# Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2)

Government Bill

As reported from the Finance and Expenditure Committee

## Commentary

### Recommendation

The Finance and Expenditure Committee has examined the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) and recommends by majority that it be passed. We recommend all amendments by majority.

### Introduction

This omnibus tax bill would amend the following Acts:

- Income Tax Act 2007
- Goods and Services Tax Act 1985
- Tax Administration Act 1994
- Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022
- Income Tax Act 2004
- Companies Act 1993
- Insolvency Act 2006
- Residential Tenancies Act 1986.

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

The bill also seeks to modernise the current tax settings regarding Inland Revenue's administration of the goods and services tax (GST) regime, KiwiSaver, and social policy rules.

Finally, the bill would set the annual rates of income tax for the 2022–23 tax year.

## Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring the House's attention to an issue relating to clause 180, which we discuss in more detail later in this commentary.

## Proposed amendments and structure of this commentary

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

Our recommendations cover the following topics:

- Tax settings for the platform economy
- GST apportionment and adjustment rules
- Arrangements for cross-border workers
- Integrity concerns and dual resident companies
- Build-to-rent exemption from interest limitation
- Fringe benefit tax exemptions

We do not discuss minor, technical, or consequential changes.

## Ensuring tax settings are fit for the platform economy

The platform economy refers to economic activity facilitated by digital platforms, such as smartphone applications and websites. The platforms connect buyers with sellers who provide skills, assets, and labour. Examples include:

- accommodation services
- transportation services such as ride-sharing and deliveries
- personal and professional services such as tutoring and web design.

The platform economy is an increasingly popular way for people to supplement their income or conduct their business, and is expected to continue growing. In light of this, the bill seeks to ensure that New Zealand's tax settings are fit for purpose.

### Information reporting with the platform economy

Clause 179 of the bill would amend the Tax Administration Act 1994 by inserting section 185S. This would implement an information reporting and exchange framework designed by the OECD (Organisation for Economic Co-operation and Development). The framework would provide tax authorities with information about sellers and their income earned using digital platforms. The bill would give legislative basis to New Zealand being involved in the global information collection and exchange.

In the bill as introduced, two sets of reporting rules would be implemented, referring to two parts of the OECD's information reporting and exchange framework. Some businesses in the platform economy would be covered by one framework, whilst other businesses would be covered by another.

The first framework, "model reporting standard for digital platforms" (framework 1), covers reporting obligations for operators of digital platforms that facilitate the rental of accommodation and personal services. The second, "extended model reporting standard for digital platforms" (framework 2), covers reporting obligations for operators of digital platforms that facilitate the sale of goods and the rental of vehicles.

We consider that implementing the OECD regime in full would impose significant costs on digital platform operators. We therefore recommend proceeding with the implementation of framework 1 but deferring implementation of framework 2.

We recommend inserting section 185T into the Tax Administration Act. This would defer implementation of framework 2 and enable it to come into force by an Order in Council within three years after the bill's commencement. We consider that using this approach, rather than leaving its implementation to a future tax bill, would allow Inland Revenue to work with platform operators to develop a methodology that would impose the least possible ongoing cost on taxpayers.

We note that, by implementing framework 1, New Zealand would have "partial equivalence" with the European Union (EU) on the matters covered by that reporting standard. This means that New Zealand would be able to receive information from EU tax authorities related to digital platforms that facilitate the rental of accommodation and personal services. Delaying the implementation of framework 2 would mean that the provision of any information by the EU in relation to digital platforms that facilitate the sale of goods and the rental of vehicles would be purely voluntary on the EU's part.

*Guidance on reporting rules*

We note that some submitters argued for clarification to help platform operators comply with the amendments to the Tax Administration Act and the OECD's reporting rules. We agree, but do not think the matter should be required in legislation. We recommend that the Commissioner of Inland Revenue (the Commissioner) provide guidance to assist platform operators in complying with the reporting rules. We look forward to reading the guidance, if the bill is enacted.

## Extending the reporting date for digital platforms

In the bill as introduced, New Zealand-based digital platforms would be required to report information about their sellers to Inland Revenue for the calendar year, under the Tax Administration Act. Reporting would be due on 31 January. Tax authorities would then have until the end of February to exchange information.

We note that until roughly 9 January New Zealand platform operators may find it difficult to prepare a report for the quarter ending 31 December, as many staff take holidays over this period. We consider it insufficient to give platform operators only 3 weeks to prepare a report, while allowing the Commissioner 4 weeks during February to perform any checks before the reports are released. We also note that the Commissioner's workload would be reduced if our recommendation to defer framework 2 was implemented.

We therefore recommend inserting section 185S(5)(g) into the Tax Administration Act, moving the deadline to 7 February instead of 31 January.

### Expressing the threshold for an "excluded seller" in New Zealand dollars

The OECD's reporting rules define an "excluded seller" as a person who sells below EUR 2,000 of goods through a digital platform during a reporting period and has fewer than 30 sales. The threshold applies to the "extended model reporting standard for digital platforms" (discussed as "framework 2" in our report). As the bill would apply the reporting rules to New Zealand, we believe it should include a mechanism for updating the monetary threshold, expressed in New Zealand dollars and accounting for exchange rate fluctuations.

We therefore recommend granting a regulation-making power to the Commissioner of Inland Revenue to determine and amend the threshold as necessary, ensuring its consistency with the OECD's reporting standard. This would reduce compliance costs associated with tracking and converting foreign currency amounts that are set out in the OECD's reporting standard.

To this effect, we recommend inserting clause 160B into the bill and amending clause 179, to insert sections 91AABB and 185T(4)(b) into the Tax Administration Act.

### Protecting against inappropriate changes to the model reporting standard

Clause 180 of the bill contains a regulation-making power that enables changes made by the OECD to its reporting standards (which would have legislative effect in New Zealand) to be ignored in New Zealand. The regulations would need to be made by the Governor-General by Order in Council. The provision would be inserted into the Tax Administration Act as section 226F and is intended to provide protection against possible future changes to the OECD's standards that were considered inappropriate for New Zealand.

We understand that some submitters want clarification about how the regulation-making power would operate. We do not consider that the clause needs amending to improve workability—our view is that it would operate as intended. On the other hand, we think the bill could be clearer as to what kinds of regulations could be made. We therefore recommend amending the wording in clause 180, inserting section 226F of the Tax Administration Act.

### Understanding the term "ride-sharing"

The bill includes "ride-sharing" as a listed service for which GST obligations would be imposed (clause 109, new section 8C(2)(b)(i) of the Goods and Services Tax Act). We note that the bill does not define "ride-sharing".

We think that the term could potentially have a wide application. In order to provide greater certainty to taxpayers and avoid unintended services being captured by the new provision, we recommend defining the term "ride-sharing" in the legislation rather than relying on the ordinary meaning of the words. We therefore recommend including a definition of "ride-sharing" in clause 109 of the bill, inserting new section

8C(8) in the Goods and Services Tax Act. We also recommend inserting the term "ride-hailing" into the definition, given that it is also a common expression for describing the service that is intended to be captured by the new requirement.

We note that Inland Revenue provides comprehensive guidance to support taxpayers to comply with tax laws. We look forward to seeing guidance produced to help taxpayers understand ride-sharing and GST obligations. We encourage Inland Revenue to include practical examples to illustrate what qualifies as a ride-sharing or ride-hailing service and what does not.

### Penalties for platform operators

Clause 172 would insert new section 142J into the Tax Administration Act. It would provide that platform operators could be liable for penalties on each "occasion" when the operator failed to meet the requirements.

Although the clause is intended to penalise offences that are repeated and serious, we note that it could be interpreted as covering any level of offence. We therefore recommend amending clause 172 so that section 142J could only penalise offences that are serious, or unreasonable, regardless of whether the "occasion" comprises sustained behaviour or a singular event.

We note that the term "unreasonable" will require some interpretation on Inland Revenue's part when it exercises the discretionary power to penalise non-compliance under section 142J. Rather than trying to define "unreasonable" in this context, we have opted to provide guidance about our intent for this clause. We consider that non-compliance should be penalised only when the underlying behaviour is more than minor. For example, if a platform operator unintentionally has missing data points in their reporting, the operator should not generally be penalised. However, if the operator was asked to provide missing data points to Inland Revenue, but wilfully failed to supply the information or to take reasonable steps to obtain the information (in the event that the information was not held by the operator), the operator's non-compliance could be considered unreasonable. We do not, however, intend to penalise errors that are inadvertent, minor, and unsustained.

## Goods and services tax in the platform economy

In the bill as introduced, operators of electronic marketplaces would become responsible for collecting GST on services that are sold through the marketplaces they operate. This would include accommodation services, ride-sharing and ride-hailing, and food and beverage delivery.

### Opt-out agreements

*Enabling unilateral opt-outs of marketplace rules*

Electronic marketplace operators would become generally responsible for paying GST on the services sold via their platforms, under the bill as introduced. Clause 129 of the bill as introduced would enable large commercial enterprises—which would generally be accommodation providers such as hotels—to agree with an electronic

marketplace operator that the enterprise (sometimes called the "underlying supplier") will continue to be responsible for paying GST on their services.

For example, if a hotel wanted to continue paying its own GST when renting out accommodation through a digital platform, a written agreement with the electronic marketplace operator would be needed. One reason a hotel might want to do this is they might have established accounting systems and practices for complying with their current GST obligations, and changing these could involve significant costs.

Some submitters were concerned about the requirement to enter into written opt-out agreements with electronic marketplace operators. They said that sellers could face significant disruption and compliance costs in accounting for GST if a marketplace operator did not agree to enter into such an agreement. We agree, and consequently recommend that underlying suppliers (such as hotels) with large sales ($500,000 or more in any 12-month period) should be able to unilaterally opt out of the new marketplace rules, without needing a written agreement with the electronic marketplace operator. This would be achieved by our proposed amendment to clause 129 of the bill, inserting new section 60C(2BF) into the Goods and Services Tax Act. Under our proposed amendment, these large enterprises would simply need to notify the electronic marketplace operator of their decision to continue being responsible for their own GST obligations.

We note that some submitters proposed that all GST-registered underlying suppliers should be able to opt out of the new marketplace rules for GST, regardless of the volume of their sales. We consider that this would introduce significant complexity into the new system, increasing compliance costs for operators of electronic marketplaces. We therefore have not proposed extending the opt-out provision to all GST-registered suppliers who sell services via electronic marketplaces.

*Amending the threshold for commercial enterprises*

As discussed above, clause 129 of the bill would amend section 60C of the Goods and Services Tax Act. It would set rules for opting out of the marketplace regime and instead becoming responsible for one's own GST obligations. A large accommodation provider would need to have 2,000 nights per year listed as available on each individual electronic marketplace, effectively making this option out of reach for small operators and potentially slowing enterprise and competition in the market.

We consider that the threshold should require the enterprise to list 2,000 nights on only one marketplace, not on each individual one. This would enable accommodation providers to continue to use multiple marketplaces, and would allow for trial periods with new ones. We recommend amending clause 129(4), section 60C(2BE) of the Goods and Services Tax Act, to this effect.

*Applying the threshold on a group basis*

Additionally, we propose that the bill be amended to allow accommodation providers to be able to meet the criteria to opt out of the marketplace regime, if they are a member of a group of companies that collectively satisfy the 2,000-night threshold.

We note that, in some large hotel groups, each individual accommodation may be owned by a separate legal entity. One accommodation provider within the group might not satisfy the 2,000 night threshold. In instances like this, we believe it would be more administratively practical if the provider could be considered from a group perspective.

We propose amending clause 129(4), section 60C(2BE) of the Goods and Services Tax Act, to this effect.

### Flat-rate credit scheme

The bill would introduce a flat-rate credit scheme into the Goods and Services Tax Act. It is intended to compensate underlying suppliers (sellers that provide services through digital platforms) for the average amount of GST that they would be able to recover as input tax, if they were registered for GST.

*When more than one marketplace operator is involved*

We note that, in the bill as introduced, when more than one marketplace operator is involved, it would be complex for operators to understand their obligations when administering the flat-rate credit scheme when services are provided through a chain of electronic marketplaces.

To address this, we recommend inserting clause 112B into the bill, to insert section 11A(1)(y) into the Goods and Services Tax Act. Our amendment would stipulate that a supply of listed services between marketplace operators would be zero-rated for GST. This would reduce complexity for marketplace operators and reduce their compliance costs. It would also make clear that the first operator (the one that has the relationship with the underlying supplier) would be the one that applies the flat-rate credit scheme.

## GST apportionment and adjustment rules

GST apportionment and adjustment rules determine tax deductions for GST inputs when an asset is partly used for business and partly for private use. We note that the current rules are complex and have high compliance costs.

The bill would implement changes to the rules, reducing compliance costs for businesses. We suggest various amendments to the bill's provisions and discuss one substantive proposed change below.

### Principal purpose test should be optional

Clause 116(9) of the bill would insert sections 20(3CB)–(3CF) into the Goods and Services Tax Act. It would provide that GST apportionment and adjustment rules for assets acquired for $10,000 or less (excluding GST) would be subject to a principal purpose test. Persons that are GST-registered would be able to claim back 100% of the GST, provided the asset was acquired primarily for selling goods or services that are taxable.

To achieve this, we note that taxpayers with assets of both high and low value would need to operate under two sets of rules. Some submitters noted this could increase compliance costs for larger businesses who would prefer to keep using one method for all of their assets. We therefore consider that, to reduce costs, the principal purpose test for assets that cost $10,000 or less should be optional. Further, to avoid "cherry-picking", our view is that the option should operate on an "all or nothing" basis. That is, registered people should be able to opt out for all assets acquired for $10,000 or less for a minimum of 24 months.

We recommend amending clause 116(9) to this effect, inserting sections 20(3CG) and (3CH) into the Goods and Services Tax Act.

## Cross-border workers and tax arrangements

The tax system imposes an obligation on employers to pay tax on the earnings of their employees. This tax can be in the form of:

- tax taken directly from an employee's salary or wages (PAYE)
- fringe benefit tax (FBT) on employee benefits such as low interest loans or use of motor vehicles
- employer's superannuation contribution tax (ESCT) on the value of cash contributions to an employee's superannuation scheme.

Complying with the arrangements can be difficult if the employer has had little exposure to the New Zealand tax system. Difficulties can also arise where there are inconsistencies between the duration a worker is expected to work in New Zealand, and the actual time spent working.

The bill as introduced contains numerous amendments to the Income Tax Act and the Tax Administration Act that aim to make the tax system easier to comply with. We discuss below some further improvements we propose.

### Employee obligations for ESCT and treatment of fringe benefits

Currently in the Income Tax Act, if a non-resident employer does not have a sufficient presence in New Zealand, an employee working for them in New Zealand can be required to pay PAYE directly to Inland Revenue. No equivalent requirements currently exist for FBT and ESCT. However, clauses 89, 93, and 94 of the bill as introduced would change this by transferring FBT and ESCT obligations to employees, where employers do not have a sufficient presence in New Zealand.

We note that some submitters oppose transferring FBT and ESCT obligations to employees. They raise multiple concerns, including about the extent to which the proposal is workable, and whether it is appropriate to shift the obligations to employees. We share similar concerns. Unless the employee receives information about how to correctly calculate their tax liability, and the employee is sufficiently knowledgeable about New Zealand's tax system, they will likely struggle to comply with the obligations. Further, they could face legal consequences if they do not meet their obligations.

To address these concerns, we recommend amending clauses 93–94, affecting sections RD 62B and RD 71B of the Income Tax Act 2007. Our proposed amendments would:

- make the employer primarily liable for ESCT or FBT, regardless of their presence in New Zealand, with an option for the employee to undertake these obligations instead
- require employers to provide their employees with information to help them complete their employment income return form, including information about their tax compliance obligations, as provided to their employers by Inland Revenue
- allow fringe benefits to be treated as taxable income, taxable at the employee's marginal tax rate rather than at up to 63.93% (the top rate of FBT).

### Employer contributions to foreign superannuation schemes

As introduced, clause 89 would require an employer's contributions to a cross-border worker's foreign superannuation scheme to be subject to PAYE, under section RD 5 of the Income Tax Act 2007.

We believe that employers should be able to choose whether they remain taxed under the FBT regime, or become taxed under the PAYE proposal if it is more appropriate for them and their employees. To this effect, we recommend inserting clause 93B, amending section RD 65 in the Income Tax Act.

### Reporting requirement for payers of non-resident contractors' tax

Non-resident contractors' tax (NRCT) is administered under the PAYE rules. It applies to a contractor's performance of services and the supply of personal property, or services by other people. The bill as introduced contained a policy change as to how people could become exempt from NRCT. This included a new reporting requirement in clause 143 of the bill.

Submitters raised several concerns about the practicalities of the new reporting requirement, including about the apportionment of payments, timing of reporting, and an increase to compliance costs. We consider the concerns justified and propose removing the NRCT reporting requirement, as well as the amendments to the NRCT "single payer view", so Inland Revenue can conduct further consultation on the matter. To this effect, we recommend deleting clauses 90, 143, and 182 from the bill.

### Implementing a 60-day grace period

Clause 18 of the bill introduces a grace period for employers of cross-border workers to meet or correct their tax obligations under the Income Tax Act 2007. It acknowledges that cross-border employees and their employers are not in the same compliance circumstances as other employers and their employees who both live in New Zealand. Under the bill, the grace period would be a duration of 60 days, provided employers have taken reasonable steps to manage their obligations.

We consider that the grace period should apply to a broader range of circumstances for employers and cross-border employees than in the bill as introduced. This would ensure that the intent of the clause is properly fulfilled. We therefore recommend amending clause 18 so that section CE 1F(3B) in the Income Tax Act would also cover a situation where an employee who is a New Zealand resident was working outside New Zealand for a period and unexpectedly receive PAYE income.

## Addressing integrity issues with dual resident companies

A company that is resident in New Zealand can also be a double tax agreement (DTA) non-resident company. This occurs when:

- the company is a New Zealand tax resident under New Zealand tax law
- the company is also tax resident in another jurisdiction, under the tax law of that jurisdiction
- the double tax agreement between New Zealand and that other jurisdiction provides a tie-breaker test to determine which jurisdiction the company is to be treated as being resident in
- under the test, the company is resident in another jurisdiction.

Companies that satisfy the above criteria are known as "DTA non-resident companies".

Currently, integrity concerns exist relating to DTA non-resident companies and New Zealand income tax. The law enables the companies to obtain income or pay dividends without paying New Zealand income tax, simply by changing their tax residence and receiving tax relief under one of New Zealand's tax treaties. The bill seeks to address these concerns by amending the domestic dividend exemption and corporate migration rules. We discuss substantive amendments we propose below.

### Integrity measures for the domestic dividend exemption

The New Zealand tax system currently enables a domestic dividend tax exemption for dividends paid between members of a group of companies that are 100% commonly owned and are tax resident in New Zealand. The exemption applies even where the recipient company is a double tax agreement (DTA) non-resident.

However, aiming to address integrity concerns, the bill would remove the exemption for certain dividends paid to a DTA non-resident company. As a result, non-resident withholding tax (NRWT) would be required in situations where a DTA non-resident on-pays a dividend.

We consider that, to the extent to which the dividend has been fully imputed,[1] there should be no liability to withhold NRWT from the dividend. This is because imput-

[1] Companies can impute the income tax they have paid by attaching imputation credits to any shareholder dividends. The company passes on the income tax benefits to its shareholders (which prevents those dividends from being taxed twice).

ation credits arise from tax paid, so when a dividend is imputed, New Zealand has already collected all of the tax it is entitled to. To remove the NRWT liability, we recommend inserting clauses 96B and 96C into the bill, amending section RF 9 and inserting new section RF 11BB into the Income Tax Act.

Further, we consider that imputation credits should be able to be attached retrospectively to dividends paid to companies that are later determined to be DTA non-resident. To enable this, we propose amending clause 84, section OB 62 of the Income Tax Act.

*Excluding dividends paid to Australia–New Zealand dual resident companies*

We note that, in the case of companies that are dual resident in New Zealand and Australia, New Zealand can impose NRWT on any dividend on-paid by a DTA non-resident company. This ability is preserved under the Australia–New Zealand DTA. Because New Zealand retains the ability to impose NRWT, the integrity concerns that the bill would address are alleviated.

Therefore, we recommend that an additional exclusion be added, under clause 22 of the bill (amending section CW 10 of the Income Tax Act). Our proposed change would exclude dividends paid to companies that are dual resident in Australia and New Zealand. Since most companies that would be covered by this proposal are resident in Australia, the exclusion would significantly reduce the potential application of the bill's proposed changes (while maintaining integrity benefits). This would result in lower compliance and administration costs.

**Integrity measures for corporate migration rules**

We recommend several amendments to the bill to address integrity concerns with the New Zealand tax system's corporate migration rules. Most notably, we propose amending clause 62 which covers events that trigger the application of the rules.

The corporate migration rules are designed to ensure that all income derived while a company is a New Zealand tax resident is subject to New Zealand tax. However, the rules do not apply where a company remains a New Zealand tax resident under domestic law, but under the DTA tie-breaker test, becomes a DTA non-resident. As introduced, the bill would require that DTA non-resident companies should be captured by the rules at the time when they become a DTA non-resident company.

We are concerned that the bill could have a significant effect on the companies that would be captured by the provision, particularly if the company was unaware that it had become a DTA non-resident company and had obtained no benefit from the change. Therefore, we recommend amending clause 62 of the bill so that the corporate migration rules are not triggered when companies inadvertently become DTA non-resident. Our amendment would change the triggers for application of the rules in new clause FL 3(1) of the Income Tax Act.

## Build-to-rent exemption from interest limitation

Interest limitation rules took effect on 1 October 2021, to limit the availability of interest deductions for residential property. The rules also provide that interest on land for a new building would be deductible for 20 years and would become non-deductible after that. The rules are intended to increase available housing supply through tax benefits for new-build land by ensuring that interest limitation rules do not disincentivise people from building new properties.

The bill would give an in-perpetuity exemption from the interest limitation rules for build-to-rent dwellings that meet the asset class definition. The exemption would be back-dated to when the interest limitation rules took effect, on 1 October 2021. We discuss our proposed amendments to this section of the bill below.

### Implementing a broad-based "build-to-rent land" definition

Clause 98(3) of the bill as introduced would amend section YA 1 in the Income Tax Act, inserting a definition for "build-to-rent land". It would require build-to-rent developments to have 20 dwellings on contiguous land.

We are concerned about the requirement for land to be "contiguous". Issues could arise where a development spans multiple blocks of land that do not directly touch. An example would be where a road runs through a development and not all parts of the land directly back onto one another. We therefore recommend removing the requirement for land to be contiguous by amending clause 98(3).

### Information sharing provisions

Te Tūāpapa Kura Kāinga–Ministry of Housing and Urban Development would be required to set up and maintain a register of assets, enabling Inland Revenue to correctly apply the build-to-rent exemption to eligible taxpayers. Setting up and maintaining the register requires taxpayer information to be shared between both agencies, when necessary, to administer the exemption.

We recommend inserting clause 183(2B) into the bill. It would amend Schedule 7 of the Tax Administration Act, ensuring that section 18 of the Act (relating to confidentiality of sensitive revenue information) does not prevent the Commissioner from sharing taxpayer information with the Ministry of Housing and Urban Development.

### Chief executive is satisfied that the land meets the definition

As introduced, clause 100 would insert item 11 into Schedule 15 of the Income Tax Act. It would enable build-to-rent land to be exempt from the interest limitation rules, subject to the Commissioner receiving notice that the land meets the definition of "build-to-rent land" from the Chief Executive of the Ministry of Housing and Urban Development.

Firstly, we consider that the reference to the Chief Executive of the Ministry of Housing and Urban Development should be amended to refer to the Chief Executive of the department responsible for administering the Residential Tenancies Act 1986.

Secondly, we consider that the Chief Executive's responsibility should be made clearer. We therefore recommend amending clause 100 so that its operation is dependent on the responsible department being "satisfied" that the land meets the definition of "build-to-rent land".

### Addressing inconsistencies with the Residential Tenancies Act

Some submitters commented about several inconsistencies between the build-to-rent exclusions in the Income Tax Act 2007 and the Residential Tenancies Act 1986. Most notably, we address the inconsistency relating to fixed-term tenancies.

The Residential Tenancies Act provides that a fixed-term tenancy "means a tenancy for a fixed term; but, except as provided in section 58(1) [of the Residential Tenancies Act], does not include such a tenancy that is terminable by notice". The proposed definition of "build-to-rent" to be inserted into section YA 1 of the Income Tax Act (clause 98 of the bill) would therefore be inconsistent with the Residential Tenancies Act. It would require landlords to offer "a fixed-term tenancy of no less than 10 years", but with the tenancy being able to be terminated by tenants giving 56 days' notice.

To address the inconsistency, we recommend amending the Residential Tenancies Act to clarify that tenants living in a build-to-rent property, who accept a fixed-term tenancy offer of at least 10 years, have the right to give 56 days' notice to terminate the lease. Under our proposed change, this would still meet the definition of fixed-term tenancy.

## Fringe benefit tax exemptions for certain public transport fares

Fringe benefit tax (FBT) applies to benefits provided to employees, such as subsidised gym memberships or work vehicles available for personal use. Some benefits, however, are exempt from FBT, such as benefits provided on an employer's premises (for example, car parks leased by an employer).

### Exempting the Total Mobility scheme

Clause 27 as introduced would insert section CX 19C into the Income Tax Act 2007. It would provide FBT exemptions for public transport including, but not limited to, travel by bus, train, or ferry. We note that not everyone is capable of using public transport, and that some people who cannot do so are supported by the Total Mobility scheme.[2]

For equity, we consider that an FBT exemption should also apply to people with impairments who receive an employer subsidy to use alternative transport for commuting to work. We therefore recommend that employer-provided fringe benefits for

[2] The Total Mobility scheme supports eligible people with impairments to access transport services, helping to meet their daily needs. It is funded in partnership by local and central government.

travelling between home and work, partly funded by the Total Mobility scheme, be included in section CX 19C of the Income Tax Act.

### Modernising the list of exemptions

As introduced, the list of FBT exemptions for public transport does not include any on-demand services (services that are booked and paid for using an app to indicate where the person wants to be picked up and dropped off). We note that some on-demand services are increasingly being offered by public transport providers in some areas, with standard public fares applying. We consider that these services form part of the public transport network.

We recommend amending clause 27 so that proposed section CX 19C of the Income Tax Act also includes on-demand services that are part of a public transport provider's network and are subject to a public transport fare.

To further modernise and future-proof the list, we recommend amending section CX 19C(1)(a)(ii) of the Act to change the term "train" to "rail vehicle". In addition to trains, our proposed term would apply to any future light rail or light metro services in New Zealand.

## National Party differing view

National opposes the proposal to introduce new GST requirements on digital services, like ride sharing, food delivery, and accommodation services in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill.

Following pressure from the National Party, a proposal last year to levy additional taxes on KiwiSaver fund managers was removed from the bill. Modelling from the Financial Markets Authority suggested this tax would have reduced KiwiSaver balances by $103 billion by 2070.

While this tax has been removed, the decision to continue with additional taxes on digital services means the bill must be further amended.

New Zealanders are experiencing a cost of living crisis. Wages are already falling behind prices, in part because government spending and broken immigration policies have stoked inflation. Introducing new taxes will just act to worsen the cost of living crisis.

National believes the proposal to further tax digital services like ride sharing, food delivery, and accommodation services should be similarly removed from the bill.

The Government has previously committed to New Zealanders that they would not introduce any new taxes before the election. National believes introducing new taxes on digital services would be a breach of this commitment.

Inland Revenue estimates this new tax will raise $47 million a year, although PWC tax partner Eugen Trombitas estimates the true increase in revenue is likely to be at least $100 million.

The Regulatory Impact Statement prepared by Inland Revenue claims that this tax will be "passed on fully to consumers" and that "[this] will increase the cost to consumers of purchases made through digital platforms by up to 15 percent".

The new tax on digital services will have the effect of worsening the cost of living crisis by increasing prices on food, transport, and accommodation. Based on Inland Revenue's advice, someone who uses a ride-sharing app once a week at an average cost of $15 per ride will pay up to an additional $117 a year in tax.

Similarly, a $400 accommodation bill for a weekend away booked through a digital provider could be up to $60 more expensive. Where an additional cleaning fee is charged (as is the case for many digital accommodation providers) GST will additionally be charged on that fee.

This proposal cannot be justified as an exercise to increase revenue. Core Crown tax revenue has increased by $42 billion since 2017. The Government is still in an operating deficit not for lack of revenue but because the Minister of Finance has been unable to control spending commitments. Additional taxes on New Zealanders would not be required if the Government had stopped ill-disciplined spending, stopped pet political projects, and reined in growth in the backroom bureaucracy.

The proposal also cannot be justified from the perspective of creating a level playing field. As has been covered by multiple submitters, digital services providers already pay GST on their fees. Where drivers or accommodation providers meet the $60,000 GST threshold, they are also obliged to register for and charge GST on their services.

The proposal as it stands would create a new specific set of rules for digital services providers not faced by other sole traders or businesses who, having not met the $60,000 threshold, are not required to be registered for or charge GST. This undermines the principle of creating a level playing field in the tax system.

We urge the Government to remove its proposal to levy new taxes on digital platforms from the bill. The proposal breaches the Government's commitment not to introduce new taxes and increases costs on New Zealanders already struggling with the cost of living crisis.

## Green Party of Aotearoa New Zealand differing view

The Green Party supports most of the bill, especially the long-awaited move to reduce distortions to travel choice by exempting public transport passes and Total Mobility scheme travel from fringe benefit tax. However, we consider there is a significant missed opportunity to further rectify this distortion and achieve wide-ranging benefits (decongestion, emissions reduction, health and productivity) by also exempting active transport vehicles and services, such as e-bikes, scooters, and sharing schemes, used for travel to and from work. The committee received over 400 submissions calling for an exemption for bicycles, including e-bikes, including from tax specialists, regional councillors, and businesses working in the space of providing bike and scooter share services to employers.

The most recent OECD environmental review in 2017 identified transport as an area where New Zealand is lagging and needs to do more to achieve coherent pricing of externalities. Investment and support to increase low-carbon travel by public and active transport (cycling, scooting, etc) was recommended.[3] Similarly, the most recent (2022) OECD economic survey identified that environmental taxation can be used to reduce externalities related to road transport, and that use of such taxation is extremely low in New Zealand.[4] While FBT was not explicitly noted in these reviews, this is the inverse problem from what is identified in the OECD reviews. Not only is New Zealand not using environmental taxation to reduce externalities related to road transport, but it is also inadvertently applying taxation in a way that creates a barrier to more environmentally and economically beneficial means of travel to work.

This also runs counter to key actions in the Transport Emissions Reduction Plan:

- increasing support for walking and cycling, including initiatives to increase the use of e-bikes
- review the revenue system in response to longer-term changes in the way New Zealanders travel.[5]

Employers are often encouraged to support sustainable travel commuting because home-to-work journeys are a significant driver of travel demand and congestion. Moreover, as organisations they have a unique ability to support behaviour change: individuals benefit from peer support in undertaking shifts in how they travel. In many other countries, like the UK, Australia, Ireland, and Canada, there are tax breaks and incentives to support biking to work, because of the large and wide-ranging public benefits.

The argument against extending the exemption to bicycles from Inland Revenue was about preserving the neutrality of the tax system; however, the tax treatment of other forms of transport means that this change would enhance neutrality, consistent with the goal of exempting public transport subsidies. A research report published by Waka Kotahi (2012) found that FBT treatment of company cars and employer-provided car parking incentivises more peak hour commuting trips (which cause congestion), larger vehicles, and more fossil fuel consumption and emissions.

This bill makes an exemption for public transport, and for total mobility. The Green Party sees a clear case to include bikes, e-bikes, scooters, and sharing services in the exemption because 1) not everyone will have reliable public transport available to them, and 2) the public benefits of incentivising employees to cycle or scoot to work

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[3] OECD (2017), OECD Environmental Performance Reviews: New Zealand 2017, OECD Environmental Performance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/9789264268203-en.

[4] https://www.oecd.org/economy/growth/New-Zealand-country-note-going-for-growth-2021.pdf

[5] https://environment.govt.nz/publications/aotearoa-new-zealands-first-emissions-reduction-plan/transport/

are substantial. There would be negligible cost to the Government, either as foregone FBT or PAYE. There is an urgent need to support low-carbon, low-congestion, and healthy means of travel to work. Employers are well positioned to do so; however the current FBT rules are a barrier.

## ACT Party differing view

ACT is against the bill and will not support it.

**Tax**: The rates set and methodology are not agreeable to ACT as it is a regressive tax package and does not drive productivity or growth and continues to solidify our country as a high tax per GDP/capita.

**Tenancies Act adjustment**: The mechanism as proposed should be extended to all landlords.

In relation to the amendment to the Residential Tenancies Act, the tax bill contains a proposal to give build-to-rent dwellings an exemption from the interest limitation rules for residential property introduced in October 2021. The intent of the proposed exemption is to ensure the interest limitation rules do not disincentivise investment in build-to-rent properties. Owners' intentions are paramount to a stable housing market around long-term tenancy and new stock.

# Appendix

## Committee process

The Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) was referred to the committee on 21 September 2022.

We called for submissions on the bill with a closing date of 2 November 2022. We received and considered submissions from 813 interested groups and individuals. We heard oral evidence from 24 submitters.

We received advice on the bill from Inland Revenue—Te Tari Taake. The Office of the Clerk provided advice on the bill's legislative quality. The Regulations Review Committee reported to us on the powers contained in clause 180.

## Committee membership

Rachel Brooking (Chairperson) (from 8 February 2023)

Hon Barbara Edmonds (member and Chairperson until 8 February 2023)

Andrew Bayly

Glen Bennett (until 8 February 2023)

Hon Dr David Clark (from 8 February 2023)

Shanan Halbert

Ingrid Leary

Anna Lorck

Damien Smith

Chlöe Swarbrick

Hon Phil Twyford (from 8 February 2023)

Simon Watts

Helen White (until 8 February 2023)

Nicola Willis

Hon Julie Ann Genter replaced Chlöe Swarbrick for this item of business.

# Key to symbols used in reprinted bill

## As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

*Hon David Parker*

# Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2)

Government Bill

## Contents

## Part 5
## Amendments to other enactments

### *Amendments to Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022*



### *Amendment to Income Tax Act 2004*



### *Amendment to Companies Act 1993*



### *Amendment to Insolvency Act 2006*



### *Amendments to Residential Tenancies Act 1986*



### Schedule



### New schedule inserted into Goods and Services Tax Act 1985

**The Parliament of New Zealand enacts as follows:**

## 1 Title

This Act is the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act **(No 2) 2022**.

## 2 Commencement

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

(2) **Section 192** comes into force on 1 April 2007.

(3) **Section 88(1) and (2)** comes into force on 1 October 2007.

(4) **Sections 12, 34, 45, 46, 48, 80, and 98(4B), (22), (23), and (24)** come into force on 1 April 2008.

(4B) **Section 98(5B) and (10B)** comes into force on 1 January 2009.

(5) **Sections 159, 161, 168, 176, and 183(2)** come into force on 1 April 2009.

(6) **Sections 68, 105(5), 105B(1), 113(1), 116(7) and (8), and 118(2) and (3)** come into force on 1 April 2011.

(7) **Section 116(18)** comes into force on 1 April 2014.

(8) **Sections 122(1) and 123(2) and (4)** come into force on 30 June 2014.

(9) **Sections 14(1A) and (1B), 55, 56, and 57** come into force on 1 July 2014.

(9B) **Section 158C(1) and (3)** comes into force on 1 April 2015.

(10) **Section 70(2) and (4)** comes into force on 21 February 2017.

(11) **Sections 63, 64, 77, 78, 79, 81, 83, and 98(2) and (9)** come into force on 15 March 2017.

(12) **Section 88(3), (4), (5), and (6)** comes into force on 1 April 2017.

(13) **Sections 24, 29, ~~32(1), (2), (3), and (4),~~ 49, 76, and 98(15) and (21)** come into force on 29 March 2018.

(13B) **Section 177(1A) and (2B)** comes into force on 1 April 2018.

(14) **Sections 19, 43, 53, and 98(16)** come into force on 29 September 2018.

(15) **Sections 30 ~~and~~, 36, and 140B** come into force on 18 March 2019.

(16) **Section 54** comes into force on 26 June 2019.

(16B) **Section 105(4B)** comes into force on 1 December 2019.

(17) **Sections 33, 73, 75, 157, ~~and~~ 158, and 158B** come into force on 1 April 2020.

(17B) **Section 177B** comes into force on 7 August 2020.

(18) **Sections 6(1), (3), (4), (5), and (6), 7(1), (1C), (2), (4), and (5), 8(1), (3), 9, 21B, 32, 35, 37, 38, 39, 40, 41, 41B, 42, 59(2), 97B, and 98(4), (6), and (18)** come into force on 27 March 2021.

(19) **Section~~s~~ 83B, 84B, 84C, 84D, 84E, 84F, and 149** come~~s~~ into force on 1 April 2021.

(20) **Sections 98(3)~~ and 100~~, 183(2B), 196, 197, and 198** come into force on 1 October 2021.

(21) **Section 101(2)** comes into force on 15 January 2022.

(22) **Sections 66, 98(12) and (26), and 139(5)** come into force on 20 January 2022.

(23) **Section 101(4)** comes into force on 15 February 2022.

(24) **Sections 82, 98(5C) and (10C), 104B, 116(1), (5), (19), and (20), 126C, ~~485,~~186, 187, 188, 189, 190, and 191** come into force on 30 March 2022.

(25) **Sections 21, 69, ~~and~~ 101(1) and (6), and 158C(2) and (4)** come into force on 1 April 2022.

(26) **Section 101(8)** comes into force on 11 April 2022.

(27) **Sections 10, 11, 13, 15, 22, 47, 60, 61, 62, 84, 85, 87, 95, 96, 96B, 96C, 97, 98(4C), (7), (8), and (19), 104, 133, 139(2), 146, 147, 147B, and 148** come into force on the 30 August 2022.

(27B) **Section 100B** comes into force on 6 December 2022.

(28) **Sections 20, 44, 47C, 58, 98(10), (13), (14), and (25)** come into force on 1 January 2023.

(29) **Sections 14, 16, 17, 23, 27, 31, 48B, 51, 52, 72, 93, 93B, 94, 98(5), 99B, 101(5), 105(2), (6), (7), and (8), 105B(2), 111(1B), 113(2), 115(2), 116(2), (2B), (6), (9), (12), (17), (21), (23), and (24), 118(1), 121(1) and (3), 122(2), 124, 136, 140, 142, 142B, 160(2), 163, 164, 166, 169, 174, 177(1) and (2), ~~484(4),~~ 193, and 194** come into force on 1 April 2023.

(30) **Section~~s~~ 103(7B) and 105(3)** come~~s~~ into force on 1 July 2023.

(31) **Sections 139(3), (6), and (8), 141, 160(1), 160B, 162, 172, 173(2), 178, 179, and 180** come into force on 1 January 2024.

(32) **Sections 18, 22B, 25, 26, 28, 32B, 47B, 86, ~~89, 90,~~ 91, 92, 98(11), 103(2), (3), (4), (5), (6), and (7), 105(4), 106(1), 109, 110, 111, 112B, 114, 115, 116(3), (4), (13), (14), (15), (16), (22), (25), and (26), 117, 119, 120, 123(1), (3), and (5), 125, 126, 128, 129(1), (3), (4), and (5), 130, 131, 132, ~~443,~~ 144, 145, 170, ~~484(2) and (3), 182,~~ and 183(1)** come into force on 1 April 2024.

(33) **Section 101(3)** comes into force on 1 April 2026.

(34) **Sections 105(1) and (1B), and 135(2)** come into force on 30 June 2026.

(35) **Section 101(7)** comes into force on 1 April 2027.

# Part 1
# Annual rates of income tax

### 3 Annual rates of income tax for 2022–23 tax year

Income tax imposed by section BB 1 (Imposition of income tax) of the Income Tax Act 2007 must, for the 2022–23 tax year, be paid at the basic rates specified in schedule 1 of that Act.

# Part 2
# Amendments to Income Tax Act 2007

### 4 Amendments to Income Tax Act 2007

This Part amends the Income Tax Act 2007.

### 5 Section AA 1 amended (Purpose of Act)

(1) In section AA 1(a), replace "net income" with "a net amount of income".

(2) In section AA 1, list of defined terms,—

(a) insert "amount" and "income":

(b) delete "net income".

### 6 Section CB 6A amended (Disposal within 10 years: Bright-line test for residential land)

(1) After section CB 6A(1A), insert:

*When this section does not apply*

(1AB) This section does not apply to a person's disposal of residential land if~~:~~ —

(a) the person first acquired an estate or interest in the land before 27 March 2021:

(b) the land meets the requirements of sections **CB 6AB, CB 6AC,** ~~**or CB 6AE,**~~ or FB 3A (Residential land), and the transferor first acquired an estate or interest in the land before 27 March 2021.

(2) In section CB 6A(2B), replace "person." with "person (*see also*: section FC 9 (Residential land transferred to executor, administrator, or beneficiary on death of person)."

(3) In section CB 6A(5B), replace "acquired subsequent to" with "converted subsequent to".

(4) In section CB 6A(5B), replace "the date the joint tenancy was acquired" with "the same as ~~it was~~ prior to the conversion".

(5) In section CB 6A(5C), replace "acquired subsequent to" with "converted subsequent to"

(6) In section CB 6A(5C), replace "the date the tenancy in common in equal shares was acquired" with "the same as ~~it was~~ prior to the conversion".

(7) Replace section CB 6A(5D) with:

*Land-owning person*

(5D) In the case and to the extent to which a person who owns land (**pre-existing land**) has more land transferred to them (the **transfer land**) or transfers part of their pre-existing land (also, the **transfer land**), the instrument of transfer for the transfer land is for the transfer land only and is treated as not being for the pre-existing land, for the purposes of the definition of **bright-line acquisition date**.

## 7 Section CB 6AB amended (Residential land transferred in relation to certain family trusts and other capacities)

(1) Replace section CB 6AB(1), (2), and (3) with:

*Family trusts: transfers to trusts*

(1) The bright-line acquisition date for land, when a trustee of a trust (**trust A**) disposes of the land, is the bright-line acquisition date that the transferors (the **transferors**) of the land to the trustee had, if the transferors transfer~~s~~ the land to the trustee on or after 1 April 2022 and—

(a) trust A is a rollover trust and the transferors are settlors and, at the time that the transferors transfer the land to the trustee,—

(i) the transferors are beneficiaries of trust A; and

(ii) at least 1 transferor is a principal settlor of trust A:

(b) the transferors are trustees of a trust (~~**head trust**~~ **trust B**) that is a rollover trust, and, for trust A,—

(i) all the beneficiaries are the same as for ~~the head trust~~trust B, and trust A is also a rollover trust:

(ii) all the natural person beneficiaries are either the same as, or close family associates of a principal settlor of, ~~the head trust~~trust B, and trust A is also a rollover trust.

*Family trusts: transfers ~~to settlors~~ from trusts*

~~(2) The bright-line acquisition date for land, when a settlor (the **transferee**) of a trust (**trust A**) disposes of the land, is the bright-line acquisition date that the trustee of trust A had for the land, if the trustee transfers the land to the transferees on or after 1 April 2022 and—~~

~~(a) the transferees acquire proportionally the same amount of land they transferred to trust A and, at the time that the trustee transfers the land to the transferee,—~~

~~(i) the transferees are beneficiaries of trust A; and~~

~~(ii) at least 1 transferee is a principal settlor of trust A; and~~

~~(iii) trust A is a rollover trust:~~

~~(b) trust A is a rollover trust and all transferees are principal settlors at the time that the trustee transfers the land to the transferee and also at the time that the trustee acquired the land.~~

(2) When persons (the **transferees**) dispose of land that was transferred to them from a trustee of a trust (**trust A**), the bright-line acquisition date for the land is the bright-line acquisition date that the trustee of trust A had for the land, if the trustee transfers the land to the transferees on or after 1 April 2022 and—

(a) the transferees are settlors of trust A and had transferred the land to the trustee; and

(b) the transferees acquire proportionally the same amount of land they had transferred to the trustee and, at the time that the trustee transfers the land to the transferees,—

(i) the transferees are beneficiaries of trust A; and

(ii) at least 1 transferee is a principal settlor of trust A; and

(iii) trust A is a rollover trust:

*Other capacities*

(3) For the purposes of applying **subsections (1)(a) and (2)**, the transferors and transferees may have different capacities in relation to the different criteria in those subsections~~a different capacity from the capacity in which they became settlor~~(*for example*: a transferee may be a settlor in their personal capacity and be a beneficiary as an LTC owner).

(1B) After section CB 6AB(2)(b), insert:

(c) trust A is a rollover trust and—

(i) the transferees had not transferred the land to the trustee; and

(ii) all transferees are principal settlors at the time that the trustee transfers the land to the transferees and also at the time that the trustee acquired the land.

(1C) In section CB 6AB(4), replace "If a person transfers the same land to themselves in a different capacity, and there is no intervening transfer to a third party," with "If a person in 1 capacity transfers land to themselves in a different capacity,".

(2) In section CB 6AB(4), delete ", and must not be to or from a person in their capacity of settlor, beneficiary, or trustee".

(3) Repeal section CB 6AB(5)(a).

(4) Replace section CB 6AB(5)(d) with:

(d) all beneficiaries are close family beneficiaries.

(5) After section CB 6AB(6)(a), insert:

(ab) a trustee of another trust and at least 1 beneficiary of the other trust is a close family associate of a beneficiary of the relevant trust:

(ac) any association, club, institution, society, organisation, or trust not carried on for the private profit of any person whose funds are applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent, or cultural purpose, whether in New Zealand or elsewhere, and, in the case of it having 1 principal settlor only, the trust has 1 or more beneficiaries who are close family associates of the principal settlor:

(6) Replace CB 6AB(6)(c) with:

(c) a company in which a 50% or more voting interest, or a 50% or more market value interest if a market value circumstance exists, is owned by a beneficiary of the trust that is—

(i) a principal settlor of the trust:

(ii) a close family associate of another beneficiary that is a principal settlor of the trust:

## 8 Section CB 6AC amended (Residential land transferred in relation to certain Māori family trusts)

(1) Replace section CB 6AC(1), (2), and (3) with:

*Transfers to trusts*

(1) The bright-line acquisition date for land, when a Māori trustee of a trust (**trust A**) disposes of the land, is the bright-line acquisition date that the transferors (the **transferors**) of the land to the Māori trustee had, if the transferors transfers the land to the Maori trustee on or after 1 April 2022 and—

(a) trust A is a Māori rollover trust and the transferors are settlors and, at the time that the transferors transfer the land to the trustee, the transferors are beneficiaries of trust A:

(b) the transferors are Māori trustees of a trust (~~**head trust**~~ **trust B**) that is a Māori rollover trust, and, for trust A, all the beneficiaries are the same as for ~~the head trust~~trust B, and trust A is also a Māori rollover trust.

*Transfers ~~to settlors~~from trusts*

~~(2) The bright-line acquisition date for land, when a settlor (the **transferee**) of a trust (**trust A**) disposes of the land, is the bright-line acquisition date that the Māori trustee of trust A had for the land, if the Māori trustee transfers the land to the transferees on or after 1 April 2022 and the transferees acquire proportionally the same amount of land they transferred to trust A and,~~

~~(a) at the time that the Māori trustee transfers the land to the transferee, the transferees are beneficiaries of trust A; and~~

~~(b) at the time that the trustee transfers the land to the transferee, trust A is a Māori rollover trust; and~~

~~(c) the transferees are settlors of trust A.~~

(2) When persons (the **transferees**) dispose of land that was transferred to them from a Māori trustee of a trust (**trust A**), the bright-line acquisition date for the land is the bright-line acquisition date that the Māori trustee of trust A had for the land, if the Māori trustee transfers the land to the transferees on or after 1 April 2022 and—

(a) the transferees are settlors of trust A and had transferred the land to the Māori trustee; and

(b) the transferees acquire proportionally the same amount of land they had transferred to the Māori trustee and, at the time that the Māori trustee transfers the land to the transferees,—

(i) the transferees are beneficiaries of trust A; and

(ii) trust A is a Māori rollover trust; and

(iii) the transferees are settlors of trust A.

*Other capacities*

(3) For the purposes of applying **subsections (1)(a) and (2)**, the transferors and transferees may have different capacities in relation to the different criteria in those subsections ~~a different capacity from the capacity in which they became settlor~~ (*for example*: a transferee may be a settlor in their personal capacity and be a beneficiary as an LTC owner).

(2) Repeal section CB 6AC(4)(a).

(3) In section CB 6AC(5), delete ", under section HF 2(3)(e)(i) (Who is eligible to be a Maori authority?)".

### 9 Section CB 16A amended (Main home exclusion for disposal within 10 years)

Repeal section CB 16A(7).

### 10 Section CD 1 amended (Dividend)

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

*Exception: certain dividends derived by dual resident companies*

(3) Despite subsection (2), the income is allocated to the income year of the person in which the DRCD deferral date falls if the dividend—

(a) is derived by a New Zealand resident company that is treated under a double tax agreement as not being resident in New Zealand; and

(b) meets the requirements set out in section CW 10(1)(b) to (d), (5), and (6) (Dividend within New Zealand wholly-owned group).

(2) In section CD 1, list of defined terms, insert "company", "double tax agreement", "DRCD deferral date", "New Zealand resident", and "resident in New Zealand".

### 11 Section CD 14 amended (Notional distributions of emigrating companies)

(1) In section CD 14(1), replace "(Treatment of emigrating companies and their shareholders)" with "or **FL 3** (which relate to the treatment of emigrating companies and their shareholders)".

(2) In section CD 14(2), after "section FL 2", insert "or **FL 3**, as applicable".

### 12 Section CD 15 amended (Tax credits linked to dividends)

(1) In section CD 15(1)(a), after "dividend", insert "subject to any limitation to the imputation credit made under section LE 5 where the person is a beneficiary".

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

### 13 Section CD 26 amended (Capital distributions on liquidation or emigration)

In section CD 26(1)(b), replace "(Treatment of emigrating companies and their shareholders)" with "or **FL 3** (which relate to the treatment of emigrating companies and their shareholders)".

### 14 Section CD 36 amended (Foreign investment fund income)

(1A) In section CD 36(2),—

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

(b) after paragraph (b), insert:

(c) is not a unit trust or is a unit trust subject under Australian law to income tax on its income in the same way as a company.

(1) After section CD 36(3), insert:

~~*Distribution by Australian unit trust of funds from attributing interest in another Australian unit trust*~~

~~(4) An amount paid by a CFC to a person (the **CFC distribution**) is not a dividend if—~~

~~(a) the CFC is a unit trust that is not subject under Australian law to income tax on its income in the same way as a company; and~~

~~(b) the CFC has an interest in a unit trust (the **FIF**) that is not subject under Australian law to income tax on its income in the same way as a company; and~~

~~(c) the interest of the CFC in the FIF is an attributing interest of the person (the **indirect FIF interest**) meeting the requirements of section EX 59(1); and~~

~~(d) the CFC distribution is funded by a payment made by the FIF to the CFC arising from the indirect FIF interest.~~

*Distribution by Australian unit trust of funds from attributing interest in a foreign investment fund*

(4) An amount paid by a CFC to a person (the **CFC distribution**) is not a dividend—

(a) if the CFC—

(i) is a unit trust that is not subject under Australian law to income tax on its income in the same way as a company; and

(ii) has an interest in a foreign investment fund (the **FIF**); and

(b) if the interest of the CFC in the FIF is an attributing interest of the person (the **indirect FIF interest**) that meets the requirements of section EX 59(1) in all the time that the interest is an attributing interest of the person or of an associated person; and

(c) to the extent to which the CFC distribution is funded directly or indirectly from the indirect FIF interest.

(1B) **Subsection (1A)** applies for income years starting on or after 1 July 2014.

(2) **Subsection (1)** applies for income years starting on or after 1 April 2023.

### 15 Section CD 43 amended (Available subscribed capital (ASC) amount)

In section CD 43(16), replace "(Treatment of emigrating companies and their shareholders)" with "or **FL 3** (which relate to the treatment of emigrating companies and their shareholders)".

### 16 Section CE 1 amended (Amounts derived in connection with employment)

(1) Replace section CE 1(3B), other than the heading, with:

(3B) For the treatment of PAYE income payments made to a cross-border employee who undertakes employment services in New Zealand, see **section CE 1F**.

(2) In section CE 1, list of defined terms, insert "cross-border employee".

### 17 New section CE 1F inserted (Treatment of amounts derived by cross-border employees)

After section CE 1E, insert:

#### CE 1F Treatment of amounts derived by cross-border employees

*When this section applies*

(1) This section applies in certain circumstances when an employer pays a PAYE income payment to a cross-border employee who provides services in New Zealand. For this purpose, the payment may include an amount paid to the person after they have left New Zealand that is a payment for services provided by the person while they were in New Zealand.

*Amounts treated as derived 20 days after payment*

(2) When the employee remains on the employer's payroll system in a country or territory outside New Zealand, the PAYE income payment is treated as derived by them on the 20th day after payment when the employer chooses to deliver their employment income information under section 23J(3) of the Tax Administration Act 1994.

*Employees undertaking tax obligations*

(3) When an amount of tax is not withheld or when payment is insufficient as described in section RD 21, **RD 62B, or RD 71B**, as applicable, and the employee must undertake the relevant tax obligations in relation to employment, ~~the PAYE income payment, employer superannuation cash contribution, or fringe benefit made or provided to them that would normally be placed on the employer~~ they must do so as if an employer, and, for this purpose, may pay the initial amount of tax for the payment as a lump sum.

*Meaning of cross-border employee*

(4) For the purposes of this section and **sections CE 1(3B), RA 15(4B), RD 62B, RD 65, and RD 71B, and sections 120B(bc) and 141ED(1B) and (3)(c)** of the Tax Administration Act 1994, a **cross-border employee**—

(a) means—

(i) for a person providing a service in New Zealand, an employee of a non-resident employer:

(ii) for a person providing a service outside New Zealand, a resident employee; and

(b) includes a secondee or a person who provides a service for or on behalf of a person who is not resident in New Zealand.

Defined in this Act: amount of tax, cross-border employee, employee, employer, ~~employer superannuation cash contribution,~~ employment income information, fringe benefit, New Zealand, non-resident, pay, PAYE income payment, resident

## 18 Section CE 1F amended (Treatment of amounts derived by cross-border employees)

(1) After **section CE 1F(3)**, insert:

*Meeting or correcting employment-related tax obligations*

(3B) **Subsection (3C)** applies when the employer or other person that the PAYE rules apply to under section RD 2(2) has taken reasonable measures to manage their employment-related tax obligations, and—

(a) ~~the employer has taken reasonable measures to manage their employment-related tax obligations; and~~the employee is a New Zealand resident working outside New Zealand for a period, and during that period the employee receives an unexpected PAYE income payment;

(b) the employee is present in New Zealand for a period during which they—

(i) have breached a threshold under section CW 19 (Amounts derived during short-term visits):

(ii) have breached a threshold set out in a double tax agreement:

(iii) have received an ~~extra pay~~unexpected PAYE income payment in the period.

*Grace period*

(3C) The employer or other person that the PAYE rules apply to has a 60-day period within which they must make a reasonable effort to meet or correct their tax obligations relating to the PAYE income payments, employer superannuation cash contributions, or fringe benefits made or provided to the employee for the time the employee was in New Zealand.

*Timing*

(3D) The 60-day period referred to in **subsection (3C)** starts to run from the earlier of—

(a) the date of the breach or the payment, as applicable:

(b) the date on which the employer could reasonably foresee that a breach or a payment, as applicable, will occur.

*Grace period when employee has undertaken obligations*

(3E) When the employee has undertaken to meet their employment-related tax obligations under **subsection (3)** for the period during which they are in New Zealand, the employee may be treated as the employer for the purposes of **subsection (3C)**, making the grace period available to the employee.

(2) In section CE 1F, list of defined terms, insert "double tax agreement"~~, "extra pay"~~.

### 19 Section CQ 5 amended (When FIF income arises)

(1) In section CQ 5(1)(c)(viii), delete "purchase".

(2) In section CQ 5, list of defined terms, insert "employee share scheme".

### 20 Section CR 4 amended (Income for general insurance outstanding claims reserve)

(1) In section CR 4(1)(a)(i), after "Appendix D", insert "or IFRS 17".

(1B) Replace section CR 4(3)(a)(ii) with:

(ii) the amount of the insurer's closing outstanding claims reserve, for general insurance contracts not referred to in subparagraph (iii), used by the insurer for tax purposes for the prior year, if the current year is the first year for which this section applies to the insurer, or for which the insurer adopts IFRS 17, or for which the

insurer applies for the first time in a tax calculation the definition of **present value (gross)** in **section EY 24(5)** (Outstanding claims reserving amount: non-participation policies not annuities):

(1C) In section CR 4, list of defined terms, insert "IFRS 17" and "present value (gross)".

(2) **Subsections (1), (1B), and (1C)** ~~applies~~ apply for income years starting on or after 1 January 2023.

### 21 Section CV 12 amended (Trustees: amounts received after person's death)

(1) In section CV 12, replace "section HC 8" with "**section HC 8(2)**".

(2) **Subsection (1)** applies for the 2022–23 and later income years.

### 21B New section CW 3C inserted (Certain subdivisions of land)

After section CW 3, insert:

#### CW 3C Certain subdivisions of land

*Exempt income*

(1) An amount that a person derives from disposing of land is exempt income if they are a co-owner of the land and—

(a) the land is disposed of by the person to themselves and other co-owners, but to no third parties by any co-owner; and

(b) as between the co-owners, the value of the land disposed of by them to each of themselves is proportionate to the value contributed by each co-owner for their acquisition of the land. *For example*: A contributes $10 for the acquisition of land worth $25, and B contributes $15. When A and B dispose of the land to themselves at a later date for a total of $50, A provides $20 and B provides $30. Because, as between themselves as co-owners, the disposal to each of themselves is proportionate in value to their acquisition contribution, amounts derived by A and B in relation to the disposal are exempt income.

*Exception: 5% safe harbour*

(2) Despite **subsection (1)**, if the person has the smallest proportion of the land as between co-owners and the land's value at the time of disposal is not exactly proportionate to the acquisition value as between co-owners, income derived by the person from disposing of the land is nevertheless exempt income if the difference between the actual disposal proportion and the proportion required by **subsection (1)** for an exemption is less than 5%.

Defined in this Act: amount, dispose, exempt income, land, person

## 22 Section CW 10 amended (Dividend within New Zealand wholly-owned group)

(1) Replace the heading to section CW 10(1) with "*Exempt income: dividends within wholly-owned groups*".

(2) Replace section CW 10(1)(a) with:

(a) it is derived by a company (the **recipient**) that is—

(i) not a foreign company; or

(ii) a New Zealand resident company that is treated under a double tax agreement as not being resident in New Zealand; and

(3) In section CW 10(1)(e), replace "met." with "met; and".

(4) After section CW 10(1)(e), insert:

(f) for a dividend derived by a company described in **paragraph (a)(ii)**, 1 or more of the following apply:

(ia) the recipient is treated as not being resident in New Zealand under a double tax agreement between New Zealand and Australia:

(i) immediately after the dividend is derived by the recipient, the recipient has only shareholders that would have full relief from New Zealand tax under a double tax agreement on a dividend paid to them at that time by the recipient if the recipient were treated as being a company that is not a foreign company:

(ii) the total amount of dividends derived by the recipient from the payer is less than $1 million in each 12-month period that includes the date on which the dividend is derived by the recipient:

(iii) the recipient becomes a company that is not a foreign company within 2 years of the date on which it derived the dividend and does not itself pay a dividend in the period that starts on the date on which it derived the dividend and ends on the date on which it becomes a company that is not a foreign company.

(5) After section CW 10(1), insert:

*Exempt income: fully imputed dividends within wholly-owned groups*

(1B) A dividend is exempt income to the extent to which it is fully imputed if—

(a) it is derived by a company described in **subsection (1)(a)(ii)**; and

(b) the requirements of subsection (1)(b) to (e) are met; and

(c) the requirement of **subsection (1)(f)** is not met.

(6) In section CW 10, list of defined terms, insert "amount", "double tax agreement", "fully imputed", "New Zealand resident", "New Zealand tax", and "shareholder".

**22B Section CX 1 amended (Goods and services tax)**

After section CX 1(b), insert:

(c) a flat-rate credit referred to in **sections 8C(3) and (4) and 20(3)(de), (3JD), (3N), and (4E)**.

**23 Section CX 9 amended (Subsidised transport)**

(1) In section CX 9, after "employee", insert ", unless **section CX 19C** applies".

(2) **Subsection (1)** applies to fringe benefits provided on or after 1 April 2023.

**24 Section CX 10 amended (Employment-related loans)**

(1) In section CX 10(2)(b), replace "a share purchase scheme" with "an exempt ESS".

(2) In section CX 10, list of defined terms,—

(a) insert "exempt ESS":

(b) delete "share purchase scheme".

**25 Section CX 13 amended (Contribution to superannuation schemes)**

(1) Replace section CX 13(2) with:

*Exclusions*

(2) This section does not apply to—

(a) an employer's superannuation cash contribution:

(b) an employer's contribution to a foreign superannuation scheme.

(2) In section CX 13, list of defined terms, insert "foreign superannuation scheme".

**26 Section CX 14 amended (Contributions to sickness, accident, or death benefit funds)**

(1) In section CX 14, replace "death benefit fund." with "death benefit fund, except when the contribution is made to a foreign superannuation scheme."

(2) In section CX 14, list of defined terms, insert "foreign superannuation scheme".

**27 New section CX 19C inserted (Certain public transport)**

(1) After section CX 19B, insert:

**CX 19C Certain public transport**

~~(1) A public transport fare that an employer subsidises mainly for the purposes of an employee travelling between their home and place of work is not a fringe benefit if the public transport service is by 1 or more of the following means:~~

~~(a) bus:~~

~~(b) train:~~

~~(c) ferry:~~

~~(d) tram:~~

~~(e) cable car.~~

*Travel between home and work*

(1) A fare that an employer subsidises mainly for the purposes of an employee travelling between their home and place of work is not a fringe benefit if the fare—

(a) is a public transport fare for 1 or more of the following:

(i) bus service:

(ii) rail vehicle:

(iii) ferry:

(iv) cable car:

(b) is partly funded by the Total Mobility Scheme administered by Waka Kotahi.

*Meaning of bus service*

(2) **Bus service** means a service for the carriage of passengers for hire or reward by means of a motor vehicle, but does not include—

(a) a service that can be reserved for use by a single person or a self-selected group of people:

(b) a shuttle service as defined in section 5 of the Land Transport Management Act 2003.

*Meaning of public transport fare*

(3) **Public transport fare** means the money paid for a journey on a means of transport that is available to the public and for which set fares are charged.

*Meaning of rail vehicle*

(4) **Rail vehicle** has the same meaning as in section 4(1) of the Railways Act 2005.

Defined in this Act: bus service, employee, fringe benefit, public transport fare, rail vehicle

(2) **Subsection (1)** applies to fringe benefits provided on or after 1 April 2023.

## 28 Section CX 26 amended (Non-liable payments)

(1) In section CX 26, insert—

(a) as a subsection heading after the section title, "*Employees' PAYE income payments*":

(b) as a new subsection:

*Benefit provided during time spent in New Zealand*

(2) Despite subsection (1), some or all of a benefit received by an employee who is not resident in New Zealand but derives a PAYE income payment that is taxable in New Zealand is a fringe benefit only to the extent to which the benefit relates to time spent by the employee in New Zealand.

(2) In section CX 26, list of defined terms, insert "New Zealand" and "resident".

**29 Section CX 35 amended (Meaning of employee share loan)**

(1) In section CX 35(2)(b), replace "a share purchase scheme" with "an exempt ESS".

(2) In section CX 35, list of defined terms, insert "exempt ESS".

**30 Section CX 47 amended (Government grants to businesses)**

(1) In section CX 47(1)(a), replace " or a public authority" with ", a public authority, or a public purpose Crown-controlled company".

(2) In section CX 47, list of defined terms, insert "public purpose Crown-controlled company".

**31 Section CX 57B amended (Amounts derived during periods covered by calculation methods)**

In section CX 57B(1),—

(a) replace "other than" with ", that is not":

(b) after "in a FIF", insert "or a dividend to which **section CD 36(4)** (Foreign investment fund income) applies,".

**32 Section CZ 39 amended (Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018)**

(1A) After section CZ 39(1), insert:

*When this section does not apply*

(1B) This section does not apply to a person's disposal of residential land if the land meets the requirements of sections CB 6AB, CB 6AC, CB 6AE, or FB 3A (which relate to residential land), and the transferor first acquired an estate or interest in the land before 29 March 2018.

(1) In section CZ 39(5B), replace "acquired subsequent to" with "converted subsequent to".

(2) In section CZ 39(5B), replace "the joint tenancy was acquired" with "was the person's bright-line acquisition date for the land prior to the conversion".

(3) In section CZ 39(5C), replace "acquired subsequent to" with "converted subsequent to".

(4) In section CZ 39(5C), replace "the tenancy in common was acquired" with "was the person's bright-line acquisition date for the land prior to the conversion".

(5) In section CZ 39(7), replace "person." with "person (*see also*: section FC 9 (Residential land transferred to executor, administrator, or beneficiary on death of person)."

(6) Replace section CZ 39(5D) with:

*Land-owning person*

(5D) In the case and to the extent to which a person who owns land (**pre-existing land**) has more land transferred to them (the **transfer land**) or transfers part of their pre-existing land (also, the **transfer land**), the instrument of transfer for the transfer land is for the transfer land only and is treated as not being for the pre-existing land, for the purposes of the definition of **bright-line acquisition date**.

### 32B Section DB 2 amended (Goods and services tax)

After section DB 2(2), insert:

*Treatment of flat-rate credit*

(2B) For the purposes of subsections (1) and (2), an underlying supplier referred to in **section 8C** of the Goods and Services Tax Act 1985 who is not a registered person is treated as if they were a registered person for the purposes of this section in relation to a deduction for expenditure to the extent to which the expenditure is attributable to a supply of listed services.

### 33 Section DB 53 amended (Attributed PIE losses of certain investors)

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

(b) either—

(i) the investor is a zero-rated investor; or

(ii) the PIE calculates its tax liability using the quarterly calculation option under section HM 43 and the amount is attributed to an exiting investor to whom section HM 61 applies.

(2) In section DB 53, list of defined terms, insert "zero-rated investor".

### 34 New heading and new section DB 68 inserted

(1) After section DB 67, insert:

### *Utilities distribution assets*

**DB 68 Amounts paid for utilities distribution assets**

*When this section applies*

(1) This section applies when a person incurs expenditure in relation to either a utilities distribution asset or a utilities distribution network.

*Determining whether expenditure of capital nature*

(2) For the purposes of determining whether the expenditure is capital in nature, the expenditure is treated as relating to a utilities distribution asset and is treated as not being incurred in relation to a utilities distribution network.

Defined in this Act: utilities distribution asset, utilities distribution network

(2) **Subsection (1)** applies for the 2008–09 and later income years. However, **subsection (1)** does not apply for an income year before the 2024–25 income year, if the person has—

(a) taken a position in a return of income filed on or before 31 March 2022 that ignores **subsection (1)**:

(b) a binding ruling that ignores **subsection (1)**.

**35 Section DD 11 amended (Some definitions)**

Repeal section DD 11, definition of **business premises**.

**36 Section DF 1 amended (Government grants to businesses)**

(1) In section DF 1(1)(a), replace " or a public authority" with ", a public authority, or a public purpose Crown-controlled company".

(2) In section DF 1(1B), replace "or public authority" with "authority, public authority, or public purpose Crown-controlled company".

(3) In section DF 1(3)(a), replace "or public authority" with "authority, public authority, or public purpose Crown-controlled company".

(4) In section DF 1, list of defined terms, insert "public purpose Crown-controlled company".

**37 Section DG 5 amended (Meaning and treatment of interest expenditure for this subpart)**

(1) After section DG 5(2)(c), insert:

(d) despite paragraphs (a) and (b), a person must apportion an amount of interest expenditure for the income year using the formula in section DG 9(2) and treat the amount of the interest expenditure as the item **expenditure** in section DG 9(3)(a) to the extent to which—

(i) the interest expenditure is for disallowed residential property that is an asset; or

(ii) the interest expenditure is for acquiring an ownership interest in, or to become a beneficiary of, an interposed residential property holder and the interposed residential property holder has an asset at any time during the income year.

(2) In section DG 5, list of defined terms, insert "beneficiary", "disallowed residential property", and "interposed residential property holder".

**38 Section DG 11 amended (Interest expenditure: close companies)**

(1) Replace section DG 11(1)(b) with:

(b) the company incurs interest expenditure for the income year.

(2) In section DG 11, list of defined terms, delete "beneficiary", "disallowed residential property", and "interposed residential property holder".

**39 Section DH 6 amended (Interposed residential property percentage)**

(1) In section DH 6(2)(a)(i), replace "DH 4(1) to (3)" with "DH 4".

(2) Repeal section DH 6(2)(a)(ii).

**40 Section DH 7 amended (Grandparented residential interest)**

In the heading to section DH 7(2), replace "balance" with "principal".

**41 Section DH 9 repealed (Exception to limited denial of deductions: loans denominated in foreign currencies)**

Repeal section DH 9.

**41B Section DH 10 amended (Limited denial of deductibility: simplified calculation of interest affected)**

In section DH 10(6)(e), replace "under section DH 7(4) against the notional loan principal" with "under section DH 7(4), other than against the notional loan principal,".

**42 Section DH 12 amended (Valuation)**

Replace the heading to section DH 12(2) with "*Other property*".

**43 Section DN 6 amended (When FIF loss arises)**

(1) In section DN 6(1)(c)(viii), delete "purchase".

(2) In section DN 6, list of defined terms, insert "employee share scheme".

**44 Section DW 4 amended (Deduction for general insurance outstanding claims reserve)**

(1) In section DW 4(1)(a)(i), after "Appendix D", insert ", or IFRS 17".

(2) In section DW 4(4)(a)(i), after "**year**)", insert ", if none of subparagraphs (ii), **(iii), and (iv)** ~~do not apply~~ applies".

(3) In section DW 4(4)(a)(ii), replace "insurer:" with "insurer; or".

(4) After section DW 4(4)(a)(ii), insert:

(iii) the amount of the insurer's reserve for outstanding claims liability, calculated at the end of the prior year using the basis the insurer used for tax purposes in that prior year for general insurance contracts, if the insurer is a general insurer and the current year is the first year in which the insurer adopts IFRS 17 for general insurance contracts; or

(iv) the amount of the insurer's reserve for outstanding claims liability, calculated at the end of the prior year using the basis the insurer used for tax purposes in that prior year for general insurance contracts, if the insurer is a life insurer with general insurance contracts who does not adopt IFRS 17 in the current year and the current year is the first year in which the insurer applies the definition of **present value (gross)** ~~inserted~~ in section EY 24(5) (Outstanding claims reserving amount: non-participation policies not annuities) ~~by section 98 of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act (No 2)~~ **2022**:

(5) In section DW 4(4B), formula, replace "risk margin" with "risk adjustment".

(6) In section DW 4(4C)(c),—

(a) replace "**risk margin**" with "**risk adjustment**":

(b) replace "appropriate margin" with "appropriate adjustment":

(c) replace "the margin" with "the adjustment".

(6B) In section DW 4, list of defined terms, insert "IFRS 17" and "present value (gross)".

(7) **Subsections (1), (2), (3), (4), (5), and ~~(6)~~ (6B)** apply for income years starting on or after 1 January 2023.

### 45 Section EE 6 amended (What is depreciable property?)

(1) After section EE 6(2), insert:

*Property: utilities distribution assets*

(2B) For the purposes of this subpart, utilities distribution assets are separate items of property.

(2) In section EE 6, list of defined terms, insert "utilities distribution asset".

(3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. However, **subsections (1) and (2)** do not apply for an income year before the 2024–25 income year, if the person has—

(a) taken a position in a return of income filed on or before 31 March 2022 that ignores **subsection (1) and (2)**:

(b) a binding ruling that ignores **subsection (1) and (2)**.

### 46 Section EE 7 amended (What is not depreciable property?)

(1) Before section EE 7(g), insert:

(fc) a utilities distribution network, to the extent to which it is treated as an item of property separate from the relevant utilities distribution assets:

(2) In section EE 7, list of defined terms, insert "utilities distribution asset" and "utilities distribution network".

(3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. However, **subsections (1) and (2)** do not apply for an income year before the 2024–25 income year, if the person has—

(a) taken a position in a return of income filed on or before 31 March 2022 that ignores **subsections (1) and (2)**:

(b) a binding ruling that ignores **subsections (1) and (2)**.

### 47 Section EE 31 amended (Annual rate for item acquired in person's 1995–96 or later income year)

In section EE 31(1), replace "(Treatment of emigrating companies and their shareholders)" with "or **FL 3(2)** (which relate to the treatment of emigrating companies and their shareholders)".

### 47B Section EE 54 amended (Cost: GST)

After section EE 54(4), insert:

*Extended meaning of input tax*

(5) For the purposes of this section, input tax includes an amount of flat-rate credit referred to in **sections 8C(3) and (4) and 20(3)(de), (3JD), (3N), and (4E)** of the Goods and Services Tax Act 1985.

### 47C Section EW 15B amended (Applying IFRSs to financial arrangements)

(1) After section EW 15B(4), insert:

*Agreed spreading methods for life financial reinsurance*

(5) A life insurer who, in an income year, is a party to a life financial reinsurance contract (the **reinsurance contract**) and to a deed of settlement under section 6A of the Tax Administration Act 1994 with the Commissioner that meets the requirements of **subsection (6)**, must use the agreed spreading method referred to in **subsection (6)(b)** for the reinsurance contract and the income year.

*Deed of settlement requirements*

(6) The deed of settlement must—

(a) be entered into by the life insurer and the Commissioner before 1 January 2023; and

(b) require the life insurer to use for the income year a method (the **agreed spreading method**) for spreading the income or expenditure under life financial reinsurance that differs from the treatment of life financial reinsurance that would otherwise be required under the IFRS used by the life insurer for the income year.

(2) In section EW 15B, list of defined terms, insert "Commissioner", "expenditure", "income year", "life financial reinsurance", "life insurer", and "reinsurance contract".

(3) **Subsections (1) and (2)** apply for income years starting on or after 1 January 2023.

### 48 Section EW 15D amended (IFRS financial reporting method)

Replace section EW 15D(3)(a) with:

(a) for a financial arrangement accounted for under the fair value method, a movement in fair value—

(i) through a decline in the credit quality of the arrangement; or

(ii) through an improvement in the credit quality of the arrangement to the extent to which it offsets earlier movements in fair value described in **subparagraph (i)**:

### 48B Section EW 24 amended (Consistency of use of spreading method)

(1) In section EW 24(3), replace "Section EW 26 sets out" with "Sections EW 26 and **HM 35(8)(c)** (Determining net amounts and taxable amounts) set out".

(2) **Subsection (1)** applies to the 2023–24 and later income years.

### 49 Section EW 46C amended (Consideration when debt remitted within economic group)

(1) In section EW 46C(6), definition of **nominal shares**, replace "a share purchase scheme" with "an exempt ESS".

(2) In section EW 46C, list of defined terms, insert "exempt ESS".

### 50 New section EW 46D inserted (Consideration when insolvent company's debt repaid with consideration received for issuing shares)

After section EW 46C, insert:

#### EW 46D Consideration when insolvent company's debt repaid with consideration received for issuing shares

*When this section applies*

(1) This section applies when—

(a) a company is a debtor; and

~~(b) the debtor is insolvent; and~~

(c) the debtor or a person (**person A**) associated with the debtor enters into an arrangement with another person (**person B**); and

(d) under the arrangement, the debtor or person A issues shares to person B for consideration; and

(db) the debtor does not satisfy the solvency test set out in section 4 of the Companies Act 1993 at either or both of the following times:

(i) immediately before the arrangement is entered into:

(ii) immediately before the issue of the shares; and

(e) the terms of the arrangement require the debtor or person A to use some or all of the consideration to pay, directly or indirectly, an amount of the debtor's debt to the creditor; and

(f) section EW 46C would not apply if the amount of the debtor's debt is remitted; and

(g) the debtor or person A uses some or all of the consideration to pay, directly or indirectly, the amount of the debtor's debt to the creditor.

*Consideration*

(2) The debtor or person A, as applicable, is treated as—

(a) not having paid, directly or indirectly, the amount of the debtor's debt to the creditor; and

(b) having made a payment, at the time the shares were issued, of an amount of the debtor's debt to the creditor equal to the amount calculated using the formula in **subsection (3)**.

*Formula*

(3) The formula is—

shares' market value × repayment ÷ total consideration.

*Definition of items in formula*

(4) In the formula,—

(a) **shares' market value** is the market value of the shares issued to person B at the time they were issued:

(b) **repayment** is the amount of the debtor's debt to the creditor that is paid, directly or indirectly, using consideration received for the issue of the shares to person B:

(c) **total consideration** is the total amount of consideration paid by person B for the issue of the shares.

Defined in this Act: amount, arrangement, associated person, company, consideration, market value, pay, share

## 51 Section EX 20B amended (Attributable CFC amount)

(1) Replace section EX 20B(3)(c) with:

(c) an amount that is not a distribution from an associated non-attributing active CFC and is—

(i) a deductible foreign equity distribution, ~~other than from~~ (the **distribution**) to the extent to which the distribution is not from, or funded directly or indirectly from, an attributing interest that is an income interest in a FIF meeting the requirements of section EX 59(1):

(ii) a distribution for fixed-rate foreign equity:

(2) **Subsection (1)** applies for income years starting on or after 1 April 2023.

### 52 Section EX 20C amended (Net attributable CFC income or loss)

(1) In section EX 20C(10)(b), after "of the CFC", insert ", other than a deductible foreign equity distribution ~~from~~ (the **distribution**) to the extent to which the distribution is funded directly or indirectly from an attributing interest that is an income interest in a FIF meeting the requirements of section EX 59(1),".

(2) **Subsection (1)** applies for income years starting on or after 1 April 2023.

### 53 Section EX 38 amended (Exemptions for employee share schemes)

In section EX 38(1)(f), replace "a employee share scheme" with "an employee share scheme".

### 54 Section EX 46 amended (Limits on choice of calculation methods)

In section EX 46(10),—

(a) replace paragraph (c)(ii) with:

(ii) are denominated in New Zealand dollars or are assets having a value in New Zealand dollars that is governed by 1 or more related financial arrangements that remove 80% to 125% of foreign currency risk for the assets and are entered with the sole purpose and net effect of offsetting exposure to foreign currency exchange rate movement in the value of the assets:

(b) replace paragraph (cb)(iii) with:

(iii) the interest has a value in New Zealand dollars that is governed by 1 or more related financial arrangements that remove 80% to 125% of foreign currency risk for the interest and are entered with the sole purpose and net effect of offsetting exposure to foreign currency exchange rate movement in the value of the interest:

### 55 Section EX 52 amended (Fair dividend rate annual method)

(1) Replace section EX 52(5), other than the heading, with:

(5) **Opening value** is the total of the market values of the FDR interests held by the person at the start of the income year that are not, at the start of the income

year, included in a direct income interest of 10% or more in a FIF that, at the start of the income year,—

(a) meets the requirements of section EX 35(b)(i) to (iii); and

(b) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in section EX 35(c)(i) or (ii); and

(c) is not a unit trust or is a unit trust subject under Australian law to income tax on its income in the same way as a company.

(2) **Subsection (1)** applies for income years starting on or after 1 July 2014.

### 56 Section EX 53 amended (Fair dividend rate periodic method)

(1) Replace section EX 53(5), other than the heading, with:

(5) **Opening value** is the total of the market values of the FDR interests held by the person at the start of the unit valuation period that are not, at the start of the unit valuation period, included in a direct income interest of 10% or more in a FIF that, at the start of the income year,—

(a) meets the requirements of section EX 35(b)(i) to (iii); and

(b) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in section EX 35(c)(i) or (ii); and

(c) is not a unit trust or is a unit trust subject under Australian law to income tax on its income in the same way as a company.

(2) **Subsection (1)** applies for income years starting on or after 1 July 2014.

### 57 Section EX 59 amended (Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method)

(1) In section EX 59(1B)(b), replace "(ii)." with "(ii); and".

(2) After section EX 59(1B)(b), insert:

(c) is not a unit trust or is a unit trust subject under Australian law to income tax on its income in the same way as a company.

(3) **Subsections (1) and (2)** apply for income years starting on or after 1 July 2014.

### 58 Section EY 24 amended (Outstanding claims reserving amount: non-participation policies not annuities)

(1) In section EY 24(2)(a)(i), before "the amount", insert "if subparagraphs (ii), **(iii), and (iv)** do not apply,".

(2) In section EY 24(2)(a)(ii), replace "IBNR liability" with "liability for claims incurred but not reported" in each place.

(3) After section EY 24(2)(a)(ii), insert:

(iii) if the current year is the first year in which the insurer adopts IFRS 17 for accounting, the amount of the insurer's reserve for

outstanding claims liability for the class of policies, calculated at the end of the prior year using the basis the insurer used for tax purposes in that prior year; or

(iv) if the insurer does not adopt IFRS 17 in the current year and the current year is the first year in which the insurer applies the definition of **present value (gross)** ~~inserted by **section 98** of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act (No 2) **2022**~~, the amount of the insurer's reserve for outstanding claims liability for the class of policies, calculated at the end of the prior year using the basis the insurer used for tax purposes in that prior year:

(4) In section EY 24(3), formula,—

(a) replace "life risk claims incurred" with "life risk claims incurred but not reported":

(b) replace "risk margin" with "risk adjustment".

(5) In section EY 24(4)(a), replace "**life risk claims incurred**" with "**life risk claims incurred but not reported**".

(6) In section EY 24(4)(c),—

(a) replace "**risk margin**" with "**risk adjustment**":

(b) replace "margin" with "adjustment" in each place.

(6B) After section EY 24(4), insert:

*Determining the present value (gross) of life risk components of claims*

(5) For the purposes of calculating a life insurer's outstanding claims reserve under this section for a class of policies, **present value (gross)** for the life risk component of a claim under a life insurance policy or life reinsurance policy that is part of the class means the present value of the life risk component that is included in the outstanding claims reserve of the life insurer, calculated—

(a) using the discount rates that would be used in calculating the present value, gross of tax, of the life risk component for the purposes of the financial statements of the life insurer; and

(b) gross of tax; and

(c) net of GST.

(6C) In section EY 24, list of defined terms, insert "GST", "IFRS 17", "life insurance policy", "life reinsurance policy", "outstanding claims reserve", and "tax".

(7) **Subsections (1), (2), (3), (4), (5), ~~and~~ (6), (6B), and (6C)** apply for income years starting on or after 1 January 2023.

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

(1) In section FC 9(2), replace "administrator." with "administrator (*see also*: sections CB 6A(2B) and CZ 39(7))."

(2) After section FC 9(3), insert:

*Rollover relief extended*

(4) Despite subsection (3), if the residential land is transferred by a beneficiary of the deceased person on or after 1 April 2022 to a person who is a recipient as described in section FC 9B(a) to (e), and the person disposes of it, sections CB 6A and CZ 39 do not apply to the disposal.

### 60 Section FL 1 amended (What this subpart does)

(1) Replace section FL 1(1), other than the heading, with:

(1) This subpart applies when a company that is a New Zealand resident (the **emigrating company**)—

(a) stops being a New Zealand resident; or

(b) starts being treated under a double tax agreement as not being a New Zealand resident.

(2) In section FL 1(2), words before the paragraphs, after "non-resident", insert ", or if a specified event occurs after an emigrating company starts being treated under a double tax agreement as not being a New Zealand resident,".

(3) In section FL 1, list of defined terms, insert "double tax agreement".

### 61 Section FL 2 replaced (Treatment of emigrating companies and their shareholders)

Replace section FL 2 with:

**FL 2 Treatment of companies that become non-resident and their shareholders**

*When this section applies*

(1) This section applies in relation to a New Zealand resident company that ~~stops being a New Zealand resident.~~—

(a) either—

(i) is not treated under a double tax agreement as not being a New Zealand resident; or

(ii) has been treated under a double tax agreement as not being a New Zealand resident since before 30 August 2022; and

(b) stops being a New Zealand resident.

*Treatment of company*

(2) Immediately before the company stops being a New Zealand resident, the company is treated as—

(a) disposing of its property to a person, and reacquiring the property from the person, for consideration equal to the market value of the property at the time; and

(b) making a distribution in money as a dividend to its shareholders of an amount that would be available for distribution at the time if the company were treated as going into liquidation.

*Treatment of shareholders*

(3) Immediately before the company stops being a New Zealand resident, each shareholder of the company is treated as being paid a distribution in money as a dividend of the amount the shareholder would be entitled to at the time if the company were treated as going into liquidation.

Defined in this Act: amount, company, dividend, double tax agreement, liquidation, market value, New Zealand resident, pay, shareholder

**62 New section FL 3 inserted (Treatment of companies that start being treated as non-resident and their shareholders)**

After section FL 2, insert:

**FL 3 Treatment of companies that start being treated as non-resident and their shareholders**

*When this section applies*

(1) This section applies in relation to a New Zealand resident company that, on or after 30 August 2022, starts being treated under a double tax agreement (the **DTA**) as not being a New Zealand resident if, after the company starts being treated under the DTA as not being a New Zealand resident, 1 or more of the following events occur:

(a) the company takes a tax position in a return of income that is consistent with relief from New Zealand tax being available under the DTA for an amount of income derived by the company on the basis that the company is treated under the DTA as not being a New Zealand resident~~, while being treated under the DTA as not being a New Zealand resident, derives an amount of income for which relief from New Zealand tax is available under the DTA~~:

~~(b) the company, while being treated under the DTA as not being a New Zealand resident, pays a dividend, other than a dividend that has an imputation ratio equal to the maximum permitted ratio calculated under section OA 18 (Calculation of maximum permitted ratios), to—~~

~~(i) a non-resident; or~~

~~(ii) a New Zealand resident that is treated under a double tax agreement as not being a New Zealand resident:~~

(c) the company becomes a non-resident:

(d) the company has~~, for a continuous period of 2 years,~~ been treated under the DTA as not being a New Zealand resident for a continuous period of 2 years starting on the day on which it receives a competent authority determination that it is treated under the DTA as not being a New Zealand resident.

*Treatment of company*

(2) Immediately before the company starts being treated under the DTA as not being a New Zealand resident, the company is treated as—

(a) disposing of its property to a person, and reacquiring the property from the person, for consideration equal to the market value of the property at the time; and

(b) making a distribution in money as a dividend to its shareholders at the time of an amount that would be available for distribution at the time if the company were treated as going into liquidation.

*Treatment of shareholders*

(3) Immediately before the company starts being treated under the DTA as not being a New Zealand resident, each shareholder of the company at the time is treated as being paid a distribution in money as a dividend of the amount the shareholder would be entitled to at the time if the company were treated as going into liquidation.

*Timing of income: company*

(4) An amount of income derived by the company from a deemed disposal under **subsection (2)** is allocated to the income year of the company in which the earliest of the events described in **subsection (1)(a) to (d)** occurs.

*Timing of income: shareholders*

(5) A dividend that a shareholder of the company at the time referred to in **subsection (3)** is treated as being paid under ~~**subsection (3)**~~that subsection is allocated to the income year of the shareholder in which the earliest of the events described in **subsection (1)(a) to (d)** occurs.

*Relationship with section CD 1*

(6) This section overrides section CD 1(2) (Dividend).

Defined in this Act: amount, company, competent authority, dividend, double tax agreement, ~~imputation ratio,~~ income, income year, liquidation, market value, ~~maximum permitted ratio,~~ New Zealand resident, New Zealand tax, non-resident, pay, return of income, shareholder, tax position

## 63 Section FM 31 amended (Eligibility rules)

(1) Repeal section FM 31(1)(b) and (e).

(2) In section FM 31, list of defined terms, delete "foreign company" and "income tax".

**64 Section FN 4 amended (Eligibility rules)**

Replace section FN 4(1)(d) with:

(d) it is required to maintain an imputation credit account (*see* sections OB 1 and OB 2); and

**65 Section GB 28 amended (Interpretation of terms used in section GB 27)**

In section GB 28(6)(a)(ii), delete "or more".

**66 Section GC 13 amended (Calculation of arm's length amounts)**

In section GC 13(1C), words before the paragraphs, replace "1.122" with "1.142".

**67 Section HA 7 amended (Shareholding requirements)**

In section HA 7(3)(a), delete "or adoption,".

**68 Section HB 13 amended (LTC elections)**

In section HB 13(6), replace "values" with "timings and values".

**69 Section HC 8 amended (Amounts received after person's death)**

(1) After section HC 8(1), insert:

*Reportable income received within 28 days after person's death*

(1B) ~~An~~The trustee may treat an amount of reportable income received by the trustee within the period of 28 days starting with the date of the person's death ~~is treated~~ as if it were income that was derived by the person before being received by the trustee.

(2) In section HC 8(2), replace "The amount" with "An amount not ~~referred to in~~ treated as being derived by the person under **subsection (1B)**".

(3) In section HC 8, list of defined terms, insert "reportable income".

(4) **Subsections (1) and (2)** apply for the 2022–23 and later income years.

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

(1A) In section HC 26(1), words before paragraph (a), replace "New Zealand resident trustee" with "resident trustee of a foreign trust".

(1) In section HC 26(1)(c), words before subparagraph (i), replace "foreign trust" with "trust".

~~(2) In section HC 26(1)(c)(i), after "trust deed", insert "or is created by a will".~~

(2) In section HC 26(1)(c)(i), after "trust deed", insert "or a will or other document that creates and governs the trust".

(3) In section HC 26(1)(d), words before subparagraph (i), replace "foreign trust" with "trust".

~~(4) In section HC 26(1)(d)(i), after "trust deed", insert "or is created by a will".~~

(4) In section HC 26(1)(d)(i), after "trust deed", insert "or a will or other document that creates and governs the trust".

(5) In section HC 26(1B), words before paragraph (a), replace "subsection (1)(c)(v) or (d)(iv)" with "subsection (1)(c)(iii), (iv), or (v) or (d)(ii), (iii), or (iv)".

(6) Replace section HC 26(1B)(b) with:

(b) satisfy the Commissioner that the trustee made reasonable efforts in the income year to comply with the requirements referred to in the subparagraph and to remedy the non-compliance.

### 71 Section HC 36 amended (Trusts and minor beneficiary rule)

In section HC 36(5), definition of **relative**, delete "adoption, as described in paragraph (a)(iv), or".

### 72 Section HM 35 amended (Determining net amounts and taxable amounts)

(1) In section HM 35(8)(a), replace "these valuations" with "these valuations and **paragraph (c)** does not apply to the income and deductions".

(2) In section HM 35(8)(b), replace "paragraph (a).", with "paragraph (a) and **paragraph (c)** does not apply to the income and deductions:".

(3) After section HM 35(8)(b), insert:

(c) given by *Determination G27: Swaps*, Method C, if the income and deductions arise from a financial arrangement that meets the requirements for the method and the multi-rate PIE, before becoming a party to the financial arrangement, chooses to use the method for the income and deductions from such financial arrangements and does not revoke the choice.

(4) **Subsections (1), (2), and (3)** apply for the 2023–24 and later income years.

### 73 Section HM 40 replaced (Deductions for attributed PIE losses for zero-rated and exiting investors)

Replace section HM 40 with:

#### HM 40 Deductions for attributed PIE losses for zero-rated and exiting investors equal to amount attributed

The deduction an investor referred to in section DB 53(1) is allowed is equal to the amount attributed for the income year or exit period.

Defined in this Act: amount, exit period, income year

### 74 Section HR 12 amended (Non-exempt charities: treatment of tax-exempt accumulations)

In section HR 12(3)(d), replace "the Te" with "Te".

### 75 New section IB 2B inserted (When subsequent ownership continuity breach regarded as occurring)

(1) After section IB 2, insert:

**IB 2B When subsequent ownership continuity breach regarded as occurring**

For the purposes of this subpart, once an ownership continuity breach has occurred for a company that, in the absence of section IB 3, prevents a tax loss component of the company from being carried forward to a tax year in a loss balance, a subsequent change in the holders of voting interests or market value interests in the company is not regarded as resulting in a subsequent ownership continuity breach unless the company would not meet the minimum continuity requirements of section IA 5(2) and (3) for the carrying forward of the tax loss component to the tax year in a loss balance if the meaning of **continuity period** in that section is modified by replacing the words "the start of the income year that corresponds to the tax year in which a tax loss component is included in the tax loss" with the words "immediately after the company's last ownership continuity breach occurred that, in the absence of section IB 3, prevents the tax loss component from being carried forward to the tax year in a loss balance".

Defined in this Act: company, continuity period, income year, loss balance, market value interest, ownership continuity breach, tax loss, tax loss component, tax year, voting interest

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

### 76 Section IC 4 amended (Common ownership: wholly-owned groups of companies)

(1) Replace the heading to section IC 4(2) with "*Exempt employee share schemes*".

(2) In section IC 4(2), replace "a share purchase scheme" with "an exempt ESS".

(3) In section IC 4, list of defined terms,—

(a) insert "exempt ESS":

(b) delete "share purchase scheme".

### 77 Section IC 5 amended (Company B using company A's tax loss)

(1) In section IC 5(1)(b), delete "residence".

(2) After section IC 5(7), insert:

*Commonality periods starting before 15 March 2017 for tax years after 1990–91*

(8) **Section IZ 7B** (Grouping tax losses for commonality periods starting before 15 March 2017 for tax years after 1990–91) modifies the requirements of subsection (1)(b) for a commonality period starting before 15 March 2017 for a tax loss component that arises after the 1990–91 tax year.

(3) In section IC 5, list of defined terms, insert "commonality period".

### 78 Section IC 7 amended (Residence of company A)

(1) Replace the heading to section IC 7 with "**Place of incorporation or carrying on business**".

(2) Repeal section IC 7(2).

(3) In section IC 7, list of defined terms, delete "double tax agreement", "income tax", and "resident in New Zealand".

### 79 New section IZ 7B inserted (Grouping tax losses for commonality periods starting before 15 March 2017 for tax years after 1990–91)

After section IZ 7, insert:

#### IZ 7B Grouping tax losses for commonality periods starting before 15 March 2017 for tax years after 1990–91

For the purposes of section IC 5(1)(b) (Company B using company A's tax loss), if the commonality period started before 15 March 2017 and company A's tax loss component arose in a tax year after the 1990–91 tax year, in addition to meeting the requirements of section IC 7(1) (Place of incorporation or carrying on business), company A, for the part of the commonality period that precedes 15 March 2017, must not be a company resident in New Zealand that is—

(a) treated under a double tax agreement, and for the purposes of the agreement, as not resident in New Zealand; or

(b) liable by the law of another country or territory to income tax in that country or territory through domicile, residence, or place of incorporation.

Defined in this Act: commonality period, company, double tax agreement, income tax, resident in New Zealand, tax loss component, tax year

### 80 Section LE 5 amended (Beneficiaries of trusts)

(1) In section LE 5(2), after "credit", insert "and imputation credit".

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

### 81 Section LK 1 amended (Tax credits relating to attributed CFC income)

Replace section LK 1(1C) with:

*Place of incorporation or carrying on business*

(1C) For the purposes of subsection (1B), the requirements set out in section IC 7 (Place of incorporation or carrying on business) do not apply to disallow the use of the tax credit by group companies under section LK 6.

**82 Section LT 1 amended (Tax credits for petroleum miners)**

In section LT 1(4D)(a), after "if", insert "the amount described in subsection (1)(a)(iii) is zero or".

**83 Section OB 2 amended (Australian companies choosing to have imputation credit accounts)**

(1) Replace the heading to section OB 2 with "**Australian companies with imputation credit accounts**".

(2) After section OB 2(2)(a)(i), insert:

(ib) is treated as not being resident in Australia under a double tax agreement between New Zealand and Australia; or

(3) After section OB 2(3), insert:

*When New Zealand resident company becomes Australian ICA company*

(3B) If a company that is resident in New Zealand stops being a company that is required by section OB 1 to maintain an imputation credit account because, under a double tax agreement between New Zealand and Australia, the company is treated as not being resident in New Zealand, the company continues to be required to maintain an imputation credit account.

(4) Replace section OB 2(7)(b) and (c) with:

(b) for a company that has made an election under subsection (1),—

(i) the company revokes the election by notifying the Commissioner; or

(ii) the Commissioner gives the company notice revoking the election.

(5) In section OB 2(8)(b), replace "unless paragraph (c) applies" with "for a company that has made an election under subsection (1), unless paragraph (a) or (c) applies".

(6) In section OB 2, list of defined terms, insert "resident in New Zealand".

**83B New section OB 23B inserted (ICA transfer from consolidated imputation group to departing member for unused tax payment)**

(1) After section OB 23, insert:

**OB 23B ICA transfer from consolidated imputation group to departing member for unused tax payment**

*Credit*

(1) An ICA company that ceases to be a member of a consolidated imputation group may choose to have an imputation credit for the amount of an imputation debit that the consolidated imputation group has under **section OP 41B** (Consolidated ICA debit for unused tax payment of departing member) because, immediately before the ICA company ceases to be a member, the imputation

credit account of the consolidated imputation group contains an imputation credit arising under section OP 7 or OP 8 (which relate to consolidated ICAs) from a payment (the **unused imputation credit payment**) that is made by the ICA company when the ICA company is a member of the consolidated imputation group and is held, unused, by the Commissioner or a tax pooling intermediary when the membership ceases.

*Table reference*

(2) The imputation credit in **subsection (1)** is referred to in table O1: imputation credits, row 21B (unused imputation credit payment by member before departure).

*When credit arises*

(3) The credit date is the date of the credit to the imputation credit account of the consolidated imputation group for the unused imputation credit payment.

Defined in this Act: amount, Commissioner, company, consolidated imputation group, ICA company, imputation credit, imputation credit account, imputation debit, income tax, pay, provisional tax, tax pooling intermediary

(2) **Subsection (1)** applies for the 2021–22 and later tax years.

### 84 Section OB 62 amended (Retrospective attachment of imputation credits)

~~In section OB 62(1)(b), replace "(Treatment of emigrating companies and their shareholders)" with "or **FL 3** (which relate to the treatment of emigrating companies and their shareholders)".~~

(1) Replace section OB 62(1), other than the heading, with:

(1) This section applies in relation to a dividend—

(a) arising from a transfer pricing arrangement when an ICA company pays a non-cash dividend whose amount is later adjusted under section GC 7 or GC 8 (which relate to transfer pricing arrangements); or

(b) arising under subpart FL (Emigration of resident companies) when an emigrating company that was an ICA company immediately before the time of emigration is treated under section FL 2 or **FL 3** (which relate to the treatment of emigrating companies and their shareholders) as paying a distribution to shareholders; or

(c) that an ICA company pays and that is described in **section CD 1(3)** (Dividend).

(2) In section OB 62(3), words before the paragraphs, after "subsection (1)(a)", insert "or **(c)**".

### 84B Table O1 amended (Table O1: imputation credits)

(1) In table O1, after row 21, insert:

| | | | |
|---|---|---|---|
| 21B | Unused imputation credit payment by | day of credit to ICA of consolidated imputation group for unused | **section OB 23B** |

| | | |
|---|---|---|
| | member before departure | imputation credit payment |

(2) **Subsection (1)** applies for the 2021–22 and later tax years.

### 84C New section OP 16B inserted (Consolidated ICA credit transfer to departing consolidated imputation group for unused tax payment)

(1) After section OP 16, insert:

**OP 16B Consolidated ICA credit transfer to departing consolidated imputation group for unused tax payment**

*Credit*

(1) A consolidated imputation group (the **departing group**) that ceases to be a part of a consolidated imputation group (the **parent group**) may choose to have an imputation credit for the amount of an imputation debit that the parent group has under **section OP 41C** because, immediately before the departing group ceases to be part of the parent group, the imputation credit account of the parent group contains an imputation credit arising under section OP 7 or OP 8 from a payment (the **unused imputation credit payment**) that is made by the departing group when the departing group is part of the parent group and is held, unused, by the Commissioner or a tax pooling intermediary when the departing group ceases to be part of the parent group.

*Table reference*

(2) The imputation credit in **subsection (1)** is referred to in table O19: imputation credits of consolidated imputation groups, **row 11B** (unused imputation credit payment by departing consolidated group before departure).

*When credit arises*

(3) The credit date is the day of the credit to the imputation credit account of the parent group for the unused imputation credit payment.

Defined in this Act: amount, Commissioner, company, consolidated imputation group, ICA company, imputation credit, imputation credit account, imputation debit, income tax, pay, provisional tax, tax pooling intermediary

(2) **Subsection (1)** applies for the 2021–22 and later tax years.

### 84D New sections OP 41B and OP 41C inserted

(1) After section OP 41, insert:

**OP 41B Consolidated ICA debit for unused tax payment of departing member**

*Debit*

(1) A consolidated imputation group (the **group**) may choose to have an imputation debit for the amount of an imputation credit (the **credit**) in the group's imputation credit account if—

(a) the credit arises under section OP 7 or OP 8 from a payment (the **unused imputation credit payment**) by a member of the consolidated imputation group (the **company**); and

(b) the company ceases to be a member of the group after making the unused imputation credit payment; and

(c) when the company ceases to be a member of the group, the unused imputation credit payment is held by the Commissioner or a tax pooling intermediary without having been applied to satisfy a tax liability, other than a liability of the company for provisional tax.

*Table reference*

(2) The imputation debit in **subsection (1)** is referred to in table O20: imputation debits of consolidated imputation groups, **row 15B** (member of consolidated imputation group leaving after making unused imputation credit payment).

*Debit date*

(3) The debit date is the date of the credit to the consolidated imputation group's imputation credit account for the unused imputation credit payment.

Defined in this Act: amount, Commissioner, company, consolidated imputation group, imputation credit, imputation credit account, imputation debit, income tax, pay, provisional tax, tax pooling intermediary

**OP 41C Consolidated ICA debit for unused tax payment of departing part of group**

*Debit*

(1) A consolidated imputation group (the **main group**) may choose to have an imputation debit for the amount of an imputation credit (the **credit**) in the main group's imputation credit account if—

(a) the credit arises under section OP 7 or OP 8 from a payment (the **unused imputation credit payment**) by a consolidated group (the **part group**) that is part of the main group; and

(b) the part group ceases to be a part of the main group after making the unused imputation credit payment; and

(c) when the part group ceases to be a part of the main group, the unused imputation credit payment is held by the Commissioner or a tax pooling intermediary without having been applied to satisfy a tax liability, other than a liability of the part group for provisional tax.

*Table reference*

(2) The imputation debit in **subsection (1)** is referred to in table O20: imputation debits of consolidated imputation groups, **row 15C** (part of consolidated imputation group leaving after making unused imputation credit payment).

*Debit date*

(3) The debit date is the date of the credit to the consolidated imputation group's imputation credit account for the unused imputation credit payment.

Defined in this Act: amount, Commissioner, company, consolidated imputation group, imputation credit, imputation credit account, imputation debit, income tax, pay, provisional tax, tax pooling intermediary

(2) **Subsection (1)** applies for the 2021–22 and later tax years.

### 84E Table O19 amended (Table O19: imputation credits of consolidated imputation groups)

(1) In table O19, after row 11, insert:

| | | | |
|---|---|---|---|
| 11B | Unused imputation credit payment by departing consolidated group before departure | day of credit to imputation credit account of parent group for unused imputation credit payment | **section OP 16B** |

(2) **Subsection (1)** applies for the 2021–22 and later tax years.

### 84F Table O20 amended (Table O20: imputation debits of consolidated imputation groups)

(1) In table O20, after row 15, insert:

| | | | |
|---|---|---|---|
| 15B | Member of consolidated imputation group leaving after making unused imputation credit payment | day of credit to ICA of consolidated imputation group for unused imputation credit payment | **section OP 41B** |
| 15C | Part of consolidated imputation group leaving after making unused imputation credit payment | day of credit to ICA of consolidated imputation group for unused imputation credit payment | **section OP 41C** |

(2) **Subsection (1)** applies for the 2021–22 and later tax years.

### 85 Section RA 6 amended (Withholding and payment obligations for passive income)

(1) After section RA 6(4), insert:

*Certain dividends paid to dual residents*

(5) For the purposes of subsections (2) and (4) and sections OB 9, OB 30, RA 15, and RF 3 (~~Obligation to withhold amounts of tax for non resident passive income~~which relate to imputation credit accounts and withholding and payment obligations), a person who makes a payment of a dividend described in **section CD 1(3)** (Dividend) is treated as making the payment on the DRCD deferral date.

*Meaning of DRCD deferral date*

(6) For the purposes of this section and sections CD 1, OB 9, OB 30, RA 15, ~~and~~ RF 3, and **RF 11BB**, the **DRCD deferral date** is the day that is the second anniversary of the date on which the dividend was actually paid.

(2) In section RA 6, list of defined terms, insert "dividend" and "DRCD deferral date".

### 86 Section RA 15 amended (Payment dates for interim and other tax payments)

(1) After section RA 15(4), insert:

*Treatment of certain cross-border employees*

(4B) Despite subsections (2)(a) and (b) and (3)(a) and (b), and on application by an employer, the Commissioner may, in special circumstances, agree with the employer that the payment of amounts of tax for PAYE income payments made to a class of cross-border employees for a tax year is due by 31 May after the end of the tax year.

(2) In section RA 15, list of defined terms, insert "cross-border employees" and "PAYE income payment".

### 87 Section RA 18 amended (Payment date for emigrating companies)

(1) In section RA 18(1), replace "(Treatment of emigrating companies and their shareholders)" with "or **FL 3** (which relate to the treatment of emigrating companies and their shareholders)".

(2) In section RA 18(2), replace "date that is 3 months after the time of emigration" with "relevant date set out in **subsection (3)**".

(3) After section RA 18(2), insert:

*Due date*

(3) The relevant date is,—

(a) for a company that is treated under section FL 2 as paying a distribution to a shareholder, the date that is 3 months after the time of emigration:

(b) for a company that is treated under **section FL 3** as paying a distribution to a shareholder, the date that is 3 months after the earliest of the events described in **subsection (1)(a) to (d)** of that section occurs.

### 88 Section RC 5 amended (Methods for calculating provisional tax liability)

(1) Replace section RC 5(2), other than the heading, with:

(2) Under the standard method, the amount of provisional tax payable for the tax year is, for the purpose of determining the amount of any particular instalment of provisional tax payable under section RC 9, 105% of the person's residual income tax for the preceding tax year, determined under section RC 6. Subsection (3) overrides this subsection.

(2) In section RC 5(3), words before the paragraphs, after "is", insert ", for the purpose of determining the amount of any particular instalment of provisional tax payable under section RC 9,".

(3) In section RC 5(3)(b), replace "date on which the first payment of provisional tax for the tax year is required" with "relevant instalment date".

(4) In section RC 5(3)(c), replace "that date" with "the relevant instalment date".

(5) In section RC 5(d), replace "the date is not" with "the relevant instalment date is not".

(6) After section RC 5(3), insert:

*Non-working days*

(3B) For the purposes of subsection (3)(c), if the relevant instalment date falls on a day that is not a working day, a return for the preceding tax year provided on the first working day after that instalment date is deemed to have been provided on the instalment date.

(7) **Subsections (1) and (2)** apply for provisional tax payments for the income years corresponding to the 2008–09 and subsequent tax years. However, **subsections (1) and (2)** do not apply to a person to the extent to which the person was assessed for penalties and interest on a return of income filed before 30 August 2022 that is inconsistent with section RC 5.

(8) **Subsections (3), (4), (5), and (6)** apply for the 2017–18 and later income years. However, **subsections (3), (4), (5), and (6)** do not apply to a person to the extent to which the person was assessed for penalties and interest on a return of income filed before 30 August 2022 that is inconsistent with section RC 5.

~~**89 Section RD 5 amended (Salary or wages)**~~

~~(1) After section RD 5(9), insert:~~

~~*Contributions to foreign superannuation schemes*~~

~~(9B) A payment that an employer makes as a contribution to a foreign superannuation scheme for the benefit of an employee, including a contribution to a death, sickness, accident, or similar benefit fund that is part of the scheme, is included in salary or wages.~~

~~(2) In section RD 5, list of defined terms, insert "foreign superannuation scheme".~~

~~**90 Section RD 8 amended (Schedular payments)**~~

~~After section RD 8(3), insert:~~

~~*Payments to non-resident contractors*~~

~~(4) For the purposes of this section, in relation to a schedular payment made to a non-resident contractor, the payment may include —~~

~~(a) a payment made by an associated person; or~~

~~(b) for a consolidated group of companies, a payment made a member of the group of companies.~~

~~*92-day threshold*~~

~~(5) For the purposes of subsection (1)(b)(v), the 92-day threshold includes only the number of days on which the contractor is present in New Zealand to perform the duties under the contract, from their arrival in New Zealand to their departure after the completion of the contract, including weekends and holidays and excluding days on which the contractor is present in New Zealand for purposes not related to the contract.~~

~~*Monetary threshold*~~

~~(6) For the purposes of subsection (1)(b)(vi), the $15,000 threshold includes only the payments made to the contractor or another person on their behalf that are related to the contract with the person paying the schedular payment.~~

**91 Section RD 23 repealed (Bonds given by employers of certain non-resident employees)**

Repeal section RD 23.

**92 Section RD 24 amended (Exemptions for non-resident contractors)**

Repeal section RD 24(1)(b).

**93 New section RD 62B inserted (Obligations of cross-border employees when FBT liability not paid)**

After section RD 62, insert:

**RD 62B Obligations of cross-border employees when FBT liability not paid**

*When this section applies*

(1) This section applies when a cross-border employee receives a fringe benefit in relation to a period when they are providing employment services in New Zealand.

*Employees' obligations*

(2) If~~, for any reason, some or all of the amount of FBT liability is not paid to the Commissioner,~~ the employer and employee agree and record in a document that the employee is liable for employment-related tax obligations, the employee must—

(aa) treat the value of the fringe benefit as a PAYE income payment and withhold and pay tax as if an employer; and

(a) provide the relevant information required under **section 23I** of the Tax Administration Act 1994. The employer must provide the employee with the relevant information that the employee does not have.~~; and~~

~~(b) pay the amount of the deficiency.~~

*When person exempt*

(3) **Subsection (2)(~~b~~aa)** does not apply if the employee is exempt from paying the amount of the liability.

Defined in this Act: amount, Commissioner, cross-border employee, fringe benefit, New Zealand, pay, salary and wages

**93B Section RD 65 amended (Employer's superannuation cash contributions)**

(1) Replace section RD 65(1), other than the heading, with:

(1) An **employer's superannuation cash contribution** means a superannuation contribution that is an employer's superannuation contribution or made by a person for the benefit of 1 or more of their past employees, if the contribution is paid in money—

(a) to a superannuation fund:

(b) by an employer of a cross-border employee to a foreign superannuation scheme and the employer chooses to apply this subsection to the contribution:

(c) under the KiwiSaver Act 2006 to the Commissioner for later payment to a superannuation fund.

(2) In section RD 65, list of defined terms, insert "cross-border employee" and "foreign superannuation scheme".

**94 New section RD 71B inserted (Obligations of cross-border employees when amounts of tax not paid)**

After section RD 71, insert:

**RD 71B Obligations of cross-border employees when amounts of tax not paid**

*When this section applies*

(1) This section applies when an employer or person makes an employer's superannuation cash contribution or an employer's contribution to a foreign superannuation scheme for a cross-border employee that relates to a period during which the employee is providing employment services in New Zealand.

*Employees' obligations*

(2) If~~, for any reason, some or all of the amount of tax for the contribution is not paid to the Commissioner,~~ the employer and employee agree and record in a document that the employee is liable for employment-related tax obligations, then the employee must—

(a) provide the relevant information required under **section 23I** of the Tax Administration Act 1994. The employer must provide the employee with the relevant information that the employee does not have.~~; and~~

(b) pay the amount of the ~~deficiency~~tax, as if an employer.

*When person exempt*

(3) **Subsection (2)(b)** does not apply if the employee is exempt from paying the amount of tax.

Defined in this Act: amount of tax, Commissioner, cross-border employee, employer's superannuation cash contribution, foreign superannuation scheme, New Zealand, pay

### 95 Section RF 2 amended (Non-resident passive income)

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

(1) **Non-resident passive income** means income having a source in New Zealand that—

(a) a non-resident derives and that consists of—

(i) a dividend other than an investment society dividend:

(ii) a royalty:

(iii) an investment society dividend when the non-resident is not engaged in business in New Zealand through a fixed establishment in New Zealand:

(iv) interest, other than interest derived in the circumstances set out in subsection (2B):

(v) non-resident financial arrangement income; or

(b) a New Zealand resident company that is treated under a double tax agreement as not being resident in New Zealand derives and that is a dividend other than an investment society dividend.

(2) Replace the heading to section RF 2(2) with "*Exclusions: non-residents*".

(3) After section RF 2(2), insert:

*Exclusions: dual resident companies*

(2BA) The following amounts derived by a New Zealand resident company that is treated under a double tax agreement as not being resident in New Zealand are excluded from non-resident passive income:

(a) an amount of exempt income:

(b) an amount of excluded income under sections CX 56B and CX 56C, as applicable:

(c) an amount derived by a trustee of a trust after the effective date of an election under section HC 33(1) for the trust.

(4) In section RF 2(2B), words before the paragraphs, replace "Subsection (1)(d)" with "**Subsection (1)(a)(iv)**".

(5) In section RF 2, list of defined terms, insert "double tax agreement" and "New Zealand resident".

**96 Section RF 2C amended (Meaning of non-resident financial arrangement income)**

In section RF 2C(1)(c)(i), replace "section RF 2(1)(d)" with "**section RF 2(1)(a)(iv)**".

**96B Section RF 9 amended (When dividends fully imputed)**

In section RF 9(1), replace "and RF 11B" with "RF 11B, and **RF 11BB**".

**96C New section RF 11BB inserted (Certain dividends paid to dual resident companies)**

After section RF 11B, insert:

**RF 11BB Certain dividends paid to dual resident companies**

*When this section applies*

(1) This section applies when a company makes a payment of non-resident passive income in the form of a dividend to a New Zealand resident company (the **recipient**) that is treated under a double tax agreement as not being resident in New Zealand to the extent to which the dividend is not fully imputed, if—

(a) the requirements of section CW 10(1)(b) to (d), (5), and (6) (Dividend within New Zealand wholly-owned group) are met; and

(b) the requirement of **section CW 10(1)(f)** is not met; and

(c) the recipient becomes a company that is not a foreign company before the DRCD deferral date.

*Amount of tax*

(2) The amount of tax is the lesser of—

(a) the amount of tax that the payer would be required to withhold and pay in the absence of this section; and

(b) the sum of all dividends paid by the recipient while it was treated under the double tax agreement as not being resident in New Zealand to the extent to which those dividends were not fully imputed.

Defined in this Act: amount of tax, company, dividend, double tax agreement, DRCD deferral date, foreign company, fully imputed, New Zealand resident, non-resident passive income, pay, resident in New Zealand

**97 Section RF 12G amended (Choosing to treat income as non-resident financial arrangement income)**

In section RF 12G(4)(a), replace "section RF 2(1)(d)" with "**section RF 2(1)(a)(iv)**".

**97B Section RL 1 amended (Residential land withholding tax)**

In section RL 1(2)(a), replace "(13)" with "(1A)".

### 98 Section YA 1 amended (Definitions)

(1) This section amends section YA 1.

(2) Replace the definition of **Australian ICA company** with:

**Australian ICA company** means a company that—

(a) is required to establish and maintain an imputation credit account because of an election under section OB 2(1) (Australian companies with imputation credit accounts); or

(b) is required by **section OB 2(3B)** to maintain an imputation credit account

~~(3) Insert, in appropriate alphabetical order:~~

~~**build-to-rent land**~~

~~(a) means land to the extent to which, together with any other contiguous land owned by the same person, has 20 or more dwellings used, available for use, or being prepared or restored for use, as dwellings occupied under a residential tenancy to which the Residential Tenancies Act 1986 applies or would apply, if—~~

~~(i) in the case of a dwelling completely built before 1 July 2023,—~~

~~(A) the landlord or manager for the dwelling has offered any current tenants before 1 July 2023 a fixed-term tenancy of no less than 10 years, and always offers prospective tenants such a tenancy; and~~

~~(B) the tenancy allows, without penalty, tenant personalisations for the dwelling; and~~

~~(C) the tenancy provides that a tenant may cancel the tenancy with 56 days notice, without penalty:~~

~~(ii) in the case of a dwelling completely built on or after 1 July 2023,—~~

~~(A) the landlord or manager for the dwelling always offers prospective tenants a fixed-term tenancy of no less than 10 years; and~~

~~(B) the tenancy allows, without penalty, tenant personalisations for the dwelling; and~~

~~(C) the tenancy provides that a tenant may cancel the tenancy with 56 days notice, without penalty:~~

~~(b) does not include land that at any time after it first meets the requirements of **paragraph (a)** fails to meet those requirements~~

(3) Insert, in appropriate alphabetical order:

**build-to-rent land**—

(a) means, for a person, land that they own and that is described in section CB 12(1)(a) to (e) or CB 13(1)(a) and (b), to the extent to which it is or was part of 1 project of 20 or more dwellings, and to the extent to which it is currently 1 of 20 or more dwellings used, available for use, or being prepared or restored for use, as a dwelling occupied under a residential tenancy to which the Residential Tenancies Act 1986 applies or would apply, if—

(i) in the case of a dwelling completely built before 1 July 2023, the landlord or manager for the dwelling has offered any current tenants before 1 July 2023 a fixed-term tenancy of no less than 10 years, and always offers prospective tenants such a tenancy; and

(ii) in the case of a dwelling completely built on or after 1 July 2023, the landlord or manager for the dwelling always offers prospective tenants a fixed-term tenancy of no less than 10 years; and

(iii) the tenancy agreement expressly refers to the ability of the tenant to personalise the dwelling with the consent of the landlord in accordance with sections 42, 42A, and 42B of the Residential Tenancies Act 1986, and includes examples of possible personalisations and the landlord's position on the keeping of pets; and

(iv) the tenancy agreement provides that a tenant may terminate the tenancy with 56 days' notice, as provided by **section 58A** of the Residential Tenancies Act:

(b) does not include land that at any time after it first meets the requirements of **paragraph (a)** fails to meet those requirements

(3B) Insert, in appropriate alphabetical order:

**bus service** is defined in **section CX 19C** (Certain public transport) for the purposes of that section

(4) Replace the definition of **business premises** with:

**business premises**, for subparts DD and DH and sections CB 6A to CB 15 and CZ 39,—

(a) means the normal business premises or a temporary workplace of the person (or an associate):

(b) does not include premises or a workplace established mainly for the purpose of enjoying entertainment

(4B) In the definition of **company**,—

(a) replace paragraph (ab) with:

(ab) does not include a limited partnership, other than a listed limited partnership or foreign corporate limited partnership:

(b) repeal paragraph (ac):

(c) repeal paragraph (ad).

(4C) Insert, in appropriate alphabetical order:

**competent authority** is defined in section 3(1) of the Tax Administration Act 1994

(5) Insert, in appropriate alphabetical order:

**cross-border employee** is defined in **section CE 1F(4)** (Treatment of amounts derived by cross-border employees for the purposes of that section and **sections CE 1(3B), RA 15(4B), RD 62B, and RD 71B** (which relate to amounts derived by employees)

(5B) Insert, in appropriate alphabetical order:

**cryptocurrency** means a cryptoasset that is not a non-fungible token

(5C) Repeal the definition of **cryptocurrency** inserted by **subsection (5B)**.

~~(6) In the definition of **dispose**, after paragraph (a), insert:~~

~~(ab) in sections CB 6A to CB 16, CB 18, CB 19, CB 21, CB 22, CZ 39, and subpart EL (which relate to the disposal of land), for land, does not include a transfer or other change of ownership between co-owners as part of an arrangement for land, to the extent to which it results in the same proportionate economic ownership as before the transfer or other change of ownership (for example: A owns 40% of some land, and B owns 60%. They subdivide the land so that A owns a piece proportionate to 40% and B owns a piece proportionate to 60%):~~

(6) In the definition of **dispose**, paragraph (a), replace "CB 22" with "CB 22, CW 3C".

(7) Insert, in appropriate alphabetical order:

**DRCD deferral date** is defined in **section RA 6(6)** (Withholding and payment obligations for passive income) for the purposes of that section and sections ~~CD 1 (Dividend) and RF 3 (Obligation to withhold amounts of tax for non-resident passive income)~~CD 1, OB 9, OB 30, RA 15, RF 3, and **RF 11BB** (which relate to dividends, imputation credit accounts, and withholding and payment obligations)

~~(8) In the definition of **fully imputed**, paragraph (a), after "CD 39,", insert "CW 10,".~~

(8) In the definition of **fully imputed**, paragraph (a),—

(a) after "CD 39,", insert "CW 10,":

(b) replace "and RF 10" with "RF 10, and **RF 11BB**".

(9) Replace the definition of **ICA company** with:

**ICA company** means a company that—

(a) is required by section OB 1 (General rules for companies with imputation credit accounts) to establish and maintain an imputation credit account; or

(b) is an Australian ICA company

(10) Insert, in appropriate alphabetical order:

**IFRS 17** means the IFRS, numbered NZ IFRS 17, that relates to insurance contracts

(10B) Insert, in appropriate alphabetical order:

**non-fungible token** means a cryptoasset that contains unique distinguishing identification codes or metadata

(10C) Repeal the definition of **non-fungible token** inserted by **subsection (10B)**.

(11) In the definition of **non-resident contractor**,—

(a) replace "services of another person" with "services of another person; and":

(b) insert after paragraph (b)(ii):

(c) is not a non-resident entertainer

(12) In the definition of **OECD transfer pricing guidelines**, replace "*OECD 2017, OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* 2017" with "OECD (2022), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*".

(13) In the definition of **outstanding claims reserve**,—

(aa) in the words before paragraph (a), before "means", insert ", for an insurer to which a following paragraph applies,":

(a) after paragraph (a), insert:

(ab) for a general insurer who uses IFRS 17, the amount of the insurer's liability for incurred claims for general insurance contracts, excluding contracts having premiums to which section CR 3 applies, as that liability is measured for the insurer's financial statements, reduced by the amount, measured for the insurer's financial statements, of reinsurance recoveries and non-reinsurance recoveries receivable in relation to the incurred claims:

(ab) in paragraph (b), replace "section EY 24(3) and (4)" with "section EY 24(3), (4), and (5)" in each place:

(b) after paragraph (b), insert:

(c) for a life insurer and life insurance contracts, the amount calculated under section EY 24(3) and (4) for the outstanding claims reserve and for part-year transfers of life insurance contracts under section EY 5 (Part-year tax calculations):

(d) for transfers of general insurance contracts to an insurer, the amount calculated under section CR 4(3)(a)(iii) (Income for general insurance outstanding claims reserve) or DW 4(4B) and (4C) (Deduction for general insurance outstanding claims reserve) to which section ED 3(1B) (Part-year calculations for transfers: general insurance OCR) applies

(14) Replace the definition of **present value (gross)** with:

~~**present value (gross)**, for a claim under a life insurance contract, means the present value of the claim for the purposes of the outstanding claims reserve of the life insurer, calculated using relevant discount rates and gross of tax~~

**present value (gross)**, for a life insurer calculating the outstanding claims reserving amount for a claim under an insurance contract, has the meaning given by **section EY 24(5)** (Outstanding claims reserving amount: non-participation policies not annuities)

(15) In the definition of **profit distribution plan**, paragraph (b), replace "a share purchase scheme" with "an exempt ESS".

(16) In the definition of **profit distribution plan**, paragraph (b), replace "a employee share scheme" with "an employee share scheme".

(16B) Insert, in appropriate alphabetical order:

**public transport fare** is defined in **section CX 19C** (Certain public transport) for the purposes of that section

(16C) Insert, in appropriate alphabetical order:

**rail vehicle** is defined in **section CX 19C** (Certain public transport) for the purposes of that section

(17) In the definition of **relative**, repeal paragraph (a)(iv).

(17B) Repeal the definition of **resident foreign trustee**.

(18) In the definition of **settlement**, paragraph (c), delete "in section CB 16A(7) (Main home exclusion for disposal within 10 years)".

(19) Replace the definition of **time of emigration** with:

**time of emigration**, for an emigrating company, means—

(a) the time at which the emigrating company starts being treated under a double tax agreement as not being resident in New Zealand, if **section FL 3** (Treatment of companies that start being treated as non-resident and their shareholders) applies in relation to the emigrating company; or

(b) otherwise, the time at which the emigrating company becomes a non-resident

(20) In the definition of **trust rules**, paragraph (h), replace "and 93B," with "59B, 59C, 59D, **59DB**, 93B, and **139AC**".

(21) In the definition of **unit trust**, paragraph (b)(viii), replace "employee share purchase scheme" with "exempt ESS".

(22) Insert, in appropriate alphabetical order:

**utilities distribution assets**—

(a) means the property (for example: a power poles) used or available to use to distribute, as applicable, electricity, gas, telecommunications services, water, and other goods and services, by a utilities distribution network operator:

(b) does not include property that is a utilities distribution network treated as an item of property separate from the relevant property described in **paragraph (a)**

(23) Insert, in appropriate alphabetical order:

**utilities distribution network** means a network made up of utilities distribution assets

(24) Insert, in appropriate alphabetical order:

**utilities distribution network operator** means a person to the extent to which they are, or are associated with:

(a) an electricity distributor under the Electricity Act 1992:

(b) a gas distributor under the Gas Act 1992:

(c) a network operator under the Telecommunications Act 2001:

(d) an operator under the Water Services Act 2021

(25) **Subsections (10), (13), and (14)** apply for income years starting on or after 1 January 2023.

(26) A person may choose that **subsection (12)** does not apply to them for ~~: the 2022–23 or earlier income years if they have an existing binding ruling, for the period of the ruling, if the ruling rules on the application of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*.~~

(a) the 2022–23 income year or earlier income years; or

(b) if they have an existing building ruling that rules on the application of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, the period of the ruling.

(27) **Subsection (15B)** applies immediately before the commencement of section 171(11) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022.

### 99 Section YB 4 amended (Two relatives)

Repeal section YB 4(3).

### 99B Schedule 5 amended (Fringe benefit values for motor vehicles)

(1) In schedule 5, after clause 7B, insert:

(7C) For the purposes of this schedule, if a person who owns a motor vehicle to which this schedule applies receives a payment under the State Sector Decarbonisation Fund for the vehicle,—

(a) the cost price of the vehicle to the person on the first acquisition of it by them is the cost price before the payment is taken into account; and

(b) the cost of the vehicle to the person on the first acquisition of it by them is the cost before the payment is taken into account; and

(c) when determining the tax value of the vehicle under subpart EE, the cost for the purposes of section EE 57 is not reduced by the payment under section DF 1.

(2) **Subsection (1)** applies to fringe benefits provided on and after 1 April 2023.

### 100 Schedule 15 amended (Excepted residential land)

In schedule 15, after item 10, insert:

| | |
|---|---|
| 11. | Land to the extent to which the Commissioner has received ~~a valid~~ notice from the Chief Executive ~~of Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development that~~of the department responsible for the administration of the Residential Tenancies Act 1986 that the Chief Executive is satisfied that the land meets the definition of **build-to-rent land**, and the Commissioner has not received notice from the Chief Executive that the land no longer meets that definition~~, and that notice has not been revoked by the Chief Executive~~. |

### 100B Schedule 21B amended (Expenditure or loss for research and development tax credits)

In schedule 21B, part B, item 21, replace "the contract for the Callaghan Innovation project grant" with "the contract for the Callaghan Innovation project grant. Nor does it include an amount spent by a recipient of a New to R&D Grant, to the extent to which the amount exceeds the amount covered by the New to R&D Grant contract".

### 101 Schedule 32 amended (Recipients of charitable or other public benefit gifts)

(1) In schedule 32, insert, in appropriate alphabetical order, "Cotton On Foundation Limited", "Engineers Without Borders New Zealand Incorporated", "Family for Every Child New Zealand Trust", "Forest for People Limited", "Joyya Trust", and "Solomon Island Medical Mission Charitable Trust".

(2) In schedule 32, insert, in appropriate alphabetical order, "Heilala Vanilla Foundation".

(3) In schedule 32, delete "Heilala Vanilla Foundation".

(4) In schedule 32, insert, in appropriate alphabetical order, "New Zealand for UNHCR (United Nations High Commissioner for Refugees)".

(5) In schedule 32, delete "UNHCR (United Nations High Commissioner for Refugees)".

(6) In schedule 32, insert, in appropriate alphabetical order, "Pacific Island Food Revolution Limited".

(7) In schedule 32, delete "Pacific Island Food Revolution Limited".

(8) In schedule 32, insert, in appropriate alphabetical order, "Anglican World Aid (Aotearoa) Limited".

# Part 3
# Amendments to Goods and Services Tax Act 1985

### 102 Amendments to Goods and Services Tax Act 1985

This Part amends the Goods and Services Tax Act 1985.

### 103 Section 2 amended (Interpretation)

(1) This section amends section 2(1).

(2) In the definition of **electronic marketplace**, replace paragraph (a) with:

(a) means a marketplace that is operated by electronic means by which a person (the underlying supplier) makes 1 or more of the following supplies by electronic means through another person (the operator of the marketplace) to a third person (the recipient):

(i) a supply of goods:

(ii) a supply of remote services:

(iii) a supply of listed services; and

(3) Insert, in appropriate alphabetical order:

**flat-rate credit** means an amount equal to the amount of input tax that an operator of an electronic marketplace passes on to an underlying supplier for a supply of listed services made through the electronic marketplace as a credit that is intended for an underlying supplier who is not a registered person

(4) Insert, in appropriate alphabetical order:

**listed services** means a service described in **section 8C(2)**

(5) In the definition of **percentage actual use**, delete "20G,".

(6) In the definition of **percentage difference**, delete "20G and".

(7) In the definition of **percentage intended use**, delete "20G,".

(7B) Insert, in appropriate alphabetical order:

**tax law** has the meaning set out in section 3(1) of the Tax Administration Act 1994

(8) **Subsections (2), (3), and (4)** apply for taxable periods starting on or after 1 April 2024.

### 104 Section 2A amended (Meaning of associated persons)

(1) After section 2A(1)(d), insert:

(db) a joint venture and a member of the joint venture:

(2) **Subsection (1)** applies to a tax position taken by a person on or after 30 August 2022.

### 104B Section 3A amended (Meaning of input tax)

(1) Replace section 3A(3)(a)(i) and (ib) with:

(i) the tax fraction of the original purchase price of the goods when they were received by the supplier; and

(2) **Subsection (1)** applies for a supply of secondhand goods—

(a) made in a taxable period starting on or after 30 March 2022:

(b) made under an agreement entered after 8 September 2021 and paid for on or after the start of the first taxable period starting on or after 30 March 2022.

### 105 Section 5 amended (Meaning of term supply)

(1) Repeal section 5(6AA), (6AAB), (6A), (6AB), (6AC), (6B), ~~(6BB),~~ and (7F).

(1B) Replace section 5(6BB) with:

(6BB) For the purposes of this Act, any amount of RFT rebate paid under section 65ZC of the Land Transport Management Act 2003 to a registered person is treated as being consideration for a supply of services in the course or furtherance of the registered person's taxable activity to the extent to which the RFT rebate relates to fuel used by the person for, or available for use by the person in, making taxable supplies.

(2) In section 5(6D)(a), delete "(not being a public authority)".

(3) After section 5(6EB), insert:

(6EC) A charge, including a fee or a levy, payable under legislation is deemed to be consideration for a supply of goods and services.

(6ED) **Subsection (6EC)** does not apply to a charge—

(a) listed in the **schedule**:

(b) that is, or is in the nature of,—

(i) a fine:

(ii) a penalty:

(iii) interest:

(iv) a general tax.

(6EE) For the purposes of **subsection (6ED)**, a general tax means a charge in the nature of a tax imposed by a tax law where the revenue is not earmarked in legislation for a particular purpose or function.

**Examples**

For the purposes of **section 5(6ED) and (6EE)**, an example of a charge that is—

- a general tax is income tax:
- not a general tax is a levy used to fund the performance of regulatory functions.

(4) In section 5(11G), replace "remote services" with "remote service, listed services,".

(4B) Replace section 5(11G)(b) with:

(b) when a supply does not meet the requirements of paragraph (a)—

(i) if it is not practical to treat the issue or sale as a supply of goods and services; and

(ii) if the supplier of the goods and services and the issuer or seller of the token, stamp, or voucher are, or could be, different persons, the issuer and the supplier, or the seller and the supplier, agree, or are parties to an agreement.

(5) After section 5(15)(b), insert:

(c) a supply that a person elects ~~as exempt under section 14~~ to apply section 6(3)(e):

(6) After **section 5(15)(c)**, insert:

(d) the ~~exempt supply described in section 91(4)~~supply described in **section 91(4)**.

(7) Replace section 5(16) with:

(16) **Subsection (16C)** applies where a ~~registered~~ person—

(a) has either—

(i) claimed a deduction under section 20(3) for goods or services; or

(ii) acquired ~~a supply~~ goods or services that ~~was~~ were zero-rated under section 11(1)(mb); or

(iii) acquired ~~a supply~~ goods or services that ~~was~~ were zero-rated under section 11(1)(m); and

(b) ~~disposes or is treated as disposing~~disposed of the goods or services or ceased to be a registered person; and

(c) is not using the goods or services in the course or furtherance of a taxable activity at the time the goods or services are disposed of or deemed to be supplied; and

(d) has not previously returned output tax for the goods or services that is equal to or greater than—

(i) the deduction under section 20(3), for ~~supplies~~ goods or services where a deduction was claimed; or

(ii) the nominal GST component under section 20(3J), for ~~supplies~~ goods or services that were acquired as zero-rated supplies.

(16B) **Subsection (16C)** also applies where—

(a) the registered person has disposed ~~or is treated as disposing~~ of the goods or services or the person ceased to be a registered person; and

(b) the Commissioner considered that the person, prior to disposal—

(i) increased their non-taxable use of the goods or services; and

(ii) applied section 21FB in contemplation of disposing of the goods or services, or ceasing their taxable activity.

(16C) A disposal of the goods or services referred to in **subsection (16) or (16B)** by the person~~, including a deemed supply, is deemed to be made in the course or furtherance of a taxable activity carried on by the person.~~—

(a) is deemed to be made in the course or furtherance of a taxable activity carried on by the person; and

(b) where the person ceases to be a registered person, the goods or services are deemed to be supplied by the person immediately before the person ceases to be a registered person.

(8) Repeal section 5(19).

(9) Replace section 5(23) with:

(23) **Subsection (23B)** applies if—

(a) section 11(1)(mb) is treated as applying to a taxable supply of goods in a return provided by the supplier; and

(b) after the date on which the relevant transaction is settled, it is found by the supplier of the goods or the Commissioner that section 11(1)(mb) does not apply; and

(c) the recipient of the goods did not provide the supplier with correct or sufficient information under section 78F to enable the supplier to determine whether the supply should be zero-rated.

(23B) The recipient of the supply of the goods referred to in **subsection (23)** is treated as if they were a supplier making, on the date on which the error referred to in **subsection (23)(b)** is found, a taxable supply of the goods.

(10) **Subsection (2)** applies for grants and subsidies paid on or after 1 April 2023.

(11) **Subsection (3)** applies for a charge, including a fee or a levy, payable under legislation (a **legislative charge**) that comes into force on or after 1 July 2023, and to all other legislative charges from 1 July 2026.

(12) **Subsection (4)** applies for taxable periods starting on or after 1 April 2024.

(13) **Subsection (5)** applies to supplies made on or after 1 April 2011, but not to supplies for which an assessment has been made prior to 30 August 2022.

(14) **Subsection (7)** applies to goods and services supplied on or after 1 April 2023.

### 105B Section 6 amended (Meaning of term taxable activity)

(1) After section 6(3)(d), insert:

(e) an activity involving the supply of goods by way of sale that a registered person has elected is not a taxable activity, provided—

(i) the person has not previously claimed a deduction under section 20(3) for the supply of goods before the goods are sold; and

(ii) the goods were not acquired for the principal purpose of making taxable supplies; and

(iii) the goods were not used for the principal purpose of making taxable supplies; and

(iv) the goods were not acquired as zero-rated supplies under section 11(1)(m) or (mb).

(2) In **section 6(e)(iv)**, after "(mb)", insert ", unless the person has chosen to return the nominal GST component as output tax under section 20(3J)(a)(iv)".

(3) **Subsection (1)** applies to supplies made on or after 1 April 2011, but not to supplies for which an assessment has been made prior to 30 August 2022.

(4) **Subsection (2)** applies to taxable periods starting on or after 1 April 2023.

### 106 Section 8 amended (Imposition of goods and services tax on supply)

(1) In section 8(3),—

(a) in paragraph (b), replace "the services are physically performed" with "the services, other than listed services, are physically performed":

(b) in paragraph (c), replace "performed." with "performed; or", and after paragraph (c), insert:

(d) the services are listed services referred to in **section 8C**.

(2) In section 8(4), replace "unless the supplier and the recipient of the supply agree that this subsection will not apply to the supply" with "unless the supplier chooses to treat the supply as made in New Zealand".

(3) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 107 Section 8B amended (Remote services: determining residence of recipients)

(1) Replace section 8B(1) with:

(1) Subsection (2) applies to determine—

(a) whether a supply is made in New Zealand under section 8(3)(c); or

(b) for the purposes of sections 10(14B), 11A(1)(j), 60(1AB), 60C, and 60D, when remote services are supplied to a person resident in New Zealand; or

(c) for the purposes of section 11A(1)(k) to (m), when remote services are supplied to a person who is outside New Zealand at the time the services are performed.

(2) In section 8B(5), replace "Section 8BB(1)" with "**Section 8BB(1B)**".

**108 Section 8BB amended (Certain supplies by non-residents: determining whether recipient is registered person)**

Replace section 8BB(1) with:

(1) This section applies when a non-resident registered person (the **supplier**) makes a supply to a person (the **recipient**) of—

(a) distantly taxable goods to which section 8(3)(ab) applies:

(b) remote services to which section 8(3)(c) applies:

(c) goods and services to which section 8(4) applies.

(1B) The supplier must not treat the supply as being made to a registered person for use in the course or furtherance of the registered person's taxable activity if the recipient does not meet the requirements of this section.

**108B New section 8BC inserted (Optional use of place of supply rules for certain suppliers required to determine residence or registration status)**

After section 8BB, insert:

**8BC Optional use of place of supply rules for certain suppliers required to determine residence or registration status**

(1) This section applies to a supplier in relation to a supply of goods and services made by them as described in **section 8B(1)(c)** or **8BB(1)(c)**.

(2) Despite **sections 8B(2) and 8BB(1B)**, the supplier may choose to use other items of commercial information to determine—

(a) a recipient's residence for the purposes of a supply of remote services; or

(b) a recipient's registration status for the purposes of a supply of distantly taxable goods, remote services, or listed services.

(3) For the purposes of **subsection (2)**, the other items of commercial information may include information obtained from the supplier's existing systems and processes that are used to collect information about the supplies made and the recipients of those supplies.

**109 New section 8C inserted (Supplies of listed services)**

(1) After section 8BB, insert:

**8C Supplies of listed services**

(1) This section applies to determine the taxation of a supply of certain services (**listed services**) made through an electronic marketplace and performed, provided, or received in New Zealand.

(2) The listed services referred to in **subsection (1)** are—

(a) a supply of accommodation services in New Zealand, other than an exempt supply under section 14(1)(c):

(b) a supply of transport services in New Zealand in the form of—

(i) ride-sharing or ride-hailing services:

(ii) ~~beverage and food~~ delivery services for beverages, food, or both.

(3) A supply of listed services is treated as 2 separate supplies as described in section 60(1C) and for that purpose,—

(a) when the underlying supplier is a registered person, the supply of the services to the electronic marketplace is zero-rated under **section 11A(1)(jc)** and—

(i) no taxable supply information is required in relation to the supply; and

(ii) the operator of the electronic marketplace must account for tax on the supply that they are treated as making to the recipient; and

(b) when the underlying supplier is not a registered person, the operator of the electronic marketplace must—

(i) account for output tax on the supply that they are treated as making to the recipient; and

(ii) deduct an amount of input tax in relation to the supply under **section 20(3)(de)** and pass on to the underlying supplier an amount equal to the input tax as a flat-rate credit; and

(c) when the underlying supplier is a registered person who has not notified the operator of the electronic marketplace their status as a registered person, and the operator has deducted an amount of input tax in relation to the supply under **section 20(3)(de)** for a taxable period, the underlying supplier—

(i) is required to account for output tax under **section 20(3JD)** for the flat-rate credit received by them; and

(ii) has a tax shortfall equal to the amount of the flat-rate credit received by them.

(4) For the amount of the input tax and the flat-rate credit, *see* **section 20(3)(de) and (3N)**.

(5) If the Commissioner notifies the operator of the electronic marketplace as to the registration status of an underlying supplier to enable the correct tax treat-

ment for both the operator and the underlying supplier, the operator must act on the notification as soon as practicable.

(6) The operator must provide the underlying supplier with a statement showing the flat-rate credit passed on to the underlying supplier. The statement may be provided periodically in a way consistent with the operator's usual reporting practices, but must be provided at least once a month.

(7) The services listed in **subsection (2)** include other services that—

(a) are closely-connected to the listed service supplied by the underlying supplier, other than a supply of services made directly by the operator to the recipient, ignoring for this purpose the effect of **section 60C** which treats the operator as a supplier of certain services that they themselves have not supplied; and

(b) are advertised, listed, or otherwise made available through the electronic marketplace.

(8) In this section, **ride-sharing or ride-hailing services** means services provided through an electronic marketplace that involve the engagement of a personal driver to transport a person to their chosen destination.

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 110 Section 9 amended (Time of supply)

(1) In section 9(9), replace "a supply of services" with "a supply of services including listed services".

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 111 Section 10 amended (Value of supply of goods and services)

(1) After section 10(6), insert:

(6B) Subsection (6) does not apply to the extent to which the supply is a supply of listed services made through an electronic marketplace.

(1B) In section 10(7A), after "section 5(3) or (3B),", insert "or **section 5(16C)(b)** applies,".

(1C) In section 10(7B), replace "section 5(23)" with "**section 5(23B)**".

(2) In section 10(7D), replace "a supply of remote services or" with "a supply of remote services, or a supply of listed services, or a supply of".

(3) **Subsections (1) and (2)** apply for taxable periods starting on or after 1 April 2024.

(4) **Subsection (1B)** applies to goods and services supplied on or after 1 April 2023.

### 112 Section 11 amended (Zero-rating of goods)

(1) In section 11(8D)(a), after "assignment" insert ", grant,".

(2) Replace section 11(8D)(b) with:

(b) A supply that is wholly or partly of an interest in land that meets the requirements of subsection (1)(mb) that is made under a lease agreement of at least 1 year is only a supply under that subsection to the extent to which there is a lump sum payment, that is not a regular payment, of more than 25% of the total consideration specified under the agreement:

(3) In section 11(9), insert in appropriate alphabetical order:

**lump sum payment** includes irregular payments made before or after another irregular payment if the payments added together equal more than 25% of the total consideration specified under the lease agreement

**112B Section 11A amended (Zero-rating of services)**

In section 11A(1)(x), replace "." with "; or" and insert:

(y) the services are listed services that consist of a supply of services from 1 operator of an electronic marketplace to another operator of an electronic marketplace.

~~**113 Section 14 amended (Exempt supplies)**~~

~~(1) After section 14(3), insert:~~

~~(4) A registered person may elect that a supply of goods is exempt from tax if—~~

~~(a) the person has not previously claimed a deduction under section 20(3) for the supply of goods; and~~

~~(b) the goods were not acquired for the principal purpose of making taxable supplies; and~~

~~(c) the goods were not used for the principal purpose of making taxable supplies; and~~

~~(d) the goods were not acquired as zero-rated supplies under section 11(1)(m) or (mb).~~

~~(2) In **section 14(4)(d)**, after "(mb)" insert ", unless the person has chosen to return the nominal GST component as output tax under **section 20(3J)(a)(iv)**".~~

~~(3) **Subsection (1)** applies to supplies made on or after 1 April 2011, but not to supplies for which an assessment has been made prior to 30 August 2022.~~

~~(4) **Subsection (2)** applies to taxable periods starting on or after 1 April 2023.~~

**114 Section 15 amended (Taxable periods)**

(1) In section 15(6), replace "section 8(3)(c) applies" with "section 8(3)(c) applies, or listed services referred to in **section 8C**,".

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 115 Section 19K amended (Taxable supply information: supplies by registered person)

(1) In section 19K(3), replace "request for the taxable supply information." with "request for the taxable supply information. However, in relation to a supply of listed services, the taxable supply information must be provided to the recipient without the need for a request."

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 116 Section 20 amended (Calculation of tax payable)

(1) Replace section 20(2) with:

(2) A registered person, when including an amount for a supply of goods or services as a deduction in a calculation of an amount of tax payable by the registered person, must—

(a) for a ~~taxable~~ supply, meet the requirements of **section 75**; and

(ab) for a supply that a registered person intends to claim a deduction for under section 20(3) because of an adjustment made under section 25(2)(b) to correct an inaccuracy, have issued a credit note if required by section 25; and

(b) for a supply, other than a taxable supply, of secondhand goods, meet the requirements of section 24(7); and

(c) for a supply that the registered person treats as being within section 5B, have a record of the supply showing that—

(i) the supply meets the requirements for treatment under section 5B as being made by the registered person; and

(ii) the registered person accounts for the output tax charged for the supply; and

(d) for a supply that the registered person treats as being made to the registered person as a nominated person under section 60B, have a record of the supply showing that—

(i) the registered person is nominated to be the recipient of the supply by another person (the **nominator**) under a contract with the supplier to which the registered person is not a party; and

(ii) the nominator and the registered person agree that the supply is to be treated as being made to the registered person and record the agreement; and

(iii) the registered person pays to the supplier the full consideration for the supply.

(2) In **section 20(2)**,—

(a) in **paragraph (a)**, replace "section 75" with "section 19F":

(b) in **paragraph (b)**, replace "section 24(7)" with "section 19H".

(2B) In **section 20(2)(ab)**, replace "issued a credit note if required by section 25" with "provided supply correction information if required by section 19N; and".

(3) After section 20(3)(dd), insert:

(de) for a supply of listed services referred to in **section 8C** when the underlying supplier has not notified the operator of the electronic marketplace that they are a registered person at the time of the supply, the amount of input tax that the operator of an electronic marketplace is required under **section 8C(3)(b)(ii)** to pass on to the underlying supplier as a flat-rate credit; and

(4) Repeal section 20(3)(hb).

(5) In **section 20(3C)**, words before paragraph (a), replace "(3D) or (3L)" with "(3D), (3L), or (3LB)".

(6) In **section 20(3C)**, words before paragraph (a), replace "(3D), (3L), or (3LB)" with "**(3CB), (3CC)**, (3D), (3L), or (3LB)".

(7) In section 20(3C)(a), replace "available for use in" with "intended to be used in".

(8) In section 20(3C)(b), replace "available for use in" with "intended to be used in".

(9) After section 20(3C), insert:

(3CB) A registered person, other than a person who has agreed an apportionment method with the Commissioner under **section 20(3E), 20(3EB), 21(4), or 21(4B)**, who acquired goods and services for $10,000, excluding GST, or less, may not deduct input tax for those goods and services unless **subsection (3CC)** applies.

(3CC) A registered person referred to in **subsection (3CB)** may deduct input tax if they acquired the goods and services for the principal purpose of making taxable supplies.

(3CD) A person to whom **subsection (3CC)** applies may not apportion input tax for an adjustment period, for the goods and services, between taxable and non-taxable use.

(3CE) For the purposes of **subsection (3CC)** a registered person may not deduct input tax as defined in section 3A(1)(b) if—

(a) for a registered person that is a resident, the goods or services are used for making taxable supplies that are the delivery, or arranging or making easier, the delivery of goods to a person in New Zealand; or

(b) for a registered person that is a non-resident, the input tax is for imported goods of the type referred to in section 20(3LC).

(3CF) For the purposes of **subsection (3CC)** all supplies made by a non-resident are treated as if they were made and received in New Zealand.

(3CG) A person may elect not to apply **subsections (3CB) and (3CC)** if they—

(a) opt-out from applying the subsections for at least 24 consecutive months from the date they first opt-out:

(b) apply an apportionment method that is agreed between the Commissioner and an industry association of which the person is a member:

(c) apply an apportionment method that is available to them in a publication by the Commissioner.

(3CH) A person who makes an election under **subsection (3CG)** must apply **subsection (3CG)** to all goods and services acquired by them.

(10) Replace section 20(3E) with:

(3E) A registered person who principally makes supplies of financial services may choose to use a fair and reasonable method of apportionment, as agreed with the Commissioner, in relation to the supply for an apportionment on acquisition. For this purpose, the person may include a group of companies.

(11) Replace section 20(3EB) with:

(3EB) A registered person may choose to use, for apportioning input tax in relation to a supply of goods and services made to the registered person, a fair and reasonable method of apportionment that is ~~agreed with the Commissioner by~~ —

(a) agreed with the Commissioner by the registered person:

(b) agreed with the Commissioner by an industry association, if the method is intended by the Commissioner and the industry association to be available to a person such as the registered person~~.~~:

(c) published by the Commissioner and is available to the person in that publication.

(12) Replace section 20(3J)(a)(iv) with:

(iv) attribute as output tax to a taxable period under subsection (4)—

(A) the amount determined under subparagraph (iii); or

(B) the nominal GST component calculated by section 20(3J)(a)(i), if the person intends to apply section 14(4) on disposal of the goods; and

(13) In section 20(3J)(b), replace "sections 20G and" with "section".

(14) Repeal section 20(3JB).

(15) In section 20(3JC)(c), delete "20G and".

(16) After section 20(3JC), insert:

(3JD) For a supply of listed services referred to in **section 8C**, if an underlying supplier of the listed services has received a flat-rate credit from the operator of the electronic marketplace through which the supply is made and was a registered person at the time of supply, the underlying supplier must account for output tax for the flat-rate credit under **subsection (4E)**.

(17) In section 20(3L), replace "For the purposes of subsection (3)" with "For the purposes of subsection (3), and if **subsections (3CB) and (3CC)** do not apply".

(18) In section 20(3L), replace "or are available for use in" with "or intended to be used in".

(19) In section 20(3L), replace "uses the goods or services for, or has the goods and services available for use in, making taxable supplies, treating all supplies made by the person as if they were made and received in New Zealand." with "~~goods or services are used for, or intends the goods or services for use in~~uses the goods and services for, or intends the goods or services for use in, making taxable supplies, treating all the supplies made by the person as if they are made and received in New Zealand".

(20) Replace section 20(3LB) with:

(3LB) For the purposes of subsection (3), a registered person who is non-resident may deduct input tax as defined in section 3(1)(b) to the extent to which the goods or services are used for, or intended to be used in, making taxable supplies, treating all supplies made by the person as if they were made and received in New Zealand.

(21) In **section 20(3LB)**, after "subsection (3)," insert "and if **subsections (3CB) and (3CC)** do not apply".

(22) After section 20(3M), insert:

(3N) For the purposes of **subsection (3)(de)**, the amount of input tax to be deducted by the operator of the electronic marketplace corresponding to the flat-rate credit passed on under **section 8C(3)(b)(ii)** to the underlying supplier is equal to 8.5% of the value of the supply of the listed services.

(23) In section 20(4)(c), replace "21FB(4)" with "21FB(4)(b)".

(24) In **section 20(4)(c)** replace "period." with "period; or" and after **section 20(4)(c)**, insert:

(d) in the case of a registered person who elected to return output tax under section 91(3), the taxable period in which the election was made.

(24B) In section 20(4B), replace "section 5(23)" with "**section 5(23B)**" in each place.

(25) In section 20(4C), replace "section 8(3)(ab) applies or a supply of remote services to which section 8(3)(c) applies," with "section 8(3)(ab) applies, or a supply of remote services to which section 8(3)(c) applies, or a supply of listed services referred to in **section 8C**,".

(26) After section 20(4D), insert:

(4E) For the purposes of **subsection (3JD)**, an output tax adjustment for the flat-rate credit must be made by the underlying supplier of listed services in a taxable period in which they received the flat-rate credit.

(27) **Subsections (3), (4), (13), (14), (15), (16), (22), (25), and (26)** apply to taxable periods starting on or after 1 April 2024.

(28) **Subsections (6), (9), (12), (17) and (21)** apply to goods and services acquired on or after 1 April 2023.

(29) **Subsection (23)** applies from a registered person's adjustment period starting on or after 1 April 2023.

### 117 Section 20G repealed (Treatment of supplies of certain assets)

(1) Repeal section 20G.

(2) **Subsection (1)** applies from a registered person's adjustment period starting on or after 1 April 2024.

### 118 Section 21 amended (Adjustments for apportioned supplies)

(1) In section 21(2)(b), replace "5,000" with "10,000".

(2) In section 21(2)(d) replace "." with ":".

(3) After section 21(2)(d), insert:

(e) they ~~have elected to apply section 14(4)~~intend to apply **section 6(3)(e)** or **section 91** to the supply.

(4) Replace section 21(4) with:

(4) For an adjustment to which sections 21A to 21H apply, a registered person who principally makes supplies of financial services may choose to use a fair and reasonable method, as agreed with the Commissioner, for making adjustments in subsequent adjustment periods. For this purpose, the person may include a group of companies.

(5) Replace section 21(4B) with:

(4B) A registered person may choose to use, for making adjustments to which sections 21A to 21H apply, a fair and reasonable method of calculating adjustments that is ~~agreed with the Commissioner by~~ —

(a) agreed with the Commissioner by the registered person:

(b) agreed with the Commissioner by an industry association, if the method is intended by the Commissioner and the industry association to be available to a person such as the registered person~~.~~:

(c) published by the Commissioner and is available to the person in that publication.

(6) **Subsection (1)** applies to goods and services acquired on or after 1 April 2023.

(7) **Subsections (2) and (3)** apply to supplies made on or after 1 April 2011, but not to supplies for which an assessment has been made prior to 30 August 2022.

### 119 Section 21B amended (Adjustments when person or partnership becomes registered after acquiring goods and services)

In section 21B(2), delete "20G,".

### 120 Section 21D amended (Calculating amount of adjustment)

In section 21D(3), delete "and section 20G,".

### 121 Section 21F amended (Treatment on disposal)

(1) In section 21F(6), after "lots,", insert "or if **section 5(16B)** applies,".

(2) In section 21F(6)(a), replace "for a disposal of land that the person acquired as a zero-rated supply", with "for a disposal that the person acquired as a zero-rated supply under section 11(1)(m) or (mb)".

(3) **Subsection (1)** applies to goods and services supplied on or after 1 April 2023.

### 122 Section 21FB replaced and amended (Treatment when use changes to total taxable or non-taxable use)

(1) Replace section 21FB(3)(b) with:

(b) **actual deduction** is the amount of deduction already claimed, taking into account adjustments made up to the end of the adjustment period referred to in subsection (1)(c)(ii) and including any nominal GST component chargeable under section 20(3J)(a)(i) which has not previously been returned as output tax under section 20(3J)(a)(iv).

(2) Replace section 21FB with:

**21FB Treatment when percentage of taxable use permanently changes**

(1) This section applies where the person's use of goods or services in making taxable supplies, as a percentage of total use, permanently changes.

(2) The person's adjustment for the adjustment period ~~following the period~~ in which the change occurred, is an amount calculated using the formula—

full input tax deduction × new intended use percentage − previous net deductions.

(3) In the formula,—

(a) **full input tax deduction** is the total amount of input tax on the supply, after taking into account any nominal GST component chargeable under section 20(3J)(a)(i):

(b) **new intended use percentage** means the extent to which the goods or services are used, determined by the use from the date the permanent change occurred up to the end of the adjustment period in which the change occurred, and intended to be used for the foreseeable future, by the person for making taxable supplies:

(c) **previous net deductions** means the input tax deduction claimed by the person on acquisition of the goods or services after taking into account any nominal GST component chargeable under section 20(3J)(a)(i) which has not previously been returned as output tax under section 20(3J)(a)(iv), plus or minus, as the case may be, any previous adjustments made.

(4) For the purposes of **subsection (2)**—

(a) if the amount is positive, the person is entitled to an additional input tax deduction under section 20(3)(e); or

(b) if the amount is negative, the person must treat the amount as a positive amount of output tax and attribute it to a taxable period under section 20(4).

(3) **Subsection (2)** applies from a registered person's adjustment period starting on or after 1 April 2023.

### 123 Section 21G amended (Definitions and requirements for apportioned supplies and adjustment periods)

(1) In section 21G(1), words before paragraph (a), delete "20G,".

(2) In section 21G(1)(a)(ii), after "acquired", insert ", or if **section 21FB** has been applied to the goods or services, from the point of the calculation made under that section".

(3) In section 21G(2), words before paragraph (a), delete "20G,".

(4) In section 21G(2), words before paragraph (a), insert "**21FB**," after "21F".

(5) In section 21G(4), words before paragraph (a), replace "sections 20G and 21A, as applicable," with "section 21A".

(6) Replace section 21G(4)(a) with:

(a) ~~one~~1 of the following based on the value of the goods or services, excluding GST:

(i) 2 adjustment periods for goods or services valued at more than $10,000 but not more than $20,000:

(ii) 5 adjustment periods for goods or services valued at more than $20,000 but not more than $500,000:

(iii) 10 adjustment periods for land, or goods or services valued at more than $500,000; or

(7) In section 21G(5), replace "Subsection (4) does" with "**Subsection (4)(a)(i) and (ii)** does".

### 124 Section 21HB amended (Transitional rules related to treatment of dwellings)

In section 21HB(7)(b), replace "21FB(4)" with "**21FB(4)(b)**".

### 125 Section 26AA amended (Marketplace operators: bad debts for amounts of tax)

(1) In section 26AA(1), replace "goods or remote services" with "goods, remote services, or listed services".

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 126 Section 51 amended (Persons making supplies in course of taxable activity to be registered)

(1) In section 51(1C), replace "8(3)(ab) applies or of remote services to which section 8(3)(c) applies," with "8(3)(ab) applies, or of remote services to which section 8(3)(c) applies, or of listed services referred to in **section 8C**,".

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 126B Section 51B amended (Persons treated as registered)

(1) In section 51B(4), replace "section 5(23)" with "**section 5(23B)**".

(2) In section 51B(4)(a), replace "section 5(23)" with "**section 5(23B)**".

(3) In section 51B(5), replace "section 5(23)" with "**section 5(23B)**".

(4) In section 51B(6)(a), replace "section 5(23)" with "**section 5(23B)**".

### 126C Section 55B amended (Supplier group and issuing member)

(1) In section 55B(3), after "responsible for the", insert "GST record-keeping" and after "supply", insert "that the issuing member has agreed to be responsible for under subsection (1)".

(2) **Subsection (1)** applies for taxable periods starting on or after 30 March 2022.

### 127 Section 58 amended (Personal representative, liquidator, receiver, etc)

(1) In section 58(1), definition of **incapacitated person**, replace "liquidation or receivership" with "liquidation, receivership, or voluntary administration".

(2) In section 58(1), definition of **specified agent**, replace "liquidator, or receiver" with "liquidator, receiver, or administrator".

(3) In section 58(3), after "receivership", insert "or voluntary administration".

### 128 Section 60 amended (Agents and auctioneers)

(1) In section 60(1A)(b), replace "goods or remote services" with "goods, remote services, or listed services".

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 129 Section 60C amended (Electronic marketplaces)

(1) In section 60C(1)—

(a) in paragraph (a), replace "goods or a supply of remote services" with "goods, or a supply of remote services, or a supply of listed services":

(b) in paragraph (ab), replace "for a marketplace" with "for a supply of goods or a supply of remote services, in relation to a marketplace":

(c) replace paragraph (c) with:

(c) the supply is of—

(i) remote services made to a person resident in New Zealand:

(ii) goods made to a person involving delivery at a place in New Zealand:

(iii) listed services performed, provided, or received in New Zealand.

(2) In section 60C(2), words before paragraph (a), replace "in the course of furtherance of" with "in the course or furtherance of".

(3) After section 60C(2)(a), insert:

(ab) listed services if the services are performed, provided, or received in New Zealand:

(4) After section 60C(2B), insert:

(2BB) Subsection (2) does not apply in relation to a supply of listed services ~~that consists of accommodation services described in **section 8C(2)(a)**~~ provided through an electronic marketplace if—

(a) the underlying supplier is a person, other than a person referred to in **subsection (2BF),** ~~large commercial enterprise~~ that meets the criteria—

(i) set out in a determination made by the Commissioner under **subsection (2BC)**; or

(ii) referred to in **subsection (2BE)**; and

(b) the documentation provided to the recipient identifies the supply as made by the underlying supplier and not the electronic marketplace; and

(c) the underlying supplier and the operator of the electronic marketplace have agreed, recording their agreement in a document, that the underlying supplier is liable for the payment of tax in relation to the supplies of listed services and will continue to remain responsible for their tax obligations under this Act.

(2BC) For the purposes of **subsection (2BB)**, the Commissioner may determine the circumstances in which, and the criteria that a person must meet to ~~be a large commercial enterprise~~enter into an opt-out agreement, having regard to the factors set out in **subsection (2BD)**.

(2BD) In making the determination under **subsection (2BC)**, the Commissioner must have regard to—

(a) the compliance costs that would arise for underlying suppliers in making changes to their accounting systems and practices:

(b) the size, scale, and nature of the ~~accommodation~~ services and activities undertaken by underlying suppliers.

(2BE) Despite a determination made under **subsection (2BC)**, a person who is an underlying supplier may enter into an agreement with the operator of the electronic marketplace ~~to enable the underlying supplier to be treated as a large commercial enterprise~~ if they have, or they are part of a group of companies as defined in section IA 6 of the Income Tax Act 2007 that has,—

(a) 2000 nights accommodation listed as available on ~~the~~ 1 electronic marketplace in a 12-month period~~; and~~:

(b) a reasonable expectation that they can meet the threshold in **paragraph (a)** for any 12-month period.

(2BF) Subsection (2) does not apply to a supply of listed services provided through an electronic marketplace if—

(a) the underlying supplier is a person that is required to maintain a 2-month or a 1-month taxable period under section 15; and

(b) they choose to be liable for the payment of tax in relation to the supply and will continue to remain responsible for their tax obligations under the Act; and

(c) they have notified the marketplace operator of their election.

(5) In section 60C(3), replace "goods or supply of remote services," with "goods, remote services, or listed services,".

(6) **Subsections (1), (3), (4), and (5)** apply for taxable periods starting on or after 1 April 2024.

### 130 New section 60H inserted (Information requirements for underlying suppliers operating through electronic marketplaces)

(1) After section 60G, insert:

### 60H Information requirements for underlying suppliers operating through electronic marketplaces

(1) An underlying supplier of listed services operating on an electronic marketplace must notify the operator of the electronic marketplace of—

(a) their name and tax file number:

(b) their GST registration status.

(2) For the purposes of **subsection (1)(b)**, if the GST registration status of an underlying supplier changes, the underlying supplier must notify the operator of the electronic marketplace as soon as practicable.

(2B) For the purposes of **section 60C(2BF)**, an underlying supplier who chooses to be liable for the payment of tax on a supply of listed services must notify the operator of the electronic marketplace of the election.

(3) Once notified under **subsection (1)** ~~**or (2)**~~**, (2), or (2B)**, the operator may rely on the information provided by the underlying supplier, and a deficiency in an amount of ~~output~~ tax allocated to a taxable period that arises as a consequence of relying on the information provided is treated as a reduction in the total output tax allocated to the taxable period.

(4) In addition to the information required to be provided under **subsections (1)** ~~**and (2)**~~**, (2), and (2B)**, an underlying supplier must also comply with the obligations imposed on them under **section 185S(4) and 185T(2)** of the Tax Administration Act 1994 in relation to their obligation to provide information to a reporting platform operator under Part 11B of that Act.

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 131 Section 75 amended (Keeping of records)

(1) In section 75(3F), replace "8(3)(ab) applies or of remote services to which section 8(3)(c) applies," with "8(3)(ab) applies, or of remote services to which section 8(3)(c) applies, or of listed services referred to in **section 8C**,".

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 132 Section 77 amended (New Zealand or foreign currency)

(1) In section 77(2), replace "8(3)(ab) applies or of remote services to which section 8(3)(c) applies" with "8(3)(ab) applies, or of remote services to which section 8(3)(c) applies, or of listed services referred to in **section 8C**,".

(2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2024.

### 133 New section 81B inserted (Limitation on amending assessments for legislative charges)

Before the heading to Part 12, insert:

#### 81B Limitation on amending assessments for legislative charges

Despite section 25 of this Act, and sections 113 and 113A of the Tax Administration Act 1994, as applicable, a person or the Commissioner must not amend an assessment in a manner that is inconsistent with **section 5(6EC) to (6EE)**.

### 134 New section 85D inserted (Transitional provision for certain supplies of listed services)

After section 85C, insert:

#### 85D Transitional provision for certain supplies of listed services

(1) This section applies for the purposes of this Act in relation to a supply of listed services ~~that consist of accommodation services~~ provided through an electronic marketplace ~~by an underlying supplier~~when—

~~(a) to enable a person meeting the criteria under **section 60C(2BC) or (2BE)** for a large commercial enterprise to enter into an agreement with~~

~~the operator of an electronic marketplace, or a person who would be an operator of an electronic marketplace after 1 April 2024; and~~

~~(b) for the period that starts on the date of Royal Assent for the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act (No 2) **2022** (the **amendment Act**) and ends on 1 April 2024 (the **transitional period**).~~

(a) an underlying supplier who meets the criteria set out in **section 60C(2BB)** agrees with the marketplace operator that the underlying supplier is liable for the payment of tax in relation to the supplies of listed services and will continue to remain responsible for their tax obligations under this Act; or

(b) an underlying supplier who meets the criteria set out in **section 60C(2BF)** chooses to be liable for the payment of tax in relation to the supplies of listed services and to continue to remain responsible for their tax obligations under this Act.

(2) Despite the commencement provisions in the ~~amendment Act~~Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act **(No 2) 2022** (the **amendment Act**), the ~~person~~underlying supplier may choose to enter into an opt-out agreement described in **section 60C(2BB) to (2BE)** or choose to be liable for the tax obligations in relation to the supply as set out in **section 60C(2BF)**~~ for the transitional period or a part of it~~. For the purpose of determining whether~~ an opt-out agreement is available~~ the supplier can enter into the agreement or make the election, as applicable, the provisions of the amendment Act relating to a supply of listed services~~ that consist of accommodation services~~ are treated as if they commenced on the date of Royal Assent for the amendment Act.

### 135 New section 90 inserted and repealed (Transitional regulation making power: legislative charges)

(1) After section 89, insert:

**90 Transitional regulation making power: legislative charges**

(1) For the purposes of **section 5(6ED)(a)**, the Governor-General may, by Order in Council made on the recommendation of the Minister of Revenue, add a charge or class of charges to the **schedule**.

(2) Before making a recommendation referred to in **subsection (1)**, the Minister must be satisfied that the charge should be non-taxable, having regard to whether making the charge non-taxable is consistent with the approach taken for other charges with similar characteristics.

(3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(2) Repeal **section 90**.

### 136 New section 91 inserted (Certain private goods removed from tax base before 1 April 2025)

After **section 90**, insert:

**91 Certain private goods removed from tax base before 1 April 2025**

(1) This section applies when—

(a) a registered person has previously claimed a deduction under section 20(3) for goods, or acquired them as zero-rated supplies; and

(b) the goods were acquired before 1 April 2023; and

(c) the goods were not acquired for the principal purpose of making taxable supplies; and

(d) the goods were not used for the principal purpose of making taxable supplies.

(2) The person may elect to return output tax equal to the amount set out in **subsection (3)** by notifying the Commissioner before 1 April 2025, in a way acceptable to the Commissioner, of—

(a) the election; and

(b) the election date; and

(c) the information required by the Commissioner relating to the election.

(3) If a person makes an election under **subsection (2)**, they must return output tax equal to—

(a) the input tax previously deducted for the supply minus the amount of output tax adjustments already made for non-taxable use; or

(b) if the supply was acquired by them as a zero-rated supply, the nominal GST component chargeable under section 20(3J)(a)(i) minus the amount of output tax adjustments already made for non-taxable use.

(4) If after returning output tax under **subsection (3)**, the person has claimed no deduction under section 20(3) for the goods, then any future disposal of the goods is ~~an exempt supply~~ not a taxable supply.

### 137 New schedule inserted (Non-taxable legislative charges)

After **section 91**, insert the **schedule** set out in the **schedule** of this Act.

## Part 4
## Amendments to the Tax Administration Act 1994

### 138 Amendments to the Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

### 139 Section 3 amended (Interpretation)

(1) This section amends section 3(1).

(1B) In the definition of **civil penalty**, paragraph (cc), replace "or 142I" with ", 142I, **142J**, or 142K".

(2) Insert, in appropriate alphabetical order:

**DRCD deferral date** has the meaning given by **section RA 6(6)** of the Income Tax Act 2007

(3) Insert, in appropriate alphabetical order:

**extended model reporting standard for digital platforms** means—

(a) the model reporting standard for digital platforms~~, as amended from time to time by regulations made under **section 226F**~~; and

(b) Part II of the *Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods*~~, as amended from time to time by regulations made under **section 226F**~~

(4) Insert, in appropriate alphabetical order:

**foreign exemption trust**, for an income year or part of an income year (the **test period**), means a trust for which a trustee is resident in New Zealand in the test period, no election under section HC 33 of the Income Tax Act 2007 is effective for the trust and the test period, and either or both—

(a) no settlor is resident in New Zealand at any time in the period—

(i) starting on the later of 17 December 1987 and the date on which a settlement was first made on the trust; and

(ii) ending at the end of the test period:

(b) the trustee takes a tax position that an amount of income derived by the trustee in or before the test period is exempt income under section HC 26 of the Income Tax Act 2007

(5) In the definition of **large multinational group**, paragraph (c), replace "5.53" with "5.52".

(6) Insert, in appropriate alphabetical order:

**model reporting standard for digital platforms** means the *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy*~~, as amended from time to time by regulations made under **section 226F**~~, that is a standard—

(a) developed by the Organisation for Economic Co-operation and Development and the Group of Twenty countries; and

(b) agreed by the Council for the Organisation for Economic Co-operation and Development

(7) In the definition of **professional trustee**,—

(a) delete ", in section 43B,":

(b) delete the words after "as a trustee".

(8) Insert, in appropriate alphabetical order:

**reporting platform operator**, in **sections 22(2)(fe) and (lf), 94D, 142J, 143(2E), 185S, 185T, and 226F**, has the meaning set out in the model reporting standard for digital platforms or the extended model reporting standard for digital platforms, as applicable

(9) Repeal the definition of **resident foreign trustee**.

### 140 Section 4A amended (Construction of certain provisions)

In section 4A(3)(bc), replace "unpaid," with " unpaid and".

### 140B Section 18B amended (Requirements for revenue officers and other persons)

In section 18B(2), replace "revenue information" with "sensitive revenue information".

### 141 Section 22 amended (Keeping of business and other records)

(1A) In section 22(2)(fb), replace "resident foreign trustee" with "resident trustee".

(1) In section 22(2)(fd), replace "CRS applied standard,—" with "CRS applied standard:".

(2) After section 22(2)(fd), insert:

(fe) is a reporting platform operator to whom **sections 185S and 185T** ~~applies~~apply—

(3) After section 22(2)(le), insert:

(lf) for a reporting platform operator, evidence of steps undertaken in the operation of the digital platform, and information relied on for the performance of due diligence procedures and reporting requirements set out in the model reporting standard for digital platforms and the extended model reporting standard for digital platforms, as applicable; and

(4) In section 22(2C), replace "resident foreign trustee" with "resident trustee" and "resident foreign trustees" with "resident trustees".

### 142 Section 23I amended (Employment income information requirements for employees)

~~In section 23I,~~

~~(a) after the section title, insert as a subsection heading "*PAYE income payments*":~~

~~(b) after "in which the payment is made.", insert:~~

~~*Information about certain benefits*~~

~~(2) An employee who is required to provide information under **section RD 62B or RD 71B** of the Income Tax Act 2007 must provide the information described in **schedule 4, table 1, rows 1 to 4** to the Commissioner within 10 working days after the end of the month in which the payment, benefit, or contribution, as applicable, is made.~~

(1) In section 23I, replace "a PAYE income payment to the Commissioner under section RD 21(1)(a) of the Income Tax Act 2007" with "employment-related tax obligations as if an employer under section CE 1F(3) of the Income Tax Act 2007".

**142B New section 23IB inserted (Employment income information requirements in relation to certain cross-border employees)**

After section 23I, insert:

**23IB Employment income information requirements in relation to certain cross-border employees**

A person that is required to provide employment income information relating to a PAYE income payment to the Commissioner under **section RA 15(4B)** of the Income Tax Act 2007 must deliver the information in the prescribed format by 31 May after the end of the tax year.

**~~143~~ ~~New subpart heading and section 23R inserted~~**

~~After section 23Q, insert:~~

~~Subpart 3D—Schedular payment information~~

**~~23R~~ ~~Information reporting: schedular payments made to non-resident contractors~~**

~~*When this section applies*~~

~~(1) This section applies for an income year when a person makes, or is treated as making, a schedular payment referred to in **section RD 8** and schedule 4, part A of the Income Tax Act 2007 to or on behalf of a non-resident contractor.~~

~~*Schedular payment information*~~

~~(2) The person must provide the schedular payment information set out in **schedule 6B** to the Commissioner—~~

~~(a) in electronic form and by means of an electronic communication as prescribed by the Commissioner; and~~

~~(b) by the 15th of the month following the month in which—~~

~~(i) the contract starts:~~

~~(ii) the payment is made to the non-resident contractor:~~

~~(iii) the contract ends.~~

### 144 Section 24H amended (Exempt schedular payments)

In section 24H, replace "is to be withheld." with "is to be withheld. For this purpose, the Commissioner may include in the notification a retroactive period of up to 92 days before the date of their application in which to include a schedular payment."

### 145 New section 24HB inserted (Schedular payments: tax obligations undertaken by nominated persons)

After section 24H, insert:

**24HB Schedular payments: tax obligations undertaken by nominated persons**

*When this section applies*

(1) This section applies in relation to a non-resident contractor that has a schedular payment under schedule 4, part A of the Income Tax Act 2007 for a tax year, if the non-resident contractor has made an arrangement with a person resident in New Zealand in relation to their tax affairs or social policy entitlements and obligations, or both.

~~(1) This section applies for the purposes of calculating and paying amounts of tax for a schedular payment to a non-resident contractor under schedule 4, part A of the Income Tax Act 2007 for a tax year when —~~

~~(a) the contractor is liable under section RD 21, **RD 62B, or RD 74B** of that Act to pay some or all of the amount of tax for the payment that was not withheld at the time the payment was made; and~~

~~(b) an arrangement is made between the contractor and a person resident in New Zealand who is associated with the contractor in relation to the contractor's tax obligations for the payment.~~

*Nominating person to carry out tax obligations*

(2) The contractor may nominate the person to carry out the contractor's tax obligations ~~in relation to the payment~~ under section 124F.

*Notifying Commissioner*

(3) The nominated person must notify the Commissioner that they act on behalf of the contractor in discharging the contractor's tax obligations for the tax year in relation to the payment.

*Compliance history*

(4) The actions of the nominated person or a person associated with the contractor may provide a compliance history for the purposes of section RD 24(1)(c) of the Income Tax Act 2007, and for an application under **section 24H** for an exempt payment.

*No separate return*

(5) The contractor may not make a separate assessment or return for the tax year, unless they are, for part of the corresponding income year, not part of the arrangement.

*Joint and several liability*

(6) Despite **subsections (2) and (3)**, each person who is part of the arrangement is jointly and severally liable for the contractor's tax payments~~the amount of tax for the schedular payment~~.

**146 Section 25E amended (Who must provide investment income information to Commissioner)**

In section 25E(1)(i), after "section FL 2", insert "or **FL 3**".

**147 Section 25G amended (Information on dividends)**

(1) After the heading to section 25G, insert "*Delivery of investment income information*" as a subsection heading.

(2) In section 25G, insert as subsection (2):

*Certain dividends derived by dual resident companies*

(2) For the purposes of subsection (1) and a dividend described in **section CD 1(3)** of the Income Tax Act 2007, the payer must treat the DRCD deferral date as the date on which the amount of investment income is paid to or derived by the payee.

**147B Section 25M amended (Information from emigrating companies)**

(1) After the heading to section 25M, insert "*Delivery of investment income information*" as a subsection heading.

(2) Replace section 25M(b) with:

(b) by the relevant date set out in **subsection (2)**.

(3) In section 25M, insert as subsection (2):

*Due date*

(2) The relevant date is,—

(a) for an emigrating company that is treated under section FL 2 of the Income Tax Act 2007 as paying a dividend to shareholders, the date that is 3 months after the time of emigration:

(b) for an emigrating company that is treated under **section FL 3** of the Income Tax Act 2007 as paying a dividend to shareholders, the date that is 3 months after the earliest of the events described in **subsection (1)(a) to (d)** of that section occurs.

### 148 Section 29 amended (Shareholder dividend statement to be provided by company)

~~(1) In section 29(1C)(b), replace "of the Income Tax Act 2007 (which relates to an emigrating company)" with "or **FL 3** of the Income Tax Act 2007".~~

(1) Replace section 29(1C) with:

(1C) The company must give the shareholder dividend statement to the shareholder—

(a) at the time of payment of the dividend, if neither of **paragraphs (b) and (c)** applies; or

(b) before the date that is 3 months after the time of emigration, if the company is treated under section FL 2 of the Income Tax Act 2007 as paying the dividend; or

(c) before the date that is 3 months after the earliest of the events described in **section FL 3(1)(a) to (d)** of that Act occurs, if the company is treated under that section as paying the dividend.

(2) After section 29(2), insert:

(3) For the purposes of this section, a company that pays to a shareholder a dividend described in **section CD 1(3)** of the Income Tax Act 2007 is treated as paying the dividend on the DRCD deferral date.

### 149 Section 43B amended (Trustees of non-active trusts and administrators or executors of non-active estates may be excused from filing returns)

(1) Replace the heading to section 43B with "**Trustees, administrators, or executors of certain trusts or estates not required to file returns**".

(2) In section 43B(1)(c), words before subparagraph (i) replace "the person has" with "if the trust or estate has a tax file number, the person has".

(2B) In section 43B(2)(a), replace "income" with "assessable income".

(2C) Replace section 43B(2)(c) with:

(c) has not been a party to, or perpetuated, or continued with, transactions with assets of the trust or estate with a person who is associated with the trustee of the trust or executor or administrator of the estate which, during the income year corresponding to the tax year,—

(i) give rise to income in that person's hands; or

(ii) give rise to fringe benefits to that person in their capacity as an employee or former employee.

(3) In section 43B(3)(b), replace "200" with "~~1,000~~1,500".

(4) Replace section 43B(3)(c) with:

(c) income~~ earned~~ derived by the ~~trust or estate~~trustee of a trust or an administrator or executor of an estate during the tax year that would be reportable income, as defined in section 22D of the Tax Administration

Act 1994, if the trust or estate ~~was~~ were an individual, to the extent to which the total amount of that income does not exceed $1,000; or

(5) In section 43B(3)(d), after "rates,", insert "interest,".

(6) After section 43B(3), insert:

(3B) If subsection (1) does not apply, a person who is a trustee of a trust is also not required to make a return of income for a tax year for the trust—

(a) if the trust is a testamentary trust; and

~~(b) distributions from the trust during the income year do not exceed $100,000; and~~

(b) the trust is a complying trust under section HC 10 of the Income Tax Act 2007; and

(bb) if the trust has a tax file number, the person has provided to the Commissioner, in a form approved by the Commissioner,—

(i) a declaration that the trust meets the requirements of this subsection and that the person will notify the Commissioner if the trust ceases to meet those requirements; and

(ii) a statement of the matters required by the Commissioner; and

(c) the trustee of the trust has derived no assessable income or ~~where the trust earned~~ has derived assessable income that would be reportable income, as defined in section 22D of the Tax Administration Act 1994, if the trust ~~was~~ were an individual, ~~tax has been deducted from that income at the correct rate, and the total amount of that income does not exceed~~ of a total amount not exceeding $5,000 for the income year corresponding with the tax year; and

~~(d) the trust derives non-reportable income of $1,000 or less and the trust has deductions against that income of at least $800 for the income year.~~

(d) the trustee of the trust has derived an amount, that does not exceed $1,000 in total for the tax year, of assessable income that is not reportable income, as defined in section 22D of the Tax Administration Act 1994, if the trust were an individual, and the trustee of the trust has incurred in the tax year a total amount of deductible expenditure that is not exceeded by the assessable income by more than $200 for the income year corresponding with the tax year.

(7) Replace section 43B(4) with:

(4) If subsections (2) or **(3B)** cease to apply to a trust or estate, a trustee of the trust or administrator or executor of the estate must notify the Commissioner that the relevant subsection no longer applies.

(8) Replace section 43B(5) with:

(5) Despite subsection (1) or **(3B)**, a person referred to in subsection (1) or **(3B)** must furnish a return of income if required by the Commissioner to do so.

(9) **Subsections (1), (2), (3), (4), (5), (6), (7), and (8)** apply for the 2021–22 and later income years.

### 150 Section 59BA amended (Annual return for trusts)

(1) In section 59BA(3)(a), delete "(which relates to non-active trusts)".

(2) In section 59BA(3)(b), replace "foreign trust" with "foreign exemption trust".

### 151 Section 59B amended (Foreign trust with resident foreign trustee: registration and disclosure)

(1) In section 59B, heading, replace "**Foreign trust with resident foreign trustee**" with "**Foreign exemption trust**".

(2) Replace section 59B(1) with:

(1) The Commissioner may register a foreign exemption trust if a trustee pays the prescribed fee.

(1B) The Commissioner may treat the registration of a trust under **subsection (1)** as being in force from a date preceding the successful application for registration of the trust, if the Commissioner considers that the trustee made reasonable efforts to obtain registration at the earlier date.

(1C) A trust that is registered under this section as a foreign trust at the start of the day on which the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act **(No 2) 2022** receives the Royal assent is treated as being registered as a foreign exemption trust from that day.

(3) Replace section 59B(2) with:

(2) A trustee of a foreign exemption trust must apply to the Commissioner for registration of the foreign exemption trust, provide the information required by **subsection (3)** and the declaration required by subsection (4), and pay the prescribed fee.

(2B) The requirement under **subsection (2)** for a trustee to register a foreign exemption trust commences on the later of—

(a) the date (the **amendment assent date**) on which the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act **(No 2) 2022** receives the Royal assent:

(b) the due date for an income tax return of the trust relating to the first income year for which the trust meets the requirements to be a foreign exemption trust.

(4) In section 59B(3), words before paragraph (a), replace "foreign trust" with "foreign exemption trust".

(5) In section 59B(3)(b)(i), replace "is in the business of providing trustee services" with "is a professional trustee".

(6) Replace section 59B(3)(c)(vi) and (vii) with:

(vi) each beneficiary that is not a minor and has a fixed interest in the trust:

(vib) each nominee for a beneficiary that has a fixed interest in the trust:

(vii) the parent or guardian of a beneficiary that is a minor and has a fixed interest in the trust:

(7) Replace section 59B(3)(d) and (e) with:

(d) for each beneficiary that is a minor and has a fixed interest in the trust, the name, date of birth, and taxpayer identification number of the beneficiary:

(e) for each beneficiary or class of beneficiary that has a discretionary interest in the trust, details sufficient for the Commissioner to determine, when a distribution is made under the trust, whether a person is a beneficiary:

(8) After **section 59B(3)(e)**, insert:

(eb) for each beneficiary or class of beneficiary that has a residual interest in the trust, details sufficient for the Commissioner to determine, when a distribution is made in the winding up of the trust, whether a person is a residual beneficiary:

(9) Replace section 59B(3)(f) with:

(f) a copy of the trust deed, or will or other document that creates and governs the trust, (the **creating document**) and of each document that amends or supplements the creating document.

(10) In section 59B(6), words before paragraph (a), after "to the Commissioner", insert ", within 30 days of becoming aware of the anticipated date of the cessation,".

(11) After section 59B(6), insert:

(6B) A contact trustee who anticipates a change in the trustee's e-mail address, physical residential address, or other contact details, must provide the Commissioner with details of the change within 30 days of becoming aware of the anticipated change.

(12) Replace section 59B(7) with:

(7) Each trustee of a foreign exemption trust is responsible for the performance of the obligations imposed on a trustee relating to registration of the trust, disclosure of information, annual returns, financial statements, and payment of fees.

(13) **Subsections (7) and (8)** do not apply for a trust except if the trustee makes an application for registration after the date on which the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act **(No 2) 2022** receives the Royal assent.

### 152 Section 59C amended (Time limits for registration and disclosure of changes)

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

(1) A trustee who becomes required to register a foreign exemption trust under **section 59B(2B)**—

(a) on the date (the **amendment assent date**) on which the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act **(No 2) 2022** receives the Royal assent, is required to apply for the registration in the period beginning with the amendment assent date and ending with **30 April 2023**, except if subsection (3) applies; or

(b) after the amendment assent date, is required to apply for the registration in the period of 30 days from which the requirement commences, except if subsection (3) applies.

(2) Replace section 59C(2) with:

(2) A trustee who is required by section 59B(5) to provide information to the Commissioner after an application for the trust to be registered, must provide the information before or with the income tax return that is next due after the trustee becomes aware of the addition or alteration.

(3) In section 59C(3)(a), replace "foreign trust" with "trust".

(4) Replace section 59C(3)(b) with:

(b) for each trustee of the trust who is responsible for the performance of the obligations imposed by **section 59B**, the trust is the first trust for which the trustee has been a trustee; and

(5) In section 59C(3)(c), replace "the foreign trust is not in the business of providing trustee services" with "the trust is not a professional trustee".

(6) Replace section 59C(3)(d), with:

(d) the end of the period of 4 years and 30 days beginning with the earliest date on which the trust becomes a foreign exemption trust (the **grace period**) occurs after the period that would otherwise be given by subsection (1).

### 153 Section 59D amended (Annual return for foreign trust)

(1) In section 59D, heading, replace "**foreign trust**" with "**foreign exemption trust**".

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

(1) A trustee of a foreign exemption trust must provide to the Commissioner a return for the trust, the declaration required by **subsection (2B)**, and the prescribed fee, for each year (the **return year**) that—

(a) includes a period in which—

(i) a trustee of the trust derives income for which the trustees of the trust take a tax position that the income is exempt income under section HC 26 of the Income Tax Act 2007:

(ii) the trust is registered as a foreign exemption trust or a trustee is required to register the trust; and

(b) ends with—

(i) a date (the **balance date**) for which the trustee prepares financial statements or is required to prepare financial statements; or

(ii) 31 March if the trustee does not prepare financial statements and is not required to prepare financial statements; and

(c) begins after 31 March 2023, if a trustee becomes required to register the trust on the date of enactment of this subsection; and

(d) if the trustee has a grace period referred to in section 59C(3), ends after the grace period.

(3) In section 59D(2)(e), replace "the age" with "the date of birth".

(4) After section 59D(2)(e), insert:

(f) details of each addition or alteration to a particular provided with an application for registration or in an earlier return, if the details have not been provided earlier.

(5) After section 59D(2), insert:

(2B) The trustee must provide a signed declaration that each settlor referred to in subsection (2)(c)—

(a) is deceased; or

(b) despite the efforts of the trustee detailed in the declaration, cannot be located by the trustee; or

(c) has been informed of, and has agreed to provide the information necessary for compliance with the requirements relating to the provision of information relating to the settlement, the trust, and persons connected with the trust, imposed by all of—

(i) the Tax Administration Act 1994:

(ii) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009:

(iii) the regulations made under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

(6) Replace section 59D(3) with:

(3) A return and the prescribed fee for a foreign exemption trust and a return year must be provided by a trustee to the Commissioner by the later of—

(a) the date by which the trustee is required to apply for registration of the trust:

(b) the date that is—

(i) 6 months after the balance date for the trust and the return year, if the trust has a balance date; or

(ii) the 30 September following the end of the return year, if the trust does not have a balance date.

**154 New section 59DB inserted (Deregistration of foreign exemption trusts)**

After section 59D, insert:

**59DB Deregistration of foreign exemption trusts**

(1) The Commissioner may deregister a trust that is registered as a foreign exemption trust if the Commissioner considers that the trust—

(a) at the time of registration, did not meet the requirements for registration:

(b) after the time of registration, ceased to meet the requirements for registration.

(2) A deregistration under **subsection (1)** may be effective from—

(a) the time of registration, if the Commissioner considers the trust did not meet the requirements for the registration; or

(b) a time after the registration at which the Commissioner considers the trust had ceased to meet the requirements for registration.

(3) If the Commissioner proposes to deregister a trust, the Commissioner must give notice of the proposal to the contact trustee of the trust not less than 30 days before the deregistration is implemented.

(4) The contact trustee for a trust must apply to the Commissioner for deregistration of the trust if the trustee becomes aware that the trust does not meet the requirements for registration.

(5) A trustee making an application under **subsection (4)** must provide with the application—

(a) the reasons for the application; and

(b) a return for the trust for the income year, or part of the income year, for which the trust meets the requirements for registration and that includes the day before the day on which the trust ceases to meet the requirements for registration; and

(c) further information required by the Commissioner.

**155 Section 59E amended (Fees: regulations and exemption)**

(1) In section 59E(1), replace "foreign trust" with "foreign exemption trust" in each place.

(2) In section 59E(3), replace "foreign trust" with "foreign exemption trust" in each place.

(3) In section 59E(5), words before paragraph (a),—

(a) replace "resident foreign trustee" with "trustee" in each place:

(b) replace "foreign trust" with "foreign exemption trust" in each place.

(4) Replace section 59E(5)(b) with:

(b) is not a professional trustee.

**155B Section 61 amended (Disclosure of interest in foreign company or foreign investment fund)**

In section 61(1B), replace "resident foreign trustee" with "trustee".

**156 New section 61B inserted (Disclosure requirements for high-value assets intended to be used in making taxable supplies)**

After section 61, insert:

**61B Disclosure requirements for high-value assets intended to be used in making taxable supplies**

(1) A registered person who acquires land, ~~pleasure craft~~ a ship, or an aircraft, with the intention of using it to make taxable supplies must disclose to the Commissioner, in the form and by the deadline prescribed by the Commissioner—

(a) the existence and nature of the acquisition; and

(b) such other information as may be required by the Commissioner.

(2) The Commissioner may exempt any person or class of persons from the requirements of **subsection (1)** where, in the opinion of the Commissioner, that person is at low risk of using the relevant asset for a use other than for making taxable supplies.

(3) For the purposes of this section—

(a) **aircraft** has the meaning set out in section 2 of the Civil Aviation Act 1990:

(b) **land** has the meaning set out in section 2 of the Goods and Services Tax Act 1985:

(c) ~~**pleasurecraft**~~**ship** has the meaning set out in section 2 of the Maritime Transport Act 1994.

**157 Section 68CB amended (Research and development tax credits: general approval)**

(1) In section 68CB(1)(c), replace "; and" with ".".

(2) Delete section 68CB(1)(d).

(3) After section 68CB(3), insert:

(3B) If a person's research and development activities materially change during the period of an approval, and they want the change to be covered by the approval,

they must apply to the Commissioner for a variation of the approval by the deadline in subsection (7) or (7B), as applicable.

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

### 158 Section 68CC amended (Research and development tax credits: greater than $2 million approval)

(1) After section 68CC(4), insert:

(4B) If a person's criteria and methodologies materially change during the period of an approval, and they want the change to be covered by the approval, they must apply to the Commissioner for a variation of the approval by the deadline in subsection (8).

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

### 158B Section 69 amended (Annual ICA return)

(1) In section 69(1), replace "An imputation credit account (ICA) company" with "Subject to **subsection (3)**, an imputation credit account (ICA) company".

(2) After section 69(2), insert:

(3) Subsection (1) does not apply to an ICA company that is a member of a consolidated imputation group if the ICA for the company has a nil balance at all times during the relevant tax year.

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

### 158C Section 70C amended (Statements in relation to R&D loss tax credits and R&D repayment tax)

(1) Replace section 70C(2) with:

(2) The statement described in subsection (1) must be filed with the Commissioner no later than the 31 March after the end of the relevant tax year.

(2) Replace section 70C(2), as replaced by **subsection (1)**, with:

(2) The statement described in subsection (1) must be filed with the Commissioner no later than the day that is 30 days after the last day for filing a return of income for the relevant tax year under section 37.

(3) **Subsection (1)** applies for the 2015–16 and later tax years.

(4) **Subsection (2)** applies for the 2022–23 and later tax years.

### 159 Section 89AB amended (Response periods)

(1) Replace section 89AB(3) with:

(3) When the initiating notice is a notice of assessment issued by a taxpayer, the response period for a notice of proposed adjustment under section 89DA is a 4-month period starting on the date of issue of the initiating notice.

(2) Replace section 89AB(4) with:

(4) When the initiating notice is either a notice of disputable decision or a notice revoking or varying a disputable decision that is not an assessment, the response period for a notice is—

(a) a 2-month period starting on the date of issue of the initiating notice; or

(b) for a notice of proposed adjustment, a 4-month period starting on the date of issue of the initiating notice.

(3) Repeal section 89AB(6).

(4) **Subsections (1), (2), and (3)** apply for the 2009–10 and later income years.

### 160 Section 89C amended (Notices of proposed adjustment required to be issued by Commissioner)

(1) After section 89C(lba), insert:

(lbab) the assessment is of a penalty under **section 142J or 142K**; or

(2) After section 89C(lb), insert:

(lbb) the assessment extinguishes all or part of a taxpayer's excess amount under section EL 4 of the Income Tax Act 2007 in accordance with **section 177C(5BA)**; or

### 160B New section 91AABB (Determinations relating to monetary threshold in extended model reporting standard for digital platforms)

After section 91AAB, insert:

#### 91AABB Determinations relating to monetary threshold in extended model reporting standard for digital platforms

(1) For the purpose of **section 185T**, the Commissioner may determine the New Zealand dollar equivalent of the monetary threshold set out in the definition of excluded seller in section I, B(4)(d) of the extended model reporting standard for digital platforms.

(2) The Commissioner may amend, if necessary, the New Zealand dollar equivalent of the threshold referred to in **subsection (1)** to account for exchange rate fluctuations to ensure its consistency with the reporting standard.

(3) The determination may set out the year or years for which it is to apply, but it may not apply for years before the implementation of the extended model reporting standard for digital platforms under **section 185T(1)**.

(4) The determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.

(5) A person affected by a determination made under this section may dispute or challenge the determination under Parts 4A and 8A.

(6) Within 30 days of having made a determination under this section, the Commissioner must publish a notice in a publication chosen by the Commissioner setting out the New Zealand dollar equivalent that is the subject of the deter-

mination, any necessary amendment caused by exchange rate fluctuations, and the periods for which the threshold is to apply.

### 161 Section 91C amended (Taxation laws in respect of which binding rulings may be made)

(1) Repeal section 91C(4).

(2) **Subsection (1)** applies for the 2009–10 and later income years.

### 162 New section 94D inserted (Assessment of penalties related to requirements under model rules)

After section 94C, insert:

#### 94D Assessment of penalties related to requirements under model rules

(1) The Commissioner may make an assessment for a reporting platform operator of the amount of a penalty under **section 142J(1) to (5)** that, in the Commissioner's opinion, ought to be imposed, and the operator is liable to pay the penalty assessed.

(2) The Commissioner may make an assessment for a seller operating on a digital platform of a reporting platform operator of the amount of a penalty under **section 142K** that, in the Commissioner's opinion, ought to be imposed, and the seller is liable to pay the penalty assessed.

(3) Despite **subsections (1) and (2)**, this section does not apply in so far as the operator or seller, as applicable, establishes in proceedings challenging the assessment that the assessment is excessive or that the operator or seller, as applicable, is not chargeable with the penalty.

### 163 New section 108AC inserted (Time bar for amending assessment of student loan deductions)

After section 108AB, insert:

#### 108AC Time bar for amending assessment of student loan deductions

(1) The Commissioner may not amend an assessment when—

(a) a taxpayer provides employment income information that includes an amount of salary or wage deductions required to be made under the Student Loan Scheme Act 2011 which, for the purposes of this section, is treated as the making of an assessment of the amount by the taxpayer; and

(b) 4 years have passed from the date on which the taxpayer provided the employment income information.

(2) However, the Commissioner may amend the assessment at any time if the Commissioner is of the opinion that either or both of the following apply:

(a) employment income information provided by a taxpayer is fraudulent or wilfully misleading:

(b) there would a be a significant adverse effect on a borrower, as defined in section 4(1) of the Student Loan Scheme Act 2011, if the assessment is not amended.

(3) This section is subject to section 64 of the Student Loan Scheme Act 2011, but overrides every other provision of this Act, and any other rule or law, that limits the Commissioner's right to amend assessments.

### 164 Section 120B amended (Persons excluded)

After section 120B(bb), insert:

(bc) a non-resident employer who incorrectly concludes that they do not have to ~~fails to~~ withhold and pay, or pay, an amount of tax for a PAYE income payment to a cross-border employee to the Commissioner in an income year, and the employer—

(i) has either 2 or fewer employees present in New Zealand during the income year or pays $500,000 or less of employment-related taxes for the income year; and

(ii) ~~has made an arrangement for their employment-related tax obligations to be met by another person or has communicated to the employee that the employee must meet those obligations directly:~~has, within 60 days of the failure, taken reasonable measures to manage their employment-related tax obligations:

### 165 Section 124G amended (Refusal, removal, or disallowance of status of tax agents, representatives, and nominated persons)

In section 124G(4)(b), delete ", whether by blood relationship or by adoption".

### 166 Section 139A amended (Late filing penalty for certain returns)

(1) In section 139A(6), replace "Subsections (7) to (9) " with "Subsections (7) and (8)".

(2) In section 139A(7), replace "Subject to subsection (9), the" with "The".

(3) Repeal section 139A(9).

(4) **Subsections (1), (2), and (3)** apply to penalties imposed on or after 1 April 2023.

### 167 New section 139AC inserted (Penalty for trustee's failure to register, provide information for, foreign exemption trust)

After section 139AB, insert:

### 139AC Penalty for trustee's failure to register, provide information for, foreign exemption trust

(1) A trustee of a foreign exemption trust is liable to pay a penalty under this section if the trustee fails to comply with the requirements of section 22, 59B, 59C, or 59D.

(2) The penalty under this section is the amount specified by the Commissioner, which must not be more than $1,000.

(3) A trustee is not liable to pay a penalty under this section for a failure to comply with requirements if the Commissioner is satisfied that the trustee makes reasonable efforts to comply with the requirements and to remedy the non-compliance with the requirements.

(4) The due date for payment of a penalty imposed under this section is the later of—

(a) 30 days after the date on which the Commissioner issues the notice of assessment for the penalty:

(b) the date specified by the Commissioner in the notice of assessment as being the due date for payment of the penalty.

### 168 Section 141 amended (Tax shortfalls)

(1A) In section 141(1), replace "this section" with "this section unless otherwise specified in a provision of an Inland Revenue Act".

(1) Repeal section 141(7C) and (7D).

(2) **Subsection (1)** applies for the 2009–10 and later income years.

### 169 Section 141ED amended (Penalty for unpaid amounts of employers' withholding payments)

(1) After section 141ED(1), insert:

(1B) This section, and sections 139A and 139B (which relate to late filing and late payment penalties) do ~~does~~ not apply when a non-resident employer incorrectly concludes that they do not have to ~~fails to~~ withhold and pay, or pay, an amount of tax for an amount of tax for a PAYE income payment to a cross-border employee to the Commissioner in an income year, if the employer—

(a) has either 2 or fewer employees present in New Zealand during the income year or pays $500,000 or less of employment-related taxes for the income year; and

(b) ~~has made an arrangement for their employment-related tax obligations to be met by another person or has communicated to the employee that the employee must meet those obligations directly:~~has, within 60 days of the failure, taken reasonable measures to manage their employment-related tax obligations.

~~(2) After section 141ED(3)(b), insert:~~

~~(c) for a non-resident employer and in relation to an amount of tax for a PAYE income payment to a cross-border employee, the employer has made an arrangement for their employment related tax obligations to be met by another person or has communicated to the employee that the employee must meet those obligations directly.~~

**170 New section 141GC inserted (Grace periods for certain schedular payments)**

After section 141GB, insert:

**141GC Grace periods for certain schedular payments**

(1) This section applies when—

(a) a person (the **payer**) makes a schedular payment referred to in section RD 3 and schedule 4, part A of the Income Tax Act 2007 to a non-resident contractor; and

(b) at the time of the payment, it is unclear whether the payer is liable to withhold an amount of tax for the schedular payment, whether because of the application of an exemption threshold or otherwise; and

(c) some or all of the amount of tax is underpaid at the due date for payment of the tax; and

(d) the payer is able to demonstrate that they have made a reasonable effort to comply with their tax obligations for the schedular payment.

(2) When a threshold under **section RD 8** of that Act has been breached, the payer has a 60-day period (the **grace period**) during which they must make a reasonable effort to meet or correct their tax obligations relating to the schedular payments made to the person in relation to the time the person was in New Zealand. The grace period starts to run from the earlier of—

(a) the date of the breach:

(b) the date on which the employer could reasonably foresee that a breach will occur.

(3) To the extent to which the payer remedies the underpayment of the amount of tax by the end of the grace period, the payer is not liable to pay interest under Part 7 or a penalty under Part 9.

**171 Section 142B amended (Due date for shortfall penalties)**

Repeal section 142B(2).

**172 New sections 142J and 142K inserted**

After section 142I, insert:

**142J When reporting requirements for operators under model rules for digital platforms not met**

(1) This section applies when a reporting platform operator (the **operator**), including a resident reporting platform operator,—

(a) is required under **sections 185S and 185T** to meet all the requirements set out in, as applicable,—

(i) the model reporting standard for digital platforms:

(ii) the extended model reporting standard for digital platforms; and

(b) does not meet the requirements in relation to sellers operating on the digital platform in cases where the non-compliance is serious or unreasonable.

(2) The operator is liable to pay a penalty of $300 for each occasion on which the operator does not meet the requirements.

(3) The operator is not liable to pay a penalty under **subsection (2)** if the failure to meet the requirements is shown to be due to circumstances outside the control of the operator.

(4) If the operator does not take reasonable care to meet a requirement, and no penalty is imposed under **subsection (2)**, the operator is liable to pay a penalty of—

(a) $20,000 for the first occasion:

(b) $40,000 for each further occasion.

(5) The total amount of penalties for a reportable period for which an operator is liable must not be more than—

(a) $10,000 for a penalty under **subsection (2)**:

(b) $100,000 for a penalty under **subsection (4)**.

(6) The due date for payment of a penalty imposed under this section is the later of—

(a) 30 days after the date on which the Commissioner makes the assessment for the penalty:

(b) the date set out by the Commissioner in the notice of assessment as being the due date for payment of the penalty.

**142K When reporting requirements for sellers operating on digital platforms not met**

(1) This section applies when a seller operating on a digital platform—

(a) is required under **sections 185S and 185T** to provide information to the reporting platform operator; and

(b) does not meet the requirements.

(2) The seller is liable to pay a penalty of $1,000 if they—

(a) provide false or misleading information to the reporting platform operator about either themselves or another person or entity:

(b) do not provide information to the reporting platform operator about either themselves or another person or entity within a reasonable time after having received a request for the information:

(c) do not provide information that they are required to provide to the reporting platform operator as a seller operating on the digital platform under—

(i) the model reporting standard for digital platforms:

(ii) the extended model reporting standard for digital platforms.

(3) The due date for payment of a penalty imposed under this section is the later of—

(a) 30 days after the date on which the Commissioner makes the assessment for the penalty:

(b) the date set out by the Commissioner in the notice of assessment as being the due date for payment of the penalty.

### 173 Section 143 amended (Absolute liability offences and strict liability offences)

(1A) In section 143(1B),—

(a) in the words before paragraph (a), replace "resident foreign trustee" with "trustee of a foreign trust":

(b) in paragraph (b), replace "resident foreign trustee" with "trustee" in each place.

(1) Replace section 143(1C) with:

(1C) No person who is a trustee of a foreign exemption trust may be convicted of an offence against subsection (1)(b) for not disclosing information required to be disclosed under section 59B or 59D if the person proves that the person did not know of the requirements of the section.

(2) After section 143(2D), insert:

(2E) No person may be convicted of an offence against subsection (1) if the requirement with which the person does not comply is a requirement under—

(a) the model reporting standard for digital platforms:

(b) the extended model reporting standard for digital platforms.

### 173B Section 147 amended (Employees and officers)

In section 147(2B),—

(a) replace "a resident foreign trustee" with "a trustee of a foreign trust":

(b) replace "the resident foreign trustee" with "the trustee".

**173C Section 147B amended (Directors and officers of resident foreign trustee)**

In section 147B,—

(a) in paragraph (a), words before subparagraph (i), replace "resident foreign trustee" with "resident trustee of a foreign trust":

(b) in paragraph (a)(i), replace "resident foreign trust" with "resident trustee":

(c) in paragraph (a)(ii), replace "resident foreign trustee" with "resident trustee" in each place:

(d) in paragraph (b), replace "resident foreign trustee" with "resident trustee".

**174 Section 167 amended (Recovery of tax and payments from employers or PAYE intermediaries)**

Replace section 167(2)(a) with:

(a) where the employer is, or ~~one~~1 of whom is, an individual, upon the employer's bankruptcy or upon the employer making an assignment for the benefit of the employer's creditors, the amount of the tax or payment shall have the ranking provided for in section 274 of the Insolvency Act 2006:

**175 Section 173M amended (Transfer of excess tax to another taxpayer)**

(1) In section 173M(5), definition of **relative**, delete ", or adoption".

(2) Repeal section 173M(6)(c).

**176 Section 177B amended (Instalment arrangements)**

(1) In section 177B(7), replace "sections LA 6(2) and LH 2(6)" with "section LA 6(2)".

(2) **Subsection (1)** applies for the 2009–10 and later income years.

**177 Section 177C amended (Write-off of tax by Commissioner)**

(1A) In section 177C(5), after "who has a tax loss," insert "other than a write-off under section 22J or 174AA,".

(1) After section 177C(5), insert:

(5BA) If the Commissioner writes off outstanding tax for a taxpayer who has an excess amount under section EL 4 or EL 20 of the Income Tax Act 2007, the Commissioner must extinguish all or part of the taxpayer's excess amount, by—

(a) dividing the amount written off by 0.33 and reducing the excess amount by that amount, if the taxpayer is not a company; or

(b) dividing the amount written off by 0.28 and reducing the excess amount by that amount, if the taxpayer is a company.

(2) Replace section 177C(5C) with:

(5C) For a taxpayer for which the Commissioner writes off outstanding tax, subsection (5) applies before **subsection (5BA)**, and **subsection (5BA)** applies before subsection (5B).

(2B) **Subsection (1A)** applies for the 2018–19 and later income years.

**177B Section 183ABAC amended (Remission of interest on terminal tax for 2020–21 tax year for provisional taxpayers affected by COVID-19)**

In section 183ABAC(3)(b), replace "terminal tax" with "residual income tax".

**178 Section 185E amended (Purpose)**

After section 185E(4), insert:

(5) **Sections 185S and 185T** imposes requirements on a person relating to the reporting of information required by—

(a) the model reporting standard for digital platforms:

(b) subject to implementation, the extended model reporting standard for digital platforms.

**179 New heading and sections 185S and 185T inserted**

After section 185R, insert:

*Model reporting standards for digital platforms*

**185S Requirements for reporting platform operators and sellers: model reporting standard**

(1) This section applies when a person who is resident in New Zealand carries on a business by way of a digital platform through which a seller of goods or services may operate in New Zealand.

(2) The person who is the platform operator must comply with all the requirements for reporting platform operators set out in the ~~extended~~ model reporting standard for digital platforms ~~in relation to all sellers operating on the digital platform~~.

~~(3) Despite **subsection (2)**, the person may choose to apply only the model reporting standard for digital platforms in relation to sellers operating on the digital platform if the sellers—~~

~~(a) are resident in New Zealand; and~~

~~(b) are not resident in a country or territory other than New Zealand.~~

(4) The seller operating on the digital platform must comply with all the requirements to provide information under the ~~extended model reporting standard for digital platforms or the~~ model reporting standard for digital platforms~~, as applicable,~~ to the platform operator.

(5) For the purposes of Part 11B, in the application of the model reporting standard for digital platforms ~~or the extended model reporting standard for digital platforms (the **reporting standard**)~~,—

(a) a term defined in the reporting standard and used in this Act has the meaning that it has at the time in the reporting standard:

(b) unless the context requires otherwise, a reference to a jurisdiction in ~~a~~the reporting standard is taken as a reference to New Zealand:

(c) the optional provision contained in section ~~1(A)(3)~~I, A(3) of the ~~extended model~~ reporting standard ~~for digital platforms~~ relating to excluded platform operators does not apply in New Zealand~~.~~:

(d) the commencement provision contained in section II, F(2)(a) in the reporting standard is treated as a reference to 1 January 2024:

(e) the provision contained in section III, B(2)(c) and B(3)(c) in the reporting standard is treated as a reference to the list maintained by the Commissioner that outlines those receiving jurisdictions using financial account identifier information:

(f) Annex A in the reporting standard does not apply:

(g) for the purposes of section III, A(1) and A(2) of the reporting standard, a reference to 31 January is treated as a reference to 7 February.

**185T Implementation of and requirements for extended model reporting standard for digital platforms**

(1) For the purposes of **sections 91AABB, 142J, 142K, 143(2E), 185E, and 185S**, the Governor-General may by Order in Council made on the recommendation of the Minister of Revenue declare a date on which the extended model reporting standard for digital platforms is to be implemented in New Zealand.

(2) As required by **section 185S(2) and (4)** in relation to the model reporting standard for digital platforms, the platform operator and the seller must comply in the same way with all the requirements set out in the extended model reporting standard for digital platforms.

(3) Despite **subsection (2)**, the platform operator may choose to apply only the model reporting standard for digital platforms under **section 185S** in relation to sellers operating on the digital platform if the sellers—

(a) are resident in New Zealand; and

(b) are not resident in a country or territory other than New Zealand.

(4) For the purposes of Part 11B in the application of the extended model reporting standard for digital platforms,—

(a) **section 185S(5)** applies in the same way as it applies to the model reporting standard for digital platforms:

(b) the Commissioner must determine and publish the New Zealand dollar equivalent to the monetary threshold in the definition of excluded seller in section I, B(4)(d) of the extended model reporting standard for digital platforms, see **section 91AABB**.

(5) An Order in Council under this section may be made only in the period that starts on the date of commencement of the Taxation (Annual Rates, Platform Economy, and Remedial Matters) Act **2023** and ends on the date that is 3 years after that date.

(6) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**180 New section 226F inserted (Application of changes to model reporting standards for digital platforms)**

After section 226E, insert:

**226F Application of changes to model reporting standards for digital platforms**

(1) The Governor-General may, by Order in Council, make regulations for a change in the model reporting standards for digital platforms providing for the cancellation, reversal, or non-application of—

(a) a change to or the effect of ~~the~~a change on the model reporting standard for digital platforms or extended model reporting standard for digital platforms, as applicable:

(b) a period for which a change or an effect applies or does not apply:

(c) the effect of a change to the model reporting standard for digital platforms or extended model reporting standard for digital platforms, as applicable, on the obligations and liabilities of a person or entity or class of persons or entities.

(2) A regulation may set out the period for which it is to apply, which must not begin before the latest reportable period that finishes before the regulation is made. If necessary or appropriate, a regulation may also make a change in the model reporting standards for digital platforms that applies during a reportable period.

(3) When a change is made by regulations under this section and is expressed to apply for a reportable period in which the regulation is made as set out in **subsection (2)**, the change applies from the date on which the regulation comes into force. Nothing in this section or in the regulation requires a reporting platform operator to give effect to the change from an earlier date.

(4) A regulation may provide for the change, extension, limitation, suspension, or cancellation of an earlier regulation.

(5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**181 Schedule 4 amended (Reporting of employment income information)**

(1) In schedule 4, in the section references after the heading, insert "23I".

(2) In schedule 4, table 1, row 4, replace "or benefit" with "or fringe benefit, benefit referred to in **section RD 5(9B)** of the Income Tax Act 2007, or benefit arising under an employee share scheme".

(3) In schedule 4, row (4)(d), replace "a benefit" with "a fringe benefit, benefit referred to in **section RD 5(9B)** of the Income Tax Act 2007, or benefit arising under an employee share scheme".

**182 New schedule 6B inserted (Reporting of schedular payment information)**

After schedule 6, insert new schedule 6B:

## Schedule 6B
## Reporting of schedular payment information

**s 23R**

Table 1—Reporting of schedular payment information

| Row | Items |
|---|---|
| 1 | The name of the payer |
| 2 | The name of the payee |
| 3 | The date on which the schedular payment is made |
| 4 | Whether the schedular payment is paid during a grace period under **section 141GG** |
| 5 | The contact addresses of the payer and the payee, whether in New Zealand or otherwise |
| 6 | The tax file number of the payee, or their foreign tax identification number |
| 7 | The gross amount of the schedular payment |
| 8 | The amount of tax withheld from the schedular payment |
| 9 | Whether an exemption applies in relation to the schedular payment |
| 10 | Whether a threshold applies in relation to the schedular payment |
| 11 | The start and end dates of the contract under which the schedular payment is made |

**183 Schedule 7 amended (Disclosure rules)**

(1) After schedule 7, part A, clause 3, insert:

**3B GST registration status**

Despite section 18, the Commissioner may supply information to an operator of an electronic marketplace about the registration status of a person under the Goods and Services Tax Act 1985 for the purposes of enabling the operator to determine whether they are required to make a deduction under **section 20(3)(de)** of that Act for a flat-rate credit that is required to be passed on to an underlying supplier of listed services.

(2) Repeal schedule 7, part C, clause 21(2).

(2B) After schedule 7, part C, clause 39B, insert:

**39C Chief executive responsible for administration of the Residential Tenancies Act 1986**

(1) Section 18 does not prevent the Commissioner from disclosing sensitive revenue information to the chief executive (**CE**) responsible for the administration of the Residential Tenancies Act 1986 and to the CE's delegatees responsible for the administration of the Residential Tenancies Act 1986, if the disclosure is necessary for the purpose of the CE forming or changing an opinion that land meets or does not meet the definition of **build-to-rent land** in the Income Tax Act 2007.

(2) No information will be disclosed unless the Commissioner is satisfied that the information is readily available and that it is reasonable and practicable to communicate the information.

(3) **Subsection (2)** applies for the 2009–10 and later income years.

# Part 5
# Amendments to other enactments

## *Amendments to Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022*

### 184 Amendments to Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022

**Sections ~~185~~186 to 191** amend the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022.

### ~~185 Section 2 amended (Commencement)~~

~~In section 2(3), replace "171(10)" with "171(10), (11), and (39)".~~

### 186 Section 5 amended (Section 2 amended (Interpretation))

(1) In section 5(4)(b), definition of **recipient details**, replace "peculiar" with "relevant".

(2) In section 5(4)(e), definition of **supply information**, replace "the date of the supply" with "the date of the invoice, or where no invoice is issued, the time of supply".

### 187 Section 19 amended (New cross-headings and sections 19E to 19Q inserted)

(1) In section 19(1), replace new section 19E(1)(d) with:

(d) the correction to the taxable supply information, including, if relevant, a correction to the amount of tax charged for the supply.

(2) In section 19(1), in new section 19E(2)(a), replace "has a value that" with "the consideration in money or money's worth for the supply".

(3) In section 19(1), repeal new section 19E(2)(a)(iii).

(4) In section 19(1), in new section 19E(2)(a)(iv), replace "the date of the supply" with "the date of the invoice, or where no invoice is issued, the time of supply".

(5) In section 19(1), replace new section 19E(2)(b), with:

> (b) for a supply that is not referred to in paragraphs (d) to (g) and the consideration in money or money's worth for the supply exceeds $200 and does not exceed $1,000,—
>
> (i) the name and registration number of the supplier; and
>
> (ii) the date of the invoice, or where no invoice is issued, the time of supply; and
>
> (iii) a description of the goods or services; and
>
> (iv) if the amount of tax charged is the tax fraction of the consideration for the supply, the amount of the consideration for the supply and a statement that the amount includes a charge in respect of tax; and
>
> (v) if **subparagraph (iv)** does not apply, the total amount of tax charged for the supply, the consideration for the supply excluding the tax, and the consideration for the supply including the tax:

(6) In section 19(1), in new section 19E(2)(c), replace "has a value that" with "the consideration in money or money's worth for the supply".

(7) In section 19(1), replace new section 19E(2)(f) with:

> (f) for a supply referred to in section 19L, which relates to supplies by a member of a GST group or supplier group, the information given by section 19L(1) for a supply made by a member of a GST group, or the information given by section 19L(2) for a supply made by a member of a supplier group:

(8) In section 19(1), replace new section 19F with:

**19F Records of ~~taxable~~ supplies**

(1) A registered person who makes a ~~taxable~~ supply of goods or services, or who receives a ~~taxable~~ supply of goods or services for the purposes of carrying on a taxable activity, must have a record of the taxable supply information and supply correction information for the supply.

(2) Despite **subsection (1)**, a registered person is not required to keep a record of the GST registration number of the supplier if the amount of consideration for the supply is $200 or less.

(9) In section 19(1), replace new section 19G(2)(b) with:

> (b) the date of the invoice, or where no invoice is issued, the time of supply:

(10) In section 19(1), repeal new section 19G(2)(e).

(11) In section 19(1), replace new section 19H(1) with:

(1) This section applies when a registered person—

(a) purchases a supply of secondhand goods, that is not a taxable supply, for more than $200; and

(b) claims an input tax deduction in respect of the supply.

(12) In section 19(1), repeal new section 19H(3).

(13) In section 19(1), replace new section 19K(1) with:

(1) A registered person who makes a taxable supply to another registered person must provide the recipient with taxable supply information for the supply within 28 days of a request for the taxable supply information.

(13B) In section 19(1), in new section 19K(4)(a)(i), insert "to which the agreement relates" after "recipient".

(13C) In section 19(1), in new section 19K(4)(a)(ii), insert "to which the agreement relates" after "to the recipient".

(14) In section 19(1), replace new section 19K(5) with:

(5) A registered person who provides taxable supply information under subsection (4) for a taxable supply must provide the ~~recipient~~ supplier with taxable supply information for the supply within 28 days of the request for the taxable supply information, or by an alternative date agreed by the supplier and recipient.

(15) In section 19(1), replace new section 19K(10) with:

(10) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or class of supplies, and that it would be impractical to require that taxable supply information be provided under this section, the Commissioner may determine that, for a supplier or a class of suppliers, subject to any conditions that the Commissioner may consider necessary,—

(a) any 1 or more of the particulars specified in section 19E(2) shall not be contained in the taxable supply information; or

(b) taxable supply information is not required to be provided.

(16) In section 19(1), replace new section 19L with:

**19L Taxable supply information: supplies by member of GST group or supplier group**

(1) Taxable supply information for a member supply made by an active member of a GST group under section 55 must include~~:~~—

(a) either—

(i) the name and registration number of the supplier; or

(ii) the name and registration number of the representative member of the GST group; and

(b) the other information that would be required if the supplier were not a member of a GST group.

(2) Taxable supply information for a member supply made by a supplying member of a supplier group under section 55B must include:—

(a) either—

(i) the name and registration number of the supplier; or

(ii) the name and registration number of the issuing member for the supplier group; and

(b) the other information that would be required if the supplier were not a member of a supplier group.

(3) Taxable supply information for a member supply made by an active member of a GST group is treated as being provided by the issuing member for the GST group or by the representative member if the GST group does not have an issuing member.

(4) Taxable supply information for a member supply made by a supplying member of a supplier group is treated as being provided by the issuing member for the supplier group.

(17) In section 19(1), replace new section 19N(2) with:

(2) Where a registered person has provided to a person (the **recipient**) taxable supply information that includes an inaccuracy in the amount of tax charged, or the registered person has taken a tax position for a supply to the recipient in accounting for an incorrect amount of output tax on the supply, and subsections (3), (4), and (7) do not apply, the registered person must provide to the person supply correction information for the supply.

(17B) In section 19(1), replace new section 19N(5) with:

(5) A registered person who has received a taxable supply from another registered person (the **supplier**) may issue supply correction information under subsection (2) for taxable supply information for the supply if—

(a) the registered person and the supplier agree that—

(i) the supplier will not issue supply correction information under subsection (2) for taxable supplies by the supplier to the registered person to which the agreement relates; and

(ii) the registered person will issue supply correction information, for each taxable supply by the supplier to the registered person to which the agreement relates; and

(b) the registered person and the supplier record the reasons for entering the agreement if the terms of the agreement are not part of the normal terms of business between the registered person and the supplier; and

(c) the Commissioner does not, before the supply correction information is issued, invalidate the agreement because the Commissioner considers

that the registered person and the supplier have failed to comply with the agreement or with **paragraph (b)**.

(18) In section 19(1), after new section 19N(8), insert:

(9) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or class of supplies, and that it would be impractical to require that supply correction information be provided under this section, the Commissioner may determine that, subject to any conditions that the Commissioner may consider necessary,—

(a) any 1 or more of the particulars specified in section 19E(1) shall not be contained in the supply correction information; or

(b) supply correction information is not required to be provided.

(19) In section 19(1), after new section 19Q(3), insert:

(4) A reference in a document to a buyer-created tax invoice is to be read as including a reference to taxable supply information as described in section 19K(4), to the extent necessary to reflect sensibly the intent of the document.

**188 Section 21 amended (Section 20 amended (Calculation of tax payable))**

Repeal section 21(1).

**189 Section 40 amended (Section 75 amended (Keeping of records))**

Replace section 40(3) with:

(3) After section 75(4), insert:

(4B) A registered person is not required to keep a record of the GST registration number of the supplier if the amount of consideration for the supply is $200 or less.

(4) Subsections (1), (2), and (3) apply for taxable periods starting on or after 1 April 2023.

**190 Section 168 amended (Section RP 17 amended (Tax pooling intermediaries))**

In section 168(2), replace "2019–20" with "2017–18".

**191 Section 170 amended (Section RP 19 amended (Transfers from tax pooling accounts))**

In section 170(2), replace "2019–20" with "2017–18".

## *Amendment to Income Tax Act 2004*

**192 Amendment to Income Tax Act 2004**

(1) This section amends the Income Tax Act 2004.

(2) Replace section EW 15C(4)(a) with:

(a) for a financial arrangement accounted for under the fair value method, a movement in fair value—

(i) through a decline in the credit quality of the arrangement; or

(ii) through an improvement in the credit quality of the arrangement to the extent to which it offsets earlier movements in fair value described in **subparagraph (i)**:

### *Amendment to Companies Act 1993*

**193 Amendment to Companies Act 1993**

(1) This section amends the Companies Act 1993.

(2) After schedule 7, clause 1(2)(g), insert:

(ga) all employer contributions payable to the Commissioner of Inland Revenue under Part 3, subpart 3 of the KiwiSaver Act 2006, including compulsory employer contributions unpaid and specified in a notice under section 141(5) of that Act:

### *Amendment to Insolvency Act 2006*

**194 Amendment to Insolvency Act 2006**

(1) This section amends the Insolvency Act 2006.

(2) After section 274(2)(g), insert:

(ga) all employer contributions payable to the Commissioner of Inland Revenue under Part 3, subpart 3 of the KiwiSaver Act 2006, including compulsory employer contributions unpaid and specified in a notice under section 141(5) of that Act:

### *Amendments to Residential Tenancies Act 1986*

**195 Amendments to Residential Tenancies Act 1986**

**Sections 196 to 198** amend the Residential Tenancies Act 1986.

**196 Section 2 amended (Interpretation)**

In section 2(1), definition of **fixed-term tenancy**, replace "section 58(1)" with "section 58(1) or **58A**".

**197 Section 50 amended (Circumstances in which tenancies are terminated)**

In section 50(1)(a), after "58(1)(d), (da),", insert "**58A**,".

**198 New section 58A inserted (Termination of tenancies in respect of build-to-rent land)**

After section 58, insert:

**58A Termination of tenancies in respect of build-to-rent land**

(1) This section applies if a tenant has accepted an offer—

(a) for a fixed-term tenancy of at least 10 years in respect of build-to-rent land; or

(b) for an extension or renewal of such a tenancy, provided that the extension or renewal is for at least 10 years.

(2) The tenant may terminate the tenancy by giving at least 56 days' notice to the landlord.

(3) In this section, **build-to-rent land** means—

(a) land as described in **paragraph (a)** of the definition of **build-to-rent land** in section YA 1 of the Income Tax Act 2007; and

(b) includes land that, at any time after it first meets the description referred to in **paragraph (a)**, fails to meet that description.

# Schedule
# New schedule inserted into Goods and Services Tax Act 1985

**s 137**

## Schedule
## Non-taxable legislative charges

**ss 5(6ED), 90**

### Legislative history

| | |
|---|---|
| 8 September 2022 | Introduction (Bill 164–1) |
| 21 September 2022 | First reading and referral to Finance and Expenditure Committee |

Wellington, New Zealand:
Published under the authority of the House of Representatives—2023