

Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Student Loan Scheme Act 2011, the Income Tax Act 2007, the Goods and Services Tax Act 1985, and the Tax Administration Act 1994. The bill would make three main changes to current laws.

Part 1 would amend the Student Loan Scheme Act to allow the Inland Revenue Department (IRD) and the Australian Taxation Office to share information on student loan borrowers living in Australia, with the aim of helping such borrowers to remain, or become, compliant with their obligations under the scheme.

Part 2 would amend the Income Tax Act 2007 to provide for a new withholding tax on sales of residential property by persons who have no or limited connection with New Zealand, within two years of purchase. The proposed residential land withholding tax (RLWT) is intended to act as a collection mechanism for the bright-line test which was introduced by the Taxation (Bright-line Test for Residential Land) Act 2015.

Part 3 would amend the Goods and Services Tax Act 1985 to provide for GST to apply to cross-border services and intangibles supplied by offshore suppliers to New Zealand-resident consumers, by requiring offshore suppliers to register and return GST on these supplies. Such “remote” services would include internet downloads and

online services such as e-books, music, videos, and software purchased from offshore websites.

In Part 4, the bill would make various amendments in the Tax Administration Act 1994 to implement these changes.

This commentary covers the main amendments we recommend to the bill. It does not discuss minor or technical amendments.

Student loans

Part 1 of the bill proposes changes to the Student Loan Scheme Act 2011. It would introduce new rules around the exchange of information between the New Zealand and Australian tax authorities to address the problem of student loan borrowers who move overseas, do not keep in touch with the scheme, and default on their repayment obligations. It would also provide a requirement for the Commissioner of Inland Revenue to keep and publish a list of charities for the purpose of treating certain borrowers as being physically in New Zealand. The list was previously kept in regulations.

We propose relatively minor amendments to this part of the bill. The main change is in clause 21A, to refer to “notifying in writing” instead of “formally notifying” in section 169 of the Act (with consequential changes in clauses 26A and 26B to sections 213 and 214 of the Act). This would allow a student loan borrower to give notice by email if they wanted the chief executive of the Ministry of Social Development to determine an objection relating to their loan. This would be consistent with clause 6, which would allow a person to cancel their loan contract by electronic means.

Our other recommended amendments to this Part, in clauses 4(1) and 21, are for purposes of clarification only.

Residential land withholding tax

Part 2 of the bill would introduce a residential land withholding tax (RLWT) that would apply in conjunction with the bright-line test (and its associated definitions) introduced by the Taxation (Bright-line Test for Residential Land) Act 2015. The RLWT would apply where

- the property being sold is located in New Zealand and defined as “residential land”
- the seller acquired the property on or after 1 October 2015 and owned it for less than two years before selling
- the seller is an “offshore person”.

Background

This part of the bill proposes the last in a three-part package of reforms to the rules for taxation of residential land, announced in Budget 2015.

The first part of the reforms was enacted in the Land Transfer Amendment Act 2015 and the Tax Administration Amendment Act 2015 (both derived from the Taxation (Land Information and Offshore Persons Information) Bill, on which we reported in

August 2015). We reported on the second part of the reforms—the Taxation (Bright-line Test for Residential Land) Act 2015—in October 2015.

Our consideration of this bill has included giving thought to any adjustments that might be desirable in the land provisions to ensure that the various new rules work effectively together. We propose two such remedial changes at the end of this commentary.

Proposed amendments

We recommend several amendments in clauses 44 and 45. These clauses would introduce the RLWT by inserting new subpart RL in the Income Tax Act, and would define an offshore person for the purposes of that subpart. We discuss our proposed changes below.

Definition of offshore person

We considered whether the definition of “offshore person” was too broad in the case of non-individuals such as companies, trusts, and partnerships. For example, as the definition stands, a partner with a 1 percent share could make the entire partnership an “offshore person”, and therefore liable to pay RLWT. Similarly, a single beneficiary of a family trust living overseas could “taint” an entire transaction if they have received any distributions from the trust in the 6 years before the disposal of residential land, even if the distribution was unrelated to property, such as a small amount of interest or dividends.

We concluded that some modifications to the definition would be appropriate, and recommend the following amendments in clauses 44 and 45(8).

Companies and limited partnerships

We consider that the test for companies should be based on the degree of control of the company that is in New Zealand, with a threshold of 75 percent. If more than 25 percent of the company’s control or ownership (that is, by directors or shareholders) is outside New Zealand, the company should be considered an offshore person.

We note that this approach would be consistent with that taken in the Overseas Investment Act 2005. We consider that the conveyancer or other withholding agent would be able to determine whether the test was met, when combined with the information requirement changes we propose below.

For partners in limited partnerships, we propose that the same percentage test should apply as for a company.

We recommend amending clause 45(8)(c) accordingly.

Partnerships and joint owners

In the case of partnerships, and for co-owners who are not in a partnership, we recommend that the test should look through to the underlying interest in the land and the consideration for its disposal. This apportionment would ensure that one overseas partner did not “taint” other partners, and would allow tax credits for RLWT to flow

appropriately. We recommend amending clause 44, new section RL 1(2B) accordingly.

Trusts

In the case of trusts, we recommend amending clause 45(8) so that a trust would be considered an offshore person if more than 25 percent of the trustees, or more than 25 percent of the people with the power to appoint or remove trustees, or to amend the trust deed, were offshore persons.

We considered the position of beneficiaries of trusts under this bill. As introduced, any offshore beneficiary who had received a distribution in the last 6 years would cause the trust as a whole to be considered “offshore”. We consider this test unduly harsh, as it would make many New Zealand family trusts liable for the withholding tax, which was not the intention. Instead, we propose basing the test on the trust not having sold any other residential land in the last 4 years, and not having distributed more than \$5,000 to any offshore beneficiary in any of the last 4 years. We recommend amending clause 45(8)(b)(v) and (vi) accordingly.

Terminology: offshore RLWT person

In the light of these amendments, we consider that a different term should be used to define an offshore person for the purposes of the RLWT. This would avoid confusion with an offshore person to whom land information requirements apply under the other, related, legislation.

We therefore recommend amending clause 45(8) to change the term “offshore person” to “offshore RLWT person”.

Exemption certificates

We gave careful thought to the compliance and administrative costs entailed in the bill, and its potential effect on the supply of new housing, which we would like to see encouraged and not constrained. As introduced, the bill proposes an interim claim process, but does not propose any ability for the Commissioner of Inland Revenue to exempt a vendor from RLWT.

We are concerned that this approach could lead to cash flow difficulties for developers of residential housing, additional compliance costs for vendors, and administrative costs for IRD. If there was any doubt about a vendor’s “offshore” status, they would have RLWT deducted and would then have to file an interim tax return or wait for their end-of-year return for a refund. We are aware that finance can be tight for housing developers and believe that the delay entailed in this interim claim process could constrain residential development activity.

We therefore recommend some amendments to allow the Commissioner, in specific circumstances, to issue a certificate of exemption from the RLWT. We propose that the exemption be limited to offshore developers and to offshore persons who are disposing of their main home. Moreover, a developer would need to satisfy the Commissioner that they had a good record of tax compliance and good prospects for this con-

tinuing, or they would need to provide the Commissioner with security for the payment of their likely tax obligations.

Accordingly, we recommend amending clause 44 to insert new subsection RL 1(2C) in the Income Tax Act, inserting clause 45(10B), and amending clause 72 to insert new section 54E in the Tax Administration Act.

Interim returns and repayment of RLWT

We propose a mechanism to allow the Commissioner to refund the RLWT to a taxpayer if it would result in over-taxation, if the disposal of the land was not subject to tax, or if the taxpayer had sufficient losses carried forward.

We recommend amending clause 44 to insert new section RL 6 in the Income Tax Act setting out the grounds on which a repayment would be made. That is, if it was likely that the RLWT would not be needed to meet an offshore person's end-of-year income tax liability in relation to land, they had no outstanding tax obligations, and they had completed the appropriate interim return form including all relevant information, the Commissioner would be able to make a repayment.

We also recommend amending clause 72, inserting new section 54D in the Tax Administration Act, to provide the administrative machinery for taxpayers to file their returns on an interim basis. Although the Tax Administration Act contains some relevant general provisions, we believe a specific provision would be beneficial as the proposed interim claim process is a new approach.

Information requirements for RLWT

The RLWT proposal in the bill would require the withholding agent to confirm the offshore status of the vendor, deduct the withholding tax, and provide it to the IRD. We recognise that, in practice, these agents should readily be able to determine the offshore status for individuals, but it could well be difficult for them to determine the status of a company, limited partnership, or trust.

To reflect commercial reality, we propose that one New Zealand director should be required to determine and certify the shareholding of a company selling residential land in order to show that the company is not an offshore person. Similarly, for a limited partnership or a trust, the verification would need to be done by a general partner or a trustee who was not an offshore person.

We recommend amending clause 72 to insert new subsection 54C(5) in the Tax Administration Act to this effect.

We also recommend amending clause 72 (new subsection 54C(6)) to specify that a purchaser must give a copy of this information to the Commissioner, but need not retain it thereafter.

We see value in having a "nil return" provided to the IRD even if the withholding tax payable by an offshore person was calculated at zero. We recommend amending clause 72 to insert new subsection 54B(2) to require this.

Transactions between associated persons

Where a purchaser and vendor were associated persons and neither had a withholding agent, the bill would require the purchaser to deduct the RLWT and hold it in a separate bank account pending remittance to the IRD. We see this as impractical and unnecessarily costly, and believe the same security would be achieved if the purchaser held the funds in their own bank account. We recommend amending clause 44, new section RL 3(b), to remove this requirement.

Penalties

The bill (clause 44, new section RL 2(6)) provides for penalties to be imposed on withholding agents in certain circumstances. In general, the existing penalties under Part 9 of the Tax Administration Act would apply, as for other withholding taxes. The penalties would include a penalty for late payment if the RLWT had been deducted but not remitted to the IRD on time, and civil penalties such as a lack of reasonable care, gross carelessness, or evasion. We consider it appropriate that, in extreme cases, criminal penalties could also be imposed by a Court of law.

We are aware of concern about the potential penalties that withholding agents could face if an error were made in administering the RLWT. We note that the bill seeks to make the test of whether a vendor is an offshore person reasonably straightforward, and we understand that the IRD will provide guidance. We consider it appropriate for the bill to specify a standard of reasonable reliance; that is, a withholding agent would not be liable for penalties under the Tax Administration Act if they relied, on reasonable grounds, on the form and accompanying documents provided to them by the vendor (such as evidence of a New Zealand passport), combined with meeting the person or obtaining other acceptable evidence of their recent presence in New Zealand.

We recommend amending clause 44 to insert new section RL 2(6B) to this effect.

While the bill provides for a late payment penalty, we consider that it should also include a penalty for late filing, in order to encourage withholding agents to provide RLWT statements to the IRD by the due date. We note that late filing could cause problems for a taxpayer in seeking to use their RLWT credit to offset an income tax liability or to obtain a refund. Accordingly, we recommend inserting clause 74, amending section 139A of the Tax Administration Act.

Provisional tax

We recommend inserting subclause (9B) in clause 45 to include tax credits for RLWT in the definition of “residual income tax” for the purposes of determining whether a taxpayer should fall within the provisional tax rules.

Bank account requirements for offshore persons

We are aware of some practical difficulties with the requirement for offshore persons to have a New Zealand bank account in order to apply for an IRD number. This measure was introduced in the Tax Administration Amendment Act 2015, and aims to en-

sure that anti-money laundering (AML) identity verification requirements apply to offshore persons.

We propose amending the bill to relieve some of the compliance costs involved in the bank account requirement, particularly where a taxpayer has limited physical presence in New Zealand, while maintaining the integrity of the requirement for AML identity verification. Officials have undertaken to continue to work on solutions, whether legislative or operational, for some of the other practical difficulties and unintended consequences.

We recommend amending clause 71 (section 24B of the Tax Administration Act) and inserting clause 70B to relax the bank account requirement in any of the following three situations:

- Non-resident seasonal workers under the recognised seasonal employment scheme would be allowed a grace period of 1 month after arriving to get a New Zealand bank account and inform the IRD, before the higher non-notification withholding tax rate applied.
- A person who had already had AML verification undertaken by a New Zealand reporting entity would not need to obtain a bank account, to avoid duplication of this process.
- The bill already exempts non-resident suppliers of remote services from the requirement to have a bank account; we recommend that other non-resident suppliers also be exempt, as long as the IRD number was being applied for solely because they were a non-resident supplier under the Goods and Services Tax Act.

GST on online services

Part 3 of the bill would amend the Goods and Services Tax Act 1985 to apply GST to cross-border “remote services” provided to New Zealand-resident consumers. Remote services would include digital services such as internet downloads and online services, and more traditional services such as legal and accounting services that are supplied remotely. The bill would include rules for insurance and gambling services that are supplied remotely by offshore suppliers. Offshore suppliers would be required to register and return GST if their supplies exceeded \$60,000 in a 12-month period, the same as the domestic threshold for GST registration.

Submitters generally supported the proposed new rules, but raised a number of technical issues about how they would apply and be enforced.

We propose several amendments to address these issues. We consider it important that the IRD monitor compliance and enforce the rules to the extent possible. It has undertaken to do so.

Commencement date

The new GST rules would come into force on 1 October 2016. We considered whether this would allow enough time for offshore suppliers to familiarise themselves with

the requirements and adjust their systems. We believe the date proposed should be manageable provided there is no major delay in the bill's enactment or in the preparation of guidance material.

We note that similar rules are proposed in Australia, commencing on 1 July 2017. However, we are not persuaded that the commencement date for the rules under this bill should be delayed to align with those in Australia.

Transitional provision for fixed-term contracts

We recognise that there could be administrative difficulties with some fixed-term contracts (such as contracts of insurance) that span the date of the rules' introduction. We consider it appropriate to provide a transitional provision, as was done in 2010 when the GST rate was changed. This would suspend the usual GST rule, which treats periodic payments as successive supplies and applies GST to each payment. Instead, such contracts could be treated as not successively supplied for the term of the contract or 396 days, whichever was earlier.

We recommend inserting clause 68B, new section 85B, accordingly.

Marketplace rules

We recommend amending clause 66 and inserting new section 60D to extend the definition of an "electronic marketplace" to include other forms of "marketplace" as approved by the Commissioner of Inland Revenue. We recommend amending the definition of "marketplace" accordingly, by inserting clause 47(4B).

We note that some insurance services are arranged through a marketplace whereby a large number of syndicate members group together to underwrite the insurance. In the bill as introduced, the GST rules would require each syndicate member to register and return GST. We accept that allowing non-electronic marketplaces such as a marketplace for insurance to register and return GST would achieve the desired result with much lower costs of compliance.

Where an insurance structure involves a New Zealand cover-holder acting as an agent for syndicate members, we accept that it may be appropriate for the agent to be treated as making the supply of remote services. We recommend amending clause 65 to insert sections 60(1A) and (1AB) to allow this.

Gambling services

We propose amendments in clause 52, amending section 10(14B), to simplify the proposed formula for calculating GST on the supply of gambling services. Our proposed changes would also allow a non-resident supplier of gambling services to carry forward New Zealand losses and use them in a later taxable period. We consider that these changes would achieve a similar result over time and would promote compliance by reducing the complexity and cost involved in the calculations.

Zero-rating of business-to-business supplies

To reduce compliance costs and fiscal risks, the bill proposes that GST would not be charged on remote supplies from offshore suppliers to New Zealand GST-registered businesses. However, an offshore supplier and a GST-registered recipient could agree to treat the supply as being made in New Zealand, in which case it would be zero-rated. (Clause 53(1) and (2), amending section 11A(1)(j) and inserting section 11A(1)(x)).

We support a simpler approach that would remove unnecessary compliance costs by allowing an offshore supplier to unilaterally elect to zero-rate supplies to GST-registered businesses, without the need to formally seek the New Zealand firm's agreement. We recommend amending clause 49, inserting section 8(4D), accordingly.

Currency conversions

Registration threshold

The bill proposes that an offshore supplier must register for GST if they have supplied more than NZ\$60,000 worth of services in the previous 12 months, or if there are reasonable grounds to believe that the value of supplies in the next 12 months will exceed this threshold. In view of currency movements, we accept that clarification is needed as to how a supplier should make these calculations.

We recommend inserting clause 60B (section 51(1B)) to allow a supplier to use any fair and reasonable currency conversion method for calculating the value of services previously supplied. (For example, when testing whether previous supplies exceeded the threshold they could use the exchange rate at the time of supply, or at the time of testing, or an average exchange rate over the previous period.) For testing whether supplies are likely to exceed the threshold over the coming 12 months, the calculation could be based on the exchange rate at the start of the 12-month period. We would, however, expect the method chosen to be used consistently.

Converting foreign currency amounts supplied

Rather than requiring a non-resident supplier to convert each transaction into New Zealand currency, the bill (clause 68, replacing section 77) would allow them to choose to express the price of the remote services in a foreign currency at the time of supply, and then to convert the aggregate amount into New Zealand currency at the due date for filing their GST return. Submitters supported this flexibility. A supplier would, however, be required to use the chosen method consistently for at least 24 months, to reduce the possibility of "gaming" exchange rate movements.

We recommend amending clause 68 (proposed subsections 77(3) and (4)) to provide additional flexibility. We propose that a supplier could convert on the last day of the relevant taxable period or, if the Commissioner of Inland Revenue agreed, choose a different date for making the currency conversion. They would need to apply the method chosen consistently for 24 months unless the Commissioner agreed otherwise.

Converting tax invoices for business-to-business supplies

As we noted above, GST would not be charged on remote supplies from offshore suppliers to New Zealand GST-registered businesses. Non-resident suppliers would therefore not be required to provide tax invoices on their supplies of remote services. However, if an offshore supplier inadvertently charged GST to a GST-registered business and the payment for the supply was less than \$1,000, clause 57 (section 24) would allow them to provide a tax invoice so that the registered business could deduct the GST charged.

For clarity, we recommend amending clause 57 to specify that the \$1,000 threshold for the option to issue tax invoices would be calculated in New Zealand currency at the time of supply.

Determining residence and status of remote service recipients

Clause 50 would insert new section 8B setting out how an offshore supplier would determine whether a recipient of remote services is resident in New Zealand and should therefore be charged GST. Where the evidence was inconclusive as to a recipient's residency status, new subsection 8B(3) would allow the Commissioner of Inland Revenue to exercise discretion and to prescribe or agree to an alternative method for determining this.

We recommend inserting new subsection 8B(3B) in clause 50 to provide guidance about matters the Commissioner may take into account in exercising this discretion.

Services to be consumed outside New Zealand

We considered the possible situation of a New Zealand resident purchasing a voucher online from an offshore supplier for a service that would be consumed outside New Zealand. We can see some grounds for excluding such a transaction from the definition of "remote service" to which GST would apply, since GST is a tax on consumption in New Zealand. However, we note that under international practice and OECD guidelines, the place of residence of the customer is considered the appropriate proxy for the place of consumption, and so forms the basis for taxation. Departure from this international norm could result in some supplies being double-taxed and some not taxed in any jurisdiction.

We propose that officials should monitor closely how the rules apply in practice, and any developments in international thinking on this issue.

Remedial amendments: land provisions

The Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014 introduced rules for determining the date on which land is acquired. The general rule is that land is acquired when a person first acquires an interest in the land. In the case of land acquired through an option it was unclear how the general rule applied. We recommend inserting clause 37B to amend section CB 15B(3) of the Income Tax Act 2007 to make it clear that, when land is acquired through the exercise of an option, the first interest in land is acquired at the time the option is exercised.

We also recommend inserting clause 37C to make a remedial amendment to section FB 3A(3) of the Income Tax Act 2007, which deals with the date of acquisition of residential land when land is transferred on a settlement of relationship property. This change would add references to sections CB 6A(2)–(4), which are also relevant for section FB 3A(3).

Appendix

Committee process

The Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill was referred to the committee on 8 December 2015. The closing date for submissions was 26 January 2016. We received and considered 19 submissions from interested groups and individuals. We heard 14 submissions.

We received advice from the Inland Revenue Department and our specialist tax advisor, Therese Turner (Chartered Accountant).

Committee membership

David Bennett (Chairperson)

Andrew Bayly

Chris Bishop

Hon Clayton Cosgrove

Julie Anne Genter

Stuart Nash

Rt Hon Winston Peters

Grant Robertson

Jami-Lee Ross

Alastair Scott

David Seymour

**Taxation (Residential Land Withholding Tax, GST on
Online Services, and Student Loans) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Michael Woodhouse

Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill

Government Bill

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<u>75</u>	<u>Section 143A amended (Knowledge offences)</u>	<u>47</u>

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act **2015**.

2 Commencement

5

- (1) This Act comes into force on the day after the date on which it receives Royal assent, except as provided in this section.
- (2) **Section 6** is deemed to have come into force on 1 January 2012.
- (2B) **Section 37B** is deemed to have come into force on 22 November 2013.
- (3) **Section 32(1)** is deemed to have come into force on 1 April 2014. 10
- (4) **Sections 37 and 37C** ~~is~~ are deemed to have come into force on 1 October 2015.
- (5) **Section 72, 73(2), 74, and Part 2** other than **sections 37, 37B, 37C, and 40** come into force on 1 July 2016.
- (6) **Section ~~74~~ 75, and Part 3** other than **section 54(2)** come into force on 15
1 October 2016.
- (7) **Section 54(2)** comes into force on 1 April 2017.

Part 1

Amendments to Student Loan Scheme Act 2011

3 Student Loan Scheme Act 2011

This Part amends the Student Loan Scheme Act 2011.

4 Section 4 amended (Interpretation)

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

entity means the trustees of a trust, a society, or an institution

list means, in relation to an entity, to include the entity, ~~in the list kept under section 27A~~, as a charity in the list kept under section 27A

main income equalisation account has the same meaning as in section EH 36 of the Income Tax Act 2007 10

main income equalisation deposit means a payment made to the Commissioner on or after 1 April 2014 under section EH 4 of the Income Tax Act 2007, for which a deduction is allowed under section DQ 1 of that Act

main income equalisation refund means a refund under sections EH 8 to EH 26 of the Income Tax Act 2007, to the extent to which the refund— 15

(a) relates to a deposit made on or after 1 April 2014; and

(b) is not interest payable under section EH 6 of the Income Tax Act 2007

Schedule 3 adjustments has the meaning given to it in **section 73**

statement of adjusted net income and **provides a statement of adjusted net income** have the meaning given to them in **section 73** 20

- (2) In section 4(1), replace the definition of **charity** with:

charity—

(a) means, for the purposes of section 25(1)(b), an entity that is listed as a charity at the relevant time; and 25

(b) includes that entity's international, national, and regional branches, offices, sections, organisations, affiliates, members, associations, and programmes at that relevant time

- (3) In section 4(1), replace the definition of **late filing penalty** with:

late notification penalty means a penalty imposed under **section 155** 30

- (4) In section 4(1), repeal the definition of **declaration of adjusted net income**.

5 Section 5 amended (Meaning of unpaid amount)

Replace section 5(1)(g) with:

(g) a late notification penalty:

6 Section 15 amended (Right to cancel loan contract)

In section 15(1)(a), replace “formally notifying the loan manager” with “notifying the loan manager in writing”.

7 New sections 27A to 27E inserted

After section 27, insert:

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27A Commissioner must keep and publish list of charities

- (1) The Commissioner must keep a list of entities that are charities for the purposes of section 25(1)(b).
- (2) The list must specify—
 - (a) the date on and from which each entity’s listing as a charity applies; and
 - (b) if applicable, the date on which each entity’s listing as a charity ceases to apply.
- (3) The Commissioner must publish the list in a manner chosen by the Commissioner.

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27B When entity qualifies to be listed as charity

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- (1) An entity qualifies to be listed as a charity under **section 27A** if the Commissioner is satisfied that—
 - (a) the entity is a tax charity under section CW 41(5) of the Income Tax Act 2007; or
 - (b) the entity meets the requirements of section 13(1)(a) or (b) of the Charities Act 2005 and it is otherwise appropriate for the entity to be listed as a charity for the purposes of section 25(1)(b).
- (2) In determining whether it is appropriate for the entity to be listed as a charity under **subsection (1)(b)**, the Commissioner may have regard to—
 - (a) the standing of the entity as a charitable organisation; and
 - (b) the entity’s systems and processes in monitoring and evaluating its charitable work; and
 - (c) any other matters the Commissioner considers relevant.

20

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27C Application by entity to be listed as charity

- (1) An entity may apply to be listed as a charity by—
 - (a) notifying the Commissioner in writing with a completed application in the form approved by the Commissioner; and
 - (b) notifying the Commissioner in writing with any other information required by the Commissioner.

30

- (2) The Commissioner may request further information from the applicant and obtain information relating to the applicant from other persons before deciding whether or not to list the applicant.
 - (3) The Commissioner must list an applicant as a charity (by adding the applicant's name to the list and a date on and from which the listing applies) if the entity qualifies for listing under **section 27B**. 5
 - (4) The date on and from which the listing applies must not be earlier than the date of the entity's application under this section.
 - (5) If the Commissioner proposes to refuse to list an applicant as a charity, the Commissioner must— 10
 - (a) notify the applicant in writing of—
 - (i) the Commissioner's reasons for the proposed decision; and
 - (ii) the period within which arguments against the proposed decision may be provided (which must be a period of at least 30 days after the date of the notice); and 15
 - (b) consider any arguments against the proposed decision that the applicant provides within that period.
 - (6) The Commissioner must notify the applicant in writing of the final decision under this section.
- 27D Commissioner may list tax charities even if no application made** 20
- (1) The Commissioner may list an entity as a charity, even if there is no application under **section 27C**, if the entity is qualified under **section 27B(1)(a)** (by adding the entity's name to the list and a date on and from which the listing applies).
 - (2) The date on and from which the listing applies must not be earlier than the date of the Commissioner's decision under this section. 25
- 27E Commissioner may remove entity's listing as charity**
- (1) The Commissioner may remove an entity's listing as a charity (by adding to the list a date on which the entity's listing as a charity ceases to apply) if the Commissioner determines that the entity no longer qualifies under **section 27B** to be listed. 30
 - (2) The date on which the listing ceases to apply must not be earlier than the Commissioner's final decision under this section.
 - (3) If the Commissioner proposes to remove an entity's listing as a charity, the Commissioner must— 35
 - (a) notify the entity in writing of—
 - (i) the Commissioner's reasons for the proposed decision; and

- (ii) the period within which arguments against the proposed decision may be provided (which must be a period of at least 30 days after the date of the notice); and
- (b) consider any arguments against the proposed decision that the applicant provides within that period.
- (4) The Commissioner must notify the entity in writing of the final decision under this section.

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8 Cross-heading above section 63 replaced

Replace the cross-heading above section 63 with:

Standard deductions resulting in significant under-deductions or over-deductions

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9 New sections 68A to 68C and cross-heading inserted

After section 68, insert:

Commissioner deductions resulting in over-deductions

68A Commissioner over-deduction identified by borrower

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- (1) If a borrower reasonably believes that a Commissioner over-deduction was made in relation to him or her, the borrower may request the Commissioner to determine whether a Commissioner over-deduction was made.
- (2) A request under **subsection (1)** must be made by notifying the Commissioner (*see* section 211).
- (3) In this section, and in **sections 68B and 68C**, **Commissioner over-deduction** means a Commissioner deduction that is made on or after the date on which—
 - (a) the Commissioner notifies the borrower's employer or PAYE intermediary to stop making Commissioner deductions; or
 - (b) the Commissioner deductions equal the amount specified in the additional rate notice in accordance with section 49(2)(b).

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68B Commissioner must determine whether Commissioner over-deduction made

If the Commissioner receives a request in accordance with **section 68A**, the Commissioner must, as soon as practicable,—

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- (a) determine whether a Commissioner over-deduction was made; and
- (b) notify the borrower in writing if the Commissioner determines that a Commissioner over-deduction was not made.

68C Procedure if Commissioner over-deduction made

- (1) This section applies if the Commissioner—
 - (a) identifies that a Commissioner over-deduction was made in relation to a borrower; or
 - (b) determines (in accordance with **section 68B**) that a Commissioner over-deduction was made in relation to a borrower. 5
- (2) The Commissioner must, as soon as practicable, notify the borrower—
 - (a) that a Commissioner over-deduction was made in relation to the borrower; and
 - (b) of the amount of the Commissioner over-deduction; and 10
 - (c) that the Commissioner over-deduction has been offset against the borrower's consolidated loan balance; and
 - (d) that the borrower may, subject to **subsections (3) and (4)**, choose to receive a refund of the Commissioner over-deduction (*see* sections 199 and 200); and 15
 - (e) of the time frame within which the borrower must notify the Commissioner if the borrower chooses to receive a refund of the Commissioner over-deduction.
- (3) In any case where there is also, in relation to the borrower and any tax year, a significant under-deduction or an unpaid amount that the Commissioner has at any time identified, the significant under-deduction or unpaid amount may be offset against a Commissioner over-deduction identified or determined under **subsection (1)** before any refund is made. 20
- (4) To receive a refund of the Commissioner over-deduction, the borrower must notify the Commissioner in a manner acceptable to the Commissioner within 6 months after the date on which the borrower was notified in accordance with **subsection (2)**. 25
- (5) A choice made by the borrower to receive a refund of the Commissioner over-deduction is irrevocable.

10 Section 73 replaced (Meaning of adjusted net income) 30

Replace section 73 with:

73 Meaning of adjusted net income, Schedule 3 adjustments, and related terms

- (1) In this Act,—

adjusted net income— 35

 - (a) means net income (as defined in section YA 1 of the Income Tax Act 2007) with any Schedule 3 adjustments; but
 - (b) excludes salary and wages

	Schedule 3 adjustments means the adjustments set out in Schedule 3 (including any adjustment determined by the Commissioner under clause 15 of that schedule) statement of adjusted net income means the return of income or notification of Schedule 3 adjustments (or both) referred to in subsection (2).	
(2)	In this Act, a borrower provides a statement of adjusted net income if the borrower—	5
	(a) files a return of income only, if there are no Schedule 3 adjustments; or	
	(b) notifies Schedule 3 adjustments under section 74 or 114 only, if the borrower is not required to file a return of income under the Tax Administration Act 1994; or	10
	(c) both files a return of income and notifies Schedule 3 adjustments under section 74 or 114 , in any other case.	
11	Section 74 replaced (Declaration of adjusted net income)	
	Replace section 74 with:	15
74	Notification of Schedule 3 adjustments	
(1)	This section applies to a borrower if—	
	(a) this subpart applies to the borrower; and	
	(b) any Schedule 3 adjustments are applicable; and	
	(c) the borrower is not required to notify the Commissioner of the Schedule 3 adjustments under section 114 .	20
(2)	The borrower must notify the Commissioner of the Schedule 3 adjustments on or before—	
	(a) 7 July in the tax year following the tax year in which the relevant adjusted net income was derived; or	25
	(b) if the borrower has received an extension of time to notify the Commissioner under section 75, the date on which the borrower is required to notify the Commissioner; or	
	(c) if the Commissioner has granted the borrower an extension of time for the notification (other than under section 75), the date specified by the Commissioner.	30
12	Section 75 amended (Extension of time for making declaration of adjusted net income)	
(1)	Replace the heading to section 75 with “ Extension of time for notification of Schedule 3 adjustments ”.	35
(2)	In section 75, replace “the making of a declaration of adjusted net income” with “notifying the Commissioner of Schedule 3 adjustments under section 74 ”.	

Part 1 cl 13		Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill	
(3)	In section 75(c), replace “declaration of adjusted net income” with “notification of Schedule 3 adjustments”.		
13	Section 76 amended (Commissioner to assess borrower’s end-of-year repayment obligation)		
	Replace section 76(1) with:		5
(1)	The Commissioner must assess the amount (if any) of a borrower’s end-of-year repayment obligation for a tax year as soon as practicable after the borrower provides a statement of adjusted net income.		
14	Section 79 amended (Payment of end-of-year repayment obligation)		
	Replace section 79(2)(b) with:		10
(b)	the borrower has not provided a statement of adjusted net income for a tax year, and the borrower’s end-of-year repayment obligation for the immediately preceding tax year was \$1,000 or more.		
15	Section 82 amended (Calculation of interim payments for next tax year)		
	Replace section 82(3)(a)(ii) with:		15
(ii)	if the borrower did not provide a statement of adjusted net income for the immediately preceding tax year, the amount of the borrower’s end-of-year repayment obligation for the year before the immediately preceding tax year multiplied by 110%; but		
16	Section 83 amended (Commissioner may assess interim payments if information for preceding year not provided)		20
	Replace section 83(1) with:		
(1)	The Commissioner may assess a borrower’s interim payments for a tax year in the manner set out in section RC 6(3) of the Income Tax Act 2007 if, for the immediately preceding tax year, the borrower did not provide a statement of adjusted net income.		25
17	Section 114 replaced (Notification of worldwide income by New Zealand-based non-resident borrowers)		
	Replace section 114 with:		
114	Notification of Schedule 3 adjustments by New Zealand-based non-resident borrowers		30
(1)	This section applies to a New Zealand-based borrower who is a non-resident and who has Schedule 3 adjustments.		
(2)	For each tax year and each part of a tax year to which this section applies to a borrower, the borrower must notify the Commissioner of the Schedule 3 adjustments.		35

- (3) The borrower must notify the Commissioner of the Schedule 3 adjustments under this section at the time when, if the borrower were a New Zealand resident, he or she would have had to notify the Commissioner of the Schedule 3 adjustments under **section 74**.
- (4) The Commissioner may require the borrower to provide evidence of the Schedule 3 adjustments. 5

18 Section 114A amended (Extension of time for making notification of worldwide income)

- (1) Replace the heading to section 114A with “**Extension of time for notification of Schedule 3 adjustments**”. 10
- (2) In section 114A(2), replace “the making of a notification of the borrower’s adjusted net income” with “notifying the Commissioner of the Schedule 3 adjustments under **section 114**”.
- (3) In section 114A(2)(c), replace “adjusted net income” with “Schedule 3 adjustments”. 15

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

Replace section 146A(3)(a)(i) with:

- (i) a late notification penalty:

20 Section 155 replaced (Late filing penalty for certain declarations)

Replace section 155 with:

20

155 Late notification penalty for Schedule 3 adjustments under section 74

- (1) If a borrower does not notify the Commissioner of Schedule 3 adjustments under **section 74** on time, the Commissioner may—
 - (a) notify the borrower in writing that a late notification penalty will be imposed if the borrower does not notify the Commissioner of the Schedule 3 adjustments within 30 days after the date of the Commissioner’s notification; or 25
 - (b) give public notice that a late notification penalty will be imposed on borrowers who do not notify the Commissioner of Schedule 3 adjustments within 30 days after the date of the Commissioner’s public notice. 30
- (2) A borrower is liable to pay a penalty under this section if—
 - (a) the Commissioner notified the borrower or gave public notice in accordance with **subsection (1)**; and
 - (b) the borrower did not notify the Commissioner of the Schedule 3 adjustments within 30 days of the date of the Commissioner’s notification or public notice. 35
- (3) The penalty for a borrower with adjusted net income—

- (a) below \$100,000 is \$50:
- (b) between \$100,000 and \$1,000,000 (both figures inclusive) is \$250:
- (c) above \$1,000,000 is \$500.

21 Section 156 replaced (Due dates for payment of late filing penalty)

Replace section 156 with:

156 Due dates for payment of late notification penalty

A borrower who is liable to pay a penalty under **section 155** must pay the penalty on or before the later of—

- (a) the date that is 60 days after the date of the notification to the borrower or public notice given under **section 155(1)**; and
- ~~(b) if the borrower does not have an extension of time under section 75 to notify the Commissioner of Schedule 3 adjustments, the date in column B of the table in Part A of Schedule 3 of the Income Tax Act 2007 that corresponds to the month of the borrower's balance date;~~
- ~~(c) if the borrower does have an extension of time under section 75 to notify the Commissioner of Schedule 3 adjustments, the date in column F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that corresponds to the month of the borrower's balance date.~~
- (b) the date that is—
 - (i) in column B of the table in Part A of Schedule 3 of the Income Tax Act 2007 that corresponds to the month of the borrower's balance date (if the borrower does not have an extension of time under section 75 to notify the Commissioner of Schedule 3 adjustments); or
 - (ii) in column F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that corresponds to the month of the borrower's balance date (if the borrower does have an extension of time under section 75 to notify the Commissioner of Schedule 3 adjustments).

21A Section 169 amended (Power to require objection to be determined by chief executive)

In section 169(1), replace “formally notifying the chief executive” with “notifying the chief executive in writing”.

22 Section 173 amended (Part 4A of Tax Administration Act 1994 applies to disputes under this Act)

Replace section 173(2) with:

- (2) However, subsection (1) does not apply to an objection to—
 - (a) the details of a loan advance made or charged to a borrower (*see* section 167); or

	(b) a decision of the Commissioner under sections 27C to 27E (which relate to decisions on the listing of an entity as a charity).	
23	New section 176A inserted (Challenge to decision relating to listing of entity as charity)	
	After section 176, insert:	5
176A	Challenge to decision relating to listing of entity as charity	
	An entity may challenge a decision by the Commissioner under sections 27C to 27E to refuse to list, or to remove the listing of, the entity as a charity, or the date or dates for which a listing applies or ceases to apply, on the ground that the decision—	10
	(a) is not fair and reasonable; or	
	(b) is erroneous.	
24	Section 185 replaced (Challenge to late filing penalty)	
	Replace section 185 with:	
185	Challenge to late notification penalty	15
	A borrower who is charged with a late notification penalty may challenge the penalty on the ground that it was imposed on the borrower in error.	
25	Section 202 amended (Provisions of Tax Administration Act 1994 and Income Tax Act 2007 to apply to this Act)	
(1)	In section 202, replace “Sections” with “Sections 15B,”.	20
(2)	Replace section 202(d) with:	
	(d) every reference to a return were a reference to a statement of adjusted net income.	
26	New section 209A inserted (Disclosure of information to Australian Taxation Office in relation to borrowers who are, or may be, overseas-based)	25
	After section 209, insert:	
209A	Disclosure of information to Australian Taxation Office in relation to borrowers who are, or may be, overseas-based	
(1)	The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the Australian Taxation Office for the purposes of assisting the Commissioner to—	30
	(a) obtain or verify contact details of borrowers who are, or may be, overseas-based; and	
	(b) administer the student loan scheme in relation to those borrowers.	35

Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill		
<u>Part 1 cl 26A</u>		
(2)	For those purposes, the Commissioner may provide the information set out in subsection (3) to a person who is—	
(a)	an officer, employee, or agent of the Australian Taxation Office; and	
(b)	authorised to receive the information by the chief executive officer of the Australian Taxation Office.	5
(3)	The information is—	
(a)	a borrower’s name or any other name by which a borrower is known:	
(b)	a borrower’s date of birth:	
(c)	a borrower’s tax file number:	
(d)	a borrower’s last known address and contact details:	10
(e)	any other information that the Commissioner considers relevant for the purposes referred to in subsection (1)(a) and (b) .	
(4)	This section applies despite any obligation as to secrecy or other restriction imposed by any enactment or otherwise on the disclosure of information.	
26A	<u>Section 213 repealed (Meaning of formally notify)</u>	15
	<u>Repeal section 213.</u>	
26B	<u>Section 214 amended (Notice requirements of Tax Administration Act 1994 do not apply)</u>	
	<u>In section 214, replace “213” with “212”.</u>	
27	Section 215 amended (Regulations)	20
	Repeal section 215(b).	
28	Section 220 amended (Application, savings, and transitional provisions)	
	In section 220(2), table, after the items relating to the Student Loan Scheme Amendment Act 2013, insert:	
	Provisions relating to Student Loan Scheme Amendment Act 2014	Part 3
	Provisions relating to Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2015	Part 4
29	Schedule 1 amended	25
	In Schedule 1, replace clause 2(2) with:	
(2)	The charity must be listed as a charity under section 27A either—	
(a)	at the time the Commissioner grants the application; or	
(b)	if the work is completed before an application is made, for the period of work to which the application relates.	30

30 Schedule 3 amended

- (1) In Schedule 3, replace clause 7 with:

7 Deposits in main income equalisation accounts

The borrower's adjusted net income is increased by the amount of a main income equalisation deposit the borrower makes for the income year.

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7A Refunds from main income equalisation accounts

The borrower's adjusted net income does not include the amount of a main income equalisation refund the borrower receives for the income year.

- (2) In Schedule 3, replace clause 8 with:

8 Borrowers who are major shareholders in close companies

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- (1) This clause applies for the purpose of determining the amount that is included in the adjusted net income of a borrower for an income year when the borrower is a major shareholder in a close company (the **company**) on the last day of the company's income year.

- (2) The amount included in the borrower's adjusted net income is the greater of— 15

- (a) zero; and
(b) the amount calculated using the formula in **subclause (3)**, adjusted, if applicable, by **subclauses (4) and (5)** for main income equalisation account amounts.

- (3) For the purposes of **subclause (2)**, the relevant amount is calculated using the formula— 20

$$p \times (r - s)$$

where—

p is the percentage voting interests for the company held, on the last day of the company's income year, by the borrower

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r is the net income of the company for the company's income year

s is the total dividends paid by the company for the company's income year.

- (4) For the purposes of **subclause (2)(b)**, if the company makes a main income equalisation deposit for the company's income year, the amount of the deposit is added to item r in the formula in **subclause (3)**. 30

- (5) For the purposes of **subclause (2)(b)**, if the company receives a main income equalisation refund for the company's income year, the amount of the refund is subtracted from item r in the formula in **subclause (3)**.

- (3) In Schedule 3, replace clause 11 with:

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11 Borrowers who are settlors of trusts

- (1) This clause applies for the purpose of determining the amount that is included in the adjusted net income of a borrower for an income year when the borrower is the settlor of a trust (the **borrower's trust**) at a time in the income year, other than solely as a result of providing personal services for less than market value in the administration of the trust or the maintenance of trust property. 5
- (2) This clause does not apply if—
 - (a) the trustee of the borrower's trust is registered as a charitable entity under the Charities Act 2005:
 - (b) the borrower's trust is solely for the benefit of a local authority: 10
 - (c) interest and dividends derived by the trustee of the borrower's trust would be exempt income of the trustee under section CW 45 (funeral trusts) of the Act:
 - (d) the borrower's trust is a superannuation fund:
 - (e) the borrower is not permitted to benefit from the borrower's trust except under an order of a court. 15
- (3) The amount included in the borrower's adjusted net income is the amount calculated using the formulas in **subclauses (4) and (5)**, adjusted, if applicable, by **subclauses (6) and (7)** for main income equalisation account amounts.
- (4) For the purposes of **subclause (3)**, the relevant amount is calculated using the formula— 20

$$(a + b) \div c$$
 where—
 - a is the net income of the trustee of the borrower's trust for the income year reduced, to not less than zero, by the amount of the trustee's income that vests or is paid by the trustee as beneficiary income for the trustee's income year 25
 - b is the greater of zero and the amount given by totalling the amounts calculated by applying the formula in **subclause (5)** to each company in which the trustee of the borrower's trust and associated persons hold, on the last day of the company's income year, voting interests of 50% or more 30
 - c is the number of settlors of the borrower's trust who are alive at any time in the income year, including the borrower, for which this clause applies.
- (5) For the purposes of item b in the formula in **subclause (4)**, an amount to be totalled is, for each relevant company, calculated using the formula— 35

$$d \times (e - f)$$
 where—

- d is the percentage voting interests for the relevant company held, on the last day of the company's income year, by the trustee
 - e is the net income of the relevant company for the company's income year
 - f is the total dividends paid by the relevant company for the company's income year.

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- (6) For the purposes of **subclause (3)**, if the trustee or a company described in the definition of item b in **subclause (4)** makes a main income equalisation deposit for an income year, the amount of the deposit is added to—

 - (a) item a in the formula in **subclause (4)**, if the trustee makes the deposit:
 - (b) item e in the formula in **subclause (5)**, if the company makes the deposit.

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- (7) For the purposes of **subclause (3)**, if the trustee or a company described in the definition of item b in **subclause (4)** receives a main income equalisation refund for an income year, the amount of the refund is subtracted from—

 - (a) item a in the formula in **subclause (4)**, if the trustee receives the refund:
 - (b) item e in the formula in **subclause (5)**, if the company receives the refund.

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- (4) In Schedule 3, repeal clause 13.

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- 31 Schedule 4 amended**
- (1) In Schedule 4, replace clause 1(f) with:

 - (f) every reference to a return of income were a reference to a statement of adjusted net income; and

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- (2) In Schedule 4, replace clause 2(c) with:

 - (c) for a borrower required to provide a statement of adjusted net income, section RC 5(3) of the Income Tax Act 2007—
 - (i) applies only if the borrower's end-of-year repayment obligation for the second preceding tax year is \$1,000 or more; and
 - (ii) for a statement of adjusted net income for the immediately preceding tax year, or an estimate of the end-of-year repayment obligation, that is not provided by the due date for payment of the final interim payment, applies as if the borrower has filed a statement showing an estimate of the end-of-year repayment obligation for that tax year equal to the total amount of interim payments paid by the borrower on or before that date.

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32 Schedule 6 amended

- (1) In Schedule 6, after clause 17, insert:

Part 3

Transitional provision relating to Student Loan Scheme Amendment Act 2014

18 Savings provision for section 110

- (1) Section 110 and any related provisions, as in force immediately before the amendment Act came into force, apply to the repayment obligation of a borrower for any tax year ending on or before 31 March 2014. 5
- (2) In this section,—
- amendment Act** means the Student Loan Scheme Amendment Act 2014
- related provision** means a provision of the Student Loan Scheme Act 2011 that has an effect in relation to section 110 as in force immediately before the amendment Act came into force (for example, a definition). 10
- (2) In Schedule 6, after clause 18 (as inserted by **subsection (1)**), insert:

Part 4

Transitional provisions relating to Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2015 15

19 Application of specified amendments

The following provisions of the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act **2015** apply for the 2016–2017 and later tax years: 20

- (a) **sections 5, 10 to 21, 24, 25, 31, and 70** (which relate to changes to the notification of Schedule 3 adjustments or statement of adjusted net income):
- (b) **section 30** (which relates to deposits and refunds for main income equalisation accounts). 25

20 Existing charities to be listed as charities on commencement

- (1) On commencement,—
- (a) an existing charity is treated as qualifying to be listed as a charity under **section 27B**; and 30
- (b) the Commissioner must—
- (i) list each existing charity as a charity; and
- (ii) specify, on the list, the date on which the existing charity was first specified in regulations made under section 215(b) (or any provision that section 215(b), with or without modification, replaced or 35

	corresponded to) as the date on and from which the listing applies; and	
	(c) the Commissioner may consider any application from an entity to be listed as a charity, even if the application was received before com- mencement.	5
(2)	Nothing in subclause (1) prevents the Commissioner from exercising the power under section 27E to remove the person’s listing on the ground that it does not qualify under section 27B to be listed.	
(3)	In this section,— commencement means the date on which section 7 comes into force existing charity means a person that, immediately before commencement, was specified in the existing regulations existing regulations means the Student Loan Scheme (Charitable Organisa- tions) Regulations 2011 as in force immediately before commencement.	10
33	Student Loan Scheme (Charitable Organisations) Regulations 2011 consequently revoked The Student Loan Scheme (Charitable Organisations) Regulations 2011 (SR 2011/355) are consequently revoked.	15

Part 2 Amendments to Income Tax Act 2007 20

34	Income Tax Act 2007 This Part amends the Income Tax Act 2007.	
35	Section BE 1 amended (Withholding liabilities) (1) After section BE 1(5B), insert: <i>Residential land purchase amount</i> (6) A person described in section RL 3 (Associated persons: who must pay, and how?) must withhold an amount from a residential land purchase amount under the RLWT rules. (2) In section BE 1, in the list of defined terms, insert “residential land purchase amount” and “RLWT rules”.	25 30
36	Section BF 1 amended (Other obligations) (1) After section BF 1(c), insert: (d) RLWT under subpart RL (Residential land withholding tax), if the per- son is described in section RL 2 (Vendors: who must pay, and how?): (2) In section BF 1, in the list of defined terms, insert “RLWT”.	 35

- 37 Section CB 6A amended (Disposal within 2 years: bright-line test for residential land)**
- (1) In section CB 6A(3), replace “in land” with “in residential land”.
- (2) In section CB 6A(4), replace “in land” with “in residential land”.
- 37B Section CB 15B amended (When land acquired)** 5
- Replace section CB 15B(3) with:
- Second exception: land from exercise of option*
- (3) A person that exercises an option to acquire land and acquires the land, is treated as acquiring the land at the time when they exercise the option.
- 37C Section FB 3A amended (Residential land)** 10
- (1) In section FB 3A(3), replace “section CB 6A(1)(a) or (b)” with “sections CB 6A(1) to (4)”.
- (2) **Subsection (1)** applies to a person’s disposal of residential land if the date that the person first acquires an estate or interest in the residential land is on or after 1 October 2015. 15
- 38 Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)**
- After section LA 6(1)(cb), insert:
- (cc) section **LB 6B** (Tax credits for RLWT):
- 39 New section LB 6B inserted (Tax credits for RLWT)** 20
- After section LB 6, insert:
- LB 6B Tax credits for RLWT**
- A person has a tax credit, for ~~at the~~ tax year corresponding to an income year in which they dispose of residential land, equal to the amount of RLWT paid in relation to that residential land ~~that they have disposed of~~.
- Defined in this Act: amount, dispose, income year, residential land, RLWT, tax credit, tax year 25
- 40 Section MK 2 amended (Eligibility requirements)**
- Replace section MK 2(1)(d)(ii) with:
- (ii) work overseas as a volunteer or for token payment for a charity (within the meaning of section 4(1) of the Student Loan Scheme Act 2011) and the work meets 1 or more of the requirements in schedule 1, clause 2(1) of that Act. 30
- 41 New section RA 6C inserted (Withholding and payment obligations for residential land)**
- After section RA 6B, insert: 35

RA 6C Withholding and payment obligations for residential land

RLWT: vendors

- (1) A person described in **section RL 2** (Vendors: who must pay, and how?) must pay RLWT for a residential land purchase amount to the Commissioner under **subpart RL** (Residential land withholding tax) by the due date.

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RLWT: associated persons

- (2) A person described in **section RL 3** (Associated persons: who must pay, and how?) must withhold and pay RLWT for a residential land purchase amount to the Commissioner under **subpart RL** by the due date.

Defined in this Act: pay, residential land purchase amount, RLWT

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42 Section RA 10 amended (When obligations not met)

- (1) In section RA 10(1)(a), replace “a PAYE income payment” with “a PAYE income payment, a residential land purchase amount”.
- (2) In section RA 10(1)(b), replace “amount.” with “amount; or”, and after section RA 10(1)(b), insert:

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(c) a vendor liable to pay an amount of RLWT does not pay the amount.

- (3) In section RA 10, in the list of defined terms, insert “residential land purchase amount” and “RLWT”.

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

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- (1) In section RA 15(1)(c), replace “contribution.” with “contribution; or”, and after section RA 15(1)(c), insert:

(d) to pay under **section RA 6C(1)** or to withhold and pay under **section RA 6C(2)**, an amount to the Commissioner for a residential land purchase amount.

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- (2) In section RA 15(3)(b),—

(a) replace “and RSCT” with “RSCT, and RLWT” in both places in which it appears:

(b) replace “or RH 2(2)” with “RH 2(2), or **RL 5**”.

- (3) In section RA 15, in the list of defined terms, insert “residential land purchase amount” and “RLWT”.

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44 New subpart RL inserted (Residential land withholding tax)

After subpart RH, insert:

Subpart RL—Residential land withholding tax

RL 1 Residential land withholding tax

What this subpart does

- (1) This subpart imposes an obligation to pay a tax called residential land withholding tax (**RLWT**). 5

When this subpart applies

- (2) This subpart applies for a residential land purchase amount in relation to a disposal of residential land located in New Zealand by a person (the **vendor**) to another person (the **purchaser**) if—

- (a) the relevant residential land purchase amount ~~is or~~ would be income of the vendor under section CB 6A (Disposal within 2 years: bright-line test for residential land), ~~but ignoring sections CB 6A(6) and section CB 16A (which relate to the bright-line test. Main home exclusion for disposal within 2 years)~~; and 10
- (b) the vendor is an offshore RLWT person. 15

How this subpart applies to joint owners

- (2B) For the purposes of this subpart, vendors who are co-owners are treated as disposing of separate residential land on the basis of an appropriate split of the underlying residential land and the consideration for its disposal.

When this subpart does not apply 20

- (2C) This subpart does not apply if the vendor holds an RLWT certificate of exemption that applies for the disposal of the relevant residential land. **Section 54E** of the Tax Administration Act 1994 provides for the issue of RLWT certificates of exemption to vendors.

Specific rules 25

- (3) In this subpart,—
- (a) **section RL 2** provides rules for vendors and conveyancers in relation to who must pay RLWT and satisfy RLWT liability;
- (b) **section RL 3** provides rules for purchasers in relation to who must withhold RLWT from relevant residential land purchase amounts. It also provides rules for segregating the RLWT withheld: 30
- (c) **section RL 4** provides rules for calculating how much tax must be paid or withheld and paid for residential land purchase amounts;
- (d) **section RL 5** provides rules for paying RLWT.
- (e) **section RL 6** provides rules for the Commissioner repaying RLWT. 35

Return and information provisions in Tax Administration Act 1994

- (4) **Sections 54B, and 54C, and 54D** of the Tax Administration Act 1994 provide for the giving of ~~statements~~ returns and information in relation to RLWT obligations.

Defined in this Act: dispose, land, offshore RLWT person, residential land, residential land purchase amount, RLWT, RLWT certificate of exemption

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RL 2 Vendors: who must pay, and how?

Liability of vendor

- (1) The vendor is liable to pay the amount of RLWT provided in **section RL 4**.

Conveyancers: agency for RLWT obligations

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- (2) The vendor's conveyancer, or if the vendor does not have a conveyancer, the purchaser's conveyancer, is treated as the agent (the **paying agent**) of the vendor in relation to the RLWT, and, in relation to the RLWT, must ~~make assessments~~, provide returns, and satisfy the vendor's liability.

Conveyancers: no agency for other obligations

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- (3) The paying agent is not treated as the vendor's agent for income ~~under section CB 6A (Disposal within 2 years: bright line test for residential land)~~, or for a tax obligation other than RLWT, solely because of their agency in relation to RLWT.

Conveyancers: relationship with subject matter

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- (4) Sections HD 2, HD 3, and HD 4 (which relate to agents) do not apply to a paying agent that is agent only in relation to RLWT.

Liability of conveyancers

- (5) The paying agent, as agent in relation to the RLWT, is not jointly and severally liable in relation to the vendor's RLWT or in relation to a debt under **section RA 10** (When obligations not met). The vendor alone is liable to pay the RLWT, despite the paying agent's obligation to satisfy the vendor's liability.

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Liability of conveyancers: exception for penalties

- (6) Despite **subsection (5)**, if the paying agent fails to satisfy the vendor's liability, then,—

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- (a) for the purposes of Part 9 of the Tax Administration Act 1994 ~~(Penalties)~~, the paying agent is treated as failing to pay an amount of withholding tax equal to the amount of RLWT liability they failed to satisfy, if the paying agent has subtracted or retained an amount from a residential land purchase; or

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- (b) for the purposes of Part 9 of the Tax Administration Act 1994 other than section 139B, the paying agent is treated as failing to pay an amount of withholding tax equal to the amount of RLWT liability they failed to satisfy, if the paying agent has not subtracted or retained an amount from a residential land purchase.

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Liability of conveyancers: reasonable reliance

(6B) A paying agent is not liable for a penalty under Part 9 of the Tax Administration Act 1994 for a failure described in **subsection (6)(b)** if, for that failure,—

(a) the paying agent has relied on a form and accompanying documents given to them in accordance with **section 54C** of the Tax Administration Act 1994; and

(b) the paying agent's reliance on the form and accompanying documents is reasonable.

Treatment of amount

(7) An amount subtracted or retained from a residential land purchase by a paying agent to satisfy the vendor's RLWT liability—

(a) is treated as received—

(i) by the vendor; and

(ii) at the time the residential land purchase amount is paid to them; and

(b) is treated for the purposes of this Act as derived by the vendor at the same time and in the same way as they derive the residential land purchase amount.

Defined in this Act: agent, amount, amount of tax, Commissioner, conveyancer, pay, residential land purchase amount, RLWT

RL 3 Associated persons: who must pay, and how?

Despite **section RL 2**, if the vendor and purchaser are associated persons—

(a) the vendor is not liable to pay the amount of RLWT provided in **section RL 4**; and

(b) the purchaser must withhold the amount of RLWT provided in **section RL 4**. ~~The purchaser must hold the RLWT withheld in a separate bank account, segregated from other money, for the benefit of the Commissioner.~~

Defined in this Act: amount, associated person, ~~Commissioner, conveyancer~~, RLWT, RLWT rules

RL 4 How much RLWT?

How much tax?

(1) The total amount (**RLWT**) that the relevant person described in **section RL 2** or **RL 3** must pay or withhold ~~from a~~ for residential land purchase amounts is equal to the lesser of the amounts described in **subsections (2), (4), and (6)**. The RLWT is paid or withheld for each residential land purchase amount, up to the maximum of the relevant residential land purchase amount.

Calculation of amount

- (2) For the purposes of **subsection (1)**, the amount is the greater of zero and the amount calculated using the formula—

$$\text{RLWT rate} \times (\text{current purchase price} - \text{vendor's acquisition cost}).$$

Definition of items in formula

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- (3) In the formula in **subsection (2)**,—

(a) **RLWT rate** means ~~0.33~~ the rate provided in schedule 1, part A, clause 1, table 1, row 4 or, if the vendor is a company that is not acting as a trustee, ~~0.28~~ the rate provided in schedule 1, part A, clause 2:

(b) **current purchase price** is the purchase price agreed by the vendor and purchaser for the disposal of the residential land, including deposits and part payments, that the residential land purchase amount relates to:

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(c) **vendor's acquisition cost** is the purchase price paid by the vendor for their acquisition of the residential land.

Calculation of amount

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- (4) For the purposes of **subsection (1)**, the amount is calculated using the formula—

$$0.10 \times \text{current purchase price}.$$

Definition of item in formula

- (5) In the formula in **subsection (4)**, **current purchase price** has the same meaning as in **subsection (3)(b)**.

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Calculation of amount

- (6) For the purposes of **subsection (1)**, the amount is the greater of zero and the amount calculated using the formula—

$$\text{current purchase price} - \text{security discharge amount} - \text{outstanding rates}.$$

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Definition of items in formula

- (7) In the formula in **subsection (6)**,—

(a) **current purchase price** has the same meaning as in **subsection (3)(b)**:

~~(b) **security discharge amount** is the total of the amounts required by licensed security holders to discharge their mortgages or other securities over the residential land, if the relevant person who must pay RLWT is the vendor or the vendor's conveyancer.~~

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(b) security discharge amount is—

(i) zero, if **paragraph (ii)** does not apply:

(ii) the total of the amounts required by licensed security holders to discharge their mortgages or other securities over the residential land, if the relevant person who must pay RLWT is the vendor or the vendor's conveyancer:

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	(c) <u>outstanding rates</u> is the amount of local authority rates outstanding.	
	<i>A definition</i>	
(8)	In this section, licensed security holder means a person who has a mortgage or other security over the relevant residential land, if that person is—	
	(a) a registered bank:	5
	(b) a licensed NBDT, as defined in section 4 of the Non-bank Deposit Takers Act 2013.	
	Defined in this Act: amount, amount of tax, company, dispose, licensed security holder, residential land purchase amount, registered bank, residential land, <u>RLWT</u>	
RL 5	Paying RLWT	10
	<i>Paying RLWT</i>	
(1)	A person who is required to pay or withhold RLWT must pay the amount of tax to the Commissioner under section RA 15 (Payment dates for interim and other tax payments).	
	<i>Basis for payment of RLWT</i>	15
(2)	For the purposes of section RA 6C (Withholding and payment obligations for residential land), the person must pay the amount of tax on a monthly basis.	
	Defined in this Act: amount of tax, Commissioner, RLWT	
RL 6	Commissioner repaying RLWT	
	<i>Repaying RLWT</i>	20
(1)	<u>An amount of RLWT paid in relation to a person's disposal of residential land may be repaid by the Commissioner to the person if and to the extent to which—</u>	
	(a) <u>a tax credit for the RLWT is likely to be a surplus credit under section BC 8(4) for the relevant tax year, treating the person as only having income and deductions for land for the tax year and the relevant tax rate provided in section RL 4(3); and</u>	25
	(b) <u>the person has no outstanding tax obligations under the Inland Revenue Acts; and</u>	
	(c) <u>the person gives the Commissioner the information in the form prescribed under section 54D of the Tax Administration Act 1994, including any prescribed accompanying documents.</u>	30
	<i>Effect of repaying RLWT</i>	
(2)	<u>For the purposes of section LB 6B (Tax credits for RLWT), an amount of RLWT repaid by the Commissioner is treated as not paid in relation to the residential land that the person disposed of.</u>	35
	Defined in this Act: amount, Commissioner, dispose, land, residential land, RLWT	

45 Section YA 1 amended (Definitions)

- (1) This section amends section YA 1.
- (2) In the definition of **amount of tax**, replace “RSCT rules” with “RSCT rules, RLWT rules”.
- (3) In the definition of **ancillary tax**, after paragraph (kb), insert: 5
(kc) RLWT:
- (4) In the definition of **bright-line date**, replace “and section CB 16A (Main home exclusion for disposal within 2 years)” with “, section CB 16A (Main home exclusion for disposal within 2 years), and section **54C** of the Tax Administration Act 1994”. 10
- (5) Insert, in appropriate alphabetical order:
conveyancer means,—
 - (a) for a vendor or a purchaser, the lawyer, incorporated law firm, conveyancing practitioner, or incorporated conveyancing firm that provides **conveyancing services**, as that term is used in the Lawyers and Conveyancers Act 2006, to the vendor or purchaser using a New Zealand-based trust account; but 15
 - (b) for a purchaser who does not have a conveyancer described in **paragraph (a)**, the purchaser themselves
- (6) In the definition of **date of acquisition**, replace “and section CB 16A (Main home exclusion for disposal within 2 years)” with “, section CB 16A (Main home exclusion for disposal within 2 years), and section **54C** of the Tax Administration Act 1994”. 20
- (7) Insert, in appropriate alphabetical order:
licensed security holder is defined in **section RL 4(8)** (How much RLWT?) for the purposes of **section RL 4** 25
- (8) Insert, in appropriate alphabetical order:
offshore person **RLWT person** means, for the purposes of **subpart RL** (Residential land withholding tax),—
 - (a) a natural person, if— 30
 - (i) the person is a New Zealand citizen who is outside New Zealand and they have not been in New Zealand within the last 3 years:
 - (ii) the person holds a residence class visa granted under the Immigration Act 2009, and they are outside New Zealand and have not been in New Zealand within the last 12 months: 35
 - (iii) the person is not a New Zealand citizen and they do not hold a residence class visa granted under the Immigration Act 2009:
 - (b) a person that is ~~acting as~~ a trustee of a trust, if—
 - (i) ~~the person is an offshore person:~~

- ~~(ii) the person has a co-trustee that is an offshore person:~~
- ~~(iii) a settlor of the trust is an offshore person:~~
- (i) more than 25% of the trustees of the trust are offshore RLWT persons:
- (ii) more than 25% of the people that have the power to appoint or remove a trustee of the trust, or to amend the trust deed, are offshore RLWT persons: 5
- ~~(iii) all natural person beneficiaries and all natural person discretionary beneficiaries of the trust are offshore RLWT persons:~~
- ~~(iv) all beneficiaries and all discretionary beneficiaries of the trust are offshore RLWT persons:~~ 10
- ~~(vi) a beneficiary that is an offshore person has received a distribution from the trust within the last 6 years of a relevant disposal of residential land:~~
- (v) a beneficiary, including a discretionary beneficiary (a **beneficiary**), that is an offshore RLWT person has received a distribution from the trust in 1 of the last 4 years before the relevant disposal of residential land and, if the beneficiary is a natural person, the total distributions to the beneficiary for the relevant year are more than \$5,000: 15
- (vi) the trust has disposed of residential land within 4 years before the relevant disposal of residential land and the trust has a beneficiary, including a discretionary beneficiary, that is an offshore RLWT person: 20
- (c) a person, ~~other than a natural person~~, if— 25
 - (i) the person is incorporated outside New Zealand:
 - (ii) the person is not a natural person and is registered outside New Zealand:
 - (iii) the person is constituted under foreign law:
 - ~~(iv) the person has a member that is an offshore person:~~ 30
 - ~~(v) the person has an executive or director that is an offshore person:~~
 - (iv) the person is a company or a partner in a limited partnership and more than 25% of the company's directors or of the limited partnership's general partners are offshore RLWT persons:
 - ~~(v) the person is a company and more than 25% of the company's shareholder decision-making rights are held directly or indirectly by offshore RLWT persons:~~ 35
 - (vi) the person is a partner in a limited partnership or an owner of an effective look-through interest in a look-through company (LTC), and more than 25% of the partnership's partnership shares or of 40

the LTC's effective look-through interests are held directly or indirectly by offshore RLWT persons:

- (9) Insert, in appropriate alphabetical order:

residential land purchase amount means, in relation to residential land located in New Zealand, an amount paid or payable for the disposal of the land, but excludes a deposit or part payment (the **part-amount**) if deposits and part payments, including the part-amount, total, in aggregate, less than 50% of the purchase price for the land

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- (9B) In the definition of **residual income tax**, after paragraph (b)(iiib), insert:

(iiibb) **section LB 6B** (Tax credits for RLWT):

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- (10) Insert, in appropriate alphabetical order:

RLWT means residential land withholding tax and refers to an amount payable under the RLWT rules

- (10B) Insert, in appropriate alphabetical order:

RLWT certificate of exemption means a certificate of exemption issued by the Commissioner under **section 54E** of the Tax Administration Act 1994

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- (11) Insert, in appropriate alphabetical order:

RLWT rules means—

- (a) sections LA 4, **LA 6, and LB 6B** (which relate to tax credits for RLWT); and
- (b) **subpart RL** (Residential land withholding tax); and
- (c) **~~sections 54B and 54C~~, 54C, 54D, and 54E**, and Part 9 of the Tax Administration Act 1994.

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Part 3

Amendments to Goods and Services Tax Act 1985

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46 Goods and Services Tax Act 1985

This Part amends the Goods and Services Tax Act 1985.

47 Section 2 amended (Interpretation)

- (1) This section amends section 2.

- (2) In the definition of **adjustment period**, replace “(3J)” with “(3J) and **(3JC)**”.

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- (3) Insert in the appropriate alphabetical order:

electronic marketplace—

- (a) means a marketplace that is operated by electronic means through which a person (the underlying supplier) makes a supply of remote services by electronic means through another person (the operator of the marketplace) to a third person (the recipient); and

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- (b) includes a website, internet portal, gateway, store, distribution platform, or other similar marketplace; and
 - (c) does not include a marketplace that solely processes payments

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 - (4) In the definition of **goods**, delete “by a non-resident to a resident”.
 - (4B)** Insert in the appropriate alphabetical order:

marketplace means—

 - (a) an electronic marketplace:
 - (b) a marketplace approved under **section 60D** as a supplier of remote services

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 - (5) In the definition of **percentage actual use**, replace “9(2)(h),” with “9(2)(h), **20(3JC)**, 20G,”.
 - (6) In the definition of **percentage difference**, replace “sections 21” with “sections 20G and 21”.
 - (7) In the definition of **percentage intended use**, replace “20(3H),” with “20(3H), **20(3JC)**, 20G,”.
 - (8) Insert in the appropriate alphabetical order:

remote services means a service that, at the time of the performance of the service, has no necessary connection between—

 - (a) the place where the service is physically performed; and
 - (b) the location of the recipient of the services

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48 Section 5 amended (Meaning of term supply)

 - (1) After section 5(10), insert:
 - (10B)** For the purposes of this Act, when a person who is resident in New Zealand pays an amount of money to participate in gambling or in a prize competition through a supply of remote services that are physically performed outside New Zealand, the payment is treated as a payment for a supply of services by the person who conducts the gambling or prize competition, as applicable.

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 - (2) In section 5(11), replace “subsection (10)” with “subsections (10) and **(10B)**”.
 - (3) In section 5(13)(c), replace “apply to it.” with “apply to it; or”.
 - (4) After section 5(13)(c), insert:

 - (d) the supply of the contract of insurance is a supply of remote services that is zero-rated under **section 11A(1)(x)**.

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 - (5) After section 5(26), insert:
 - (27) The Commissioner may treat a person resident in New Zealand who receives a supply of remote services to which **section 8(3)(c)** applies as if they were making a supply of services that is chargeable with tax under section 8(1) if—

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- (a) the person has, for the purposes of avoiding the payment of tax, knowingly notified a fact or provided information under **section 8B(5)** that is altered, false, or misleading; and
- (b) after the date on which the services have been physically performed, it is found that the notification or provision of information has ~~led~~led to the supply being treated as—
 - (i) zero-rated under **section 11A(1)(x)**; or
 - (ii) not being a service supplied in New Zealand; and
- (c) either—
 - (i) the act of the person described in **paragraph (a)** is a repeated occurrence; ~~or~~
 - (ii) the amount of tax that was not charged on the supply through the act described in **paragraph (a)** is substantial.

49 Section 8 amended (Imposition of goods and services tax on supply)

- (1) In section 8(3),—
 - (a) before the paragraphs, delete “either”;
 - (b) in paragraph (b), replace “the services are performed.” with “the services are performed; or”;
 - (c) after paragraph (b), insert:
 - (c) the services are remote services supplied to a person resident in New Zealand, other than services that are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed.
- (1B) In section 8(4), replace “to which subsection (3) would apply” with “to which subsection (3)(a) or (b) would apply”.
- (2) In section 8(4B) replace “that is not treated as being made in New Zealand by subsections (3)(b) and (4)” with “subsections (3)(b) and (c) and, (4)” “that is treated as not being made in New Zealand by subsections (4) or (4D)”.
- (3) After section 8(4C), insert:
 - (4D) Despite subsection (3), if a non-resident supplier supplies remote services to which **subsection (3)(c)** would apply but for this subsection to a registered person for the purposes of carrying on the registered person’s taxable activity, the services are treated as being supplied outside New Zealand unless the supplier chooses to treat the supply as made in New Zealand.
- (4) In section 8(5), replace “(3), (4), and (4B)” with “(3), (4), (4B), and (4D)”.

50 New section 8B inserted (Remote services: determining residence and status of recipients)

After section 8A, insert:

8B Remote services: determining residence and status of recipients

- (1) **Subsection (2)** applies to determine whether a supply is made in New Zealand under **section 8(3)(c)**, or for the purposes of **sections 10(14B), 11A(1)(j), and 60C**, when remote services are supplied to a person resident in New Zealand. 5
- (2) A supplier must treat the recipient of the supply as a person resident in New Zealand if 2 of the following items are non-contradictory and support the conclusion that the person is resident in New Zealand:
 - (a) the person's billing address:
 - (b) the internet protocol address of the device used by the person or another geolocation method: 10
 - (c) the person's bank details, including the account the person uses for payment or the billing address held by the bank:
 - (d) the mobile country code of the international mobile subscriber identity stored on the subscriber identity module card used by the person: 15
 - (e) the location of the person's fixed land line through which the service is supplied to them:
 - (f) other commercially relevant information.
- (3) For the purposes of **subsection (2)**,—
 - (a) if, in addition to having 2 ~~non-conflicting~~non-contradictory items from the list in **subsection (2)** supporting residence in New Zealand, a supplier also has at least 2 non-conflictingnon-contradictory items that support residence in a country other than New Zealand, the supplier must choose the evidence that is more reliable to determine a recipient's residence: 20 25
 - (b) the Commissioner may prescribe the use of another method to determine a recipient's residence, or may agree with the supplier on the use of another method, if a supplier is unable to establish a recipient's residence by 2 ~~non-conflicting~~non-contradictory items from the list in **subsection (2)**. 30
- (3B) In prescribing or agreeing to the use of an alternative method under **subsection (3)(b)**, the Commissioner may take into account the following:
 - (a) the nature of the supply, including, for example,—
 - (i) whether the supply is made in a low-value high-volume digital context: 35
 - (ii) whether the supply is a single instance or a supply made as part of a continuing relationship between the recipient and the supplier:
 - (b) the availability to the supplier of information about the recipient's residence.

- (4) **Subsection (5)** applies to determine the treatment of a supply to a registered person of remote services described in **section 8(3)(c)** when section 8(4) applies, and for the purposes of **sections 11A(1)(j) and 60C**.
- (5) Having established the New Zealand residence of a recipient of a supply of services under **subsection (2)**, a supplier must treat the recipient as not being a registered person unless the recipient—
- (a) notifies the supplier that they are a registered person; ~~or~~
 - (b) provides their registration number or New Zealand business number.
- (6) For the purposes of **subsection (5)**, the Commissioner may ~~agree with the supplier on~~ prescribe the use of another method to determine whether the supply is made to a registered person, ~~or may agree with the supplier on the use of another method to determine whether the supply is made to a registered person.~~
- (7) In prescribing or agreeing to the use of an alternative method under **subsection (6)**, the Commissioner may take into account the following:
- (a) the nature of the supply, including, for example, whether the supply is of services that are purchased only by a registered person in the course or furtherance of their taxable activity;
 - (b) the value of the supply, including, for example, whether the supply is of a value that would be expected to be received only by a registered person in the course or furtherance of their taxable activity;
 - (c) the terms and conditions related to the provision of the services, including, for example, whether the supply is of services that may be licensed for use by a registered person.

51 Section 9 amended (Time of supply)

In section 9(2)(e), replace “section 5(10)” with “section 5(10) or **(10B)**”. 25

52 Section 10 amended (Value of supply of goods and services)

(1) After section 10(14), insert:

(14B) If a supply of services is treated as having been made under **section 5(10B)**, the consideration for the supply is calculated using the formula—

$$\frac{\text{resident amounts} - \text{worldwide prizes} \times (\text{resident amounts} \div \text{worldwide amounts})}{\text{amounts received from residents} - \text{prizes paid to residents.}}$$

(14C) In the formula in **subsection (14B)**,—

- (a) ~~resident amounts is the total amount in money received in relation to the supply by the non-resident person who conducts the gambling or the prize competition, as applicable, from all persons resident in New Zealand as determined under **section 8B(1) to (3)**;~~

- (b) ~~worldwide prizes is the total amount of all prizes paid and payable in money worldwide in relation to the supply:~~
- (e) ~~worldwide amounts is the total amount in money received worldwide in relation to the supply by the non-resident person who conducts the gambling or the prize competition, as applicable.~~ 5
- (a) amounts received from residents is the total amount in money received in relation to the supply by the non-resident person who conducts the gambling or the prize competition, as applicable, from all persons resident in New Zealand:
- (b) prizes paid to residents is the total amount of all prizes paid and payable in money to persons resident in New Zealand in relation to the supply. 10
- (14D) If amounts of consideration calculated under **subsection (14B)** for all of the non-resident's supplies of gambling or prize competitions for a taxable period are added together (the **total consideration**), and the total consideration is a negative amount, then the negative amount may be used to reduce a corresponding positive amount of total consideration for the next taxable period. 15
- (14E) If, after the use of the negative amount described in **subsection (14D)**, an excess negative amount remains, the excess amount may be used to reduce a positive amount of total consideration in the immediately following taxable period. 20
- (14F) **Subsection (14E)** continues to apply until the excess amount is extinguished.
- (2) In section 10(15C), replace “the supply, the value of the supply” with “the supply, or **section 20(3JC)** applies, the value of the supply”.
- 53 Section 11A amended (Zero-rating of services)** 25
- (1) In section 11A(1)(j), replace “outside New Zealand; or” with “outside New Zealand, other than a supply of remote services provided to a person resident in New Zealand who is not a registered person; or”.
- (2) In section 11A(1)(w), replace “standard.” with “standard; or”, and after section 11A(1)(w), insert: 30
- (x) the services are remote services to which **section 8(3)(c)** applies that are provided to a registered person and the supplier ~~and the registered person have made an agreement as described in section 8(4)~~ has chosen under **section 8(4D)** to treat the supply as made in New Zealand. 35
- (3) After section 11A(6), insert:
- (7) **Subsection (1)(x)** does not apply to a supply of services for which the supplier subsequently makes an election under **section 24(5B)**.

54 Section 15 amended (Taxable periods)

- (1) After section 15(5), insert:
- (6) Despite subsections (1) to (4), the taxable period of a non-resident supplier whose only supplies are supplies of remote services to which **section 8(3)(c)** applies, is a 6-month period. However, the supplier may apply to the Commissioner to pay on the basis of a 2-month period. 5
- (2) Replace **section 15(6)**, as inserted by **subsection (1)**, with:
- (6) Despite subsections (1) to (4), the taxable period of a non-resident supplier whose only supplies are supplies of remote services to which **section 8(3)(c)** applies, is a 3-month period, based on a first quarter ending on 31 March. 10

55 Section 20 amended (Calculation of tax payable)

- (1) In section 20(3)(d)(vi), replace “supply; and” with “supply:”.
- (2) After section 20(3)(d)(vi), insert:
 - (vii) does not apply to the supply of a contract of insurance that is zero-rated under **section 11A(1)(x)**; and 15
- (3) After section 20(3)(db), insert:
 - (dc) an amount of output tax charged on a supply of remote services to the extent that the supplier has, in relation to the supply, incurred liability for, returned, and paid a consumption tax in another country or territory, when the remote services are— 20
 - (i) physically performed in New Zealand; and
 - (ii) supplied to a non-resident person in New Zealand who is not a registered person; and
- (4) After section 20(3JB), insert:
- (3JC) For a supply of remote services to which **section 11A(1)(j) or (x)** applies, if the recipient of the supply— 25
 - (a) estimates at the time of acquisition that the percentage intended use of the services is less than 95%, then the recipient must, on acquisition—
 - (i) identify the nominal amount of tax (the **nominal GST component**) that would be chargeable on the value of the supply, as if the value were equal to the consideration charged for the supply, at the rate set out in section 8(1); and 30
 - (ii) based on the percentage intended use of the services, account for output tax under subsection (4) for the proportion of the nominal GST component for any non-taxable use of the services: 35
 - (b) determines at the end of an adjustment period that the percentage actual use of the services is less than 95%, then the recipient must, at the end of the adjustment period—

- (i) identify the nominal GST component that would have been chargeable on the value of the supply, as if the value were equal to the consideration charged for the supply, at the rate set out in section 8(1); and
 - (ii) based on their percentage actual use of the services, account for output tax under subsection (4) for the proportion of the nominal GST component for any non-taxable use of the services: 5
 - (c) is required to account for output tax under **paragraph (a) or (b)**, then the recipient must, for later adjustment periods, make adjustments under the apportionment rules set out in sections 20G and 21 to 21H in relation to the taxable supply referred to in **paragraph (a) or (b)**. 10
- (5) After section 20(4B), insert:
- (4C) For a supply of remote services to which **section 8(3)(c)** applies, a recipient of the supply is denied a deduction of input tax in relation to the supply unless the recipient has obtained a tax invoice under **section 24(5B)**. 15
- (4D) **Subsection (4C)** does not apply to a supply of remote services that is treated by section 5B as being made by the recipient and the recipient has accounted for the output tax charged on the supply.
- 56 Section 21G amended (Definitions and requirements for apportioned supplies and adjustment periods)** 20

In section 21G(1), before paragraph (a), replace “20(3H),” with “20(3H) and **(3JC)**,”.
- 57 Section 24 amended (Tax invoices)**
 - (1) In section 24(4), replace the text after paragraph (e) with:
 - provided that this subsection does not apply to a supply— 25
 - (f) that is charged with tax pursuant to section 11, 11A, 11AB, or 11B:
 - (g) for which a supplier made an election under **subsection (5B)**.
 - (2) Replace section 24(5) with:
 - (5) Notwithstanding any other provision of this Act, a supplier is not required to provide a tax invoice if— 30
 - (a) the consideration in money for a supply does not exceed \$50 (or such greater amount as the Governor-General may, from time to time, by Order in Council declare):
 - (b) the supplier is a non-resident supplier of remote services to which **section 8(3)(c)** applies. 35
 - (5B) Despite **subsection (5)**, a supplier may choose to provide a tax invoice to the recipient of the services if—

- (a) the supplier is a non-resident supplier of remote services to which **section 8(3)(c)** applies, and—
- (i) section 8(4) was incorrectly applied to the treatment of the supply, so that the services were treated as being supplied in New Zealand when they should have been treated as being supplied outside New Zealand; or 5
- (ii) **section 11A(1)(x)** was incorrectly applied to the treatment of the supply, so that the supply was not zero-rated when it should have been; and
- (b) the consideration in money for the supply, in New Zealand currency as at the time of the supply, does not exceed \$1,000; and 10
- (c) the recipient—
- (i) notifies the supplier that they are a registered person; ~~or~~
- (ii) provides their registration number or New Zealand business number to the supplier. 15
- (5C) **Subsection (5B)** does not apply to the supply of a contract of insurance.
- (5D) If an election is made under **subsection (5B)** in circumstances where section 8(4) was incorrectly applied to the treatment of the supply, the supplier and the recipient are treated as agreeing that section 8(4) will not apply to the supply.
- 58 Section 24B amended (Records to be kept by recipient of imported services)** 20
- In section 24B, replace “as being made in New Zealand” with “as being made in New Zealand, or who is required to account for output tax under **section 20(3JC)**”.
- 59 Section 25 amended (Credit and debit notes)** 25
- (1) After section 25(1)(aa), insert:
- (aab) section 8(4) was incorrectly applied to the treatment of the supply, so that the services were treated as having been supplied in New Zealand when they should have been treated as being supplied outside New Zealand, for a supply— 30
- (i) made by a non-resident supplier of services to which **section 8(3)(c)** applies; and
- (ii) for which no election was subsequently made under **section 24(5B)**; or
- (2) After section 25(1)(ab), insert: 35
- (abb) **section 11A(1)(x)** was incorrectly applied to the treatment of the supply, so that the supply was not zero-rated when it should have been, and the supplier did not subsequently make an election under **section 24(5B)**; or

60 Section 25AA amended (Consequences of change in contract for imported services)

- (1) In section 25AA(1)(a)(iv), replace “non-resident; and” with “non-resident.”.
- (2) After section 25AA(1)(a)(iv), insert:
 - (v) the supplier has provided the recipient with a tax invoice under section 24(5B); and

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60B Section 51 amended (Persons making supplies in course of taxable activity to be registered)

After section 51(1B), insert:

- (1C) For the purposes of subsection (1), if the person is a non-resident supplier of remote services to which **section 8(3)(c)** applies, then in determining whether the person is liable to be registered, the person may use a fair and reasonable method of converting foreign currency amounts into New Zealand currency amounts.

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61 Section 51B amended (Persons treated as registered)

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After section 51B(6), insert:

- (7) For the purposes of this Act, in relation to a supply of remote services to which **section 8(3)(c)** applies, a recipient who is treated as a supplier under **section 5(27)** is treated as registered from the date on which the services are physically performed.

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62 Section 54B amended (Non-residents: registration)

Replace the section heading with “**Requirements for registration for certain non-resident suppliers**”.

63 Section 54C amended (Non-residents: cancellation of registration)

Replace the section heading with “**Cancellation of registration of certain non-resident suppliers**”.

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64 Section 56B amended (Branches and divisions in relation to certain imported services)

In section 56B(1), replace “made in New Zealand.” with “made in New Zealand, or in relation to which an output tax liability under **section 20(3JC)** arises.”

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65 Section 60 amended (Agents and auctioneers)

- (1) After section 60(1), insert:

- (1A) Despite subsection (1), **subsection (1AB)** applies to an agent who—

- (a) is resident in New Zealand; and

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(b) <u>makes supplies of remote services to a person resident in New Zealand for and on behalf of a non-resident principal.</u>	
(1AB) <u>The principal and the agent may agree that the agent, and not the principal, is treated as making the supply in the course and furtherance of a taxable activity carried on by them.</u>	5
(2) After section 60(1B), insert:	
(1C) For the purposes of sections 60C and 60D , an operator of an electronic a marketplace and a resident supplier who makes supplies of services to recipients through the marketplace may treat a supply as 2 separate supplies, being—	
(a) a supply of services from the underlying supplier to the operator of the marketplace; and	10
(b) a supply of those services from the operator of the marketplace to the recipient, treating the operator as if they were the underlying supplier of the services.	
66 New sections 60C and 60D inserted (Electronic marketplaces)	15
After section 60B, insert:	
60C Electronic marketplaces	
(1) Subsection (2) applies when—	
(a) a supply of remote services is made through an electronic marketplace; and	20
(b) the marketplace is operated by a non-resident person; and	
(c) the supply is made to a person resident in New Zealand.	
(2) The operator of the marketplace is treated as making the supply in the course or furtherance of a taxable activity. But this subsection does not apply if—	
(a) the documentation provided to the recipient identifies the supply as made by the underlying supplier and not the marketplace; and	25
(b) the underlying supplier and the operator of the marketplace have agreed in a document signed by them that the supplier is liable for the payment of tax; and	
(c) the electronic marketplace does not—	30
(i) authorise the charge to the recipient; or	
(ii) authorise the delivery of the supply to the recipient; or	
(iii) set the terms and conditions under which the supply is made.	
(3) If, in relation to a single supply of remote services, more than 1 operator of an electronic marketplace is liable for tax on the supply, the first operator that authorises a charge or receives consideration for the supply is treated as making the supply. If no operator exists that meets this requirement, the first operator that authorises delivery of the supply is treated as making the supply.	35

- (4) This section overrides section 60(1).
- 60D Approved marketplaces**
- (1) This section applies when—
- (a) a supply of remote services is made through a marketplace other than an electronic marketplace; and 5
 - (b) the marketplace is operated by a non-resident person; and
 - (c) the supply is made to a person resident in New Zealand.
- (2) On application by the operator of the marketplace, the Commissioner may agree to treat the operator, and not the underlying supplier, as making the supply in the course or furtherance of a taxable activity. 10
- (3) In the exercise of the discretion referred to in **subsection (2)**, the Commissioner may take into account the following:
- (a) whether the marketplace is best placed to determine whether the recipient of the supply of remote services— 15
 - (i) is resident in New Zealand:
 - (ii) is a registered person:
 - (b) whether the number of underlying suppliers to the marketplace means that return requirements are better satisfied by the marketplace rather than the individual underlying suppliers.
- (4) This section overrides section 60(1). 20
- 67 Section 75 amended (Keeping of records)**
- After section 75(3E), insert—
- (3F) Subsection (3BA) does not apply to require a non-resident supplier whose only supplies are supplies of remote services to which **section 8(3)(c)** applies, to keep and retain records— 25
- (a) in English or in a language authorised by the Commissioner; or
 - (b) at a place in New Zealand or at a place outside New Zealand authorised by the Commissioner.
- 68 Section 77 replaced (New Zealand currency)**
- Replace section 77 with: 30
- 77 New Zealand or foreign currency**
- (1) All amounts of money must, for the purposes of this Act, be expressed in terms of New Zealand currency, and in any case where and to the extent that any such amount is consideration in money for a supply, that amount must be expressed in terms of New Zealand currency as at the time of that supply. 35

- (2) Despite **subsection (1)**, a non-resident supplier of remote services to which **section 8(3)(c)** applies may choose to express the amount of consideration in money for their supplies in a foreign currency as at the time of supply.
- (3) ~~If a supplier makes an election under **subsection (2)**, the supplier must convert the foreign currency amounts into New Zealand currency on the earlier of—~~ 5
- ~~(a) the date the supplier files their return for the relevant period;~~
- ~~(b) the due date for filing their return for the relevant period.~~
- (4) ~~A supplier may not revoke an election made under **subsection (2)** until at least 24 months after making the election.~~ 10
- (3) A non-resident supplier which makes an election under **subsection (2)** must, in a return, choose to convert foreign currency amounts into New Zealand currency amounts on—
- (a) the last day of the relevant taxable period; or
- (b) the earlier of— 15
- (i) the date the supplier files their return for the relevant period;
- (ii) the due date for filing their return for the relevant period; or
- (c) another date agreed between the supplier and the Commissioner.
- (4) A non-resident supplier may not revoke an election under **subsection (2) or (3)** until at least 24 months after making the election, unless the Commissioner agrees otherwise. 20

68B New section 85B inserted (Certain contracts entered into before 1 October 2016)

After section 85, insert:

- 85B Certain contracts entered into before 1 October 2016** 25
- (1) This section applies to a supply of remote services when—
- (a) the contract under which the supply is made is for a fixed term that starts before 1 October 2016 and ends after that date; and
- (b) the contract provides for periodic payments that are treated under section 9(3)(a) as successive supplies; and 30
- (c) under the contract, the consideration for the supply is set or reviewed for periods of 396 days or less during the term of the contract; and
- (d) **section 8(3)(c)** would apply in relation to the supply in the absence of this section.
- (2) Despite section 9(3)(a), for the period described in **subsection (3)**, the supplier of the remote services may choose to treat the periodic payments as not successively supplied for successive parts of the period of the contract. The election is made in a return for the relevant taxable period. 35

- (3) The period starts on 1 October 2016 and ends on the earlier of—
- (a) the date on which the term of the contract ends; and
- (b) the date that is 396 days after the date on which the contract was entered into.

Part 4

Amendments to Tax Administration Act 1994

69 Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

70 Section 22 amended (Keeping of business and other records)

- (1) In section 22(2)(fb), replace “year,—” with “year:”.
- (2) After section 22(2)(fb), insert:
- (fc) is a borrower under section 4(1) of the Student Loan Scheme Act 2011 who has adjusted net income as defined in **section 73** of that Act,—
- (3) In section 22(2)(m), replace “trust,—” with “trust; and”.
- (4) After section 22(2)(m), insert:
- (n) adjusted net income under the Student Loan Scheme Act 2011,—

70B Section 24B amended (PAYE tax codes)

In section 24B(3) replace “An” with “Except as provided by **section 24BA(1D)**, an”.

71 Section 24BA amended (Offshore persons’ bank accounts and tax file numbers)

- (1) After section 24BA(1), insert:
- (1B) Subsection (1) does not apply to a person who requires a tax file number only because they are a non-resident supplier ~~who makes a supply of remote services under **section 8(3)(c)** of the~~ of goods and services under the Goods and Services Tax Act 1985.
- (1C) Subsection (1) does not apply to a person for whom a reporting entity under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 has conducted the customer due diligence procedures required for customer due diligence under that Act and regulations made under that Act.
- (1D) Despite subsection (1) and section 24B(3), a non-resident seasonal worker under the recognised seasonal employer (RSE) instructions has a tax code of NSW for the first month of a period of employment in New Zealand.
- (2) In section 24BA(2), replace “A person” with “A person to whom subsection (1) applies”.

72 New sections 54B, ~~and 54C~~, 54D, and 54E inserted

After section 54, insert:

54B ~~Statement of payment of RLWT~~Return of statement for RLWT

(1) A person that must make a payment of RLWT must give the Commissioner a statement in relation to their RLWT obligations (the return), in the form prescribed by the Commissioner, at the time at which the RLWT must be paid to the Commissioner or within such further time as the Commissioner may allow.

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(2) Also, a person must give the Commissioner the return if they have no RLWT to pay because of the application of **section RL 4** of the Income Tax Act 2007.

54C Information in relation to payment of RLWT

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(1) This section applies if a person (the **vendor**) disposes of residential land (the **disposal**), and the bright-line date for the residential land is within 2 years of—

(a) the date on which the instrument to transfer the land to the person was registered under the Land Transfer Act 1952; or

(b) their date of acquisition of the land, if an instrument to transfer the land to the person is not registered on or before the bright-line date.

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(1B) This section does not apply if the relevant date for the vendor under **subsection (1)(a) or (b)** is before 1 October 2015.

(2) The vendor must give to their conveyancer, or if they do not have a conveyancer or they are associated with the purchaser, give to the purchaser's conveyancer or the purchaser, information in relation to RLWT, in the form prescribed by the Commissioner, before the relevant residential land purchase amount is paid ~~disposal is completed~~.

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(3) The information must be accompanied by ~~certified copies of~~ relevant and appropriate documents, as prescribed by the Commissioner, ~~to evidence the information in the form (for example: a certified copy of a vendor's New Zealand passport, to support information in the form that they are not an offshore person).~~

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(4) The information that a vendor must give includes—

(a) their full name, address and tax file number; and

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(b) whether or not they are an offshore RLWT person; and

(c) if they are an offshore RLWT person,—

(i) whether or not they are associated with the purchaser; and

(ii) whether or not **section RL 1(2)(a)** of the Income Tax Act 2007 applies for the disposal.

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(5) If the vendor is not an offshore RLWT person, the following people must verify, as prescribed by the Commissioner, the information and any relevant and appropriate documents:

	(a) <u>in the case of a vendor company or a look-through company, a director who is not an offshore RLWT person;</u>	
	(b) <u>in the case of a vendor limited partnership, a general partner of the partnership who is not an offshore RLWT person;</u>	
	(c) <u>in the case of a vendor trust, a trustee of the trust who is not an offshore RLWT person.</u>	5
(56)	The person who receives the information must keep and retain the information for a period of at least 7 years, <u>unless they receive the information as the purchaser. If they receive the information as the purchaser, they must give a copy of it to the Commissioner within 1 month of receiving it, but they do not have to keep and retain the information afterwards.</u>	10
54D	<u>Information in relation to repayment of RLWT</u>	
(1)	For the purposes of deciding if an amount of RLWT may be repaid for a person under section RL 6 of the Income Tax Act 2007, the Commissioner must prescribe a form that requires:	15
	(a) <u>a person's income and deductions for land for the period of the part of the income year before the date that is 1 month after the relevant disposal of residential land; and</u>	
	(b) <u>whether or not the person, for the relevant disposal of residential land, will meet the requirements in section CB 16A; and</u>	20
	(c) <u>other relevant particulars.</u>	
(2)	The Commissioner may also prescribe any appropriate documents to accompany the form.	
54E	<u>RLWT certificate of exemption</u>	
(1)	This section applies when—	25
	(a) <u>a person applies for an RLWT certificate of exemption in the form prescribed by the Commissioner; and</u>	
	(b) <u>the form is accompanied by certified copies of relevant and appropriate documents, as prescribed by the Commissioner; and</u>	
	(c) <u>the Commissioner is satisfied that the person meets the requirements in 1 of subsection (2), (3), or (4).</u>	30
(2)	The requirements in this subsection are that the person, for the residential land,—	
	(a) <u>is a person who carries on a business of developing land or dividing land into lots or erecting buildings; and</u>	35
	(b) <u>has provided, in accordance with section 7A of this Act, a security that is acceptable to the Commissioner to secure the performance of their income tax obligations in relation to the land.</u>	

- (3) The requirements in this subsection are that the person, for the residential land,—
- (a) is a person who carries on a business of developing land or dividing land into lots or erecting buildings; and
- (b) has had tax obligations under the Inland Revenue Acts before applying for the certificate; and 5
- (c) has complied with all tax obligations for the 2 years before they apply for the certificate, and the Commissioner is satisfied that the person will continue to so comply.
- (4) The requirements in this subsection are that the person, for the residential land, will meet the requirements in section CB 16A. 10
- (5) The Commissioner must issue an RLWT certificate of exemption to the person.
- 73 Section 81 amended (Officers to maintain secrecy)**
- (1) After section 81(4)(gba), insert:
- (gbb) communicating to a person referred to in **section 209A(2)** of the Student Loan Scheme Act 2011 any information specified in **subsection (3)** of that section for the purposes set out in **subsection (1)** of that section: 15
- (2) After section 81(4)(o), insert:
- (ob) communicating to a relevant professional body appropriate details of a failure by 1 of its members to satisfy, as agent, a person's liability to pay RLWT in accordance with the RLWT rules: 20
- 74 Section 139A amended (Late filing penalty for certain returns)**
- (1) In section 139A(1), replace “2001,” with “2001, the statement required to be provided under section 54B of this Act.”. 25
- (2) After section 139A(2)(iiib), insert:
- (iiic) a statement for payment of RLWT required to be provided under **section 54B**:
- (3) In section 139A(4), replace “schedule” with “schedule or statement for RLWT”. 30
- 75 Section 143A amended (Knowledge offences)**
- After section 143A(1)(f), insert:
- (g) in relation to a recipient of a supply of remote services from a non-resident supplier, and for the purposes of avoiding the payment of goods and services tax, knowingly provides altered, false, or misleading information relating to their residence in New Zealand or their status as a registered person. 35

**Taxation (Residential Land Withholding Tax, GST on
Online Services, and Student Loans) Bill**

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