51, 54, 55(1) and (3), 56, 58, 59, 60(1) to (15) and (17) to (28), 61 to 63, 85, 93, 94, 97, 99, and 104** come into force on 1 October 2005.

New (unanimous)

- (11) **Sections 39 to 44, 60(8), (8B), (10), (11), (14), (15), (17) to (19), (24) to (26), (29), 62B, 69 to 74, 80(3), (3B), (5) to (8), (10), (12), (14) to (16), (16C), and (19)** come into force on 1 July 2005.
- (12) **Sections 3B to 12, 13 to 17, 18, 19, 20 to 27, 28, 29, 30 to 34, 35 to 37B, 45 to 48A, 50, 51, 52B, 53B, 54, 55(1) and (3), 56, 56B, 57B to 57F, 58, 59, 60(1BA) to (7B), (9), (12), (13), (20) to (23), (26B), (27), (27B), and (28), 62 and 63, 85, 93, 94, 97, 99, and 104** come into force on 1 October 2005.

Part 1

Amendments to Income Tax Act 2004

3 Income Tax Act 2004

- (1) This Part amends the Income Tax Act 2004.
- (2) A section in this Part applies for income years corresponding to the 2005–06 and later tax years if the section does not provide for a different application.

New (unanimous)

3B New section CB 6B inserted

After section CB 6, the following is inserted:

“CB 6B Disposal: Land used for landfill, if notice of election

An amount that a person derives from disposing of land is income of the person if—

- “(a) the person uses the land as a landfill before disposing of the land; and
- “(b) at the time of disposal, the land is not being used as a landfill; and
- “(c) the person acquiring the land is not an associated person under section OD 7; and
- “(d) the person gives written notice to the Commissioner of an election that the land be subject to this section by the day that is the later of the following:
 - “(i) the day that is 12 months after the day on which the person acquires the land:
 - “(ii) **24 June 2006**; and
- “(e) the person makes an election under **paragraph (d)** for all land that the person acquires and uses as a landfill; and
- “(f) any person associated with the person makes an election under **paragraph (d)** for all land that the associated person acquires and uses as a landfill.

“Defined in this Act: associated person, Commissioner, dispose”.

4 New heading and section CB 24B inserted

After section CB 24, the following is inserted:

“Environmental restoration**“CB 24B Environmental restoration accounts*****“Income from refund***

- “(1) A person who receives a refund for a tax year under **section EK 12** (Refund on request) derives for the person’s corresponding income year an amount of income calculated using the formula—

$$\frac{\text{refund}}{\text{tax rate.}}$$

“Income from transfer from environmental restoration account

- “(2) If there is a transfer from a person’s environmental restoration account under **section EK 15** (Transfer on request), **EK 16** (Transfer on death, bankruptcy, or liquidation), or **EK 20** (Environmental restoration account of amalgamating company), the person derives for the corresponding income year an amount of income calculated using the formula—

$$\frac{\text{transfer}}{\text{tax rate.}}$$

“Definitions of items in formulas

- “(3) The items in the formulas are defined in **subsections (4) to (6)**.

“Refund

- “(4) **Refund** is the amount of the refund.

“Tax rate

- “(5) **Tax rate** is the highest rate of income tax on taxable income that—
- “(a) is stated in schedule 1; and
 - “(b) would apply to the person for the tax year if the person had sufficient taxable income.

“Transfer

- “(6) **Transfer** is the amount in the environmental restoration account that is transferred.

“Income arising from renewal of resource consent

- “(7) A person who incurs expenditure of a type listed in **schedule 6B, part A, paragraphs 2 to 5** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 6B, part C** derives income under **subsection (8)** if—
- “(a) the deduction under **section DB 37** (Avoiding, remedying, or mitigating effects of discharge of contaminant) for the expenditure is determined by the period for which a resource consent is granted; and
 - “(b) the period of the grant of the resource consent is extended by more than 50% in a later income year or a

new resource consent is granted for a period that is more than 50% of the total period of the resource consent.

“Amount of income

“(8) The person derives for the income year in which the period of the resource consent is extended, or the new resource consent is granted, an amount of income equal to the greater of zero and the difference between—

“(a) the total deduction under **section DB 37** (Avoiding, remedying, or mitigating effects of discharge of contaminant) for the person for the period from the grant of the resource consent to the beginning of the income year:

“(b) the total deduction for the expenditure that the person would have had under **section DB 37** for the period referred to in **paragraph (a)**, if *(the period of the extension or of the new resource consent had been included in)* the period of the resource consent at the time of the grant had been 35 years.

“Defined in this Act: corresponding income year, environmental restoration account, income, income tax, taxable income, tax year”.

New (unanimous)

4B Section CB 26 replaced

(1) Section CB 26 is replaced by the following:

“CB 26 Sale of patent applications or patent rights

If a person derives an amount from the sale of a patent application with a complete specification or from the sale of patent rights, the amount is income of the person.

“Defined in this Act: amount, income, patent rights”.

(2) **Subsection (1)** applies to patent applications lodged for the first time after the date on which this Act receives the Royal assent.

5 Royalties

In section CC 9(2)(a), “patent,” is replaced by “patent, plant variety rights,”.

6 Elections to make bonus issue into dividend

(1) Section CD 7(1), other than the heading, is replaced by the following:

“(1) A bonus issue that is not a bonus issue in lieu is a dividend if—

“(a) the bonus issue *(is not a share split under section 48(b) or (c) of the Companies Act 1993, or a similar division of a share in a company that is not registered under the Companies Act 1993)*—

New (unanimous)

“(i) is issued fully paid from reserves of the company:

“(ii) if a dividend, would not be exempt income under section CW 10 (Dividend within New Zealand wholly-owned group) or CW 11 (Dividend of conduit tax relief holding company); and

“(b) the company chooses under this section to treat the bonus issue as a dividend.”

New (unanimous)

(2) **Subsection (1)** applies for an issue of shares made on or after 16 November 2004.

6B Returns of capital: off-market share cancellations

(1) Section CD 14(5), other than the heading, is replaced by the following:

“(5) If a company is an unlisted widely-held trust not resident in New Zealand and a shareholder cannot obtain sufficient information to calculate the available subscribed capital per share under the ordering rule,—

“(a) the share is treated as if it were issued under subsection (4) on terms that the slice rule applies; and

“(b) the available subscribed capital under the slice rule is—

“(i) the amount paid for the issue of the share, if **subparagraph (ii)** does not apply; or

New (unanimous)

“(ii) the value of the money or property in which a beneficial interest would have vested in the shareholder had the share not been issued, if the share is a taxable bonus issue under paragraph (d) of the definition of the term.”

7 Recovered expenditure or loss

In the list of defined terms in section CG 4, “, loss” is inserted after “income year”.

8 New section CW 45B inserted

The following is inserted after section CW 45:

“CW 45B Non-resident company involved in exploration and development activities*“Exempt income*

“(1) An amount of income derived by a non-resident company from exploration and development activities in an offshore permit area is exempt income if it is derived in the period that—

“(a) starts on the beginning of the 2005–06 income year for the non-resident company; and

“(b) ends on 31 December 2009.

“Some definitions

“(2) In this section,—

“**exploration and development activities** means the following activities undertaken for the purposes of identifying and developing exploitable petroleum deposits or occurrences in an offshore permit area:

“(a) operating a ship to provide seismic survey readings (*of the earth’s crust*):

“(b) drilling an exploratory well or other well

“**offshore permit area** means an area of land that is—

“(a) in New Zealand; and

“(b) on the seaward side of the mean high-water mark; and

“(c) a permit area or part of a permit area.

“Defined in this Act: amount, exempt income, exploration and development activities, exploratory well, New Zealand, non-resident company, offshore permit area, permit area”.

9 New heading and section CW 49B inserted

After section CW 49, the following is inserted:

“Cook Islands National Superannuation Fund

“CW 49B Cook Islands National Superannuation Fund

A foreign-sourced amount derived by the Cook Islands National Superannuation Fund, as established by the National Superannuation Board under section 11(1)(a) of the Cook Islands National Superannuation Act 2000, is exempt income.

“Defined in this Act: exempt income, foreign-sourced amount”.

10 New heading and section CX 43B inserted

(1) After section CX 43, the following is inserted:

“Environmental restoration

“CX 43B Refund from environmental restoration account

A refund to a person under **section EK 9** (Refund of payment if excess, lacking details, or after earlier payment or request for refund) is excluded income of the person.

“Defined in this Act: excluded income”.

(2) **Subsection (1)** applies for a refund made to a person in an income year starting on or after **10 June 2005**.

11 Commercial bills before 31 July 1986

Section CZ 6(3) is repealed.

New (unanimous)

11B Expenses of failed or withdrawn application for resource consent

In section DB 13B(1)(b), “a resource consent that is depreciable property” is replaced by “depreciable property, or otherwise a deduction,”.

12 Amounts paid for non-compliance and change in use

- (1) Section DB 16(1)(b)(iv) is replaced by the following:

“(iv) in the absence of **section DB 37** (Avoiding, remedying, or mitigating effects of discharge of contaminant), no other provision of this Act would allow the lessor a deduction for the expenditure.”
- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

New (unanimous)**12B Research or development**

- (1) In section DB 26(7), “tax year” is replaced by “income year”.
- (2) In section DB 26, in the list of defined terms,—
 - (a) “income year” is inserted:
 - (b) “tax year” is repealed.

12C Patent rights acquired on or after 1 April 1993

- (1) In the heading to section DB 31, “Patent rights” is replaced by “Patent applications or patent rights”.
- (2) In section DB 31(1), “a patent application with a complete specification or” is inserted before “patent rights”.
- (3) In section DB 31(2), “patent application with a complete specification or” is inserted before “patent rights”.
- (4) In section DB 31(4), “patent application with a complete specification or” is inserted before “patent rights” in both places where it appears.
- (5) **Subsections (1) to (4)** apply for patent applications lodged for the first time on or after the date on which this Act receives the Royal assent.

13 Preventing pollution of environment

- (1) In section DB 37(1)(b), “industrial waste” is replaced by “waste”.
- (2) **Subsection (1)** applies for expenditure incurred by a person in the 2005–06 income year if the income year starts before **10 June 2005**.

14 Section DB 37 replaced

(1) Section DB 37 is replaced by the following:

“DB 37 Avoiding, remedying, or mitigating effects of discharge of contaminant

“When this section applies

“(1) This section applies if a person—

“(a) carries on a business in New Zealand; and

“(b) the person incurs, in the business or in ending the operations of the business, expenditure that is—

“(i) of a type listed in **schedule 6B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 6B, part C**; and

“(ii) not incurred in relation to revenue account property other than land that is subject to **section CB 6B** (Disposal: land used for landfill, if notice of election); and

“(c) no other provision allows a deduction for the expenditure.

“Amount and timing of deduction

“(2) The person is allowed for an income year a deduction for the expenditure of,—

“(a) if **paragraphs (b) and (c)** do not apply, an amount that is calculated using the formula—

rate × (*diminished*)value:

“(b) if the operations of the business for which the expenditure was incurred come to an end in the income year, the diminished value or adjusted tax value of the expenditure for the income year:

“(c) if an improvement on which the expenditure was incurred is destroyed, or is rendered useless for the purposes for which the expenditure was incurred, and **paragraph (b)** does not apply, the diminished value or adjusted tax value of the expenditure for the income year.

“Definition of items in formula

“(3) The items in the formula in **subsection (2)(a)** are defined in **subsections (4) and (5)**.

“Rate

“(4) **Rate** is—

- “(a) 100%, if the expenditure is of a type listed in **schedule 6B, part A, item 1, or part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and the rate is not given by **paragraph (b) or (c)**:
- “(b) *(the rate calculated for the income year using the formula in subsection (6))* the appropriate rate given by subsection (4B) if—
 - “(i) the expenditure is of a type listed in **schedule 6B, part A, items 2 to 5**; and

Struck out (unanimous)

- “(ii) the expenditure is incurred in relation to an improvement or activity after the person applies for a resource consent that relates to the improvement or activity or, if no resource consent is required for the expenditure, after the person becomes committed to construct the improvement or carry on the activity; and

- “(iii) no applicable rate is given by **paragraph (c)**:
- “(c) the rate for the type of expenditure, the income year, the valuation method adopted under subsection (5), and the person, determined by the Commissioner under **section (91AL)91AAN** of the Tax Administration Act 1994, if such a rate is determined.

New (unanimous)

“Banded straight-line rate or corresponding diminishing-value rate

“(4B) The rate for expenditure if **subsection (4)(b)** is satisfied is—

- “(a) the straight-line rate given in schedule 11, column 2 that is nearest to the rate calculated for the expenditure using the formula in **subsection (6)**, if the person elects to use the straight-line method:

New (unanimous)

- “(b) the diminishing value rate given in schedule 11, column 1 that corresponds to the straight-line rate given by **paragraph (a)**, if the person elects to use the diminishing value method.

Struck out (unanimous)

“Diminished value

- “(5) **Diminished value** is the diminished value of the expenditure for the income year.

New (unanimous)

“Value

- “(5) **Value** is—
- “(a) the adjusted tax value of the expenditure, if the person elects to use the straight-line method:
 - “(b) the diminished value of the expenditure for the income year, if the person elects to use the diminishing value method.

“Formula for rate for expenditure with assumed life

- “(6) The formula for the straight-line rate for a type of expenditure to which **subsection (4)(b)** applies is—
- $$\frac{100\%}{\text{assumed life.}}$$

“Definition of item in formula

- “(7) In the formula in **subsection (6)**, **assumed life** for expenditure and an income year is,—
- “(a) for expenditure associated with a business activity that does not require a resource consent, 35:
 - “(b) for expenditure associated with a business activity that requires a resource consent, the lesser of 35 and the

number of the years in the period of the resource consent that include or follow the time at which the expenditure is incurred.(—)

Struck out (unanimous)

- “(i) are part of the life of the resource consent under **subsection (8)** for the income year; and
- “(ii) include or follow the time at which the expenditure is incurred.

“Years in life of resource consent

- “(8) For the purposes of **subsection (7)**, a year is part of the life of a resource consent—
 - “(a) for an income year that ends within the period for which the resource consent is initially granted, if the year is included in the period for which the resource consent is initially granted:
 - “(b) for an income year that ends within the period of a renewal of the resource consent, or within the period of a replacement for the resource consent, if the year is included in the period that—
 - “(i) begins with the initial grant of the resource consent; and
 - “(ii) ends with the expiry of the renewal or replacement of the resource consent.

“Link with subpart DA

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

“Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand”.

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

15 Cost of timber

- (1) Section DP 10(1)(b) is replaced by the following:
 - “(b) in the absence of **section DB 37** (Avoiding, remedying, or mitigating effects of discharge of contaminant), no

other provision of this Act would allow the person a deduction for the amount.”

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

16 Heading to subpart DQ

In the heading to subpart DQ, “**and environmental restoration accounts scheme**” is added.

17 New section DQ 4 added

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

“DQ 4 **Environmental restoration accounts scheme**

“Deduction for payment

- “(1) A person is allowed a deduction of the amount given by **section EK 7** (Deduction for payment) if the person has made a payment to the Commissioner for an income year under **section EK 2** (Persons who may make payment to environmental restoration account) that is not refunded under **section EK 9** (Refund of payment if excess, lacking details, or after earlier payment or request for refund)).

“Timing of deduction

- “(2) A deduction under **subsection (1)** is allocated to the income year given by **section EK 7** (Deduction for payment).

“Deduction for transfer

- “(3) A person is allowed a deduction for an income year of the amount given by **section EK 8** (Deduction for transfer) if in the income year the person receives—

- “(a) a transfer under **section EK 15** (Transfer on request) that is treated under **section EK 15(4)** as being a payment by the person:

New (unanimous)

- “(ab) a transfer under **section EK 16(3)(b)** (Transfer on death, bankruptcy or liquidation):

- “(b) a transfer under **section EK 20** (Environmental restoration account of amalgamating company).

“Timing of deduction

- “(4) A deduction under **subsection (3)** is allocated to the income year given by **section EK 8** (Deduction for transfer).

“Link with subpart DA

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

“Defined in this Act: capital limitation, deduction, general limitation, general permission, income year, pay, supplement”.

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

New (unanimous)**17B Enhancements to land unamortised at end of 2004–05 year**

- (1) Section DZ 13(1)(a) is replaced by the following:
- “(a) a person is allowed under section DO 4(1) of the Income Tax Act 1994 a deduction of an amount given by section DO 4(3)(a) or (c) of that Act for expenditure incurred in carrying on a farming or agricultural business on land in New Zealand; and”.
- (2) In section DZ 13(1)(b), “claimed as a deduction in later income years; and” is replaced by “allowed as a deduction in later income years”.
- (3) Section DZ 13(1)(c) is repealed.
- (4) Section DZ 13(2) is replaced by the following:
- “(2) The person is allowed a deduction for the unamortised balance of expenditure in the income year in which the expenditure is of benefit to the business.”

18 Section EC 4 repealed
Section EC 4 is repealed.**19 Depreciation methods**
In section EE 12(1), “loss.” is replaced by “loss, and includes a rate determined by the Commissioner under section (91AD,

91AE, or 91AJ) 91AAF, 91AAG, or 91AAL of the Tax Administration Act 1994.”

New (unanimous)

19B Calculation rule: income year in which item disposed of
In section EE 11(5), “subsection” is replaced by “section”.

20 Annual rate for fixed life intangible property

In section EE 27(1), “(not including an item of excluded depreciable property, for which a rate is set in section EZ 14 (Annual rate for excluded depreciable property: 1992–93 tax year)).” is replaced by “, not including—” and the following is added:

- “(a) an item of excluded depreciable property for which a rate is set in section EZ 14 (Annual rate for excluded depreciable property: 1992–93 tax year):
- “(b) a patent or patent application for which a rate is set in **section EE 27B or EE 27C:**

New (unanimous)

- “(c) plant variety rights for which a rate is set in **section EE 27D.**”

21 New sections EE 27B to EE 27D inserted

After section EE 27, the following is inserted:

“EE 27B Annual rate for patents, patent applications: lodged before 1 April 2005

“When this section applies

“(1) This section applies if—

- “(a) *(a complete)* an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and

New (unanimous)

“(ab) the application is lodged with the complete specification before 1 April 2005; and

“(b) the patent is granted to a person in the 2005–06 or later income year of the person.

“Income years for which usual rate applies

“(2) The rate given by **subsection (3)** applies in an income year that begins—

“(a) after the date on which the patent is granted; and

“(b) before the date that is 240 months after the patent application date.

“Usual rate

“(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months}}.$$

“Rate for first income year of use

“(4) In the income year that includes the date on which the patent is granted, the rate is found by adding together the following rates:

“(a) the rate calculated using the formula—

$$\frac{\text{months before grant}}{\text{depreciation months}};$$

“(b) the rate calculated for the income year under **subsection (3)**.

“When ownership of patent application changes

“(5) If the patent is granted to a person who does not lodge the (complete)application for the patent with the complete specification, the rate(s) calculated under (subsections (3) and) subsection (4) for the person (are affected by) depends on the period between (the patent application date and) the date on which the person acquires the application and the date on which the patent is granted.

“Definition of items in formulas in subsections (3) and (4)

- “(6) The items in the formulas in **subsections (3) and (4)** are defined in **subsections (7) to (9)**.

“Months

- “(7) **Months** is the number of months in the income year—
- “(a) in which the patent is used or available for use; and
 - “(b) that begin on, or a whole number of months after, the date on which the application is granted; and
 - “(c) that end on or before the date that is 240 months after the patent application date.

“Depreciation months

- “(8) **Depreciation months** is,—
- “(a) if **subsection (5)** does not apply, 240:
 - “(b) if **subsection (5)** applies, 240 reduced by the number of months that—
 - “(i) begin on, or a whole number of months after, the patent application date; and
 - “(ii) end on or before the date on which the person acquires the application.

“Months before grant

- “(9) **Months before grant** is the number of months that,—
- “(a) if **subsection (5)** does not apply,—
 - “(i) begin on, or a whole number of months after, the patent application date; and
 - “(ii) end on or before the date on which the patent is granted:
 - “(b) if **subsection (5)** applies,—
 - “(i) begin on, or a whole number of months after, the application is acquired; and
 - “(ii) end on or before the date on which the patent is granted.

Struck out (unanimous)*“Meaning of patent application date*

“(10) In this section, **patent application date** means the date on which the complete application for the patent is lodged with the Intellectual Property Office of New Zealand.

“Defined in this Act: amount, income year, patent application date

New (unanimous)

“EE 27C **Annual rate for patents, patent applications: lodged on or after 1 April 2005**

“When this section applies

“(1) This section applies if—

- “(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and
- “(b) the application is lodged with the complete specification on or after 1 April 2005; and
- “(c) the patent is granted to a person in the 2005–06 or later income year of the person.

“Income years for which rate applies

“(2) The rate given by **subsection (3)** applies in an income year that—

- “(a) includes the patent application date; and
- “(b) begins before the date that is 240 months after the patent application date.

“Rate

“(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months}}.$$

New (unanimous)

“Months

- “(4) **Months** is the number of months in the income year—
- “(a) that begin on, or a whole number of months after, the patent application date; and
 - “(b) that end on or before the date that is 240 months after the patent application date.

“Depreciation months

- “(5) **Depreciation months** is,—
- “(a) if **subsection (6)** does not apply, 240:
 - “(b) if **subsection (6)** applies, 240 reduced by the number of months that—
 - “(i) begin on, or a whole number of months after, the patent application date; and
 - “(ii) end on or before the date on which the person acquires the application.

“When ownership of patent application changes

- “(6) If the patent is granted to a person who does not lodge the application for the patent with the complete specification, the rate calculated under **subsection (3)** for the person depends on the period between patent application date and the date on which the person acquires the application.

“EE 27D Annual rate for plant variety rights

“When this section applies

- “(1) This section applies if—
- “(a) a plant variety right is given provisional protection; and
 - “(b) the plant variety right is granted to a person in the 2005–06 or later income year of the person.

“Income years for which usual rate applies

- “(2) The rate given by **subsection (3)** applies in an income year that begins—
- “(a) after the date on which the plant variety right is granted; and
 - “(b) before the date on which the plant variety right expires.

New (unanimous)

“Usual rate

- “(3) The rate is calculated using the formula—
$$\frac{\text{months}}{\text{depreciation months}}.$$

“Rate for first income year of use

- “(4) In the income year that includes the date on which the plant variety right is granted, the rate is found by adding together the following rates:

- “(a) the rate calculated using the formula—

$$\frac{\text{months before grant}}{\text{depreciation months}};$$

- “(b) the rate calculated for the income year under **subsection (3)**.

“When ownership of patent application changes

- “(5) If the plant variety right is granted to a person who does not lodge the application for the plant variety right, the rate calculated under **subsection (4)** for the person depends on the period between the date on which the person acquires the application and the date on which the plant variety right is granted.

“Definition of items in formulas in subsections (3) and (4)

- “(6) The items in the formulas in **subsections (3) and (4)** are defined in **subsections (7) to (9)**.

“Months

- “(7) **Months** is the number of months in the income year—
- “(a) in which the plant variety right is used or available for use; and
- “(b) that begin on, or a whole number of months after, the date on which the plant variety right is granted; and
- “(c) that end on or before the date on which the plant variety right expires.

New (unanimous)

“Depreciation months

“(8) **Depreciation months** is—

- “(a) if **subsection (5)** does not apply, the number of months in the period for which the plant variety right is granted plus the number of months for which the plant variety right has provisional protection:
- “(b) if **subsection (5)** applies, the number of months referred to in **paragraph (a)** reduced by the number of months that
 - “(i) begin on, or a whole number of months after, the plant variety right has provisional protection; and
 - “(ii) end on or before the date on which the person acquires the application.

“Months before grant

“(9) **Months before grant** is the number of months that,—

- “(a) if **subsection (5)** does not apply,—
 - “(i) begin on, or a whole number of months after, the plant variety right has provisional protection; and
 - “(ii) end on or before the date on which the plant variety right is granted:
- “(b) if **subsection (5)** applies,—
 - “(i) begin on, or a whole number of months after, the application is acquired; and
 - “(ii) end on or before the date on which the plant variety right is granted.

“Defined in this Act: amount, income year, plant variety right”.

22 Section EE 28 replaced

Section EE 28 is replaced by the following:

“EE 28 Special rate or provisional rate

“Rate set for item of depreciable property

- “(1) A special rate or a provisional rate is set for an item of depreciable property under sections **(91AE to 91AH)** 91AAG to 91AAJ of the Tax Administration Act 1994.

“No special rate for excluded depreciable property

- “(2) A special rate may not be set for an item of excluded depreciable property.

“No provisional rate for fixed life intangible property or excluded depreciable property

- “(3) A provisional rate may not be set for an item of fixed life intangible property or an item of excluded depreciable property.

“Defined in this Act: depreciable property, excluded depreciable property, fixed life intangible property, provisional rate, special rate”.

New (unanimous)

22B Items no longer used

Section EE 32(1) is replaced by the following:

“When this section applies

- “(1) This section applies when a person in an income year has an item of depreciable property that—
- “(a) is no longer used; and
 - “(b) is not a building, unless the item satisfies **subsection (1B)**; and
 - “(c) has not been depreciated using the pool method.

“Buildings

- “(1B) This section applies to a building that satisfies **subsection (1)(a) and (c)** if—

- “(a) the building has been irreparably damaged and rendered useless for the purpose of deriving income; and
- “(b) the damage occurs—
 - “(i) in the 2005–06 or a subsequent income year;
 - “(ii) as a result of the extreme climatic conditions that occurred during the month of February 2004 in New Zealand;
 - “(iii) as a result of the storm event that occurred during the month of July 2004 in the Bay of Plenty area; and
- “(c) 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)

22C Transfer of depreciable property on or after 24 September 1997

After section EE 34(5), the following is inserted:

“Link with section FI 6

“(6) If a disposal of property to which **subpart FI** applies is at market value, this section does not apply to the bequest of property.”

22D Consideration for purposes of section 37

After section EE 38(2), the following is inserted:

“Link with subpart FI

“(2B) Subsection (2) does not apply to a disposal of property to which any of **sections FI 4 and FI 5** applies.”

23 Events for purposes of section EE 37

Section EE 40(7) is repealed.

24 Effect of disposal or event

(1) In section EE 41(2), the second sentence is *(replaced)* repealed and the following is added: *(by “This section does not apply if the item is a building unless the item has been destroyed or rendered useless for the purpose of deriving income as a result of an event that is a qualifying event.”)*

New (unanimous)

“When this section does not apply

“(3) This section does not apply if the item is a building unless—

“(a) the building has been irreparably damaged and rendered useless for the purpose of deriving income; and

“(b) the damage occurs—

“(i) in the 2005–06 or a subsequent income year:

“(ii) as a result of the extreme climatic conditions that occurred during the month of February 2004 in New Zealand:

New (unanimous)

- “(iii) as a result of the storm event that occurred during the month of July 2004 in the Bay of Plenty area; and
- “(c) 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.”

- (2) In the list of defined words in section EE 41, (“*income year*” is replaced by “*income, income year, qualifying event*”) “*qualifying event*” is repealed.

25 Meaning of annual rate

After section EE 52(4), the following is inserted:

“Patents, applications: complete specification before 1 April 2005

- “(4B) The rate is the rate set by **section EE 27B** if the item is a patent and **section EE 27B** applies to the item and the person.

New (unanimous)

- “Patents, applications: complete specification on or after 1 April 2005*
- “(4C) The rate is the rate set by **section EE 27C** if the item is a patent or patent application and **section EE 27C** applies to the item and the person.
- “Plant variety rights*
- “(4D) The rate is the rate set by **section EE 27D** if the item is a plant variety right and **section EE 27D** applies to the item and the person.”

26 Main income equalisation account

In section EH 5(4), in the words preceding paragraph (a), “Amounts” is replaced by “Despite **section FI (4) 3** (Date on which disposal and resulting acquisition treated as occurring), amounts”.

27 Refund on death

In section EH 19(2) “The Commissioner” is replaced by “Despite **section FI (4) 3** (Date on which disposal and resulting acquisition treated as occurring), the Commissioner”.

New (unanimous)

27B Other definitions

In section EH 37, in the definition of **specified period**, in the 3 places in paragraphs (a) and (b) in which it appears, “tax year” is replaced by “accounting year that corresponds to the tax year”.

28 Refund on death

In section EH 50(2), “The Commissioner” is replaced by “Despite **section FI (4) 3** (Date on which disposal and resulting acquisition treated as occurring), the Commissioner”.

29 Thinning operations income equalisation account

In section EH 67(4), in the words preceding paragraph (a), “Amounts” is replaced by “Despite **section FI (4) 3** (Date on which disposal and resulting acquisition treated as occurring), amounts”.

New (unanimous)

29B Other definitions

In section EH 81, in the definition of **specified period**, in the 3 places in paragraphs (a) and (b) in which it appears, “tax year” is replaced by “accounting year that corresponds to the tax year”.

30 New subpart EK inserted

(1) After subpart EJ, the following is inserted:

“Subpart EK—Environmental restoration accounts

“EK 1 **Environmental Restoration Funds Account**

“*Account*

- “(1) There is a Crown Bank Account called the Environmental Restoration Funds Account that is operated under the Public Finance Act 1989.

“*Payments from person paid into account*

- “(2) Every payment a person makes to the Commissioner under **section EK 2**—

- “(a) is public money; and
“(b) must be paid into the Environmental Restoration Funds Account.

“Defined in this Act: Commissioner

“EK 2 **Persons who may make payment to environmental restoration account**

“*Business required to restore environment*

A person may make a payment to the Commissioner for entry in the person’s environmental restoration account for an income year if the person—

- “(a) carries on a business in New Zealand; and
“(b) expects to incur, for a later income year, expenditure that—
 “(i) is not on revenue account property, other than land to which **section CB 6B** applies; and
 “(ii) is of a type listed in **schedule 6B, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and
 “(iii) is of a type not listed in **schedule 6B, part C**; and
“(c) makes a provision for such expenditure in financial statements that are—
 “(i) prepared for external reporting purposes; and
 “(ii) audited by an accountant who is a chartered accountant or has equivalent professional qualifications; and

“(iii) given by the accountant a standard audit opinion, without qualifications on matters relating to the effect of this subpart.

“Defined in this Act: business, Commissioner, environmental restoration account, income year, revenue account property

“EK 3 Payments to environmental restoration account

Struck out (unanimous)

“One payment for income year

“(1) A person must not make more than 1 payment under **section EK 2** for an income year.

“No payment for income year after refund

“(2) A person must not make a payment for an income year after the person has applied for a refund for the income year.

“Upper limit of payment

“(3) A person must not make a payment for an income year of more than the person’s maximum payment for the income year.

“Lower limit of payment

“(4) A person must not make a payment for an income year of less than \$1,000.

“Time for making payment

“(5) A payment made after the day that is 6 months after the end of an income year is not made for the income year unless—

“(a) the Commissioner has allowed a longer period for the payment; and

“(b) the payment is made within the period allowed by the Commissioner.

“Defined in this Act: Commissioner, income year, maximum payment

“EK 4 Environmental restoration account*“Person’s account*

- “(1) The Commissioner must keep an environmental restoration account in the name of every person who makes a payment to the Commissioner under **section EK 2**.

“Payments in account

- “(2) Every payment under **section EK 2** that a person makes to the Commissioner must be entered in the person’s environmental restoration account.

“Amounts in account

- “(3) The only amounts that may be entered in a person’s environmental restoration account are—
- “(a) payments made by the person to the Commissioner under **section EK 2**;
 - “(b) transfers made to the account under **subsection (6)**;
 - “(c) interest paid under **section EK (7)6**.

“Amounts not available to others

- “(4) Amounts entered in a person’s environmental restoration account may not, while they are in the account—
- “(a) be assigned or charged in any way;
 - “(b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation;
 - “(c) be assets for the payment of the person’s debts or liabilities, except when the person is bankrupt or has been put into liquidation;
 - “(d) be assets for the payment of the debts or liabilities of a dead person’s estate.

“Amounts not available except for refunds or transfers

- “(5) An amount entered in a person’s environmental restoration account may not be removed from the environmental restoration account except by a refund under **section EK 9 or EK 12** or by a transfer under **subsection (6)**.

“Transfers of amounts

- “(6) An amount may be transferred from the environmental restoration account of a person—
- “(a) to an environmental restoration account of a person to whom the amount has been transferred under **section EK 15 or EK 16(3)(b)**;
 - “(b) to the (Ministry for the Environment) department that is at the time responsible for the administration of the Environment Act 1986, if the amount has been transferred under **section EK 16(3)(a)**;
 - “(c) to an environmental restoration account of an amalgamated company to which the amount has been transferred under **section EK 20**.

“Commissioner may close empty account

- “(7) The Commissioner may close an environmental restoration account of a person if the amount in the environmental restoration account is zero.

“Defined in this Act: amalgamating company, amount, Commissioner, environmental restoration account, interest, liquidation

“EK 5 Details to be provided with payment to environmental restoration account

- “(1) A person making a payment to an environmental restoration account must provide the Commissioner with a notice, in a form prescribed by the Commissioner, giving—
- “(a) the name of the person; and
 - “(b) the income year for which the payment is made; and
 - “(c) a calculation of the maximum payment for the person and the income year; and
 - “(d) any additional information that the Commissioner requires.
- “(2) The person must provide the information required by **subsection (1)** within 2 working days from the day of the payment.

“Defined in this Act: Commissioner, environmental restoration account, income year, maximum payment

“EK 6 Interest on payments to environmental restoration account*“Interest payable*

- “(1) Interest is payable by the Commissioner on—
- “(a) a payment under **section EK 2** to an environmental restoration account:
 - “(b) an amount that is treated under **section EK 15 or EK 20** as being a payment to an environmental restoration account.

Struck out (unanimous)

“(c) interest that is added to a payment under **subsection (3)(a)**.

“Period

- “(2) Interest is computed with daily rests from the *(date of acknowledgment of the receipt)* day after the date of the payment until the day before the date on which the payment is included in a refund under **section EK 12** or in a transfer under **section EK 15, EK 16, or EK 20**.

“Date to which interest accrues

- “(3) Interest that has accrued on a payment is *(added to the payment)* payable to the person who has the environmental restoration account on the earlier of—
- “(a) 31 March in each year:
 - “(b) the day *(before the date)* on which the payment is included in a refund under **section EK 12** or in a transfer under **section EK 15, EK 16, or EK 20**.

“Rate

- “(4) The interest rate is 3% per year.

“Defined in this Act: Commissioner, environmental restoration account, interest, year

“EK 7 Deduction for payment*“When this section applies*

- “(1) This section applies if a person is allowed a deduction under **section DQ 4** (Environmental restoration accounts scheme) for

a payment to the person's environmental restoration account under **section EK 2**.

“Amount of deduction

- “(2) The amount of the deduction is calculated using the formula—
$$\frac{\text{payment}}{\text{tax rate}}.$$

“Definitions of items in formula

- “(3) The items in the formula are defined in **subsections (4) and (5)**.

“Payment

- “(4) **Payment** is the lesser of—
“(a) the person's payment to the Commissioner under **section EK 2** for the income year; and
“(b) the person's maximum payment for the income year.

“Tax rate

- “(5) **Tax rate** is the highest rate of income tax on taxable income that—
“(a) is stated in schedule 1; and
“(b) would apply to the person for the tax year if the person had sufficient taxable income.

“Timing of deduction

- “(6) The person is allowed the deduction for the income year for which the payment is made.

“Defined in this Act: Commissioner, deduction, environmental restoration account, income tax, income year, maximum payment, tax year, taxable income

“EK 8 Deduction for transfer

“When this section applies

- “(1) This section applies if a person is allowed a deduction under **section DQ 4** (Environmental restoration accounts scheme) for a transfer to the person's environmental restoration account under **section EK 15, EK 16, or EK 20**.

“Amount of deduction

- “(2) The amount of the deduction is calculated using the formula—
- $$\frac{\text{transfer}}{\text{tax rate.}}$$

“Definitions of items in formula

- “(3) The items in the formula are defined in **subsections (4) and (5)**.

“Transfer

- “(4) **Transfer** is the amount of the transfer to the person’s environmental restoration account that is treated as a payment by the person under **section EK 15(4)(3), EK 16, or EK 20**.

“Tax rate

- “(5) **Tax rate** is the highest rate of income tax on taxable income that—
- “(a) is stated in schedule 1; and
 - “(b) would apply to the person for the tax year if the person had sufficient taxable income.

“Timing of deduction

- “(6) The person is allowed the deduction for the income year for which the **(payment) transfer** is made.

“Defined in this Act: deduction, environmental restoration account, income tax, income year, maximum payment, tax year, taxable income

“EK 9 Refund of payment if excess, lacking details (after payment or request for refund)

“When this section applies

- “(1) This section applies if a person’s payment under **section EK 2** for an income year is—
- “(a) more than the person’s maximum payment for the income year:
 - “(b) made without providing the details required by **section EK 5**.

Struck out (unanimous)

- “(c) made after the person has—

Struck out (unanimous)

- “(i) made under **section EK 2** a payment for the income year:
- “(ii) applied under **section EK 11** for a refund for the income year.

“Refund

- “(2) As soon as practicable after the date on which the payment is received, the Commissioner must refund to the person—
 - “(a) the excess, if the payment is more than the person’s maximum payment for the income year:
 - “(b) the payment, if the payment is described by **sub-section (1)(b) (or (c))**.

“No interest payable by Commissioner

- “(3) No interest is payable by the Commissioner under **section EK 6** on the amount of the payment.

“Defined in this Act: Commissioner, income year, interest, maximum payment

“EK 10 Certain refunds not income

A refund under **section EK 9** is excluded income under **section CX 43B** (Refund from environmental restoration account).

“Defined in this Act: excluded income

“EK 11 Application for refund

“Who may apply

- “(1) A person may apply to the Commissioner for a refund under **section EK 12** of an amount in the person’s environmental restoration account if the refund *(the person has not, before the date on which the Commissioner receives the application)*—

Struck out (unanimous)

- “(a) made a payment to the environmental restoration account for the income year in which the Commissioner receives the application:

Struck out (unanimous)

“(b) received a refund under **section EK 12** for the income year in which the Commissioner receives the application.

New (unanimous)

- “(a) corresponds to expenditure incurred by the person of a type that is listed in **schedule 6B, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 6B, part C**:
- “(b) represents an excess in the person’s environmental restoration account over the maximum account balance for the person’s environmental restoration account for the income year.

“Application

“(2) An application for a refund must—

- “(a) be in writing; and
- “(b) state the grounds on which the application is made; and
- “(c) provide evidence satisfactory to the Commissioner verifying the existence of the grounds; and
- “(d) state the amount of the refund that the applicant wants.

“Defined in this Act: Commissioner, environmental restoration account, income year

“EK 12 Refund*“When this section applies*

“(1) This section applies when *(a person wants a refund of some or all of the amount in their environmental restoration account and none of sections EK 9, EK 15, EK 16, and EK 20 applies)*—

New (unanimous)

- “(a) a person wants a refund of some or all of the amount in the person’s environmental restoration account and none of **sections EK 9, EK 15, EK 16, and EK 20** applies:
- “(b) the amount in the person’s environmental restoration account exceeds the maximum account balance for an income year.

“Refund if request made

- “(2) The Commissioner must make a refund under this section to a person *(who applies for a refund)* if—
 - “(a) the person applies for a refund and has incurred expenditure—
 - “(i) of a type that is listed in **schedule 6B, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 6B, part C**; and
 - “(ii) of an amount equal to or greater than the amount given by **subsection (3)** for the amount of the refund; and
 - “(iii) after the first date on which the person made to the Commissioner a payment under **section EK 2** for entry in the person’s environmental restoration account or a transfer under **section EK 15, EK 16, or EK 20** was made to the person’s environmental restoration account:
 - “(b) the maximum account balance for the latest complete income year for the person’s environmental restoration account is less than the amount in the environmental restoration account at the end of that income year *(, after any transfer under)(section EK 15)(for that income year)*.

“Minimum amount of expenditure incurred

- “(3) The amount of expenditure incurred that corresponds to the amount of a refund is calculated using the formula—

$$\frac{\text{amount}}{\text{tax rate.}}$$

“Definitions of items in formula

“(4) The items in the formula are defined in **subsections (5) and (6)**.

“Amount

“(5) **Amount** is the amount of the refund.

“Tax rate

“(6) **Tax rate** is the highest rate of income tax on taxable income that—

“(a) is stated in schedule 1; and

“(b) would apply to the person for the tax year if the person had sufficient taxable income.

“Amount of refund if expenditure incurred

“(7) If a person is entitled to a refund under **subsection (2)(a)**, the amount that the Commissioner must refund to the person is the smallest of—

“(a) the refund for which the person applies:

“(b) the contents of the person’s environmental restoration account at the time of the refund:

“(c) the refund corresponding to the person’s expenditure that satisfies **subsection (2)(a)(i) to (iii)**.

“Amount of refund if maximum account balance decreases

“(8) If a person is entitled to a refund under **subsection (2)(b)**, the amount that the Commissioner must refund to the person is the lesser of—

“(a) the refund for which the person applies:

“(b) the difference at the end of the latest complete income year between—

“(i) the amount in the person’s environmental restoration account, after any transfer under **section EK 15, EK 16, or EK 20** for the income year:

“(ii) the person’s maximum account balance *(for the environmental restoration account)*for that income year.

“Section EK 18 overrides subsections (7) and (8)

“(9) **Section EK 18** overrides **subsections (7) and (8)**.

“Defined in this Act: amount, Commissioner, environmental restoration account, income tax, income year, maximum account balance, tax year, taxable income

“EK 13 **Income when refund given on request**

A refund under **section EK 12** is income, (*under*) of the amount given by **section CB 24B** (Environmental restoration accounts), derived by the person in the income year in which the (Commissioner receives the application for) person receives the refund.

“Defined in this Act: Commissioner, income, income year

“EK 14 **Application for transfer**

“*Who may apply*

“(1) A person may apply to the Commissioner for a transfer under **section EK 15** from the amount in the person’s environmental restoration account.

“*Application*

“(2) An application for a transfer must—

“(a) be in writing; and

“(b) state the grounds on which the application is made; and

“(c) state the amount of the transfer that the applicant wants.

“Defined in this Act: Commissioner, environmental restoration account

“EK 15 **Transfer on request**

“*When this section applies*

“(1) This section applies if—

“(a) a person applies under **section EK 14** for a transfer of some or all of the amount in their environmental restoration account to a person who is nominated in the application; and

New (unanimous)

“(ab) the person has transferred to the nominated person the obligations to which the amount relates; and

“(b) none of **sections EK 9, EK 12, EK 16, and EK 20** applies.

“Transfer if request made

“(2) The Commissioner must make a transfer under this section to an environmental restoration account of the person nominated in the application.

“Transfer treated as payment by nominated person if transfer of obligations verified

“(3) A transfer under **subsection (2)** is treated as being a payment by the nominated person to the nominated person’s environmental restoration account if the nominated person satisfies the Commissioner that—

- “(a) the obligations to which the transferred amount relates have been transferred to the nominated person; and
- “(b) in the absence of the transfer, the nominated person would be entitled to make a payment, of the amount of the transfer, to the nominated person’s environmental restoration account.

Struck out (unanimous)

“Rights of nominated person if transfer of obligations not verified

“(4) If the person nominated in the application does not satisfy the Commissioner that the person meets the requirements of **subsection (3)(a)**,—

- “(a) the person is not entitled to obtain a refund under **section EK 12(2)**;
- “(b) the person is entitled to apply for a transfer under this section.

“Rights of nominated person if entitlement to make payment not verified

“(5) If the person nominated in the application does not satisfy the Commissioner that the person meets the requirements of **subsection (3)(b)**,—

- “(a) the person is not entitled to make a payment to the environmental restoration account:

Struck out (unanimous)

“(b) the person is entitled to apply for a transfer under this section.

New (unanimous)

“Commissioner to reverse transfer if not satisfied under subsection (3)

“(4) If the nominated person does not satisfy the requirements of **subsection (3)** in relation to an amount, the Commissioner must transfer the amount to the environmental restoration account of the person who made the application under **subsection (1)(a)**.

“Timing of reversal

“(5) The transfer under **subsection (4)** is treated as taking place at the time of the original transfer under **subsection (2)**.

“Defined in this Act: Commissioner, environmental restoration account

“EK 16 Transfer on death, bankruptcy, or liquidation

“When this section applies

“(1) This section applies if a person—

“(a) has an environmental restoration account; and

“(b) does one of the following:

“(i) dies:

“(ii) becomes bankrupt:

“(iii) is put into liquidation.

“Transfer to other person

“(2) **Subsection (3)** applies if the Commissioner is informed, by the administrator of the person’s estate, the Official Assignee, or the person’s liquidator, that the obligation to which the balance in the person’s environmental restoration account relates has been transferred to another person.

“Transfer to Crown or other person

“(3) The Commissioner must transfer the amount referred to in **subsection (4)** to—

- “(a) the department that is at the time responsible for the administration of the Environment Act 1986, if the transfer is to Her Majesty the Queen in right of New Zealand; or
- “(b) an environmental restoration account of the person to whom the obligation has been transferred, if **paragraph (a)** does not apply.

“Amount of transfer

“(4) The Commissioner must transfer under **subsection (3)** the amount that is in the person’s environmental restoration account—

- “(a) on the date on which the person dies, if **subsection (1)(b)(i)** applies;
- “(b) on the date on which the person becomes bankrupt, if **subsection (1)(b)(ii)** applies;
- “(c) on the date on which the person is put into liquidation, if **subsection (1)(b)(iii)** applies.

“Section EK 18 overrides subsection (4)

“(5) **Section EK 18** overrides **subsection (4)**.

“Year of income

“(6) The amount of a transfer under this section is income, under **section CB 24B** (Environmental restoration accounts), derived by the person on the day before the day on which the amount of the transfer is determined under **subsection (4)**.

“Defined in this Act: amount, Commissioner, environmental restoration account, income, liquidation

Struck out (unanimous)**“EK 17 Amendment of assessment**

Despite the time bar, the Commissioner may amend an assessment at any time, in order to give effect to **sections EK 7, EK 8, EK 13, and EK 16**.

“Defined in this Act: assessment, Commissioner, time bar

“EK 18 Minimum refund or transfer

The Commissioner must not give a refund or make a transfer under any of **sections EK 9, EK 12, EK 15, EK 16, and EK 20** that is less than the lesser of—

- “(a) \$1,000; and
- “(b) the balance in the person’s environmental restoration account on the date on which the refund or transfer is made.

“Defined in this Act: Commissioner, environmental restoration account

“EK 19 Payments from which refunds come

Each refund to a person is treated as coming from the total amount in the person’s environmental restoration account in the order in which the person made the payments into the account.

“Defined in this Act: amount, environmental restoration account

“EK 20 Environmental restoration account of amalgamating company

If an amalgamating company with an environmental restoration account ceases to exist because of an amalgamation during an income year—

- “(a) the contents of the environmental restoration account of the amalgamating company are transferred to an environmental restoration account of the amalgamated company on the date of the amalgamation:
- “(b) the amalgamated company is treated as having—
 - “(i) made to the amalgamated company’s environmental restoration account the payments that the amalgamating company made before the amalgamation to the amalgamating company’s environmental restoration account; and
 - “(ii) made from the amalgamated company’s environmental restoration account the transfers that the amalgamating company made before the amalgamation from the amalgamating company’s environmental restoration account; and
 - “(iii) received from the amalgamated company’s environmental restoration account the refunds that the amalgamating company received before the

amalgamation from the amalgamating company's environmental restoration account.

“Defined in this Act: amalgamated company, amalgamating company, amalgamation, environmental restoration account, income year

“EK 21 Environmental restoration account of member of consolidated group

“Member may have environmental restoration account

- “(1) A member of a consolidated group may have an environmental restoration account.

“Nominated company for group may act on behalf of member

- “(2) The nominated company for the consolidated group may make payments and applications and receive refunds under this subpart on behalf of the member.

“Use of consolidated financial statements for group

- “(3) In making payments and applications under this subpart, the nominated company may rely on the audited consolidated financial statements for the consolidated group.

“Use of consolidated figures for liabilities anticipated and expenditure incurred

- “(4) If the nominated company relies on the audited consolidated financial statements for the consolidated group, the consolidated figures for the anticipated liabilities and incurred expenditure of the consolidated group are attributed to the members on the basis of the individual obligations of the members to incur expenditure of a type listed in **schedule 6B, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 6B, part C**.

“Defined in this Act: consolidated group, environmental restoration account, nominated company

“EK 22 **Commissioner may require notice in electronic format**

The Commissioner may require a person to provide a notice under this subpart in an electronic format that the Commissioner prescribes under **section 36BC** of the Tax Administration Act 1994.

“Defined in this Act: Commissioner

“EK 23 **Meaning of maximum payment**

“Meaning of maximum payment

- “(1) In this subpart, maximum payment means the maximum payment that under **subsection (2)** a person may make to the person’s environmental restoration account for an income year.

“Amount of maximum payment

- “(2) The maximum payment that a person may make for an income year is the lesser of—
- “(a) the amount by which the maximum account balance for the income year for the environmental restoration account exceeds the amount in the environmental restoration account at the end of the income year:
 - “(b) the amount, if any, given for the person and the income year by **subsection (3)**.

“Maximum payment for first 5 years of environmental restoration funds scheme

- “(3) If a person has a maximum account balance for the 2005–06 income year that is more than zero, the amount given by this subsection for the person and for that income year, and for each of the later income years before the 2010–11 income year, is the amount given by the formula—
- $$\text{level increase} + (\text{year} \times 0.2 \times \text{initial level}) - \text{contents}.$$

“Definitions of items in formula

- “(4) In the formula—
- “(a) **level increase** is the greater of zero and the amount by which the maximum account balance for the income year exceeds the maximum account balance for the 2005–06 income year:

- “(b) **year** is 1 for the 2005–06 income year and increases by 1 for each successive income year to a maximum of 5 for the 2009–10 income year:
- “(c) **initial level** is the maximum account balance for the 2005–06 income year:
- “(d) **contents** is the amount in the environmental restoration account at the end of the income year.

“Defined in this Act: amount, business, environmental restoration account, income year, maximum payment

“EK 24 Other definitions

“Meaning of maximum account balance

- “(1) In this subpart, **maximum account balance** for a person and an income year means—
 - “(a) if the person does not satisfy **section EK 2** for the income year, zero:
 - “(b) if the person satisfies **section EK 2** for the income year, the amount calculated using the formula—

$$\text{provision} \times \text{tax rate}.$$

“Definitions of items in formula

- “(2) In the formula in **subsection (1)(b)**—
 - “(a) **provision** is the provision in the person’s financial statements for future expenditure that—
 - “(i) is of a type listed in **schedule 6B, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and
 - “(ii) is not of a type listed in **schedule 6B, part C**:
 - “(b) **tax rate** is the highest rate of income tax on taxable income that—
 - “(i) is stated in schedule 1; and
 - “(ii) would apply to the person for the tax year if the person had sufficient taxable income.

“Meaning of environmental restoration account

- “(3) In this subpart, **environmental restoration account**, for a person, means the account that the Commissioner keeps in the person’s name under **section EK 4**.

“Defined in this Act: business, Commissioner, environmental restoration account, income tax, income year, taxable income”.

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

31 When calculation of base price adjustment required

In section EW 29—

- (a) section EW 29(13) is repealed:
- (b) in the item “Defined in this Act:”, “New Zealand resident, trustee” is replaced by “New Zealand resident”.

32 Consideration when person exits from rules: accrued entitlement

Section EW 36(1)(b)(i) is repealed.

33 Section EW 39 repealed

Section EW 39 is repealed.

34 Consideration when person exits from rules: accrued obligation

Section EW 41(1)(b)(i) is repealed.

New (unanimous)

34B Consideration when person enters rules: accrued entitlement

In section EW 42, the list of sections in the compare note is replaced by “ss EH 24(3)(c), EH 50(1A), (2)”.

35 Section EW 44 repealed

Section EW 44 is repealed.

36 Section EX 55 repealed

Section EX 55 is repealed.

37 Disposal of trading stock

In section FB 3, “(whether by way of exchange, or gift, or distribution in terms of a will or on an intestacy, or otherwise” is replaced by “(whether by way of exchange, or otherwise, other than by a disposition of property *(to which section FI 1*

applies) that is not at market value because of the operation of any of **sections FI 4 to FI 6**".

New (unanimous)

37B Rules for personal property lease asset during term of finance lease

- (1) In section FC 8B(2), "lease term" is replaced by "term of the lease".
- (2) In section FC 8B(3), "lease term" is replaced by "term of the lease".

38 Premiums paid to residents of Switzerland and the Netherlands

- (1) In the heading to section FC 17, "**and the Netherlands**" is omitted.
- (2) Section FC 17(1)(c) is replaced by the following:

“(c) the insurer or other person is treated as being resident in Switzerland for the purposes of a double tax agreement between the government of New Zealand and the government of Switzerland.”

New (unanimous)

38B Patent rights

- (1) The heading to section FF 8 is replaced by "**Patent applications and patent rights**".
- (2) In section FF 8, "patent rights" is replaced by "patent applications with complete specifications or patent rights" wherever it appears.
- (3) **Subsections (1) and (2)** apply to patent applications that are lodged for the first time on or after the date on which this Act receives the Royal assent.

39 Entities to which apportionment rule potentially applies

- (1) The heading to section FG 2 is replaced by "**Entities to which interest deduction rules potentially apply**".
- (2) Section FG 2(1) is replaced by the following:

- “(1) A taxpayer is not subject for a tax year to the interest apportionment rule in section FG 8 or the adjustment of annual total deduction in **section FG 8B** unless, at a time in the taxpayer’s income year, the taxpayer—
- “(a) is a non-resident who is not a company:
 - “(b) is a company that is a non-resident in which—
 - “(i) no person who is resident in New Zealand has a direct ownership interest that is equal to or greater than 50%(; *and*);
 - “(ii) a non-resident has a direct ownership interest that, when aggregated with the direct ownership interests of persons associated with the non-resident, is equal to or greater than 50%:
 - “(c) is a company that is resident in New Zealand—
 - “(i) in which a non-resident has an ownership interest that is equal to or greater than 50%:
 - “(ii) of which a non-resident has control by any other means:
 - “(d) is the trustee of a non-qualifying trust for which 50% or more in value of the settlements on the trust is settled by—
 - “(i) a non-resident:
 - “(ii) persons who are associated with the non-resident.”
- (3) Section FG 2(7) is omitted.

40 Section FG 3 replaced

Section FG 3 is replaced by the following:

“FG 3 When interest apportioned under section FG 8 or annual total deduction adjusted under section FG 8B

- “(1) A taxpayer who is not excluded by section FG 2 from the application of section FG 8 for a tax year is required to make an apportionment under section FG 8 of interest expenditure incurred during the corresponding income year of the taxpayer if the taxpayer—
- “(a) at no time in the income year—
 - “(i) is a reporting bank for a New Zealand banking group:
 - “(ii) is part of a New Zealand banking group for the purpose of **section FG 8C**; and

- “(b) has a New Zealand group debt percentage for the income year that—
 - “(i) is greater than 75%; and
 - “(ii) if the taxpayer is a company or a trustee, exceeds the number obtained by multiplying the world-wide group debt percentage of the taxpayer by 1.1.
- “(2) A taxpayer who is not excluded by section FG 2 from the application of **section FG 8B** for a tax year is treated as having an annual total deduction for the tax year of an amount that is given by **section FG 8B** if—
 - “(a) at a time in the taxpayer’s corresponding income year the taxpayer is the reporting bank for a New Zealand banking group; and
 - “(b) the New Zealand banking group has a New Zealand net equity, as defined in **section FG 8G**, of less than the net equity threshold for the New Zealand banking group, as defined in **section FG 8H**, on a measurement day for the taxpayer’s corresponding income year, as defined in **section FG 8E**.”

41 Rules for calculating New Zealand group debt percentage

- (1) In section FG 4(12)(b), “New Zealand parent.” is replaced by “New Zealand parent; and” and the following is added:
 - “(c) are not members of the New Zealand banking group of a registered bank.”
- (2) In section FG 4(14C)(b)(iii), “New Zealand parent.” is replaced by “New Zealand parent; and” and the following is added:
 - “(c) are not members of the New Zealand banking group of a registered bank.”

42 Apportionment of interest deductions

- (1) In the heading to section FG 8, “—**taxpayer not in New Zealand banking group**” is added after “**deductions**”.
- (2) In section FG 8(1), “taxpayer is not in a New Zealand banking group and the” is inserted after “if a”.

43 New sections FG 8B to FG 8J inserted

After section FG 8, the following is inserted:

“FG 8B Adjustment of annual total deduction—reporting bank

“(1) For a taxpayer that is a reporting bank and under **section FG 3(2)** has an annual total deduction for a tax year given by this section, the taxpayer’s annual total deduction for the tax year is,—

“(a) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year that is not zero, the amount calculated using the formula—

unadjusted annual total deduction – adjustments:

“(b) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year of zero, the annual total deduction for the tax year that the taxpayer would have had in the absence of this section and **section FG 3(2)**.

“(2) In the formula in **subsection (1)(a)**,—

“(a) **unadjusted annual total deduction** is the annual total deduction for the tax year that the taxpayer would have had in the absence of this section and **section FG 3(2)**:

“(b) **adjustments** is the sum of the income adjustment amounts that are given by **subsection (4)** for the measurement periods for the corresponding income year of the reporting bank.

“(3) The group funding debt for a tax year for the New Zealand banking group of a reporting bank means the amount calculated using the formula—

$$\frac{\text{SFI} + \text{FID} - \text{FTE}}{\text{NQ}}$$

where—

SFI is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group of interest-bearing debt calculated under generally accepted accounting practice for a group quarter day

FID is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of financial arrangements—

- (a) for which the consolidated financial statements of the New Zealand banking group would show, in the corresponding income year of the reporting bank, a deduction (*in the corresponding income year of the reporting bank*)—
 - (i) under 1 or more of sections DB 6 to DB 8; and
 - (ii) other than as a consequence of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and
- (b) that do not contribute to **item SFI**

FTE is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of shares that contribute to **item SFI**

NQ is the number of group quarter days in the corresponding income year of the registered bank.

- “(4) For a measurement day in an income year of a reporting bank, the adjustment amount for a reporting bank is the amount calculated using the formula—

$$(\text{NET} - \text{NZE}) \times \frac{\text{I}}{\text{GFD}} \times \frac{\text{PD}}{\text{YD}}$$

where—

NET is the net equity threshold for the New Zealand banking group for the measurement day

NZE is the lesser of—

- (a) the net equity threshold for the New Zealand banking group for the measurement day;
- (b) the New Zealand net equity for the New Zealand banking group for the measurement day

I is the financial value for the New Zealand banking group, on the last day of the income year, of expenditure that—

- (a) is incurred by a member of the New Zealand banking group in the income year; and
- (b) is an interest expense under generally accepted accounting practice or a deduction referred to in paragraph (a) of the definition of item FID in sub-clause (3)

GFD is the group funding debt for the tax year for the New Zealand banking group

PD is the number of days in the measurement period that corresponds to the measurement day

YD is the number of days in the income year.

- “(5) If this Act requires that the annual total deduction for a reporting bank for an income year be apportioned between 2 or more parts of the income year, the adjustment amount under **subsection (4)** for a measurement day in the income year is attributed to the part containing the measurement day.
- “(6) In this section, **group quarter day** for a registered bank and a tax year means a day—
- “(a) that is the last day of a quarter in the corresponding income year of the registered bank; and
 - “(b) on which the registered bank is a reporting bank.

“FG 8C New Zealand banking group of registered bank

- “(1) The **New Zealand banking group** of a registered bank for a measurement period consists of every person or fixed establishment that on the measurement day for the measurement period is—
- “(a) a member under **subsection (2)** or a potential member under **subsection (3) or (4)**; and
 - “(b) not excluded by an election under **subsection (8)**.
- “(2) If the registered bank—
- “(a) is resident in New Zealand, the registered bank is a member:
 - “(b) is not resident in New Zealand, a fixed establishment in New Zealand of the registered bank is treated as being a person who is—
 - “(i) separate from the registered bank; and
 - “(ii) a member.
- “(3) A person who is a New Zealand resident is a potential member if—
- “(a) the person satisfies **subsection (5)** and—
 - “(i) the registered bank is resident in New Zealand; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under **subsection (9)**;
 - “(b) the person satisfies **subsection (6)** and—

- “(i) the registered bank is a non-resident; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under **subsection (9)**:
 - “(c) the person satisfies **subsection (7)** and there is a non-resident who is an ultimate parent of the registered bank under **subsection (9)**.
- “(4) A fixed establishment in New Zealand of a non-resident is treated as being a person who is separate from the non-resident and a potential member if—
 - “(a) the fixed establishment satisfies **subsection (6)** and—
 - “(i) the registered bank is a non-resident; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under **subsection (9)**:
 - “(b) the fixed establishment satisfies **subsection (7)** and there is a non-resident who is an ultimate parent of the registered bank under **subsection (9)**.
- “(5) A person satisfies this subsection if,—
 - “(a) under generally accepted accounting practice, consolidated group accounts—
 - “(i) are required to include the person and the registered bank:
 - “(ii) would be required to include the person and the registered bank but for relevant materiality thresholds:
 - “(b) the person is in the same group of companies as the registered bank under section IG ((11))(2).
- “(6) A person or fixed establishment satisfies this subsection if,—
 - “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the registered bank if—
 - “(i) the registered bank were resident in New Zealand; and
 - “(ii) the relevant materiality thresholds were satisfied:
 - “(b) the person is in the same group of companies as the registered bank under section IG ((11)) (2).
- “(7) A person or fixed establishment satisfies this subsection if,—
 - “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be

- included in consolidated group accounts with the ultimate parent of the registered bank if—
- “(i) the ultimate parent were resident in New Zealand; and
 - “(ii) the relevant materiality thresholds were satisfied:
- “(b) the person is in the same group of companies as the ultimate parent under section IG (1)(i) (2).
- “(8) A reporting bank may elect under this subsection to exclude from the New Zealand banking group of the reporting bank—
- “(a) a person or a fixed establishment, whose main activity is the providing of life insurance:
 - “(b) a person who—
 - “(i) is resident in New Zealand or is a non-resident with a fixed establishment in New Zealand; and
 - “(ii) has a voting interest of 100% in a person who is excluded by an election under **paragraph (a)**; and
 - “(iii) does not have a main activity that is banking, financing or leasing; and
 - “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing:
 - “(c) a person who—
 - “(i) is resident in New Zealand; and
 - “(ii) under generally accepted accounting practice is required for the making of financial reports to be included in consolidated group accounts with a person or fixed establishment who is excluded by an election under **paragraph (a) or (b)**; and
 - “(iii) does not have a main activity that is banking, financing or leasing; and
 - “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing.
- “(9) For the purposes of this section, the **ultimate parent** of a registered bank is a company—
- “(a) that has an ownership interest in the registered bank, calculated under section FG 2, of 50% or more; and
 - “(b) in which no ownership interest, as calculated under section FG 2, is held by a company that holds an ownership interest in the registered bank, calculated under section FG 2, of 50% or more.

“(10) For the purposes of this section, the **ultimate parent** of a fixed establishment in New Zealand of a registered bank is the registered bank.

“FG 8D Reporting bank for New Zealand banking group

“(1) For a New Zealand banking group that on a day includes a single registered bank, or includes no registered bank but includes a fixed establishment of a single registered bank, the reporting bank for the day is the registered bank.

“(2) For a New Zealand banking group that on a day includes more than 1 registered bank, the reporting bank for the day is—

“(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:

“(b) the registered bank chosen by the Commissioner, if **paragraph (a)** does not apply.

“(3) For a New Zealand banking group that on a day includes no registered bank but includes fixed establishments of more than 1 registered bank, the reporting bank for the day is—

“(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:

“(b) the registered bank chosen by the Commissioner, if **paragraph (a)** does not apply.

“FG 8E Measurement periods and measurement days

“(1) For the New Zealand banking group and income year of a reporting bank, the **measurement periods** are—

“(a) the quarters in the income year, if the reporting bank does not make an election under **paragraph (b) or (c)**:

“(b) each calendar month of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods:

“(c) each day of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods.

- “(2) For the New Zealand banking group and income year of a reporting bank, the **measurement days** are each last day of each measurement period if the measurement periods are given by **subsection (1)(a) or (b)**.
- “(3) If there is a change in the identity of the reporting bank for a New Zealand banking group, the measurement period corresponding to the first measurement day for the new reporting bank begins on the day after the last measurement day for the former reporting bank.

“FG 8F **Financial value and regulatory value**

- “(1) In **sections FG 8B to FG 8J**, the **financial value** of an item for a New Zealand banking group at a time is the amount that would be recorded for the item in financial statements for the New Zealand banking group that—
 - “(a) related to the time; and
 - “(b) were prepared for external reporting purposes; and
 - “(c) were produced consistently with generally accepted accounting practice at the time by—
 - “(i) consolidating the financial statements for the members of the New Zealand banking group that are in the same group of companies; and
 - “(ii) if more than 1 consolidation is required under **subparagraph (i)**, combining the consolidated financial statements so as to eliminate inter-group transactions.
- “(2) In **sections FG 8B to FG 8J**, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item that would be obtained for the New Zealand banking group if the New Zealand banking group were a banking group for the purposes of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand acting in the prudential supervision of registered banks under the Reserve Bank of New Zealand Act 1989.

“FG 8G **New Zealand net equity of New Zealand banking group**

- “(1) The **New Zealand net equity** of the New Zealand banking group of a registered bank for a measurement day is given by the following formula:

EQV – FRS – EID – UPB – INTG – CGA – REV – TXB
– CEFA – NAFA – EOI – NOIA – AEQ – AEQI

where—

EQV is the sum of the following amounts for the New Zealand banking group:

- (a) the financial value for the measurement day of—
 - (i) the shareholders' equity (*relating to members of*) for the New Zealand banking group; and
 - (ii) the branch equity relating to fixed establishments (*that are members*) of the New Zealand banking group;
- (b) the financial value for the measurement day of shares, each of which—
 - (i) is issued by a member of the taxpayer's New Zealand banking group; and
 - (ii) does not contribute to the amount referred to in **paragraph (a)**;
- (c) the financial value for the measurement day of financial arrangements, each of which is a loan, or the provision of funds by a (*parent*) non-resident to (*a permanent*) its fixed establishment that—
 - (i) is not taken into account in the calculation of the group funding debt of the New Zealand banking group; and
 - (ii) is made by a non-resident who is not a member of the New Zealand banking group and is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3); and
 - (iii) is made to a member of the New Zealand banking group; and
 - (iv) does not contribute to the amount referred to in **paragraph (a)**; and
 - (v) does not give rise to interest expenditure other than as a result of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and

(vi) does not relate to a supply of goods or services

- FRS** is the financial value for the measurement day of fixed rate shares, each of which is—
- (a) issued by a member of the New Zealand banking group; and
 - (b) owned by a person who is resident in New Zealand; and
 - (c) included in the value of **item EQV**; and
 - (d) issued by the member—
 - (i) on or after 1 January 2005:
 - (ii) before 1 January 2005, if the measurement period begins on or after 1 January 2010
- EID** is the financial value for the measurement day of financial arrangements, each of which—
- (a) is taken into account under **paragraph (a) or (b)** of the definition of **item EQV** in calculating the value of that item; and
 - (b) gives rise to a deduction for the tax year under 1 or more of sections DB 6 to DB 8 for a member of the New Zealand banking group
- UPB** is the financial value for the measurement day of unvested policyholder benefit liabilities and policyholder retained profits that contribute to the value of **item EQV**
- INTG** is the financial value for the measurement day of intangible assets, other than—
- (a) goodwill relating to a business that is not banking, financing, leasing, or life insurance and that—
 - (i) is acquired from a person who, at the time of acquisition, is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group:
 - (ii) relates to an entity that is acquired from a person who is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group:
 - (b) a film or film right:

- (c) property that is depreciable property or is expected to become depreciable property
- CGA is the sum for the measurement day of capital gain amounts, each of which arises for the 2004–05 or a later tax year from a transfer of an intangible asset between a member of the New Zealand banking group and a person who—
 - (a) is not a member of the New Zealand banking group; and
 - (b) is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3)
- REV is the financial value for the measurement day of revaluation reserves that contribute to the value of **item EQV**
- TXB is the financial value for the measurement day of net future tax benefits that are taken into account in determining the value of **item EQV** and arise from—
 - (a) net losses for the tax year;
 - (b) losses carried forward from an earlier tax year;
 - (c) timing or temporary differences relating to the tax year or an earlier tax year
- CEFA is the financial value for the measurement day of the credit enhancements provided by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand—
 - (a) a credit enhancement that is provided to an associated funds management and securitisation scheme of a non-member;
 - (b) a credit enhancement that is provided to an affiliated insurance group that is a non-member and has not been expensed
- NAFA is the financial value for the measurement day of advances by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand, an advance of a capital nature to a connected person who is not a member of the New Zealand banking group

- EOI is the amount that would, if the New Zealand banking group included all the potential members of the New Zealand banking group and all companies in which a member or potential member of the New Zealand held a direct voting interest of 10% or more and before any set-off allowed under generally accepted accounting practice, be the financial value for the measurement day of shares in non-residents that are neither of the following:
- (a) interests in foreign investment funds for which the FIF income or loss is calculated using the comparative value method or the deemed rate of return method;
 - (b) shares in a grey list company that are—
 - (i) listed on the official list of a recognised exchange; and
 - (ii) revenue account property; and
 - (iii) would not be a sufficient interest in the offshore company if the class of the shares were the only class of share issued by the offshore company
- NOIA is the notional offshore investment amount for the New Zealand banking group for the income year of the reporting bank, as defined in **subsection (4)**
- AEQ is the financial value for the measurement day of interests, each of which is taken into account in calculating **item EQV** and is held by a person who—
- (a) is not a member of the New Zealand banking group; and
 - (b) *(is associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group)* is not a member of the New Zealand banking group because of an election under **section FG 8C(8)**; and
 - (c) is resident in New Zealand or holds the interest through a fixed establishment in New Zealand
- AEQI is the financial value for the measurement day of—

- (a) shares in persons who are not members of the New Zealand banking group (*but are associated under section OD 7 or OD 8(3) with members of the New Zealand banking group*) because of an election under **section FG 8C(8)**:
- (b) loans, other than on arm's-length terms, to persons who are not members of the New Zealand banking group (*but are associated under section OD 7 or OD 8(3) with members of the New Zealand banking group*) because of an election under **section FG 8C(8)**.

“(2) **Subsection (3)** applies if a component of an item, other than the **item NOIA**, that is subtracted from the **item EQV** under **subsection (1)** is a component of 1 or more other such items.

“(3) The value of the component is included in a single item for which the value of the component is not less than the value of the component for each of the other items.

“(4) The **notional offshore investment amount** for a New Zealand banking group for an income year of the reporting bank for the New Zealand banking group is the greater of zero and the amount given by the following formula:

$$\frac{(\text{FTC} - \text{DMT}) \times 12}{\text{CRT} \times \text{IRR} \times \text{NM}}$$

where—

FTC is the total for the tax year of foreign tax credits each of which—

- (a) is claimed as a credit against the income tax liability for the tax year of—
 - (i) a member of the New Zealand banking group:
 - (ii) a person who is excluded from the New Zealand banking group by an election under **section FG 8C(7)**; and
- (b) does not arise from attributed CFC income or from FIF income; and
- (c) does not arise from income derived before 1 July 2005

DMT is the amount—

- (a) set by the Governor-General by Order in Council as the threshold amount for the application of this subsection; or
 - (b) equal to \$5,000,000, if no threshold amount is set under **paragraph (a)** and **paragraph (c)** does not apply; or
 - (c) equal to \$416,667 multiplied by the number of months beginning on or after 1 July 2005 in the corresponding income year for the reporting bank, if the corresponding income year includes that date and no threshold amount is set under **paragraph (a)**
- CRT is the rate of tax for companies referred to in schedule 1, part A, item 5 for the tax year
- IRR is the amount—
- (a) set by the Governor-General by Order in Council as the interest rate of return for the purposes of this subsection; or
 - (b) of 7% per year, if no interest rate of return is set under **paragraph (a)**
- NM is the number of months beginning on or after 1 July 2005 in the income year of the reporting bank for the New Zealand banking group.

New (unanimous)

- “(5) The Governor-General may, from time to time by Order in Council,—
- “(a) specify a type of instrument that is included in **item EQV** for the purposes of **subsection (1)**:
 - “(b) specify a type of instrument that is not included in **item EQV** for the purposes of **subsection (1)**:
 - “(c) set, replace, or repeal a figure for a threshold amount for a value of an instrument, or aggregate value of a type of instrument, held by a person or group of persons for the purposes of a specification under **paragraph (a) or (b)**:
 - “(d) amend or delete a specification under **paragraph (a) to (c)**:
 - “(e) set, replace, or repeal a figure for the threshold amount for the purposes of **paragraph (a)** of the definition of **item DMT** in **subsection (4)**:

New (unanimous)

- “(f) set, replace, or repeal a figure for the interest rate of return for the purposes of **paragraph (a)** of the definition of **item IRR** in **subsection (4)**.
- “(6) An Order in Council under **subsection (5)** may—
- “(a) come into effect on or after 1 July 2005:
- “(b) apply for measurement periods and quarters that—
- “(i) are in the 2005–06 or a subsequent income year; and
- “(ii) commence on or after 1 July 2005.

“FG 8H **Net equity threshold**

- “(1) The **net equity threshold** for a measurement day for the New Zealand banking group of a registered bank is given by the following formula:

$$0.04 \times (\text{RWE} - \text{DEQ})$$

where—

RWE is the sum of the following values for the measurement day:

- (a) for an asset that is included in a balance sheet, the regulatory value of the asset:
- (b) for an exposure that is not included in a balance sheet, the regulatory value of the exposure:
- (c) for goodwill that is not taken into account in calculating **item INTG** in determining the New Zealand net equity of the New Zealand banking group, the financial value of the goodwill

DEQ is the total of the regulatory values for the measurement day of items, other than **item NOIA**, that are deducted from **item EQV** in determining the New Zealand net equity of the New Zealand banking group.

- “(2) For the purposes of **subsection (1)**, the assets of a fixed establishment include the assets that are treated as being the assets of the fixed establishment under generally accepted accounting practice.

“FG 8I Valuation of debt and risk-weighted exposures

For the purposes of **sections FG 8B to FG 8H**, the value on a day of a financial arrangement or risk-weighted exposure that is denominated in a foreign currency must be determined—

- “(a) in New Zealand currency; and
- “(b) using the close of trading spot exchange rate for the foreign currency on the day.

“FG 8J Treatment of temporary change in New Zealand net equity or net equity threshold

A change in a quantity that, but for this subsection, would produce a temporary change in the New Zealand net equity or net equity threshold of the New Zealand banking group of a registered bank does not affect the value of the New Zealand net equity or net equity threshold if the change is produced by an arrangement that has an effect of defeating the intent and application of **sections FG 8B to FG 8I**.”

44 Circumstances in which group excess interest allocation required

Section FH 1(1) is replaced by the following:

- “(1) Subject to subsection (2), the group excess interest allocation rules in sections FH 5 to FH 8 apply for a tax year to a company that—
 - “(a) for the imputation year that corresponds with the tax year—
 - “(i) is a dividend withholding payment account company or a conduit tax relief company; and
 - “(ii) is not a member of a New Zealand banking group for a registered bank; and
 - “(b) in the corresponding income year—
 - “(i) derives foreign attributed income:
 - “(ii) is paid a dividend from which the company must deduct an amount of dividend withholding payment or would have to deduct such an amount but for section NH 7.”

45 New subpart FI inserted

After subpart H of Part F, the following is inserted:

**“Subpart I—Effect of certain disposals and resulting
acquisitions**

**“FI 1 Disposals and resulting acquisitions to which subpart FI
applies**

- “(1) The purpose of this subpart is to provide a disposal value in respect of the disposals and a cost price in respect of the resulting acquisitions of property for transactions to which **subsections (2) and (3)** refer.
- “(2) This subpart applies to a transaction that is of a type referred to in **subsection (3)** *(and involves property of a type referred to in subsection (5))*.
- “(3) This subpart applies to a transaction that is—
- “(a) a distribution of property made by a trustee of a trust to a beneficiary of that trust:

Struck out (unanimous)

- “(b) a distribution in kind made by a company to a shareholder of that company:

New (unanimous)

- “(b) a distribution in kind made by a company—
- “(i) to a shareholder of that company, or to a person in a shareholding relationship with that company; and
- “(ii) to which section CD 5 applies; and
- “(iii) that is a transfer of value to which section CD 3(1)(a) refers:
- “(c) a gift made by one person to another person:
- “(d) a transfer of an estate of a deceased person to an administrator or executor of the estate occurring as a result of the death of a person:
- “(e) a distribution of property made by an administrator, executor, or trustee of the estate of a deceased person to a person who is beneficially entitled to receive the property under a will or an intestacy:

Struck out (unanimous)

- “(f) a payment under a credit contract (as defined in section 7 of the Credit Contracts and Consumer Finance Act 2003) made by a person who is beneficially entitled to receive property under a will or an intestacy, if an obligation to make a payment under the credit contract existed on the date of the transaction referred to in **paragraph (d)**.

New (unanimous)

- “(f) a settlement of property by one trust on another trust, if authorised—
- “(i) under a trust instrument as a power of advancement or resettlement:
 - “(ii) under section 41 of the Trustees Act 1956 as the payment of money or the application of property.

Struck out (unanimous)

- “(4) Property involved in a transaction to which this subpart applies may be any property that is not owned by 2 or more natural persons as joint tenants and is—
- “(a) real or personal:
 - “(b) legal or equitable:
 - “(c) tangible or intangible:
 - “(d) money or money’s worth:
 - “(e) anything that is the subject of a distribution in kind.
- “(5) A transaction to which this subpart applies is treated as a disposal and resulting acquisition of the property involved in the transaction.

“FI 2 Disposal and resulting acquisition of property treated as occurring at market value

- “(1) A transaction to which this subpart applies is to be treated as—
- “(a) a disposal at market value by the person who disposes of the property; and

“(b) an acquisition at market value by the recipient of the property.

New (unanimous)

“(2) In this Act, the market value of property that a person receives from a transaction to which this subpart applies is the market value of the property for the person from whom the property was received.

Struck out (unanimous)

“FI 3 Market value of property to recipient

In this Act, the market value of property that a person receives from a transaction to which this subpart applies is the market value of the property for the person from whom the property was received.

“FI 4 Date on which disposal and resulting acquisition treated as occurring

“(1) Unless **subsection (2)** applies, the person who disposes of property in a transaction to which **section FI 1** refers and the person who receives the property must treat the disposal as occurring on the date on which the transaction occurs.

“(2) On the happening of a transaction to which **section FI 1(3)(d)** refers, the personal representatives of the deceased person and the recipient of the property must treat the disposal as occurring immediately before the person died.

“FI 5 Disposal and resulting acquisition of property by spouse or de facto partner on death of person

Struck out (unanimous)

“(1) This section applies to a person who is the surviving spouse or de facto partner of a deceased person and, under the terms of the will or intestacy of the deceased, is—

“(a) the sole recipient of the property of the deceased person:

Struck out (unanimous)

- “(b) a beneficiary of the deceased and the sole recipient of the property of the deceased that is—
- “(i) revenue account property:
 - “(ii) an interest in a foreign investment fund:
 - “(iii) a financial arrangement:
 - “(iv) an item in respect of which a person has an amount of depreciation loss under section EE 1(2).
- “(2) If a person to whom this section applies receives property from a transaction to which **section FI 1(3)(d) or (e)** refers, subpart FF applies to the property that is not referred to in **subsection (1)(b)** and is received by the person.

New (unanimous)

On the death of a person, a disposal under the terms of a will or intestacy to the surviving spouse or de facto partner of the deceased person of property to which **section FI 1(3)(d) or (e)** refers is treated as a matrimonial property disposition to which subpart FF applies, unless—

- “(a) a person who is not within the second degree of relationship to the deceased is beneficially entitled to the property; and
- “(b) the property is—
 - “(i) revenue account property:
 - “(ii) an interest in a FIF:
 - “(iii) a financial arrangement other than a financial arrangement in respect of which the deceased person or a trustee of the deceased person was a cash basis holder:
 - “(iv) an item in respect of which a person has an amount of depreciation loss under section EE 1(2).

“FI 6 Distributions of property to close relatives and others**Struck out (unanimous)**

- “(1) This section applies to a transaction to which **section FI 1(3)(e)** refers if,—
- “(a) in the case of bequests of property to natural persons, all of the bequests to persons who are not within the second degree of relationship to the deceased person are of property that is not—
 - “(i) revenue account property:
 - “(ii) an interest in a FIF:
 - “(iii) a financial arrangement:
 - “(iv) an item in respect of which a person has an amount of depreciation loss under section EE 1(2):
 - “(b) in the case of bequests of property to persons that are not natural persons, the income of all the persons is exempt under section CW 36.

New (unanimous)

- “(1) This section applies to a transaction to which **section FI 1(3)(e)** refers if persons who are related within the second degree of relationship to the deceased person, or persons who are exempt under section CW 36, are—
- “(a) the sole beneficiaries of the property of the deceased person:
 - “(b) beneficiaries of the deceased person and the sole beneficiaries of property of the deceased person that is—
 - “(i) revenue account property:
 - “(ii) an interest in a FIF:
 - “(iii) an item in respect of which a person has an amount of depreciation loss under section EE 1(2).
- “(2) A disposal and acquisition of property~~(, other than property specified in **subsections (1)(a)(i) to (iv),**)~~ to which this section applies is treated as a transaction to which subpart FF applies, if—

- “(a) the terms of the testamentary instrument or intestacy of the deceased person establish no life interest; and
- “(b) other than for the period in which the property is subject to administration or executorship, the terms of the testamentary instrument or intestacy of the deceased person require that no property of the deceased person be held in trust; and
- “(c) in a tax year during which the property is subject to administration or executorship or in which the property is held in trust, the net income of the estate is distributed beneficially to the maximum extent that is practicable.

“FI 7 Disposal and resulting acquisition of timber

If a transaction to which **section FI 1(3)(d) or (e)** refers involves the disposal and acquisition of property that is timber, standing timber, or the right to take timber, (by a person who is an administrator or executor of a deceased person,) the disposal is treated as a transaction to which subpart FF applies if (the transaction—) the recipient of the property is within the second degree of relationship to the deceased person.

Struck out (unanimous)

- “(a) is under a will or intestacy; and
- “(b) the recipient of the property is within the second degree of relationship to the deceased person.

“FI 8 Relationship of section FI 3 to subpart CB

For the purposes of sections CB 7, CB 8, CB 9 and CB 12, a transaction that does not involve timber, and to which **section FI 1(3)(d) or (e)** refers and **section FI 4** applies, is a disposal of property to which subpart FF applies if the transaction—

- “(a) is under a will or intestacy; and
- “(b) the recipient of the property is within the second degree of relationship to the deceased person.

“FI 9 Special rules for in-kind distribution of property by company

- “(1) This section applies if a company makes a distribution of property that is paid in kind, which may be a distribution that is a dividend under subpart CD.

Struck out (unanimous)

- “(2) A distribution to which this section applies must be treated by the company and the shareholder as occurring—
- “(a) on the date on which the distribution occurs; and
 - “(b) at the market value of the property, calculated on the date of the distribution.

“FI 10 Relationship of subpart FI to unexpired prepayments

- “(1) If a transaction to which **section FI 1** refers involves an amount of unexpired expenditure to which sections EA 3(4) to (7) refer and for which the deceased person was allowed a deduction, the amount of the unexpired expenditure is income of the trustee, administrator, or executor in the income year in which the transaction occurs.
- “(2) If a transaction to which **section FI 1** refers involves an unpaid amount of expenditure on employment income to which section EA 4(2) to (7) refer and for which a deceased person was allowed a deduction, the unpaid amount is income of the trustee, administrator, or executor in the income year in which the transaction occurs.

New (unanimous)**“FI 8 Relationship of section FI 3 to subpart CB**

- “(1) This section applies to a transaction to which **section FI 1(3)(d) or (e)** refer if—
- “(a) persons who are related within the second degree of relationship to the deceased person receive an interest in property that is land; and
 - “(b) the sale of the interest in the land, if sold by the deceased person, would result in income to the deceased person under any of sections CB 7, CB 8, CB 9, or CB 10.
- “(2) When this section applies, sections CB 7, CB 8, CB 9, and CB 10 do not apply to a transaction to which any of **section FI 1(3)(d) or (e)** refers.
- “(3) If a disposal of an interest in land by an administrator or executor of the estate of a deceased person within 10 years of

New (unanimous)

its acquisition by the deceased person results in income under any of sections CB 7, CB 8, CB 9, or CB 10, the cost of the interest in the land to the administrator or executor is the cost of the interest to the deceased person plus all other costs incurred by the deceased person and the administrator or executor not previously deducted under this Act.

“FI 9 Relationship of subpart FI to unexpired prepayments

In the application of section EA 3(4) to (7), **section FI 2** does not apply to transactions to which **section FI 1(3)(d) and (e)** refer.

“FI 11 Death occurring before (*commencement of 2005–06 income year*) 1 October 2005

- “(1) This section applies to a transaction to which **section FI 1** refers that involves the disposal of property to an administrator, or executor, or trustee on the death of a person if—
- “(a) the death occurred before (*the commencement of the 2005–06 income year of the deceased person*) 1 October 2005; and
 - “(b) in the year in which the transaction occurred,—
 - “(i) each beneficiary of the deceased person is a New Zealand resident; and
 - “(ii) no amount of the income of the beneficiary is exempt income under section CW 36; and
 - “(c) the tax returns of the deceased person and of the resulting estate that are provided to the Commissioner in respect of the income year in which the (*transaction*) death occurred are calculated on the basis that all the property of the deceased person was disposed of immediately before death—
 - “(i) at market values; or
 - “(ii) at the values given by subpart FF for property of that type; or
 - “(iii) at a combination of the values in **subparagraphs (i) and (ii)**; and
 - “(d) the administrator or executor adopted for taxation purposes the value referred to in **paragraph (c)** for the property.

- “(2) For the purposes of the Income Tax Act 1994 and this Act, the value used in the tax returns of the deceased person and the estate for the disposal value and the cost price of the property involved in the transaction is treated as correct.
- “(3) Despite **subsection (1) (2)**, if an enactment contained in the Income Tax Act 1994 or this Act prescribes the adoption of a market value on a disposal by an administrator or executor or trustee of the estate of the deceased person on the death of the deceased person, that market value must be adopted in a tax return provided to the Commissioner.

“FI 12 Value of property acquired by beneficiary of trust before (16 November 2004) 1 October 2005

- “(1) This section applies to a transaction to which **section FI 1** refers that involves the disposal of property to a beneficiary by an administrator or executor or trustee if—
- “(a) the transaction occurred before **16 November 2004**; and
 - “(b) the beneficiary was a New Zealand resident when the beneficiary acquired the property; and
 - “(c) no amount of the income of the beneficiary is exempt income under section CW 36; and
 - “(d) the tax returns of the estate and of the beneficiary provided to the Commissioner in respect of the income year in which the transaction occurred are calculated on the basis that—
 - “(i) the distributed property was disposed of at market value; or
 - “(ii) the disposition of the estate was a disposition and acquisition of the property at values given by subpart FF for property of that type; or
 - “(iii) the value of the property was a combination of the values given by **paragraphs (d)(i) or (ii)**; and
 - “(e) the beneficiary adopted for taxation purposes the value referred to in **paragraph (d)** for the property.
- “(2) For the purposes of the Income Tax Act 1994 and this Act, the value used in the tax returns of the estate and the beneficiary for the disposal value and the cost price of the property involved in the transaction is treated as correct.
- “(3) Despite **subsection (1) (2)**, if an enactment contained in the Income Tax Act 1994 or this Act prescribes the adoption of a

market value on a disposal by an administrator or executor or trustee of the estate of a deceased person (*and on an acquisition of property by a beneficiary*), that market value must be adopted by the administrator, executor, or trustee, and a beneficiary in (a tax return provided) the tax returns they provide to the Commissioner.

Struck out (unanimous)

“FI 13 Value of property acquired by beneficiary of a trust on or after 16 November 2004 and before commencement of 2004–05 income year

- “(1) This section applies to a transaction to which **section FI 1** refers that involves a disposal of property to a beneficiary by an administrator or executor or trustee if—
- “(a) the transaction occurred on or after **16 November 2004** and before the commencement of the 2004–05 income year of the trust; and
 - “(b) the beneficiary was a New Zealand resident when the beneficiary acquired the property; and
 - “(c) no amount of the income of the beneficiary is exempt income under section CW 36; and
 - “(d) the tax returns of the trust and of the beneficiary provided to the Commissioner in respect of the income year in which the transaction occurred are calculated on the basis that—
 - “(i) the distributed property was disposed of at market value; or
 - “(ii) the disposition of the estate was a disposition and acquisition of the property at values given by subpart FF for property of that type; or
 - “(iii) the value of the property was a combination of the values given by **paragraphs (d)(i) or (ii)**; and
 - “(e) the beneficiary adopted for taxation purposes the value referred to in **paragraph (d)** for the property.
- “(2) For the purposes of the Income Tax Act 1994 and this Act, the value used in the tax returns of the trust and of the beneficiary for the disposal value and the cost price of the property involved in the transaction is treated as correct.

Struck out (unanimous)

- “(3) Despite **subsection (1)**, if an enactment contained in the Income Tax Act 1994 or this Act prescribes the adoption of a market value on a disposal of property by a trustee of the estate of a deceased person, that market value must be adopted in a tax return provided to the Commissioner by the estate and the beneficiary.

New (unanimous)**“FI 13 Disposal of certain financial arrangements on death**

On the death of a person, a disposal of property that is a financial arrangement is treated as a transaction to which subpart FF applies, if—

- “(a) the deceased person in the last tax return filed before their death accounted for the financial arrangement as a cash basis person under section EW 56; and
- “(b) each beneficiary of the estate of the deceased person is related to the deceased person within the second degree of relationship; and
- “(c) each beneficiary is entitled to receive, as one or more specific legacies, property that is not—
 - “(i) revenue account property;
 - “(ii) an interest in a FIF;
 - “(iii) a financial arrangement other than a financial arrangement in respect of which the deceased person was a cash basis holder;
 - “(iv) an item in respect of which a person has an amount of depreciation loss under section EE 1(2).”

46 Imputation: arrangement to obtain tax advantage

- (1) In section GC 22(4)(b), “both a tax credit advantage and” is omitted.

New (unanimous)

- (2) **Subsection (1)** applies for arrangements entered on or after 16 November 2004.

Struck out (unanimous)

47 Sale of trading stock for inadequate consideration

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

- “(5) In subsections (1), (2)(b) and (3), trading stock does not include—
- “(a) property that is gifted:
 - “(b) property that is distributed in kind:
 - “(c) property that is on hand at the date of death of a deceased person.”

48 Attributing interests in FIFs

Section GD 14(3)(c) is replaced by the following:

- “(c) the consideration (if any) is not equal to the market value of the interest at the time.”

New (unanimous)

48BA Section GD 2 repealed

Section GD 2 is repealed.

48B Interpretation

In section HH 1(7), “paragraph (b) of” is inserted before “the definition”.

48C Income of beneficiaries

In section HH 3(4), the formula is replaced by the following:

$$\frac{a \times b}{c.}$$

49 Liability for tax payable by company left with insufficient assets

- (1) Section HK 11(1)(b) is replaced by the following:

- “(b) an effect of that arrangement is that the company is unable to satisfy under this Act a liability (called in this section the **tax liability**) of the company, whether arising before or after the arrangement is entered, for—
- “(i) income tax:
 - “(ii) a civil penalty:
 - “(iii) an amount payable under Part 7 of the Tax Administration Act 1994; and”.
- (2) In section HK 11(4)(c), “(exclusive of any late payment penalty or interest arising under this Act or the Tax Administration Act 1994 for late payment of any part of the tax liability)” is replaced by “(excluding a civil penalty or an amount payable under Part 7 of the Tax Administration Act 1994 that is part of the tax liability)”.
- (3) In section HK 11(4)(d),—
- (a) “any late payment penalty or interest arising under this Act or the Tax Administration Act 1994 for late payment, which comprises part of the tax liability” is replaced by “a civil penalty or an amount payable under Part 7 of the Tax Administration Act 1994 that is part of the tax liability”:
 - (b) “(exclusive of any such late payment penalty or interest)” is replaced by “(excluding the civil penalty or the amount payable under Part 7 of the Tax Administration Act 1994)”.

New (unanimous)**49B Rebate for gifts of money**

In section KC 5(1)(co), “Trust.” is replaced by “Trust:” and the following is added:

“(cp) Habitat for Humanity New Zealand Limited.”

50 Determination of amount of credit in certain cases

After section LB 1(1)(h), the following is inserted:

“(hb) in the case of an imputation credit carried forward to a later income year under **section LB 2(3C)** as a credit of tax, the amount of the credit of tax carried forward reduced by any amount of the credit that is extinguished by the

Commissioner under section 177C of the Tax Administration Act 1994:”.

51 Credit of tax for imputation credit

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

“(2B) Subsection (3) applies to a taxpayer that is—

- “(a) a company:
- “(b) a trustee (other than the Maori Trustee):
- “(c) a Maori authority:
- “(d) a taxpayer whose imputation credit giving rise to the credit of tax is category A income of the trustee of a group investment fund.”

(2) In section LB 2(3)—

- (a) “There is no refund to the taxpayer of any credit of tax under this section” is replaced by “For a taxpayer referred to in **subsection (2B)**, no refund of a credit of tax under this section is available”:
- (b) in the definition of item b of the formula—
 - (i) in subparagraph (iia), “year; and” is replaced by “year.”:
 - (ii) subparagraph (iv) is omitted.

(3) After section LB 2(3A), the following is inserted:

“(3B) For a taxpayer other than a taxpayer referred to in **subsection (2B)**, no refund of a credit of tax under this section is available, but if the whole of the credit of tax is not credited under subsection (2) against the taxpayer’s income tax liability for the income year, **subsection (3C)** applies to the amount of the credit of tax that remains.

“(3C) The remaining credit of tax for an income year is treated in the following ways, applied in the alphabetical order of the paragraphs so far as the credit of tax extends:

- “(a) carried forward as a credit of tax to the next income year:
- “(b) reduced by any amount extinguished under **section 177C(5B)** of the Tax Administration Act 1994 by the Commissioner in that next income year:
- “(c) reduced by any amount credited against the taxpayer’s income tax liability for that next income year:
- “(d) treated under this subsection as a remaining credit of tax for that next income year.”

52 Section LC 15 repealed

Section LC 15 is repealed.

New (unanimous)**52B Resident withholding tax deductions to be credited against income tax assessed**

- (1) In the heading to section LD 3, “**deductions**” is replaced by “**payments**”.
- (2) In section LD 3(2), in the words before paragraph (a),—
 - (a) “deducted from” is replaced by “paid in relation to”;
 - (b) “deduction” is replaced by “payment”.
- (3) In section LD 3(2), in the words after paragraph (d), “deducted” is replaced by “payments”.

52C Special rules for holding companies

In section LE 3(3)(e), “are exempt income” is replaced by “are exempt income other than”.

53 Amount of provisional tax payable

Section MB 2(1)(aa) and (ab) is repealed.

New (unanimous)**53B Section MB 6 replaced**

Section MB 6 is replaced by the following:

“MB 6 Voluntary payments

A taxpayer may at any time make voluntary payments to the Commissioner as provisional tax of such amounts as the taxpayer thinks fit, being—

- “(a) tax in respect of the taxpayer’s income tax liability for a tax year:
- “(b) tax in excess of the provisional tax payable by the taxpayer for a tax year:
- “(c) tax in excess of the taxpayer’s income tax liability for a tax year.”

54 Credits arising to imputation credit account

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

“(cb) the amount of any credit arising in the imputation credit account as a result of an election under **section ME 9B(2)(a)(ii)**:

“(cc) the amount of any payment of *(further)*additional income tax for which the company is liable under **section ME 9B(2)(b)(5)**:

New (unanimous)

“(cd) the amount of any payment of additional income tax for which the company is liable under **section ME 9C(6)**:”.

Struck out (unanimous)

(2) In section ME 4(1)(k), “closed.” is replaced by “closed:” and the following is added:

“(l) the amount of any credit balance arising in the company’s account with the Commissioner from a payment made by the company to the Commissioner that does not give rise to a credit under any other paragraph.”

(3) After section ME 4(2)(b), the following is inserted:

“(bb) in the case of a credit referred to in **subsection (1)(cb)**, on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:

“(bc) in the case of a credit referred to in **subsection (1)(cc)**, on the date on which the company makes the payment to the Commissioner:

New (unanimous)

“(bd) in the case of a credit referred to in **subsection (1)(cd)**, on the date on which the company makes the payment to the Commissioner:”.

Struck out (unanimous)

(4) In section ME 4(2)(i), “section MK 5.” is replaced by “section MK 5:” and the following is added:

Struck out (unanimous)

“(j) in the case of a credit referred to in **subsection (1)(l)**, on the date on which the company makes the payment to the Commissioner.”

55 Debits arising to imputation credit account

- (1) After section ME 5(1)(f), the following is inserted:

“(fb) the amount of any debit arising in the imputation credit account as a result of an election under **section ME 9B(2)(a)(i)**.”.
- (2) In section ME 5(1)(h), “section LD 8(1)(a)” is replaced by “section LD 8(1)(c)”.
- (3) After section ME 5(2)(f), the following is inserted:

“(fb) in the case of a (*credit*) **debit** referred to in **subsection (1)(fb)**, on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:”.

56 New sections ME 9B and ME 9C inserted

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

“ME 9B Imputation credit account company leaving wholly-owned group

“(1) This section applies to an imputation credit account company (called the **leaving company**) if, at a time in the income year of the leaving company that corresponds to a tax year—

 - “(a) there is a change in the ultimate owners of the leaving company; and
 - “(b) as a result of the change, the leaving company ceases to be a member of a wholly-owned group of companies (called the **former group**); and
 - “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.

“(2) If the leaving company at the time has a debit balance in its imputation credit account, the leaving company—

 - “(a) may elect that an amount that is not more than the debit balance be—

- “(i) a debit in the imputation credit account of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
 - “(ii) a credit in the imputation credit account of the leaving company:
 - “(b) may elect to pay an amount of tax by way of *(further)* additional income tax that is equal to—
 - “(i) the amount of the debit balance, if the leaving company makes no election under **paragraph (a)**:
 - “(ii) the amount by which the debit balance exceeds the amount that is subject to the election under **paragraph (a)**.
- “(3) If the leaving company at the time is entitled to an amount in a pooling account or would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax, **subsection (4)** applies to the following amount (called the **excess entitlement**):
 - “(a) zero, if at the time the credit balance in the imputation credit account of the leaving company equals or exceeds the total of the following amounts:
 - “(i) the amount that would be the entitlement under section MD 1:
 - “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the leaving company and would *(produce a credit balance in the account with the Commissioner of the leaving company if transferred to that account)* exceed the liability at the time of the leaving company:
 - “(b) the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if at the time there is no credit balance in the imputation credit account of the leaving company:
 - “(c) the amount by which the credit balance in the imputation credit account of the leaving company at the time is exceeded by the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if neither of **paragraphs (a) and (b)** applies.
- “(4) If the leaving company at the time has an excess entitlement, the leaving company—
 - “(a) may elect that an amount that is not more than the *(credit balance in the account with the Commissioner of*

the leaving company) excess tax payment for the company be—

“(i) *(a credit to the account with the Commissioner)* treated as having been paid, as income tax or provisional tax, on behalf of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and

“(ii) *(a debit to the account with the Commissioner of the leaving company)* not treated as having been paid as income tax or provisional tax by the leaving company:

“(b) may elect to pay an amount of tax by way of *(further)* additional income tax equal to—

“(i) the amount of the excess entitlement, if the leaving company makes no election under **paragraph (a)**; or

“(ii) the amount by which the *(credit balance)*excess tax payment exceeds the amount that is subject to the election under **paragraph (a)**.

New (unanimous)

“(4B) A leaving company or a former group may satisfy a liability to pay additional income tax under **subsection (2) or (4)** by treating an excess tax payment of the leaving company or the former group as a payment towards the satisfaction of the liability.

“(5) If the leaving company elects to pay an amount of *(further)* additional income tax under **subsection (2)(b) or (4)(b)** that exceeds the amount of any payment under subsection (4B), the *(further)*additional income tax must be paid to the Commissioner by the 20th day of the month following the month in which the leaving company leaves the former group.

“(6) The former group is jointly liable with the leaving company for *(further)* additional income tax payable under **subsection ((2) or (4))(5)**.

Struck out (unanimous)

“(7) A leaving company or a former group may satisfy a liability to pay further income tax under **subsection (2) or (4)** by a debit against a credit balance in the account with the Commissioner of the leaving company or the former group.

“(8) A payment of *(further)* additional income tax under **subsection (2) or (4)** does not satisfy any other liability of the leaving company or the former group.

New (unanimous)

“(8B) An election under **subsection (2) or (4)** must be—

- “(a) in a form the Commissioner may require; and
- “(b) made by the leaving company; and
- “(c) accompanied by notice of agreement from the company who receives the debit under **subsection (2)** or is treated under **subsection (4)** as having the benefit of the excess tax payment; and
- “(d) be made before the company leaves the group or within a further period that the Commissioner may allow if satisfied that the company had insufficient information to make an appropriate election at the time the company left the group.

“(9) In this section, *(an ultimate owner of a company means a person)* —

Struck out (unanimous)

- “(a) who has an ownership interest in the company, calculated under section FG 2; and
- “(b) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more.

New (unanimous)

- “(a) an **ultimate owner** of a company means a person—
 - “(i) who has an ownership interest in the company, calculated under section FG 2; and
 - “(ii) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more:
- “(b) **excess tax payment**, for a company at a time, means the amount at the time by which payments made by or on behalf of the company to the Commissioner for income tax or provisional tax exceed the liability at the time of the company to pay income tax and provisional tax.

“ME 9C **Imputation credit account company joining wholly-owned group**

- “(1) This section applies to an imputation credit account company (called the **joining company**) if, at a time in the income year of the joining company that corresponds to a tax year—
 - “(a) the joining company becomes a member of a wholly-owned group of companies (called the **new group**); and
 - “(b) the joining company was formerly a member of a wholly-owned group (called the **former group**) having ultimate owners that differed from the ultimate owners of the new group(.); and

New (unanimous)

- “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.
- “(2) **Subsection (3)** applies to the joining company if—
 - “(a) the joining company at the time has a debit balance in its imputation credit account; and
 - “(b) the debit balance includes debits (called the **former group debits**)—

- “(i) that *(were recorded)* arose in the imputation credit account when the joining company was a member of the former group; and
 - “(ii) upon which *(further)* additional income tax under section ME 9B(2) was not paid by the joining company or former group.
- “(3) The joining company must pay an amount of tax by way of *(further)* additional income tax that is equal to the amount of the former group debits.
- “(4) If the joining company at the time is entitled to an amount in a pooling account or would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax relating to a time when the joining company was in the former group, **subsection (5)** applies to the following amount (called the **excess entitlement**):
 - “(a) zero, if at the time the credit balance in the imputation credit account of the joining company equals or exceeds the total of the following amounts:
 - “(i) the amount that would be the entitlement under section MD 1:
 - “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the joining company and would *(produce a credit balance in the account with the Commissioner of the joining company if transferred to that account:)* exceed the liability at the time of the joining company to pay income tax and provisional tax:
 - “(b) the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if at the time there is no credit balance in the imputation credit account of the joining company:
 - “(c) the amount by which the credit balance in the imputation credit account of the joining company at the time is exceeded by the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if neither of **paragraphs (a) and (b)** applies.
- “(5) If the joining company at the time has an excess entitlement, the joining company must pay an amount of tax by way of *(further)* additional income tax equal to the amount of the excess entitlement.

New (unanimous)

“(5B) A joining company or a new group may satisfy a liability to pay additional income tax under **subsection (3) or (5)** by treating an excess tax payment of the joining company or the new group as a payment towards the satisfaction of the liability.

“(6) If the joining company must pay an amount of *(further)* additional income tax under **subsection (3) or (5)** that exceeds the amount of any payment under **subsection (5B)**, the *(further)* additional income tax must be paid to the Commissioner by the 20th day of the month following the month in which the joining company joins the new group.

“(7) The new group is jointly liable with the joining company for *(further)* additional income tax payable under **subsection (3) or (5)**.

Struck out (unanimous)

“(8) A joining company or a new group may satisfy a liability to pay further income tax under **subsection (3) or (5)** by a debit against a credit balance in the account with the Commissioner of the joining company or the new group.

“(9) A payment of *(further)* additional income tax under **subsection (3) or (5)(6)** does not satisfy any other liability of the joining company or the new group.

“(10) In this section, *(an ultimate owner of a company means a person)*—

Struck out (unanimous)

- “(a) who has an ownership interest in the company, calculated under section FG 2; and
- “(b) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more.

New (unanimous)

- “(a) an **ultimate owner** of a company means a person—
 - “(i) who has an ownership interest in the company, calculated under section FG 2; and
 - “(ii) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more:
 - “(b) **excess tax payment**, for a company at a time, means the amount at the time by which payments made by or on behalf of the company to the Commissioner for income tax or provisional tax exceed the liability at the time of the company to pay income tax and provisional tax.”
- (2) **Subsection (1)** applies for a company that leaves a wholly-owned group on or after 16 November 2004.

56B Application of specific imputation provisions to consolidated imputation groups

After section ME 14(3), the following is inserted:

- “(3B) Sections ME 9B and ME 9C and sections 97, 101, 139B, 140B, 140D, and 180 of the Tax Administration Act 1994 apply, with any necessary modifications, to a consolidated imputation group and its imputation credit account as if—
- “(a) it were a single company; and
 - “(b) each reference to a provision of this Act were a reference to the equivalent provision applicable to consolidated imputation groups; and
 - “(c) each reference to liability of a company for additional income tax, late payment penalty, or imputation penalty tax were (subject to the application of section HB 1(2) to (5)) a reference to joint and several liability for that tax of each company which is a member of the group at the time the additional income tax, late payment penalty, or imputation penalty tax becomes payable.”

57 Debits arising to dividend withholding payment account

In section MG 5(1)(e), “section LD 8(1)(a)” is replaced by “section LD 8(1)(c)”.

New (unanimous)

57B Policyholder credit account companies and dividend withholding payment credits

- (1) In section MG 8B(4),—
- (a) in the definition of **policyholder DWP ratio**, in the definition of item “c”, “dividend withholding payment credit account” is replaced by “dividend withholding payment account”;
 - (b) in the definition of **reduced deficit debit**, in the definition of item “c”, “imputation credit account” is replaced by “dividend withholding payment account”.
- (2) **Subsection (1)** applies for the 2005–06 and subsequent income years.

57BB Application of RWT rules

In section NF 1(2)(a), the following is inserted after subparagraph (iv):

“(ivb) interest derived from New Zealand by the Cook Islands National Superannuation Fund, as established by the National Superannuation Board under section 11(1)(a) of the Cook Islands National Superannuation Act 2000; or”.

57C Deduction of resident withholding tax

- (1) The heading before section NF 2 is replaced by “**Liability to pay resident withholding tax**”.
- (2) The heading to section NF 2 is replaced by “**Liability to pay resident withholding tax**”.
- (3) Before section NF 2(1), the following is inserted:
- “(1A) A person is liable to pay to the Commissioner, in relation to a payment that is or includes resident withholding income, a tax (called **resident withholding tax**) of an amount given by **subsection (1) or (1B)** if—
- “(a) the person makes the payment and is required to make a deduction of resident withholding tax from the payment:

New (unanimous)

- “(b) the person is an RWT proxy for the payer of the resident withholding income, the recipient of the resident withholding income, and the resident withholding income.
- “(1AB) A person who makes a payment that is or includes resident withholding income must deduct resident withholding tax from the payment if the person is not excluded by the rest of this section from liability to make the deduction.”
- (4) In section NF 2(1), the words before paragraph (a) are replaced by “If a person makes a payment that is or includes resident withholding income and is required to deduct resident withholding tax from the payment, the person must make a deduction—”.
- (5) After section NF 2(1), the following is inserted:
- “(1B) A person who is an RWT proxy for a payer of resident withholding income and a payment of resident withholding income in the form of a dividend must pay to the Commissioner the amount of resident withholding tax given by the following formula:
- $$\frac{a \times b}{1 - a}$$
- where—
- a is the appropriate rate of resident withholding tax, expressed as a percentage, specified in schedule 14, clause 1:
- b is the amount paid to the recipient of the dividend.”

57D New section NF 2AA inserted

After section NF 2, the following is inserted:

“NF 2AA Election to be RWT proxy

- “(1) A person is an **RWT proxy** for a payer of resident withholding income and a payment that is or includes the resident withholding income if—
- “(a) the person gives to the Commissioner a notice of election under **subsection (2)**; and
- “(b) the payer is a unit trust who is a non-resident; and
- “(c) the recipient is a natural person or a trustee of a qualifying trust; and

New (unanimous)

- “(d) the recipient has requested the person to act as an RWT proxy in relation to the payer and the resident withholding income; and
 - “(db) the person has agreed to act as an RWT proxy in relation to the recipient; and
 - “(e) the resident withholding income is a dividend; and
 - “(f) the payment is made while the election in the notice is effective.
- “(2) A notice of election must be in writing and contain—
- “(a) an election by the person to be an RWT proxy for dividends distributed by the payer; and
 - “(b) the name and postal address of the payer; and
 - “(c) the date from which the election is effective.
- “(3) An election by a person to be an RWT proxy is effective from the date nominated in the notice of election until the later of the following:
- “(a) the date nominated in a written notice of cancellation of the election that the Commissioner receives from the person;
 - “(b) the date on which the Commissioner receives from the person a written notice of cancellation of the election.”

57E Election to apply higher rate of deduction

- (1) Section NF 2A(1) is replaced by the following:
- “(1) A person entitled to receive a payment to which section NF 2(1) or (1B) relates may elect, in the manner required by the payer or RWT proxy, that the payment be subject to resident withholding tax at a rate specified in schedule 14, clause 1(a), (b), or (c).”
- (2) In section NF 2A(3),—
- (a) “each deduction” is replaced by “each deduction or payment under section NF 2(1B)”;
 - (b) “the deduction” is replaced by “the deduction or payment”.

New (unanimous)

57F Payment of deductions of resident withholding tax to Commissioner

After section NF 4(8), the following is added:

- “(9) For the purposes of this section, an RWT proxy who is required to pay resident withholding tax in relation to a payment of resident withholding income is treated as having deducted the resident withholding tax from the payment at the time of the payment.”

58 Certificates of exemption

In section NF 9(1)(i), “CW 43” is replaced by “CW 44”.

New (unanimous)

58B Application of NRWT rules

In section NG 1(2)(b), “New Zealand,—” is replaced by “New Zealand; or” and the following is inserted:

- “(c) interest derived from New Zealand by the Cook Islands National Superannuation Fund, as established by the National Superannuation Board under section 11(1)(a) of the Cook Islands National Superannuation Act 2000,—”.

59 Payment and recovery of dividend withholding payment

In section NH 3(4)(b), “penalty under section 150” is replaced by “late payment penalty under section 139B”.

60 Definitions

- (1) This section amends section OB 1.

New (unanimous)

- (1BA) After the definition of **additional capital**, the following is inserted:

“**additional income tax** means tax arising under **section ME 9B** (Imputation credit account company leaving wholly-owned

New (unanimous)

- group) **or ME 9C** (Imputation credit account company joining wholly-owned group)”.
- (1B) In paragraph (b)(ii) of the definition of **beneficiary income**, “section CC 3” is replaced by “section CC 3(2)”.
- (2) After the definition of **child tax credit**, the following is inserted:
“civil penalty is defined in section 3(1) of the Tax Administration Act 1994”.
- (3) After the definition of **consolidation rules**, the following is inserted:
“contaminant means a contaminant as defined in section 2(1) of the Resource Management Act 1991”.
- (4) The definition of **diminished value** is replaced by the following:
“diminished value, for an income year, means the amount calculated using the formula—
- $$a + b - c$$
- where—
- a is the amount of expenditure—
 - “(a) on an improvement described in section DO 4 (Improvements to farm land), DO 4C (Expenditure on land: planting of listed horticultural plants), DO 4D (Expenditure on land: horticultural replacement planting), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land); or
 - “(b) of a type described in **section DB 37** (Avoiding, remedying, or mitigating effects of discharge of contaminant):
 - b is the total amount of income derived under **section CB 24B(6) (8)** (Environmental restoration accounts) in relation to the expenditure:
 - c is the total of every amount allowed as a deduction for the expenditure to any person—
 - “(a) in any earlier income year under this Act or an earlier Act:

- “(b) in the income year under this Act, except an amount allowed in the income year under section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant), section DO 4C (Expenditure on land: planting of listed horticultural plants), DO 4D (Expenditure on land: horticultural replacement planting), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land).
- (5) In the definition of **dispose**, in paragraph (e), “destroy” is replaced by “destroy:” and the following is added:
- “(f) in **subpart FI** (Effect of certain disposals and resulting acquisitions), means a disposal of property in the manner provided for in **section FI 1** (Disposals and resulting acquisitions to which subpart FI applies)(, *of property that is—*).

Struck out (unanimous)

- “(i) assigned, conveyed, delivered, settled, or transferred:
- “(ii) a payment:
- “(iii) otherwise alienated, whether at law or in equity”.

New (unanimous)

- (5B) In the definition of **eligible period**, paragraph (e) is replaced by:
- “(e) the composition of a subpart KD credit does not change, other than on the first, or as applicable, the last day”.
- (6) After the definition of **entitlement period**, the following is inserted:
- “**environmental restoration account** is defined in **section EK 24** (Other definitions) for the purposes of **subpart EK** (Environmental restoration accounts)”.
- (7) After the definition of **expenditure on account of an employee**, the following is inserted:

“**exploration and development activities** is defined in **section CW 45B** (Non-resident company involved in exploration and development activities) for the purposes of that section”.

New (unanimous)

(7B) The definition of **finance lease** is replaced by the following:

“**finance lease** means a lease of a personal property lease asset entered by a person on or after 20 May 1999 that,—

“(a) when the person enters the lease, involves or is part of an arrangement that involves—

“(i) the transfer of the ownership of the asset to the lessee or an associate of the lessee during or at the end of the term of the lease:

“(ii) the lessee or an associate of the lessee having the option of acquiring the asset for an amount that is likely to be substantially lower than the asset’s market value on the date of acquisition:

“(iii) a right of an associate of the lessee to acquire the asset, or a right of the lessor to require an associate of the lessee to acquire the asset, during the term of the lease under an arrangement that does not entitle the associate to receive all of the personal property lease payments that may fall due after the acquisition:

“(b) when the person enters the lease or from a later time, involves a term of the lease that is more than 75% of the asset’s estimated useful life as defined in section EE 54 (Meaning of estimated useful life)”.

(8) After the definition of **financial statements**, the following is inserted:

“**financial value** for the New Zealand banking group of a registered bank is defined in **section FG 8F** (Financial value and regulatory value) for the purposes of subpart FG (Apportionment of interest costs)”.

New (unanimous)

(8B) Paragraph (e) of the definition of **fixed rate share** is replaced by the following:

“(e) in sections **FG 8G** (New Zealand net equity of New Zealand banking group) and LF 2 (Granting of foreign underlying tax credit) has the meaning given in section LF 2(3)”.

Struck out (unanimous)

(9) In the definition of **further income tax**, “, **ME 9B** (Imputation credit account company leaving wholly-owned group) or **ME 9C** (Imputation credit account company joining wholly-owned group)” is added after “credit account company”.

(10) After the definition of **gross tax deductions**, the following is inserted:

“**group funding debt** is defined in **section FG 8B** (Adjustment of annual total deduction—reporting bank) for the purposes of subpart FG (Apportionment of interest costs)”.

(11) After the definition of **group of persons**, the following is inserted:

“**group quarter day** is defined in **section FG 8B(5)(6)** (Adjustment of annual total deduction—reporting bank) for the purposes of that section”.

New (unanimous)

(11B) In the definition of **interest**, in paragraph (d)(ii), the reference to the title of section DB 1(1)(c) is replaced by “(Taxes, other than GST, and penalties)”.

(11C) In the definition of **lessee’s outstanding balance**, the formula is replaced by the following:

“ $a - b + c$ ”.

(11D) In the definition of **lessor’s outstanding balance**, the formula is replaced by the following:

“ $a - b + c$ ”.

- (12) In the definition of **market value**, in paragraph (f), “in (~~sections FI 2, FI 4, FI 9, and FI 10~~) **section FI 2** (which relates to certain disposals and resulting acquisitions), and” is inserted before “in sections OD 4, OD 5, and OD 6”.
- (13) After the definition of **maturity**, the following is inserted:
- “**maximum account balance** is defined in **section EK 24** (Other definitions) for the purposes of **subpart EK** (Environmental restoration accounts)
- “**maximum payment** is defined in **section EK 23** (Meaning of maximum payment) for the purposes of **subpart EK** (Environmental restoration accounts)”.
- (14) After the definition of **maximum pooling value**, the following is inserted:
- “**measurement day**, for an income year of a reporting bank, means 1 of the measurement days for the income year defined in **section FG 8E** (Measurement periods and measurement days) for the purposes of subpart FG (Apportionment of interest costs)
- “**measurement period**, for an income year of a reporting bank, means 1 of the measurement periods for the income year defined in **section FG 8E** (Measurement periods and measurement days) for the purposes of subpart FG (Apportionment of interest costs)”.
- (15) After the definition of **net balance due**, the following is inserted:
- “**net equity threshold** for the New Zealand banking group of a registered bank is defined in **section FG 8H** (Net equity threshold) for the purposes of subpart FG (Apportionment of interest costs)”.
- (16) In paragraph (a) of the definition of **net loss**, “amount written off by the Commissioner under section 177C(4)” is replaced by “amount extinguished by the Commissioner under section 177C(5)”.
- (17) After the definition of **New Zealand**, the following is inserted:
- “**New Zealand banking group**, for a registered bank, means the New Zealand banking group that is given for the registered

bank by **section FG 8C** (New Zealand banking group of registered bank) for the purposes of subpart FG (Apportionment of interest costs)”.

- (18) After the definition of **New Zealand group debt percentage**, the following is inserted:

“**New Zealand net equity**, for a New Zealand banking group, is defined in **section FG 8G(1)** (New Zealand net equity of New Zealand banking group) for the purposes of subpart FG (Apportionment of interest costs)”.

- (19) After the definition of **notional income tax liability**, the following is inserted:

“**notional offshore investment amount**, for a reporting bank, is defined in **section FG 8G(4)** (New Zealand net equity of New Zealand banking group) for the purposes of subpart FG (Apportionment of interest costs)”.

- (20) After the definition of **offshore development**, the following is inserted:

“**offshore permit area** is defined in **section CW 45B** (Non-resident company involved in exploration and development activities) for the purposes of that section”.

- (21) After the definition of **partnership net income**, the following is inserted:

Struck out (unanimous)

“**patent application date** is defined in **section EE 27B** (Annual rate for patents) for the purposes of that section”.

New (unanimous)

“**patent application date**, for a patent and an application for a patent, means the date on which the application for the patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another country or territory”

New (unanimous)

- (21B) The definition of **payment period** is replaced by:

“**payment period** means the period of 56 days beginning after the date on which an application is made to receive the parental tax credit”.

- (22) After the definition of **physical cost of production**, the following is inserted:

“**plant variety rights** means proprietary rights granted for a plant variety(, *within the meaning of the terms **plant** and **variety** in the Plant Variety Rights Act 1987*) under the Plant Variety Rights Act 1987 or similar rights given similar protection under the laws of a country or territory other than New Zealand”.

Struck out (unanimous)

- (23) After the definition of **qualifying debenture**, the following is inserted:

“**qualifying event** means an unexpected event that either results in, or brings about, the destruction of a person’s building or renders it useless, when the destruction or damage is not caused by the action or failure to act of the person, or their agent, or an associated person”.

- (24) After the definition of **registered**, the following is inserted:

“**registered bank** means a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989”.

- (25) After the definition of **registered security**, the following is inserted:

“**regulatory value** for the New Zealand banking group of a registered bank is defined in **section FG 8F** (Financial value and regulatory value) for the purposes of subpart FG (Apportionment of interest costs)”.

- (26) After the definition of **replacement permit**, the following is inserted:

“**reporting bank** for a New Zealand banking group, means the reporting bank that is given for the New Zealand banking

group by **section FG 8D** (Reporting bank for New Zealand banking group)”).

New (unanimous)

(26B) In the definition of **resident withholding tax**, “Deduction of resident withholding tax” is replaced by “Liability to pay resident withholding tax”.

(27) After the definition of **residual income tax**, the following is inserted:

“**resource consent** means a resource consent as defined in section 2 of the Resource Management Act 1991”.

New (unanimous)

(27B) After the definition of **royalty**, the following is inserted:

“**RWT proxy** is defined in **section NF 2AA** (Election to be RWT proxy)”.

(28) After the definition of **type**, the following is inserted:

“**ultimate owner** is defined in—

“(a) **section ME 9B** (Imputation credit account company leaving wholly-owned group) for the purposes of that section:

“(b) **section ME 9C** (Imputation credit account company joining wholly-owned group) for the purposes of that section

Struck out (unanimous)

“**ultimate parent** is defined in **section FG 8C** (New Zealand banking group of registered bank) for the purposes of that section”.

New (unanimous)

- (29) Before the definition of **unadjusted income tax liability**, the following is inserted:

“**ultimate parent** is defined in **section FG 8C** (New Zealand banking group of registered bank) for the purposes of that section”.

Struck out (unanimous)

61 Meaning of income tax

In section OB 6(1), the following is inserted after paragraph (i):

“(ib) is defined in **section HK 11(10)** for the purposes of that section:”.

62 New schedule 6B inserted

After schedule 6, **schedule 6B** in the schedule of this Act is inserted.

New (unanimous)

62C Schedule 13—Month for payment of provisional tax and terminal tax

- (1) In schedule 13, the list of shoulder numbers is replaced by “ss EF 3, MB 4, MB 5A, MC 1, OB 1”.
- (2) In schedule 13, part A, clause 1, in the heading to column C, “month preceding the balance date” is replaced by “month of the balance date”.

63 Schedule 17—Depreciable intangible property

New (unanimous)

- (1) In schedule 17, after item 3, the following is added:
- “3b a patent application with a complete specification lodged on or after 1 April 2005”.

- (2) In schedule 17, after item 10, the following is added:
- “11 plant variety rights granted under the Plant Variety Rights Act 1987 or similar rights given similar protection under the laws of a country or territory other than New Zealand
- “12 a right to use plant variety rights granted under the Plant Variety Rights Act 1987 or a similar right under the laws of a country or territory other than New Zealand”.

New (unanimous)

63B Schedule 22A—Identified policy changes

- (1) In schedule 22A, after the entry relating to section DO 5, the following is inserted:
- “DZ 13 A deduction is allowed for expenditure of an amount given by section DO 4(3)(a) or (c) of the Income Tax Act 1994 and allowed as a deduction under section DO 4(1) of that Act, being expenditure incurred in carrying on a farming or agricultural business on land in New Zealand.”
- (2) **Subsection (1)** commences on 1 April 2005.

63C Schedule 23 amended

- (1) In schedule 23, Part A,—
- (a) in the entry corresponding to section CN 4—
- (i) in column 2, “(3)(a)”, “(3)(b)” and “(3)(c)” are repealed:
- (ii) in column 3, “FC 16(3)” is replaced by “FC 16(4)–(6)”:
- (iii) in column 3, “FC 16(4)”, “FC 16(5)”, and “FC 16(6)” are repealed.
- (b) for section CN 4(4)(a), in column 3, “FC 16(2), (3)”.
- (2) In schedule 23, Part B,—
- (a) in the entry for section CQ 2, the first section number in column 2 is replaced by “CG 6(1)(a)”:
- (b) in the entry for section CX 3, the entry in column 2 is replaced by “new”:
- (c) in the entry for section DT 10, the entry in column 2 is replaced by “DM 1(7)(a)”.

Part 2

Amendments to Income Tax Act 1994

64 Income Tax Act 1994

This Part amends the Income Tax Act 1994.

65 Non-residents' exempt income

In section CB 2(1)(f)(v), "foreign company." is replaced by "foreign company:" and the following is inserted:

"(g) any foreign-sourced amount derived by the Cook Islands National Superannuation Fund, as established by the National Superannuation Board under section 11(1)(a) of the Cook Islands National Superannuation Act 2000."

66 New section CB 16 inserted

The following is inserted after section CB 15:

"CB 16 Non-resident company involved in exploration and development activities

"(1) An amount of income derived by a non-resident company from exploration and development activities in an offshore permit area is exempt income if it is derived in the period that starts on 1 January 2004 and ends on 31 December 2009.

"(2) In this section,—

"**exploration and development activities** means the following activities undertaken for the purposes of identifying and developing exploitable petroleum deposits or occurrences in an offshore permit area:

"(a) operating a ship to provide seismic survey readings (*of the earth's crust*):

"(b) drilling an exploratory well or other well

"**offshore permit area** means an area of land that is—

"(a) in New Zealand; and

"(b) on the seaward side of the mean high-water mark; and

"(c) a permit area or part of a permit area."

67 Expenditure incurred by superannuation funds

(1) After section DI 3(2), the following is inserted:

“(2B) **Subsection (2C)** applies if,—

- “(a) for the 2000–01 income year, the balance date of the second superannuation fund is earlier than the balance date of the first superannuation fund; and
- “(b) the first superannuation fund has incurred expenditure of a kind described in subsection (2)(b) in the period that starts on the second superannuation fund’s 2000–01 balance date and ends on the first superannuation fund’s 2000–01 balance date.

“(2C) Despite subsection (2)(c), the second superannuation fund may deduct under subsection (2)(d) the expenditure referred to in subsection (2)(b) in whichever of the 2000–01 income year and the 2001–02 income year that the second superannuation fund elects by including the expenditure as a deduction in a return of income for the elected income year.”

- (2) **Subsection (1)** applies for the 2000–01 and 2001–02 income years.

68 Expenditure to prevent or combat pollution of environment

- (1) In section DJ 10(1), “industrial waste” is replaced by “waste”.
- (2) **Subsection (1)** applies to a taxpayer for an income year that is the 1995–96 or a subsequent income year if—
 - (a) the taxpayer, before **16 November 2004**, makes a return of income, issues a notice of proposed adjustment or response notice, or requests a reassessment, that relates to the income year; and
 - (b) the correctness of the tax position adopted by the taxpayer in the return, notice, or request depends on the interpretation of the meaning of “industrial waste” in section DJ 10; and
 - (c) the taxpayer’s interpretation of “industrial waste” in the return, notice, or request, is consistent with the meaning of section DJ 10 as amended by **subsection (1)**.

New (unanimous)

68B Expenditure on unsuccessful application for resource consent

- (1) In section DJ 14B(b), “a resource consent that is depreciable property” is replaced by “depreciable property, or allowed as a deduction,”.
- (2) **Subsection (1)** applies for an application by a taxpayer that is refused or withdrawn in the 2004–05 or a subsequent income year.

69 Entities to which apportionment rule potentially applies

- (1) The heading to section FG 2 is replaced by “**Entities to which interest deduction rules potentially apply**”.
- (2) Section FG 2(1) is replaced by the following:
 - “(1) A taxpayer is not subject for a tax year to the interest apportionment rule in section FG 8 or the adjustment of annual total deduction in **section FG 8B** unless, at a time in the taxpayer’s income year, the taxpayer—
 - “(a) is a non-resident who is not a company:
 - “(b) is a company that is a non-resident in which—
 - “(i) no person who is resident in New Zealand has a direct ownership interest that is equal to or greater than 50%(; *and*):
 - “(ii) a non-resident has a direct ownership interest that, when aggregated with the direct ownership interests of persons associated with the non-resident, is equal to or greater than 50%:
 - “(c) is a company that is resident in New Zealand—
 - “(i) in which a non-resident has an ownership interest that is equal to or greater than 50%:
 - “(ii) of which a non-resident has control by any other means:
 - “(d) is the trustee of a non-qualifying trust for which 50% or more in value of the settlements on the trust is settled by—
 - “(i) a non-resident:
 - “(ii) persons who are associated with the non-resident.”

- (3) Section FG 2(7) is omitted.

70 Section FG 3 replaced

Section FG 3 is replaced by the following:

“FG 3 When interest apportioned under section FG 8 or annual total deduction adjusted under section FG 8B

- “(1) A taxpayer who is not excluded by section FG 2 from the application of section FG 8 for a tax year is required to make an apportionment under section FG 8 of interest expenditure incurred during the corresponding income year of the taxpayer if the taxpayer—
- “(a) at no time in the income year—
 - “(i) is a reporting bank for a New Zealand banking group;
 - “(ii) is part of a New Zealand banking group for the purpose of **section FG 8C**; and
 - “(b) has a New Zealand group debt percentage for the income year that—
 - “(i) is greater than 75%; and
 - “(ii) if the taxpayer is a company or a trustee, exceeds the number obtained by multiplying the world-wide group debt percentage of the taxpayer by 1.1.
- “(2) A taxpayer who is not excluded by section FG 2 from the application of **section FG 8B** for a tax year is treated as having an annual total deduction for the tax year of an amount that is given by **section FG 8B** if—
- “(a) at a time in the taxpayer’s corresponding income year the taxpayer is the reporting bank for a New Zealand banking group; and
 - “(b) the New Zealand banking group has a New Zealand net equity, as defined in **section FG 8G**, of less than the net equity threshold for the New Zealand banking group, as defined in **section FG 8H**, on a measurement day for the taxpayer’s corresponding income year, as defined in **section FG 8E**.”

71 Rules for calculating New Zealand group debt percentage

- (1) In section FG 4(12)(b), “New Zealand parent.” is replaced by “New Zealand parent; and” and the following is added:
“(c) are not members of a New Zealand banking group for a registered bank.”
- (2) In section FG 4(14C)(b)(iii), “New Zealand parent.” is replaced by “New Zealand parent; and” the following is added:
“(c) are not members of a New Zealand banking group for a registered bank.”

72 Apportionment of interest deductions

- (1) In the heading to section FG 8, “—**taxpayer not in New Zealand banking group**” is added after “**deductions**”.
- (2) In section FG 8(1), “taxpayer is not in a New Zealand banking group and the” is inserted after “if a”.

73 New sections FG 8B to FG 8J inserted

After section FG 8, the following is inserted:

“FG 8B Adjustment of annual total deduction—reporting bank

- “(1) For a taxpayer that is a reporting bank and under **section FG 3(2)** has an annual total deduction for a tax year given by this section, the taxpayer’s annual total deduction for the tax year is—
 - “(a) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year that is not zero, the amount calculated using the formula—
unadjusted annual total deduction – adjustments:
 - “(b) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year of zero, the annual total deduction for the tax year that the taxpayer would have had in the absence of this section and **section FG 3(2)**.
- “(2) In the formula in **subsection (1)(a)**,—
 - “(a) **unadjusted annual total deduction** is the annual total deduction for the tax year that the taxpayer would have had in the absence of this section and **section FG 3(2)**:

- “(b) **adjustments** is the sum of the income adjustment amounts that are given by **subsection (4)** for the measurement periods for the corresponding income year of the reporting bank.
- “(3) The **group funding debt** for a tax year for the New Zealand banking group of a reporting bank means the amount calculated using the formula—

$$\frac{\text{SFI} + \text{FID} - \text{FTE}}{\text{NQ}}$$

where—

SFI is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group of interest-bearing debt calculated under generally accepted accounting practice for a group quarter day

FID is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of financial arrangements—

- (a) for which the consolidated financial statements of the New Zealand banking group would show, in the corresponding income year of the reporting bank, a deduction (in the corresponding income year of the reporting bank)—
 - (i) under 1 or more of sections DB 6 to DB 8; and
 - (ii) other than as a consequence of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and
- (b) that do not contribute to **item SFI**

FTE is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of shares that contribute to **item SFI**

NQ is the number of group quarter days in the corresponding income year of the registered bank.

- “(4) For a measurement day in an income year of a reporting bank, the adjustment amount for a reporting bank is the amount calculated using the formula—

$$(\text{NET} - \text{NZE}) \times \frac{\text{I}}{\text{GFD}} \times \frac{\text{PD}}{\text{YD}}$$

where—

NET is the net equity threshold for the New Zealand banking group for the measurement day

NZE is the lesser of—

- (a) the net equity threshold for the New Zealand banking group for the measurement day;
- (b) the New Zealand net equity for the New Zealand banking group for the measurement day

I is the financial value for the New Zealand banking group, on the last day of the income year, of expenditure that—

- (a) is incurred by a member of the New Zealand banking group in the income year; and
- (b) is an interest expense under generally accepted accounting practice or a deduction referred to in **paragraph (a)** of the definition of **item FID** in **subclause (3)**

GFD is the group funding debt for the tax year for the New Zealand banking group

PD is the number of days in the measurement period that corresponds to the measurement day

YD is the number of days in the income year.

“(5) In this section, **group quarter day** for a registered bank and a tax year means a day—

- “(a) that is the last day of a quarter in the corresponding income year of the registered bank; and
- “(b) on which the registered bank is a reporting bank.

“FG 8C **New Zealand banking group of registered bank**

“(1) The **New Zealand banking group** of a registered bank for a measurement period consists of every person or fixed establishment that on the measurement day for the measurement period is—

- “(a) a member under **subsection (2)** or a potential member under **subsection (3) or (4)**; and
- “(b) not excluded by an election under **subsection (8)**.

- “(2) If the registered bank—
 - “(a) is resident in New Zealand, the registered bank is a member:
 - “(b) is not resident in New Zealand, a fixed establishment in New Zealand of the registered bank is treated as being a person who is—
 - “(i) separate from the registered bank; and
 - “(ii) a member.
- “(3) A person who is a New Zealand resident is a potential member, if—
 - “(a) the person satisfies **subsection (5)** and—
 - “(i) the registered bank is resident in New Zealand; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under **subsection (9)**:
 - “(b) the person satisfies **subsection (6)** and—
 - “(i) the registered bank is a non-resident; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under **subsection (9)**:
 - “(c) the person satisfies **subsection (7)** and there is a non-resident who is an ultimate parent of the registered bank under **subsection (9)**.
- “(4) A fixed establishment in New Zealand of a non-resident is treated as being a person who is separate from the non-resident and a potential member if—
 - “(a) the fixed establishment satisfies **subsection (6)** and—
 - “(i) the registered bank is a non-resident; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under **subsection (9)**:
 - “(b) the fixed establishment satisfies **subsection (7)** and there is a non-resident who is an ultimate parent of the registered bank under **subsection (9)**.
- “(5) A person satisfies this subsection if—
 - “(a) under generally accepted accounting practice, consolidated group accounts—
 - “(i) are required to include the person and the registered bank:
 - “(ii) would be required to include the person and the registered bank but for relevant materiality thresholds:

- “(b) the person is in the same group of companies as the registered bank under section IG ~~((11))~~(2).
- “(6) A person or fixed establishment satisfies this subsection if—
 - “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the registered bank if—
 - “(i) the registered bank were resident in New Zealand; and
 - “(ii) the relevant materiality thresholds were satisfied:
 - “(b) the person is in the same group of companies as the registered bank under section IG ~~((11))~~(2).
- “(7) A person or fixed establishment satisfies this subsection if—
 - “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the ultimate parent of the registered bank if—
 - “(i) the ultimate parent were resident in New Zealand; and
 - “(ii) the relevant materiality thresholds were satisfied:
 - “(b) the person is in the same group of companies as the ultimate parent under section IG ~~((11))~~(2).
- “(8) A reporting bank may elect under this subsection to exclude from the New Zealand banking group of the reporting bank—
 - “(a) a person or fixed establishment whose main activity is the providing of life insurance:
 - “(b) a person who—
 - “(i) is resident in New Zealand or is a non-resident with a fixed establishment in New Zealand; and
 - “(ii) has a voting interest of 100% in a person who is excluded by an election under **paragraph (a)**; and
 - “(iii) does not have a main activity that is banking, financing or leasing; and
 - “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing:
 - “(c) a person who—
 - “(i) is resident in New Zealand; and
 - “(ii) under generally accepted accounting practice is required for the making of financial reports to be included in consolidated group accounts with a

- person or fixed establishment who is excluded by an election under **paragraph (a) or (b)**; and
- “(iii) does not have a main activity that is banking, financing or leasing; and
- “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing.
- “(9) For the purposes of this section, the **ultimate parent** of a registered bank is a company—
- “(a) that has an ownership interest in the registered bank, calculated under section FG 2, of 50% or more; and
- “(b) in which no ownership interest, as calculated under section FG 2, is held by a company that holds an ownership interest in the registered bank, calculated under section FG 2, of 50% or more.
- “(10) For the purposes of this section, the **ultimate parent** of a fixed establishment in New Zealand of a registered bank is the registered bank.

“FG 8D Reporting bank for New Zealand banking group

- “(1) For a New Zealand banking group that on a day includes a single registered bank, or includes no registered bank but includes a fixed establishment of a single registered bank, the reporting bank for the day is the registered bank.
- “(2) For a New Zealand banking group that on a day includes more than 1 registered bank, the reporting bank for the day is—
- “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs;
- “(b) the registered bank chosen by the Commissioner, if **paragraph (a)** does not apply.
- “(3) For a New Zealand banking group that on a day includes no registered bank but includes fixed establishments of more than 1 registered bank, the reporting bank for the day is—
- “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is

6 months after the end of the tax year in which the day occurs:

- “(b) the registered bank chosen by the Commissioner, if **paragraph (a)** does not apply.

“FG 8E Measurement periods and measurement days

- “(1) For the New Zealand banking group and income year of a reporting bank, the **measurement periods** are—
- “(a) the quarters in the income year, if the reporting bank does not make an election under **paragraph (b) or (c)**;
- “(b) each calendar month of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods;
- “(c) each day of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods.
- “(2) For the New Zealand banking group and income year of a reporting bank, the **measurement days** are each last day of each measurement period if the measurement periods are given by **subsection (1)(a) or (b)**.
- “(3) If there is a change in the identity of the reporting bank for a tax year for a New Zealand banking group, the measurement period corresponding to the first measurement day for the new reporting bank begins on the day after the last measurement day for the former reporting bank.

“FG 8F Financial value and regulatory value

- “(1) In **sections FG 8B to FG 8J**, the **financial value** of an item for a New Zealand banking group at a time is the amount that would be recorded for the item in financial statements for the New Zealand banking group that—
- “(a) related to the time; and
- “(b) were prepared for external reporting purposes; and
- “(c) were produced consistently with generally accepted accounting practice at the time by—
- “(i) consolidating the financial statements for the members of the New Zealand banking group that are in the same group of companies; and
- “(ii) if more than 1 consolidation is required under **subparagraph (i)**, combining the consolidated

financial statements so as to eliminate inter-group transactions.

- “(2) In **sections FG 8B to FG 8J**, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item that would be obtained for the New Zealand banking group if the New Zealand banking group were a banking group for the purposes of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand acting in the prudential supervision of registered banks under the Reserve Bank of New Zealand Act 1989.

“**FG 8G New Zealand net equity of New Zealand banking group**

- “(1) The **New Zealand net equity** of the New Zealand banking group of a registered bank for a measurement day is given by the following formula:

$$\text{EQV} - \text{FRS} - \text{EID} - \text{UPB} - \text{INTG} - \text{CGA} - \text{REV} - \text{TXB} \\ - \text{CEFA} - \text{NAFA} - \text{EOI} - \text{NOIA} - \text{AEQ} - \text{AEQI}$$

where—

EQV is the sum of the following amounts for the New Zealand banking group:

- (a) the financial value for the measurement day of—
 - (i) the shareholders’ equity (*relating to members of*) for the New Zealand banking group; and
 - (ii) the branch equity relating to fixed establishments (*that are members*) of the New Zealand banking group;
- (b) the financial value for the measurement day of shares, each of which—
 - (i) is issued by a member of the taxpayer’s New Zealand banking group; and
 - (ii) does not contribute to the amount referred to in **paragraph (a)**;
- (c) the financial value for the measurement day of financial arrangements, each of which is a loan, or the provision of funds by a (*parent*) non-resident to (a permanent) its fixed establishment that—

- (i) is not taken into account in the calculation of the group funding debt of the New Zealand banking group; and
- (ii) is made by a non-resident who is not a member of the New Zealand banking group and is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3); and
- (iii) is made to a member of the New Zealand banking group; and
- (iv) does not contribute to the amount referred to in **paragraph (a)**; and
- (v) does not give rise to interest expenditure other than as a result of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and
- (vi) does not relate to a supply of goods or services

FRS is the financial value for the measurement day of fixed rate shares, each of which is—

- (a) issued by a member of the New Zealand banking group; and
- (b) owned by a person who is resident in New Zealand; and
- (c) included in the value of **item EQV**; and
- (d) issued by the member—
 - (i) on or after 1 January 2005;
 - (ii) before 1 January 2005, if the measurement period begins on or after 1 January 2010

EID is the financial value for the measurement day of financial arrangements, each of which—

- (a) is taken into account under **paragraph (a) or (b)** of the definition of **item EQV** in calculating the value of that item; and
- (b) gives rise to a deduction for the tax year under 1 or more of sections DB 6 to DB 8 for a member of the New Zealand banking group

- UPB is the financial value for the measurement day of unvested policyholder benefit liabilities and policyholder retained profits that contribute to the value of **item EQV**
- INTG is the financial value for the measurement day of intangible assets, other than—
- (a) goodwill relating to a business that is not banking, financing, leasing, or life insurance and that—
 - (i) is acquired from a person who, at the time of acquisition, is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group:
 - (ii) relates to an entity that is acquired from a person who is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group:
 - (b) a film or film right:
 - (c) property that is depreciable property or is expected to become depreciable property
- CGA is the sum for the measurement day of capital gain amounts, each of which arises for the 2004–05 or a later tax year from a transfer of an intangible asset between a member of the New Zealand banking group and a person who—
- (a) is not a member of the New Zealand banking group; and
 - (b) is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3)
- REV is the financial value for the measurement day of revaluation reserves that contribute to the value of **item EQV**
- TXB is the financial value for the measurement day of net future tax benefits that are taken into account in determining the value of **item EQV** and arise from—
- (a) net losses for the tax year:
 - (b) losses carried forward from an earlier tax year:

- (c) timing or temporary differences (*[to the extent that a net loss would have been carried forward to the tax year if there had been a net loss for the tax year]*) relating to the tax year or an earlier tax year

CEFA is the financial value for the measurement day of the credit enhancements provided by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand—

- (a) a credit enhancement that is provided to an associated funds management and securitisation scheme of a non-member;
- (b) a credit enhancement that is provided to an affiliated insurance group that is a non-member and has not been expensed

NAFA is the financial value for the measurement day of advances by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand, an advance of a capital nature to a connected person who is not a member of the New Zealand banking group

EOI is the amount that would, if the New Zealand banking group included all the potential members of the New Zealand banking group and all companies in which a member or potential member of the New Zealand held a direct voting interest of 10% or more and before any set-off allowed under generally accepted accounting practice, be the financial value for the measurement day of shares in non-residents that are neither of the following:

- (a) interests in foreign investment funds for which the FIF income or loss is calculated using the comparative value method or the deemed rate of return method;
- (b) shares in a grey list company that are—
 - (i) listed on the official list of a recognised exchange; and
 - (ii) revenue account property; and

- (iii) would not be a sufficient interest in the offshore company if the class of the shares were the only class of share issued by the offshore company

NOIA is the notional offshore investment amount for the New Zealand banking group for the income year of the reporting bank, as defined in **subsection (4)**

AEQ is the financial value for the measurement day of interests, each of which is taken into account in calculating **item EQV** and is held by a person who—

- (a) is not a member of the New Zealand banking group; and
- (b) *(is associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group)* is not a member of the New Zealand banking group because of an election under **section FG 8C(8)**; and
- (c) is resident in New Zealand or holds the interest through a fixed establishment in New Zealand

AEQI is the financial value for the measurement day of—

- (a) shares in persons who are not members of the New Zealand banking group *(but are associated under section OD 7 or OD 8(3) with members of the New Zealand banking group)* because of an election under **section FG 8C(8)**:
- (b) loans, other than on arm's-length terms, to persons who are not members of the New Zealand banking group *(but are associated under section OD 7 or OD 8(3) with members of the New Zealand banking group)* because of an election under **section FG 8C(8)**.

- “(2) **Subsection (3)** applies if a component of an item, other than the **item NOIA**, that is subtracted from the **item EQV** under **subsection (1)** is a component of 1 or more other such items.
- “(3) The value of the component is included in a single item for which the value of the component is not less than the value of the component for each of the other items.
- “(4) The **notional offshore investment amount** for a New Zealand banking group for an income year of the reporting

bank for the New Zealand banking group is the greater of zero and the amount given by the following formula:

$$\frac{(\text{FTC} - \text{DMT}) \times 12}{\text{CRT} \times \text{IRR} \times \text{NM}}$$

where—

FTC is the total for the tax year of foreign tax credits each of which—

- (a) is claimed as a credit against the income tax liability for the tax year of—
 - (i) a member of the New Zealand banking group;
 - (ii) a person who is excluded from the New Zealand banking group by an election under **section FG 8C(7)**; and
- (b) does not arise from attributed CFC income or from FIF income; and
- (c) does not arise from income derived before 1 July 2005

DMT is the amount—

- (a) set by the Governor-General by Order in Council as the threshold amount for the application of this subsection; or
- (b) equal to \$5,000,000, if no threshold amount is set under **paragraph (a)** and **paragraph (c)** does not apply; or
- (c) equal to \$416,667 multiplied by the number of months beginning on or after 1 July 2005 in the corresponding income year for the reporting bank, if the corresponding income year includes that date and no threshold amount is set under **paragraph (a)**

CRT is the rate of tax for companies referred to in schedule 1, part A, item 5 for the tax year

IRR is the amount—

- (a) set by the Governor-General by Order in Council as the interest rate of return for the purposes of this subsection; or
- (b) of 7% per year, if no interest rate of return is set under **paragraph (a)**

NM is the number of months beginning on or after 1 July 2005 in the income year of the reporting bank for the New Zealand banking group.

New (unanimous)

- “(5) The Governor-General may, from time to time by Order in Council,—
- “(a) specify a type of instrument that is included in **item EQV** for the purposes of **subsection (1)**;
 - “(b) specify a type of instrument that is not included in **item EQV** for the purposes of **subsection (1)**;
 - “(c) set, replace, or repeal a figure for a threshold amount for a value of an instrument, or aggregate value of a type of instrument, held by a person or group of persons for the purposes of a specification under **paragraph (a) or (b)**;
 - “(d) amend or delete a specification under **paragraph (a) to (c)**;
 - “(e) set, replace, or repeal a figure for the threshold amount for the purposes of **paragraph (a)** of the definition of **item DMT** in **subsection (4)**;
 - “(f) set, replace, or repeal a figure for the interest rate of return for the purposes of **paragraph (a)** of the definition of **item IRR** in **subsection (4)**.
- “(6) An Order in Council under **subsection (5)** may—
- “(a) come into effect on or after 1 July 2005;
 - “(b) apply for measurement periods and quarters that commence on or after 1 July 2005.

“FG 8H Net equity threshold

- “(1) The **net equity threshold** for a measurement day for the New Zealand banking group of a registered bank is given by the following formula:

$$0.04 \times (\text{RWE} - \text{DEQ})$$

where—

RWE is the sum of the following values for the measurement day:

- (a) for an asset that is included in a balance sheet, the regulatory value of the asset;
- (b) for an exposure that is not included in a balance sheet, the regulatory value of the exposure;

- (c) for goodwill that is not taken into account in calculating **item INTG** in determining the New Zealand net equity of the New Zealand banking group, the financial value of the goodwill
- DEQ is the total of the regulatory values for the measurement day of items that are—
- (a) excluded from the calculation of **item NOIA**; and
 - (b) deducted from **item EQV** in determining the New Zealand net equity of the New Zealand banking group.
- “(2) For the purposes of **subsection (1)**, the assets of a fixed establishment include the assets that are treated as being the assets of the fixed establishment under generally accepted accounting practice.

“FG 8I **Valuation of debt and risk-weighted exposures**

For the purposes of **sections FG 8B to FG 8H**, the value on a day of a financial arrangement or risk-weighted exposure that is denominated in a foreign currency must be determined—

- “(a) in New Zealand currency; and
- “(b) using the close of trading spot exchange rate for the foreign currency on the day.

“FG 8J **Treatment of temporary change in New Zealand net equity or net equity threshold**

A change in a quantity that, but for this subsection, would produce a temporary change in the New Zealand net equity or net equity threshold of the New Zealand banking group of a registered bank does not affect the value of the New Zealand net equity or net equity threshold if the change is produced by an arrangement that has an effect of defeating the intent and application of **sections FG 8B to FG 8I**.”

74 Circumstances in which group excess interest allocation required

Section FH 1(1) is replaced by the following:

- “(1) Subject to subsection (2), the group excess interest allocation rules in sections FH 5 to FH 8 apply for a tax year to a company that—

- “(a) for the imputation year that corresponds with the tax year—
 - “(i) is a dividend withholding payment account company or a conduit tax relief company; and
 - “(ii) is not a member of a New Zealand banking group for a registered bank; and
- “(b) in the corresponding income year—
 - “(i) derives foreign attributed income:
 - “(ii) is paid a dividend from which the company must deduct an amount of dividend withholding payment or would have to deduct such an amount but for section NH 7.”

75 Imputation—arrangement to obtain tax advantage

In section GC 22(4)(b), “both a tax credit advantage and” is omitted.

New (unanimous)

75B Resident withholding tax deductions to be credited against income tax assessed

- (1) In the heading to section LD 3, “**deductions**” is replaced by “**payments**”.
- (2) In section LD 3(2), in the words before paragraph (a)—
 - (a) “deducted from” is replaced by “paid in relation to”;
 - (b) “deduction” is replaced by “payment”.
- (3) In section LD 3(2), in the words after paragraph (d), “deducted” is replaced by “payments”.

75C Section MB 6 replaced

- (1) Section MB 6 is replaced by the following:

“MB 6 Voluntary payments

A taxpayer may at any time make voluntary payments to the Commissioner as provisional tax of such amounts as the taxpayer thinks fit, being—

- “(a) tax in respect of the taxpayer’s income tax liability for a tax year:
- “(b) tax in excess of the provisional tax payable by the taxpayer for a tax year:

New (unanimous)

“(c) tax in excess of the taxpayer’s income tax liability for a tax year.”

- (2) **Subsection (1)** applies for the 1995–96 and later income years.

76 Credits arising to imputation credit account

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

“(cb) the amount of any credit arising in the imputation credit account as a result of an election under **section ME 9B(2)(a)(ii)**:

“(cc) the amount of any payment of *(further)* additional income tax for which the company is liable under **section ME 9B(2)(b)(5)**:

New (unanimous)

“(cd) the amount of any payment of additional income tax for which the company is liable under **section ME 9C (6)**.”

Struck out (unanimous)

- (2) In section ME 4(1)(k), “closed.” is replaced by “closed:” and the following is added:

“(l) the amount of any credit balance arising in the company’s account with the Commissioner from a payment made by the company to the Commissioner that does not give rise to a credit under any other paragraph.”

- (3) After section ME 4(2)(b), the following is inserted:

“(bb) in the case of a credit referred to in **subsection (1)(cb)**, on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:

“(bc) in the case of a credit referred to in **subsection (1)(cc)**, on the date on which the company makes the payment to the Commissioner:

New (unanimous)

“(bd) in the case of a credit referred to in **subsection (1)(cd)**, on the date on which the company makes the payment to the Commissioner:”.

Struck out (unanimous)

- (4) In section ME 4(2)(i), “section MK 5.” is replaced by “section MK 5:” and the following is added:
- “(j) in the case of a credit referred to in **subsection (1)(l)**, on the date on which the company makes the payment to the Commissioner.”
- (5) **Subsections (2) and (4)** apply for the 1995–96 and later income years.

77 Debits arising to imputation credit account

- (1) After section ME 5(1)(f), the following is inserted:
- “(fb) the amount of any debit arising in the imputation credit account as a result of an election under **section ME 9B(2)(a)(i)**:”.
- (2) In section ME 5(1)(h), “section LD 8(1)(a)” is replaced by “section LD 8(1)(c)”.
- (3) After section ME 5(2)(f), the following is inserted:
- “(fb) in the case of a credit referred to in **subsection (1)(fb)**, on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:”.

78 New sections ME 9B and ME 9C inserted

After section ME 9, the following is inserted:

“ME 9B Imputation credit account company leaving wholly-owned group

- “(1) This section applies to an imputation credit account company (called the **leaving company**) if, at a time in the income year of the leaving company (*that corresponds to a tax year*),—
- “(a) there is a change in the ultimate owners of the leaving company; and

- “(b) as a result of the change, the leaving company ceases to be a member of a wholly-owned group of companies (called the **former group**); and
 - “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.
- “(2) If the leaving company at the time has a debit balance in its imputation credit account, the leaving company—
- “(a) may elect that an amount that is not more than the debit balance be—
 - “(i) a debit in the imputation credit account of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
 - “(ii) a credit in the imputation credit account of the leaving company:
 - “(b) may elect to pay an amount of tax by way of *(further) additional* income tax that is equal to—
 - “(i) the amount of the debit balance, if the leaving company makes no election under **paragraph (a)**:
 - “(ii) the amount by which the debit balance exceeds the amount that is subject to the election under **paragraph (a)**.
- “(3) If the leaving company at the time is entitled to an amount in a pooling account or would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax, **subsection (4)** applies to the following amount (called the **excess entitlement**):
- “(a) zero, if at the time the credit balance in the imputation credit account of the leaving company equals or exceeds the total of the following amounts:
 - “(i) the amount that would be the entitlement under section MD 1:
 - “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the leaving company and would *(produce a credit balance in the account with the Commissioner of the leaving company if transferred to that account)* exceed the liability at the time of the leaving company to pay income tax or provisional tax:

- “(b) the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if at the time there is no credit balance in the imputation credit account of the leaving company:
- “(c) the amount by which the credit balance in the imputation credit account of the leaving company at the time is exceeded by the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if neither of **paragraphs (a) and (b)** applies.
- “(4) If the leaving company at the time has an excess entitlement, the leaving company—
 - “(a) may elect that an amount that is not more than the *(credit balance in the account with the Commissioner of the leaving company)* excess tax payment for the company be—
 - “(i) *(a credit to the account with the Commissioner)* treated as having been paid, as income tax or provisional tax, on behalf of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
 - “(ii) *(a debit to the account with the Commissioner of the leaving company)* not treated as having been paid as income tax or provisional tax by the leaving company:
 - “(b) may elect to pay an amount of tax by way of *(further)* additional income tax equal to—
 - “(i) the amount of the excess entitlement, if the leaving company makes no election under **paragraph (a)**; or
 - “(ii) the amount by which the *(credit balance)* excess tax payment exceeds the amount that is subject to the election under **paragraph (a)**.

New (unanimous)

- “(4B) A leaving company or a former group may satisfy a liability to pay additional income tax under **subsection (2) or (4)** by treating an excess tax payment of the leaving company or the former group as a payment towards the satisfaction of the liability.

- “(5) If the leaving company elects to pay an amount of *(further)* additional income tax under **subsection (2)(b) or (4)(b)**, the *(further)* additional income tax must be paid to the Commissioner by the 20th day of the month following the month in which the leaving company leaves the former group.
- “(6) The former group is jointly liable with the leaving company for *(further)* additional income tax payable under **subsection ((2) or (4))(5)**.

Struck out (unanimous)

- “(7) A leaving company or a former group may satisfy a liability to pay further income tax under **subsection (2) or (4)** by a debit against a credit balance in the account with the Commissioner of the leaving company or the former group.

- “(8) A payment of *(further)*additional income tax under **subsection (2) or (4)** does not satisfy any other liability of the leaving company or the former group.

New (unanimous)

- “(8B) An election under **subsection (2) or (4)** must be—
- “(a) in a form the Commissioner may require; and
 - “(b) made by the leaving company; and
 - “(c) accompanied by notice of agreement from the company who receives the debit under **subsection (2)** or is treated under **subsection (4)** as having the benefit of the excess tax payment; and
 - “(d) be made before the company leaves the group or within a further period that the Commissioner may allow if satisfied that the company had insufficient information to make an appropriate election at the time the company left the group.

- “(9) In this section, *(an ultimate owner of a company means a person)* —

Struck out (unanimous)

- “(a) who has an ownership interest in the company, calculated under section FG 2; and
- “(b) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more.

New (unanimous)

- “(a) an **ultimate owner** of a company means a person—
 - “(i) who has an ownership interest in the company, calculated under section FG 2; and
 - “(ii) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more:
- “(b) **excess tax payment**, for a company at a time, means the amount at the time by which payments made by or on behalf of the company to the Commissioner for income tax or provisional tax exceed the liability at the time of the company to pay income tax and provisional tax.

“ME 9C Imputation credit account company joining wholly-owned group

- “(1) This section applies to an imputation credit account company (called the **joining company**) if, at a time in the income year of the joining company (*that corresponds to a tax year*)—
 - “(a) the joining company becomes a member of a wholly-owned group of companies (called the **new group**); and
 - “(b) the joining company was formerly a member of a wholly-owned group (called the **former group**) having ultimate owners that differed from the ultimate owners of the new group.
- “(2) **Subsection (3)** applies to the joining company if—
 - “(a) the joining company at the time has a debit balance in its imputation credit account; and

- “(b) the debit balance includes debits (called the **former group debits**)—
- “(i) that *(were recorded)* arose in the imputation credit account when the joining company was a member of the former group; and
 - “(ii) upon which *(further)* additional income tax under **section ME 9B(2)** was not paid by the joining company or former group.
- “(3) The joining company must pay an amount of tax by way of *(further)* additional income tax that is equal to the amount of the former group debits.
- “(4) If the joining company at the time is entitled to an amount in a pooling account or would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax relating to a time when the joining company was in the former group, **subsection (5)** applies to the following amount (called the **excess entitlement**):
- “(a) zero, if at the time the credit balance in the imputation credit account of the joining company equals or exceeds the total of the following amounts:
 - “(i) the amount that would be the entitlement under section MD 1:
 - “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the joining company and would *(produce a credit balance in the account with the Commissioner of the joining company if transferred to that account:)* exceed the liability at the time of the joining company:
 - “(b) the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if at the time there is no credit balance in the imputation credit account of the joining company:
 - “(c) the amount by which the credit balance in the imputation credit account of the joining company at the time is exceeded by the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if neither of **paragraphs (a) and (b)** applies.
- “(5) If the joining company at the time has an excess entitlement, the joining company must pay an amount of tax by way of *(further)* additional income tax equal to the amount of the excess entitlement.

- “(6) If the joining company must pay an amount of *(further) additional* income tax under **subsection (3) or (5)**, the *(further) additional* income tax must be paid to the Commissioner by the 20th day of the month following the month in which the joining company joins the new group.
- “(7) The new group is jointly liable with the joining company for *(further) additional* income tax payable under **subsection (3) or (5)**.
- “(8) A joining company or a new group may satisfy a liability to pay *(further) additional* income tax under **subsection (3) or (5)** by a debit against a credit balance in the account with the Commissioner of the joining company or the new group.
- “(9) A payment of *(further) additional* income tax under **subsection (3) or (5)** does not satisfy any other liability of the joining company or the new group.
- “(10) In this section, *(an ultimate owner of a company means a person)* —

Struck out (unanimous)

- “(a) who has an ownership interest in the company, calculated under section FG 2; and
- “(b) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more.

New (unanimous)

- “(a) an **ultimate owner** of a company means a person—
 - “(i) who has an ownership interest in the company, calculated under section FG 2; and
 - “(ii) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more:
- “(b) **excess tax payment**, for a company at a time, means the amount at the time by which payments made by or on behalf of the company to the Commissioner for

New (unanimous)

income tax or provisional tax exceed the liability at the time of the company to pay income tax and provisional tax.”

78B Application of specific imputation provisions to consolidated imputation groups

After section ME 14(3), the following is inserted:

- “(3B) Sections ME 9B and ME 9C and sections 97, 101, 139B, 140B, 140D, and 180 of the Tax Administration Act 1994 apply, with any necessary modifications, to a consolidated imputation group and its imputation credit account as if—
- “(a) it were a single company; and
 - “(b) each reference to a provision of this Act were a reference to the equivalent provision applicable to consolidated imputation groups; and
 - “(c) each reference to liability of a company for additional income tax, late payment penalty, or imputation penalty tax were (subject to the application of section HB 1(2) to (5)) a reference to joint and several liability for that tax of each company which is a member of the group at the time the additional income tax, late payment penalty, or imputation penalty tax becomes payable.”

78BB Application of RWT rules

In section NF 1(2)(a), the following is inserted after subparagraph (iv):

- “(ivb) interest derived from New Zealand by the Cook Islands National Superannuation Fund, as established by the National Superannuation Board under section 11(1)(a) of the Cook Islands National Superannuation Act 2000; or”.

78C Deduction of resident withholding tax

- (1) The heading before section NF 2 is replaced by “***Liability to pay resident withholding tax***”.
- (2) The heading to section NF 2 is replaced by “***Liability to pay resident withholding tax***”.

New (unanimous)

- (3) Before section NF 2(1), the following is inserted:
- “(1A) A person is liable to pay to the Commissioner, in relation to a payment that is or includes resident withholding income, a tax (called **resident withholding tax**) of an amount given by **subsection (1) or (1B)** if—
- “(a) the person makes the payment and is required to make a deduction of resident withholding tax from the payment:
- “(b) the person is an RWT proxy for the payer of the resident withholding income, the recipient of the resident withholding income, and the resident withholding income.
- “(1AB) A person who makes a payment that is or includes resident withholding income must deduct resident withholding tax from the payment if the person is not excluded by the rest of this section from liability to make the deduction.”
- (4) In section NF 2(1), the words before paragraph (a) are replaced by “If a person makes a payment that is or includes resident withholding income and is required to deduct resident withholding tax from the payment, the person must make a deduction—”.
- (5) After section NF 2(1), the following is inserted:
- “(1B) A person who is an RWT proxy for a payer of resident withholding income and a payment of resident withholding income in the form of a dividend must pay to the Commissioner the amount of resident withholding tax given by the following formula:

$$\frac{a \times b}{1 - a}$$

where—

- a is the appropriate rate of resident withholding tax, expressed as a percentage, specified in schedule 14, clause 1:
- b is the amount paid to the recipient of the dividend.”

New (unanimous)

78D New section NF 2AA inserted

After section NF 2, the following is inserted:

“NF 2AA Election to be RWT proxy

“(1) A person is an **RWT proxy** for a payer of resident withholding income and a payment that is or includes the resident withholding income if—

- “(a) the person gives to the Commissioner a notice of election under **subsection (2)**; and
- “(b) the payer is a unit trust who is a non-resident; and
- “(c) the recipient is a natural person or a trustee of a qualifying trust; and
- “(d) the recipient has requested the person to act as an RWT proxy in relation to the payer and the resident withholding income; and
- “(e) the person has agreed to act as an RWT proxy in relation to the recipient; and
- “(f) the resident withholding income is a dividend; and
- “(g) the payment is made while the election in the notice is effective.

“(2) A notice of election must be in writing and contain—

- “(a) an election by the person to be an RWT proxy for dividends distributed by the payer; and
- “(b) the name and postal address of the payer; and
- “(c) the date from which the election is effective.

“(3) An election by a person to be an RWT proxy is effective from the date nominated in the notice of election until the later of the following:

- “(a) the date nominated in a written notice of cancellation of the election that the Commissioner receives from the person:
- “(b) the date on which the Commissioner receives from the person a written notice of cancellation of the election.”

78E Election to apply higher rate of deduction

(1) Section NF 2A(1) is replaced by the following:

“(1) A person entitled to receive a payment to which section NF 2(1) or (1B) relates may elect, in the manner required by the

New (unanimous)

payer or RWT proxy, that the payment be subject to resident withholding tax at a rate specified in schedule 14, clause 1(a), (b), or (c).”

- (2) In section NF 2A(3),—
- (a) “each deduction” is replaced by “each deduction or payment under section NF 2(1B)”;
 - (b) “the deduction” is replaced by “the deduction or payment”.

78F Payment of deductions of resident withholding tax to Commissioner

After section NF 4(8), the following is added:

- “(9) For the purposes of this section, an RWT proxy who is required to pay resident withholding tax in relation to a payment of resident withholding income is treated as having deducted the resident withholding tax from the payment at the time of the payment.”

79 Certificates of exemption

- (1) In section NF 9(1)(i), “and paragraph (l)” is replaced by “, (l), and (m)”.
- (2) **Subsection (1)** applies for the 2004–05 tax year.

New (unanimous)

79B Application of NRWT rules

In section NG 1(2)(b), “New Zealand,—” is replaced by “New Zealand; or” and the following is inserted:

- “(c) interest derived from New Zealand by the Cook Islands National Superannuation Fund, as established by the National Superannuation Board under section 11(1)(a) of the Cook Islands National Superannuation Act 2000,—”.

80 Definitions

- (1) This section amends section OB 1.

New (unanimous)

- (1B) After the definition of **additional capital**, the following is inserted:

“**additional income tax** means tax arising under **section ME 9B or ME 9C**”.

- (2) After the definition of **expenditure portion**, the following is inserted:

“**exploration and development activities** is defined in **section CB 16(2)** for the purposes of that section”.

New (unanimous)

- (2B) The definition of **finance lease** is replaced by the following:

“**finance lease** means a lease of a lease asset entered by a taxpayer on or after 20 May 1999 that,—

“(a) when the taxpayer enters the lease, involves or is part of an arrangement that involves—

“(i) the transfer of the ownership of the lease asset to the lessee or an associate of the lessee during or at the end of the lease term:

“(ii) the lessee or an associate of the lessee having the option of acquiring the lease asset for an amount that is likely to be substantially lower than the lease asset’s market value on the date of acquisition:

“(iii) a right of an associate of the lessee to acquire the lease asset, or a right of the lessor to require an associate of the lessee to acquire the lease asset, during the lease term under an arrangement that does not entitle the associate to receive all of the lease payments that may fall due after the acquisition:

“(b) when the taxpayer enters the lease or from a later time, involves a lease term that is more than 75% of the lease asset’s estimated useful life”.

- (3) After the definition of **financial statements**, the following is inserted:

“**financial value** for the New Zealand banking group of a registered bank is defined in **section FG 8F** for the purposes of Part FG”.

New (unanimous)

- (3B) Paragraph (b) of the definition of **fixed rate share** is replaced by the following:
- “(b) is defined in section LF 2(3) for the purposes of that section and **section FG 8G**”.

Struck out (unanimous)

- (4) In the definition of **further income tax**, “, **ME 9B**, or **ME 9C**” is added after “ME 9”
- (5) After the definition of **gross tax deductions**, the following is inserted:
- “**group funding debt** is defined in **section FG 8B** for the purposes of Part FG”.
- (6) After the definition of **group of persons**, the following is inserted:
- “**group quarter day** is defined in **section FG 8B(6)** for the purposes of that section”.
- (7) The definition of **measurement day** is replaced by the following:
- “**measurement day**,—
- “(a) in relation to a calendar year, means each of 31 March, 30 June, 30 September, and 31 December, except for the purposes of Part FG:
- “(b) for an income year of a reporting bank, means 1 of the measurement days for the income year defined in **section FG 8E** for the purposes of Part FG
- “**measurement period**, for an income year of a reporting bank, means 1 of the measurement periods for the income year defined in **section FG 8E** for the purposes of Part FG”.
- (8) Before the definition of **net gain**, the following is inserted:

- “**net equity threshold** for the New Zealand banking group of a registered bank is defined in **section FG 8H** for the purposes of Part FG”.
- (9) In the definition of **net loss**, “written off by the Commissioner under section 177C(4)” is replaced by “extinguished by the Commissioner under section 177C(5)”.
- (10) After the definition of **New Zealand**, the following is inserted:
- “**New Zealand banking group**, for a registered bank, is defined in **section FG 8C** for the purposes of Part FG”.
- (11) After the definition of **New Zealand group debt percentage**, the following is inserted:
- “**New Zealand net equity**, for a New Zealand banking group, is defined in **section FG 8G(1)** for the purposes of Part FG”.
- (12) After the definition of **notional income tax liability**, the following is inserted:
- “**notional offshore investment amount**, for a reporting bank, is defined in **section FG 8G(4)** for the purposes of Part FG”.
- (13) After the definition of **offshore development**, the following is inserted:
- “**offshore permit area** is defined in **section CB 16(2)** for the purposes of that section”.

New (unanimous)

- (13B) After the definition of **partnership net income**, the following is inserted:
- “**patent application date**, for an application for a patent, means the date on which the application with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in a country or territory other than New Zealand”.
- (14) After the definition of **registered**, the following is inserted:
- “**registered bank** means a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989”.
- (15) After the definition of **registered security**, the following is inserted:

“**regulatory value** for the New Zealand banking group of a registered bank is defined in **section FG 8F** for the purposes of Part FG”.

- (16) After the definition of **replacement price option**, the following is inserted:

“**reporting bank**, for a New Zealand banking group, means the reporting bank that is given for the New Zealand banking group by **section FG 8D**”.

New (unanimous)

- (16B) After the definition of **royalty**, the following is inserted:

“**RWT proxy** is defined in **section NF 2AA** (Election to be RWT proxy)”.

- (16C) In the definition of **sufficient interest**, “in Part LF” is replaced by “in Part FG, Part LF,”.

- (17) In the definition of **taxable bonus issue**, paragraph (b) is replaced by the following:

“(b) any bonus issue that—

Struck out (unanimous)

“(i) is not a share split under section 48(b) or (c) of the Companies Act 1993 or a similar division of a share in a company that is not registered under the Companies Act 1993; and

New (unanimous)

“(i) is issued fully paid from reserves of the company and, if a dividend, would not be exempt income under section CB 10(2) to (5); and

“(ii) the company elects in accordance with section CF 8(a) (or with section 3(3)(a)(i) of the Income Tax Act 1976) to be a bonus issue that will be treated as a dividend for the purposes of this Act”.

- (18) After the definition of **type**, the following is inserted:

“**ultimate owner** is defined in—

“(a) **section ME 9B** for the purposes of that section:

“(b) **section ME 9C** for the purposes of that section”.

- (19) Before the definition of **unadjusted income tax liability**, the following is inserted:

“**ultimate parent** is defined in **section FG 8C** for the purposes of that section”.

New (unanimous)

- (20) **Subsection (2B)** applies for arrangements entered on or after 29 March 2004.
- (21) **Subsection (17)** applies for an issue of shares made on or after 16 November 2004.

Part 3

Amendments to Tax Administration Act 1994

81 Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

82 Interpretation

- (1) This section amends section 3(1) of the Tax Administration Act (2004) 1994.
- (2) After the definition of **amount payable**, the following is inserted:
- “**approved advisor group** is defined in **section 20B(5)**”.
- (3) After the definition of **incremental late payment penalty**, the following is inserted:
- “**information holder** is defined in **section 20B(1)** for the purposes of **sections 20B to 20F**”.

New (unanimous)

- (3B) In the definition of **shortfall penalty**, “141A” is replaced by “141AA”.

- (4) After the definition of **tax**, the following is inserted:
- “**tax advice document** is defined in **section 20B(3)**”

“**tax advisor** is defined in **section 20B(4)**”.

- (5) After the definition of **tax agent**, the following is inserted:
“**tax contextual information** is defined in **section 20F(3)**”.

83 Court orders for production of information or return

In section 17A(7)(b)(ii), “law).” is replaced by “law); and”
and the following is added:

“(iii) whether or not the information is contained in a
tax advice document; and

“(iv) if the information is contained in a tax advice
document, whether or not the information is
required to be disclosed under **section 20E or 20F.**”

84 New sections 20B to (20F) 20G inserted

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

“**20B No requirement to disclose tax advice document**

“(1) A person (called in this section and **sections 20C to (20F)20G** an
information holder) who is required under 1 or more of
sections 16 to 19 to disclose information in relation to **(a) the**
information holder or another person is not required to dis-
close a book or document that is a tax advice document for
(that person) the person to whom the information relates.

“(2) A book or document is eligible to be a tax advice document
for a person if the book or document—

New (unanimous)

“(aa) is confidential; and

“(a) is created by—

“(i) the person for the main purpose of instructing a
tax advisor to act for the person by giving advice
to the person, if the advice is to be about the
operation and effect of tax laws:

New (unanimous)

“(ib) a tax advisor or, where the tax advisor is in public
practice, an employee of the tax advisor’s firm,

New (unanimous)

for the main purpose of recording research and analysis, if the research and analysis is performed for the main purpose of enabling the tax advisor to give advice to the person about the operation and effect of tax laws:

- “(ii) (by)a tax advisor or, where the tax advisor is in public practice, an employee of the tax advisor’s firm, for the main purpose of the giving of advice by the tax advisor to the person (advice), or the recording of advice given by the tax advisor to the person, if the advice is about the operation and effect of tax laws; and
- “(b) for purposes that do not include a purpose of committing, or promoting or assisting the committing of, an illegal or wrongful act.
- “(3) A book or document is a **tax advice document** for a person if—
 - “(a) the book or document is eligible under **subsection (2)** to be a tax advice document for the person; and
 - “(b) the person makes a claim, under **section 20D**, that the book or document is a tax advice document; and
 - “(c) the person satisfies the requirements of **sections 20E and 20F** for the book or document.
- “(4) A **tax advisor** is a natural person who is subject to the code of conduct and disciplinary process, referred to in **subsection (5)(a)(ii) and (iii)**, of an approved advisor group.

Struck out (unanimous)

- “(a) is part of an approved advisor group; and
 - “(b) has a significant function of giving advice on the operation and effect of tax laws; and
 - “(c) is subject to the code of conduct and disciplinary process referred to in **subsection (6)(a)(ii) and (iii)**.
- “(5) An **approved advisor group** is a group that—
 - “(a) includes natural persons who—

- “(i) (*who*) have a significant function of giving advice on the operation and effect of tax laws; and
- “(ii) are subject to a professional code of conduct in giving the advice; and
- “(iii) are subject to a disciplinary process that enforces compliance with the code of conduct; and
- “(b) is approved by the Commissioner for the purposes of this definition.

“20C **Treatment of book or document**

- “(1) This section applies to a book or document that is—
 - “(a) included in a request for information in relation to a person; and
 - “(b) possibly eligible to be a tax advice document for the person.
- “(2) The book or document must be treated as being a tax advice document for the person—
 - “(a) from the time of the request for information:
 - “(b) until the earlier of—
 - “(i) the time by which the person is required by **section 20D** to claim that the book or document is a tax advice document for the person:
 - “(ii) the time at which the person informs the Commissioner that the person does not claim that the book or document is a tax advice document for the person.
- “(3) If the person makes a claim under **section 20D** that the book or document is a tax advice document for the person, the book or document must be treated as being a tax advice document for the person from the time of the claim until—
 - “(a) the (*a court or the Taxation Review Authority*) District Court rules that the book or document is not a tax advice document for the person:
 - “(b) the person agrees in writing that the book or document is not (*a*) eligible to be a tax advice document for the person:
 - “(c) the person withdraws in writing the claim that the book or document is a tax advice document for the person:
 - “(d) an approved advisor group informs the Commissioner that a tax advisor is not or was not a member of the approved advisor group at a time—

- “(i) at which the tax advisor is claimed by the person or the tax advisor to be a member of the approved advisor group; and
 - “(ii) at which the tax advisor would be required to be a member of an approved advisor group for the document to be a tax advice document.
- “(4) If a book or document must be treated under this section as being a tax advice document for a person, a copy of the book or document must be held in a secure place for the periods referred to in **subsections (2) and (3)** by a tax advisor (*who is accepted by the Commissioner as being a member of an approved advisor group*).

“20D Claim that book or document is tax advice document

- “(1) A claim by a person that a book or document is a tax advice document for the person must be made by the person or by a tax advisor who is authorised to act on behalf of the person for the purposes of **sections 20C to 20F**.
- “(2) A claim that a book or document created by a person is a tax advice document for the person must contain the following information:
- “(a) a brief description of the form and contents of the book or document; and
 - “(b) the name of the tax advisor for whom the book or document was intended; and
 - “(c) the date on which the book or document was created.
- “(3) A claim that a book or document created by a tax advisor, or by an employee of a tax advisor’s firm, is a tax advice document for a person must contain the following information:
- “(a) a brief description of the form and contents of the book or document; and
 - “(b) the name of the tax advisor (*who created the document*) giving the tax advice in relation to which the book or document was created; and
 - “(c) the approved advisor group to which the tax advisor belonged when (*creating*) the book or document was created; and

Struck out (unanimous)

- “(d) the areas of law about which the tax advisor was intending to give advice when creating the document; and

New (unanimous)

- “(d) the statute or other enactment and the type of revenue that was the subject of the tax advisor’s advice in relation to which the book or document was created; and
- “(e) the date on which the book or document was created.
- “(4) A claim that a book or document is a tax advice document for a person must be made—
- “(a) if the requirement to disclose information is under 1 or both of sections 16 and 16B—
- “(i) on the day on which the Commissioner or an officer of the Department exercises the right of inspection or removal that leads to the claim:
- “(ii) by a later date to which the Commissioner agrees:
- “(b) if the requirement to disclose information is under section 17, by the date that is the later of the following:
- “(i) the date that is given by the Commissioner in the request for disclosure of the information:
- “(ii) the date that is 28 days after the date of the request by the Commissioner for disclosure of the information:
- “(c) if the requirement to disclose information is under section 17A or section 18, by the date on which the Court requires the production of information:
- “(d) if the requirement to disclose information is under section 19, by the date on which the Commissioner requires the production of information.
- “(5) If a tax advisor acting on behalf of a person claims that a book or document is a tax advice document for the person, the claim must be (accompanied by) include written confirmation from the tax advisor that the tax advisor is authorised to act on behalf of the person for the purposes of **sections 20C to 20G.**

Struck out (unanimous)

- “(a) written confirmation from the person that the tax advisor is authorised to act on behalf of the person for the purposes of **sections 20C to 20F**;
- “(b) a statutory declaration, which may be a statutory declaration required by **section 20F(4)**, by the tax advisor stating that the tax advisor is authorised to act on behalf of the person for the purposes of **sections 20C to 20F**.

“20E **(Document)Book or document or part of book or document included in tax advice document**

An information holder who is required to disclose information in relation to a person is required to provide a copy of a book or document or part of a book or document that—

- “(a) is attached to a book or document that is eligible under **section 20B(2)** to be a tax advice document for the person; and
- “(b) is not eligible under **section 20B(2)** to be a tax advice document for the person.

“20F **Person must disclose tax contextual information from tax advice document**

- “(1) An information holder who is required to disclose information relating to a person must disclose under **subsection (2)** a description of tax contextual information from a book or document that the person claims, under **section 20D**, to be a tax advice document for the person.
- “(2) A disclosure under **subsection (1)** of a description of tax contextual information from a book or document must be made—
 - “(a) if the requirement to disclose information is under 1 or both of sections 16 and 16B, by the date that is determined by the Commissioner;
 - “(b) if the requirement to disclose information is under section 17 and the requirement is accompanied or followed by a requirement for disclosure of a description of tax contextual information, by the date that is the later of—

- “(i) the date that is given by the Commissioner in the (request) requirement for disclosure of the (information) description:
 - “(ii) the date that is 28 days after the date of the (request) requirement by the Commissioner for disclosure of the (information) description:
 - “(c) if the requirement to disclose information is under section 17A or section 18, by the date on which the Court requires the production of information:
 - “(d) if the requirement to disclose information is under section 19, by the date on which the Commissioner requires the production of information.
- “(3) **Tax contextual information** for a tax advice document for a person is—
- “(a) a fact or assumption relating to a transaction that has occurred or is postulated by the person creating the tax advice document:
 - “(b) a description of a step involved in the performance of a transaction that has occurred or is postulated by the person creating the tax advice document:
 - “(c) advice that does not concern the operation and effect on the person of tax laws:
 - “(d) advice that concerns the operation and effect on the person of tax laws relating to the collection by the Commissioner of debts payable to the Commissioner:
 - “(e) a fact or assumption relating to advice that is referred to in **paragraph (c) or (d)**:
 - “(f) a fact or assumption from, or relating to the preparation of,—
 - “(i) financial statements of the person:
 - “(ii) a document containing information that the person is required to provide to the Commissioner under an Inland Revenue Act.
- “(4) A disclosure by a person or tax advisor of tax contextual information from a tax advice document for the person must *(be in a statutory declaration that)*—
- “(a) *(is) be* made by a tax advisor who has not been barred under **subsection (5)** from making statutory declarations under this subsection; and

- “(b) ~~(states)~~ state that the tax advisor is authorised to act on behalf of the person for the purposes of **sections 20C to 20F** ~~20G~~; and
- “(c) ~~(is)~~ be in the prescribed form.

New (unanimous)

“(4B) The Commissioner may require that the disclosure referred to in **subsection (4)** be in a statutory declaration.

- “(5) (A court may) The Commissioner may apply to a District Court Judge for an order that a tax advisor be barred from making statutory declarations under this section, if the tax advisor is convicted of an offence under—
- “(a) section 111 of the Crimes Act 1961:
- “(b) section 143(1)(b):
- “(c) section 143A(1)(b) or (c):
- “(d) section 143B(1)(b) or (c):
- “(e) section 143H.

New (unanimous)

“20G **Challenge to claim that book or document is tax advice document**

- “(1) If a person claims that a book or document is a tax advice document for the person, the Commissioner or the person may apply to a District Court Judge for an order determining whether—
- “(a) the book or document is a tax advice document for the person:
- “(b) information provided by the person is tax contextual information in relation to the book or document:
- “(c) the person should provide a more detailed or better description of tax contextual information in relation to the book or document.
- “(2) For the purposes of determining an application under this section, the District Court Judge may require the book or document to be produced to the District Court Judge.

New (unanimous)

“(3) An application under this section may be made in the course of an inquiry under section 18 to the District Court Judge who is holding the inquiry.”

- (2) **Subsection (1)** applies to a requirement to disclose information for which notice of the requirement is given after the date on which this Act receives the Royal assent.

New (unanimous)

84B Resident withholding tax deduction tax certificates

After section 25(10), the following is inserted:

“(11) In this section, a dividend that is resident withholding income under **section NF 2(1A)(b)** of the Income Tax Act 2004 is treated as being interest.”

84C Records to be kept for purposes of resident withholding tax

- (1) In section 26(1),—
- (a) in the words preceding paragraph (a), “deductions of resident withholding tax from” is replaced by “payments of resident withholding tax in relation to”;
 - (b) in paragraph (a), “deduction” is replaced by “payment”;
 - (c) in paragraph (b), “deduction” is replaced by “payment”.
- (2) In section 26(2),—
- (a) in the words preceding paragraph (a), “deduct resident withholding tax from” is replaced by “pay resident withholding tax in relation to”;
 - (b) in paragraph (a), “deduction” is replaced by “payment”.

84D Provision of tax file numbers

In section 27(1),—

- (a) “resident withholding tax deduction” is replaced by “resident withholding tax payment”;
- (b) “by a payer” is omitted.

85 Annual returns of income not required**New (unanimous)**

(1A) In section 33A(1)(b)(iv), “Interest” is replaced by “Interest or a dividend that is resident withholding income under **section NF 2(1A)(b)** of the Income Tax Act 2004”.

(1AA) In section 33A(1)(b)(x), subsubparagraph (B) is replaced by the following:

“(B) was not resident withholding income under **section NF 2(1A)(b)**; and”.

(1AAB) In section 33A(2), paragraphs (cb)(ii) and (f) are repealed.

(1) In section 33A(2), the following is inserted after paragraph (k):

“(kb) has carried forward to the income year a credit of tax under **section LB 2(3C)** of the Income Tax Act 2004:”.

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

86 New section 36BC inserted

After section 36BB, the following is inserted:

“36BC Electronic format for details required under subpart EK of Income Tax Act 2004

The Commissioner may prescribe 1 or more electronic formats in which details that must be provided under **subpart EK** of the Income Tax Act 2004 may be provided by electronic means.”

87 Particulars furnished in electronic format

In section 36C(1), “or 36BB” is replaced by “, 36BB, or **36BC**”.

New (unanimous)**87B Statement of payment of deductions of withholding tax**

In section 50,—

(a) the section heading is replaced by “**Statement of payment of resident withholding tax**”:

New (unanimous)

- (b) “deduction” is replaced by “payment” wherever it appears.

87C Resident withholding tax deduction reconciliation statements

After section 51(6), the following is added:

- “(7) In this section, a dividend referred to in **section NF 2(1B)** of the Income Tax Act 2004 is treated as being interest.”

87D Disclosure of interest in foreign company or foreign investment fund

In section 61(1), in the words before paragraph (a) “interest in a foreign investment fund” is replaced by “attributing interest in a foreign investment fund”.

87E Annual imputation return

In section 69(1)(ea)(ii), “Part MI” is replaced by “subpart MI”.

88 Officers to maintain secrecy

In section 81(4)(p), “Commission.” is replaced by “Commission:”, and the following is added:

- “(q) communicating, for the purpose of **section 85H**, information to a person who is an officer, employee, or agent of the department for the time being responsible for the administration of the Parental Leave and Employment Protection Act 1987 and who is authorised to receive the information by the chief executive of that department.”

89 New section 81B inserted

After section 81, the following is inserted:

“81B Disclosure of information concerning actions of tax advisor

Despite section 81, the Commissioner may supply information to an approved advisor group about an action or omission—

- “(a) by a person who is, or purports to be, a member of the approved advisor group; and
- “(b) that the Commissioner considers to be a breach of a member’s responsibilities under **sections 20B to (20F) 20G.**”

90 New sections 85H and 85I inserted

After section 85G, the following are inserted:

“85H Disclosure of information for purposes of Parental Leave and Employment Protection Act 1987

- “(1) The purpose of this section is to facilitate the exchange of information between the Commissioner and the responsible department for the purposes of providing to the responsible department, applicant information that the Commissioner considers necessary to enable the responsible department to—
 - “(a) verify an entitlement to parental leave payments:
 - “(b) investigate possible overpayment of parental leave payments.
- “(2) For the purpose of **subsection (1)**, an employee or agent of the responsible department who is authorised to do so by the chief executive of the responsible department may from time to time supply to the Commissioner information that is held by the responsible department in relation to an applicant, or the spouse of an applicant, for a parental leave payment.
- “(3) For the purpose of **subsection (1)**, the Commissioner may compare applicant information contained in an application for payment of paid parental leave made under section 71I of the Parental Leave and Employment Protection Act 1987, or compare applicant information supplied under **subsection (2)**, and information held by the Commissioner that relates to the applicant.
- “(4) Where the Commissioner has made a comparison under **subsection (3)**, the Commissioner may communicate applicant information to the chief executive of the responsible department if the Commissioner considers the communication to be necessary for the purposes set out in **subsection (1)**.
- “(5) In this section and in **section 85I**—
 - “**applicant** means a person who has made an application for a parental leave payment under section 71I of the Parental Leave and Employment Protection Act 1987

“**applicant information**, for an applicant, means—

- “(a) information that relates to the circumstances of the applicant that are relevant to the eligibility of the applicant for parental leave payments under Part 7A of the Parental Leave and Employment Protection Act 1987:
- “(b) the applicant’s name and tax file number:
- “(c) the name and tax file number of the applicant’s employer

“**parental leave** has the meaning in section 2 of the Parental Leave and Employment Protection Act 1987

“**responsible department** means the department for the time being responsible for the administration of the Parental Leave and Employment Protection Act 1987.

“85I **Use of Parental Leave and Employment Protection Act 1987 and parental tax credit information to determine entitlement**

- “(1) For the purpose of section 71G(1) of the Parental Leave and Employment Protection Act 1987, if the Commissioner as a delegate under section 71ZA of that Act receives an application for parental leave payments in relation to a child, the Commissioner may—
 - “(a) compare applicant information and information held by the Commissioner:
 - “(b) refuse the application for payment of parental leave if a comparison under **paragraph (a)** indicates that the employee or his or her spouse has received a payment of parental tax credit in respect of the child.
- “(2) The Commissioner may treat information obtained while acting as a delegate of the responsible department under section 71ZA of the Parental Leave and Employment Protection Act 1987 as information obtained for the purposes of administering the Inland Revenue Acts.
- “(3) The Commissioner may refuse or recover a parental tax credit under section KD 2AB(1) of the Income Tax Act 2004 in respect of a child if a parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 is to be paid or has been paid to the applicant in respect of the child.”

91 Further secrecy requirements

In section 87(5)(a)(i), “and (i)” is replaced by “, (i) and (q)”.

92 Election of small claims jurisdiction of Taxation Review Authority

- (1) In section 89E(1)(a), “89D” is replaced by “89D or 89DA”.
- (2) **Subsection (1)** applies for disputes that begin under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

93 Determination on special rates and provisional rates

- (1) In section (91AE) 91AAG(2), “must have regard to—” and paragraphs (a) and (b) are replaced by “may have regard to any factors that are relevant in determining the item’s estimated useful life, including an estimate based on a depreciation method or on a valuer’s report, or a rate of depreciation that the person uses for the item for financial reporting purposes”.
- (2) In section (91AE) 91AAG(3), “after having regard to the factors in subsection (2)” is replaced by “using either the formula in section EE 25(4) of the Income Tax Act 2004 or the straight-line method for an item of property”.

New (unanimous)

(2A) After section 91AAG(5), the following is inserted:

“(5B) A determination setting a special rate for an item and a person may also be expressed to apply to items, of the same kind as the item, for which the Commissioner considers the special rate is appropriate.”

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

94 Applications for determinations

- (1) In section (91AK) 91AAM(2), “Within” is replaced by “Unless **subsection (2B)** applies, within”.
- (2) After section (91AK) 91AAM(2), the following is inserted:

“(2B) Despite subsection (2), a person making an application may agree to an extension of the 6-month time limit within which the Commissioner must respond.”

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

95 New section (91AL) 91AAN and heading inserted

After section (91AK) 91AAM, the following is inserted:

“Determinations relating to environmental restoration expenditure

“(91AL) 91AAN Determinations on rates for diminishing value of environmental expenditure

- “(1) (If requested in writing by a)A person or a group of persons may request the Commissioner in writing to set a rate or an (expected) assumed life for the purpose of **section DB 37** of the Income Tax Act 2004.(, the Commissioner may determine that the person, group, or a class of persons is to calculate the diminishing value for a type of expenditure listed in)(schedule **6B, part A**) (of that Act, or for expenditure that is part of such a type of expenditure, using a banded rate set out in column 1 of schedule 11 of that Act for the purposes of)(section **DB 37(3)(c)**) (of that Act.)*

New (unanimous)

*“(2B) The Commissioner may determine that the person, group, or a class of persons is to use for a type of expenditure listed in **schedule 6B, part A** of the Income Tax Act 2004 or, for expenditure that is part of such a type of expenditure, for the purposes of **section DB 37(4)(c)** of that Act,—*

- “(a) a diminishing value rate that is a banded rate set out in column 1 of schedule 11 of the Income Tax Act 2004;*
“(b) a straight-line rate that is a banded rate set out in column 2 of schedule 11 of the Income Tax Act 2004.

*“(2) The Commissioner may decline to issue a determination under **subsection (1)** if—*

- “(a) the information that is supplied to the Commissioner by the person or group is insufficient for the calculation of an appropriate rate;*
*“(b) the Commissioner considers that the alternative rate for the expenditure differs from the banded rate set out for the expenditure in **schedule 6B** of the Income Tax Act 2004, or in an existing applicable determination, by less*

than half the difference between that banded rate and the banded rate that is next closest to the alternative rate.

- “(3) In making a determination, the Commissioner may take into account—
- “(a) the length of time for which the expenditure may reasonably be expected to be effective for the purpose for which it was incurred:
 - “(b) the length of time for which the expenditure may reasonably be expected to be effective for the purpose of earning income:
 - “(c) the treatment of the expenditure in the person’s financial reports:
 - “(d) the life of any resource consent that is associated with the expenditure:
 - “(e) an estimate based on a depreciation method or on a valuer’s report.
- “(4) The determination may set out the income year or income years for which it is to apply, but may not apply for income years before the 2005–06 income year.
- “(5) The determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.
- “(6) A person affected by a determination made under this section may dispute or challenge the determination under Parts 4A and 8A.
- “(7) Within 30 days of issuing a determination under **subsection (1)**, the Commissioner must give notice of the determination to the person or group who requested the determination.
- “(8) Within 30 days of issuing a determination under **subsection (1)** that is expressed to apply to a class of persons, the Commissioner must (*give*) publish a notice in the *Gazette* that—
- “(a) gives notice that the determination has been issued; and
 - “(b) states where copies of the determination can be obtained.”

96 Commissioner to make private rulings on request
Section 91E(6) is repealed.

97 Taxpayer assessment

- (1) Section 92(4) is repealed.
- (2) **Subsection (1)** applies for the 2005–06 and later tax years.

Struck out (unanimous)

98 Assessment of further income tax

In section 101(1), “**or ME 9C**” is inserted after “ME 9”.

New (unanimous)

98B New section 101B inserted

After section 101, the following is inserted:

“101B Assessment of additional income tax

- “(1) The Commissioner may, in respect of any company liable to pay additional income tax under **section ME 9C** of the Income Tax Act 2004, make an assessment of the amount of the additional income tax that in the Commissioner’s judgment ought to be imposed, and the company shall be liable to pay the additional income tax so assessed except so far as the company establishes in proceedings challenging the assessment that the assessment is excessive or that the company is not chargeable with the additional income tax.
- “(2) Sections 109, 111, and 113 apply, so far as may be, with respect to every assessment made under this section as if—
 - “(a) in those sections, the term “taxpayer” included a company which is chargeable with additional income tax; and
 - “(b) in section 113, the term “tax already assessed” included the additional income tax already assessed under this section.
- “(3) An assessment made under this section is subject to challenge in the same manner as an assessment of income tax and Part VIIIA of this Act shall apply, so far as may be, to a challenge to an assessment made under this section as if the terms “income tax” and “tax” in that Part included the additional income tax for which a company may be chargeable under **section ME 9C** of the Income Tax Act 2004.”

99 Time bar for amendment of income tax assessment

- (1) Section 108(1B) is repealed.

New (unanimous)

- (1B) Section 108(3B) is repealed.

- (2) **Subsections (1) and (1B)** (*applies*) apply for the 2005–06 and later tax years.

100 Definitions

- (1) In section 120C(1), in the definition of **date interest starts**, the following is added:

“(f) for unpaid tax, being terminal tax for the tax year in which a disposition of property to which **section FI 5** of the Income Tax Act 2004 refers, the due date for the deceased person’s terminal tax, if all instalments of provisional tax (including terminal tax) payable by the deceased person are paid by their due date”.

New (unanimous)

- (2) In section 120C(1), in the definition of **interest period**, paragraph (b)(iii) is repealed.
- (3) **Subsection (2)** applies for the 2004–05 and later tax years.

101 Imputation penalty tax payable where end of year debit balance**Struck out (unanimous)**

In section 140B(1), “**or ME 9C(3) or (5)**” is inserted after “ME 9”.

New (unanimous)

- (1) In section 140B(1), “or additional income tax under **section ME 9C** of that Act” is inserted after “debit balance”.
- (2) Section 140B(2) is replaced by the following:

New (unanimous)

- “(2) The amount of the imputation penalty tax payable by a company is 10% of the amount of—
- “(a) further income tax that gives rise to the liability for further imputation penalty tax:
 - “(b) additional income tax that gives rise to the liability for further imputation penalty tax.”

102 Unacceptable tax position

- (1) In section 141B(5), “interpretation of a tax law” is replaced by “tax position”.
- (2) Section 141B(6) is replaced by the following:
- “(6) The time at which a taxpayer takes a tax position for a return period is—
 - “(a) the time at which the taxpayer provides the return containing the taxpayer’s tax position, if the taxpayer provides a tax return for the return period:
 - “(b) the due date for providing the tax return for the return period, if the taxpayer does not provide a tax return for the return period.”

New (unanimous)

102B Reduction of penalties for previous behaviour

In section 141FB(5), in the words before paragraph (a), “subsection (2)” is replaced by “subsections (1) and (2)”.

102C Increased penalty for obstruction

In section 141K(1), “141A” is replaced by “141AA”.

103 Publication of names

- (1) Section 146 is repealed.
- (2) **Subsection (1)** applies to publication that, but for this section, would be required after the date on which this Act receives the Royal assent.

104 Write-off of tax by Commissioner

(1) In section 177C, the following is inserted after subsection (5):

“(5B) If the Commissioner writes off outstanding tax for a taxpayer who has a credit of tax carried forward under **section LB 2(3C)** of the Income Tax Act 2004, the Commissioner must extinguish all or part of the credit of tax on a dollar-for-dollar basis.

“(5C) If a taxpayer has both a net loss to which subsection (5) applies and a credit of tax carried forward to which **subsection (5B)** applies, the Commissioner must *(determine the part of the amount extinguished that relates to)* extinguish the net loss under subsection (5) before extinguishing any credit of tax under **subsection (5B)**. *(and the part of the amount extinguished that relates to the credit of tax carried forward.)*

Struck out (unanimous)

“(5D) In making a determination under **subsection (5C)**, the Commissioner must consider any preference of the taxpayer concerning the apportionment if the Commissioner is aware of the preference before making the determination.”

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

New (unanimous)**104B Obligation to pay tax on foreign investment fund income able to be suspended**

(1) In section 183(1)(a), “has in a fund an interest” is replaced by “has in a foreign investment fund an attributing interest”.

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

104C Remission in circumstances of qualifying event

(1) In section 183ABA(1), “Income Tax Act 1994” is replaced by “Income Tax Act 2004”.

(2) In section 183ABA(4), “Income Tax Act 1994” is replaced by “Income Tax Act 2004”.

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

Part 4

Amendments to other (Acts) enactments

Amendments to Goods and Services Tax Act 1985

105 Goods and Services Tax Act 1985

Sections 106 to 110 amend the Goods and Services Tax Act 1985.

106 Meaning of term “supply”

After section 5(6A), the following is inserted:

“(6AB) For the purposes of this Act, a levy that is paid to the New Zealand Fire Service Commission under section 48 of the Fire Service Act 1975 and (that) is not a penalty surcharge or interest payable (penalty or default interest) under that Act is treated as being consideration for a supply of services to the insured person in the course or furtherance of a taxable activity carried on by the Commission.”

107 Imposition of goods and services tax on imports

In section 12(4)(d)(ii), “does not qualify for an input tax credit in relation to” is replaced by “is not entitled to make an input tax deduction under section 20(3) in respect of”.

108 Credit and debit notes

In section 25(2)(a), “tax charged by that supplier in relation to a taxable supply” is replaced by “tax charged on a taxable supply made by that supplier and be”.

109 Section 26A replaced

Section 26A is replaced by the following:

“26A Factored debts

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

“(a) sells a debt to another person during a taxable period; and

“(b) is required to account for tax payable on a payments basis.

“(2) The sale of the debt is treated as being a taxable supply—

“(a) that is made by the registered person during the taxable period; and

“(b) on which the amount of tax charged is the tax fraction of the remaining book value of the debt.”

New (unanimous)

109B Refund of excess tax

- (1) In section 45(1)(a), “properly assessed” is replaced by “properly payable”.
- (2) In section 45(2)(a), “assessment that changed” is replaced by “an amendment to an assessment that increased”.
- (3) In section 45(2)(b), “properly assessed” is replaced by “properly payable”.
- (4) In section 45(2)(c), “made” is replaced by “amended”.
- (5) In section 45(3)(a), “properly assessed” is replaced by “properly payable”.
- (6) Section 45(3)(c) is replaced by the following:

“(c) the Commissioner is satisfied that the person was entitled to receive the amount at the time of the refund but did not; and”.
- (7) **Subsections (1) to (6)** apply for taxable periods beginning on or after 1 April 2005.

110 Cancellation of registration

- (1) After section 52(5A), the following is inserted:

“(7) In subsections (5) and (5A), for a person who is a non-resident, a taxable activity means a taxable activity carried on in New Zealand.”
- (2) **Subsection (1)** applies to a person who becomes registered under the Goods and Services Tax Act 1985 on or after the date on which this Act receives the Royal assent.

New (unanimous)

Amendment to Student Loan Scheme Act 1992

110B Interpretation

In section 2 of the Student Loan Scheme Act 1992, after the definition of **student loan scheme**, the following is inserted:

“**tax year**, in respect of the income of a person, means a **tax year** as defined in section OB 1 of the Income Tax Act 2004”.

Amendment to Taxation Review Authorities Act 1994

111 Small claims jurisdiction of Authorities

- (1) In section 13B(1)(b) of the Taxation Review Authorities Act 1994, “of precedent” is replaced by “, the decision of which affects or may affect the outcome of a separate and unrelated dispute between the Commissioner and a taxpayer other than the disputant”.
- (2) **Subsection (1)** applies for disputes that begin under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Amendment to Privacy Act 1993

112 Schedule 3 amended

In Schedule 3 of the Privacy Act 1993, in the item “Tax Administration Act 1994”, “and 85G” is replaced by “, 85G, and **85H**”.

New (unanimous)

Amendment to Income Tax (Social Assistance Suspensory Loans) Order 1995

113 Social assistance suspensory loans

In clause 2 of the Income Tax (Social Assistance Suspensory Loans) Order 1995, “EH 53” is replaced by “EW 47”.

New schedule 6B inserted in Income Tax Act 2004

Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant

Expenditure relating to activity or improvement to land

- 1 expenditure on investigating and testing~~(, before a choice~~
~~between options, of)~~ locations and methods, before a decision
is made to use a location or method, for an activity or
improvement that is intended to avoid, remedy, or mitigate
future detrimental effects on the environment from the dis-
charge of a contaminant
- 2 expenditure, ~~(on)~~ in the construction of an improvement ~~(to)~~
on land in New Zealand, incurred in order to avoid or mitigate
future detrimental effects on the environment from the dis-
charge of a contaminant
- 3 expenditure on screen planting, on land in New Zealand,
incurred in association with the construction of an improve-
ment to the land that is intended to avoid, or mitigate future
detrimental effects on the environment from the discharge of
a contaminant
- 4 expenditure on riparian planting, on land in New Zealand,
incurred in order to avoid or mitigate future detrimental
effects on the environment from the discharge of a contami-
nant
- 5 expenditure on an activity that is intended to avoid or mitigate
the future discharge of a contaminant

Expenditure relating to monitoring, remedies, and mitigation

- 1 expenditure related to monitoring the discharge of a contami-
nant
- 2 expenditure related to monitoring detrimental effects on the
environment from the discharge of a contaminant
- 3 expenditure, incurred after the discharge of a contaminant, on
avoiding, remedying, or mitigating detrimental effects on the
environment from the discharged contaminant

Schedule 6B—continued

Part B—*continued*

- 4 expenditure, incurred after the discharge of a contaminant, on removing an improvement to land in New Zealand for the purpose of avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant
- 5 expenditure, incurred after the discharge of a contaminant, on the installation of impermeable surfaces on land in New Zealand with the purpose of avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant
- 6 expenditure, incurred after the discharge of a contaminant, on replanting land in New Zealand in association with expenditure to avoid, remedy, or mitigate detrimental effects on the environment from the discharged contaminant
- 7 expenditure, incurred in the cessation of a business, on disposing of a stored substance that is a potential contaminant in a way that avoids detrimental effects on the environment

Part C

Excluded expenditure

- 1 expenditure related to land reclamation
- 2 expenditure relating to dredging, other than dredging for the principal purpose of remedying or mitigating detrimental effects on the environment from a discharged contaminant
- 3 expenditure related to the acquisition of land

Schedule	Taxation (Base Maintenance and Miscellaneous Provisions)
New (unanimous)	
ss 62B, 80B	Schedule 2 New schedule 11B inserted in Income Tax Act 1994 and Income Tax Act 2004
ss FG 8G	Schedule 11B Amounts affecting New Zealand net equity for New Zealand banking group of registered bank Part A Amounts added to equity value Part B Amounts subtracted from equity value
Legislative history 16 November 2004 Introduction (Bill 231–1) 14 December 2004 First reading and referral to Finance and Expenditure Committee	