

Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill

Government Bill

As reported from the Finance and Expenditure
Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill and recommends by majority that it be passed with the amendments shown.

Venture capital

The bill provides that the capital profits of certain non-residents from the sale of shares, in particular unlisted New Zealand companies will not be taxable. This is intended to remove one significant tax barrier that currently limits the ability of unlisted New Zealand companies from accessing offshore venture capital. Non-residents will be eligible for this exemption if they are resident in a country that is subject to a double tax agreement with New Zealand and where they would not be able to access a credit in their country of residence if the income were taxed in New Zealand. Foreign funds of funds, which are commonly used to invest capital in local venture capital funds on the behalf of a number of international investors, will also be eligible under this provision.

Definition of foreign equity investor

We recommend that paragraph (b)(viii) of the definition of “qualifying foreign equity investor” be omitted. This provision requires an investor seeking qualification under paragraph (b) to be structured in a limited partnership legally equivalent to a New Zealand special partnership. Some jurisdictions have rules governing limited partnerships that vary significantly from the New Zealand special partnership rules.

We also recommend further amendment of the definition of “qualifying foreign equity investor” to provide the venture capital exemption to the individual partners of the unincorporated body, rather than to the partnership itself as currently provided. Under tax law, any New Zealand tax will not attach to the foreign limited partnership, and will instead be imposed directly on the partners. Paragraph (b) currently provides the exemption to the partnership, which will not be taxed in any case. It is therefore necessary that the provision target the partners responsible for meeting the tax obligation.

Paragraph (c) of the definition defines the term “qualifying foreign equity investor” as it applies to incorporated bodies, including foreign funds of funds that may be structured as separate legal entities. Subparagraph (ii) requires members of the entity to be entitled to shares in the entity’s income in proportion to their interest in the entity. In some cases, however, a foreign fund of funds may have internal arrangements allowing disproportionate allocations of income to members, which would currently disqualify the fund from the venture capital exemption. This would not be appropriate, and we therefore recommend amending the definition to remove the requirement in paragraph (c)(ii) for members of the entity to be entitled to income proportionate to their capital interest.

We also recommend the omission of the requirement in paragraph (c)(iv) for a foreign fund of funds to be resident in a particular country. Paragraph (c) is intended to target foreign funds of funds that are structured as entities that are flow-through for tax purposes, but use a company form. The transparency of the flow-through entity means, however, that the entity may not be subject to the other country’s tax laws, and therefore, under a double tax agreement, may not be considered tax-resident of that country. This would prevent the fund from qualifying, and it is therefore necessary to omit this requirement. At the same time, we recommend the addition of a residence test disqualifying funds that are resident in a country

and are taxed as an entity by that country. Such funds would be able to claim a credit in their country of residence for New Zealand tax paid, and would therefore not be sensitive to the imposition of New Zealand tax.

Paragraphs (b) and (c) of the definition of “qualifying foreign equity investor” exclude unincorporated or incorporated bodies from being a qualifying investor where a partner or member, under the associated persons test contained in section OD 8(3), holds a 10 percent or greater interest in the capital of the entity. The associated persons test in OD 8(3) is too wide, and could prevent a foreign fund of funds from qualifying if only one investor in the fund was not tax-exempt or resident in an eligible country. This is undesirable, and we recommend amending paragraphs (b)(v)(A), (b)(vi)(A), (c)(v)(A), and (c)(vi)(A) of the definition, to impose the more appropriate test contained in section OD 8(1).

In addition, it is unclear whether, under paragraphs (b) and (c) of the definition, a foreign fund of funds would qualify if it were established under the state laws of a particular jurisdiction. We therefore recommend amending paragraphs (b) and (c) to provide that a limited partnership or foreign hybrid, established under the state laws of a particular country, can qualify as a qualifying foreign equity investor.

We consider that the bill should state clearly that the qualifying foreign equity investor must meet the requirements, set out in the definition in new section CB 2(4), at all times during the period of the investment. At the moment, the bill is unclear on these points, and we recommend amending new section CB 2(1)(g) for clarification.

Extension of venture capital exemption

We recommend extending the venture capital provisions so that the exemption applies not just to the sale of shares, as the bill currently provides, but also to share options. The definition of “shares” in OB 1(a) would not include a share option, where the investor has an option to purchase shares in the company at a set price at some time in the future, since it does not represent a direct interest in the capital of a company. At the same time, the economic substance of a share option is closely related to an equity interest in the company, and the return on the option is directly connected with the company’s performance. It is therefore appropriate that share options be an eligible

investment under these rules. For similar reasons, we recommend also that the rules accommodate interests purchased as convertible notes, where the interest has been held for at least 12 months and has been converted to shares before sale. These amendments should provide additional flexibility for investors when choosing the appropriate vehicle for venture capital investment.

Excluded activities

New section CB 2(1)(g)(iii) in clause 4 prevents the use of the venture-capital provisions to invest in companies that operate in one of a number of specified areas of activity. One of these is “property development”. In our view, this reference is too wide. It was intended that this exclusion would be aimed at land development, but as drafted, it could extend to cover the development of intellectual property or other non-land-based property. We therefore recommend amending new section CB 2(1)(g)(iii)(A), to replace the reference to “property development” with “land development”.

In addition, we are concerned about the provision that excludes companies investing with an intention of deriving gross income in the form of royalties. Many companies seeking venture-capital investment funding would earn income through royalties on the licensing of intellectual property or leasing technology. This exclusion would therefore be unnecessarily restrictive, and we recommend the reference to “royalties” in new section CB 2(1)(g)(iii)(H) be omitted. We recognise that some royalties may still be captured by the inclusion of “lease payments” in the exclusion, and we recommend that, while the reference to “lease payments” should remain in new section CB 2(1)(g)(iii)(H), the section should be amended to exclude any lease payment that is also a royalty.

It is important that a company that has been invested into should not be able to have one of the listed prohibited activities as a main activity at any time during the period of investment. Unfortunately, we do not consider the bill is clear on this point, and we recommend amending new section CB 2(1)(g) for clarification purposes.

Subsidiaries of holding companies

New section CB 2(1)(h) details the conditions under which the venture capital exemption will be available to investors in New Zealand resident companies. At least one of the conditions detailed

in subparagraphs (i) to (iv) of new section CB 2(1)(h) must be met before the exemption is available.

One of the conditions, contained in subparagraph (iii), requires the main activity of the holding company to be investment in New Zealand resident companies, and that those companies be part of the same wholly-owned group as the resident company. We recommend amending new section CB 2(1)(h)(iii) to omit the requirement for the holding companies and the invested companies to be part of the same wholly-owned group. It is common in the venture-capital industry, where a holding company acquires a company, for the founding or existing shareholders to retain an equity interest in the company. This is important, as it allows the investor to retain the knowledge and skills of current management and investors, and can also assist in attracting senior management. A requirement for the invested company to be wholly-owned by the holding company would prevent any such retention, of an equity interest and would limit the operation of the new rules.

In addition, we recommend amending new section CB 2(1)(h)(iii) to allow eligible holding companies to have a main activity of investing in non-New Zealand companies. We are concerned that restricting a holding company to investing in New Zealand resident companies may limit the ability of the holding company to expand into offshore markets, and we therefore consider our recommended amendment to be appropriate. At the same time, to ensure the provisions remain targeted at venture capital investments, we consider the bill should retain the requirement for all New Zealand companies that the holding company invests into to be eligible investments.

Listing requirement

New sections CB 2(1)(g)(ii) and CB 2(1)(h)(ii) detail the rules governing how long shares, acquired as part of a venture capital investment, may not be quoted on an official list of a recognised exchange. We recommend that new sections CB 2(1)(g)(ii) and CB 2(1)(h)(ii) be omitted and replaced with redrafted provisions. The new listing requirements for eligible venture capital investments, under these two paragraphs, should be that the company is either unlisted at the time the shares are purchased, or, if listed at the time of purchase, that the company is delisted within 12 months. We consider the provisions as currently drafted are unnecessarily complex and inflexible, and consider the recommended change offers

simpler drafting and allows sufficient flexibility in the listing requirement to accommodate a variety of genuine venture capital investment strategies.

Eligible countries

Currently, foreign funds of funds are eligible only for the venture-capital exemption if they have been established in one of eight countries—the United States, the United Kingdom, Australia, Canada, Singapore, France, Germany and Japan. This list is more limited than the list of countries that will be allowed for individual investors. In our view, provided that New Zealand is able to access the necessary information through a double tax agreement with the relevant country, there is no reason why a foreign fund of funds should be denied the exemption because of its country of establishment. We recommend that the list of countries where foreign funds of funds are required to have been established be the same as the list that applies for direct investors under new section CB 2(4)(a). This would ensure that one list of eligible countries will apply for all categories of investors.

We also recommend amending paragraph (a)(i) of the definition of “qualifying foreign equity investor” to allow consideration, where an effective exchange-of-information agreement that is not a complete double tax agreement has been negotiated with another country, to be given to granting eligibility to the country under the proposed venture capital rules. At present, the Inland Revenue Department can only obtain the information necessary to administer the proposal from countries that have signed a double tax agreement with New Zealand providing information sharing between the countries. It is possible that an agreement on information exchange may be negotiated with another country outside a full, double tax agreement. Provided the agreement allows the Inland Revenue Department to access the information necessary to administer the venture capital rules, we see no reason why such a country should not be included in this system.

Dispute resolution

The bill amends the framework for the resolution of tax disputes between the Inland Revenue Department and taxpayers. The amendments contained in this bill follow on from a discussion document,

Resolving Tax Disputes: A Legislative Review, released in July 2003.

Three main stages, intended to ensure all relevant evidence, facts, and legal arguments are explored before a case goes to court, and essential to the dispute resolution process are:

- The Commissioner of Inland Revenue, or the taxpayer may issue a notice of proposed adjustment to the other, informing them of an intention to seek an adjustment to the taxpayer's self-assessment.
- The party that receives the notice of proposed adjustment will issue a notice of response if they disagree with the adjustment.
- A disclosure notice and statement of position is then issued. The statement of position is issued by both parties, and contains the detailed facts and legal arguments in support of the position taken. If the case goes to court, parties are limited to the facts and arguments contained in their statements of position.

Completing the process

New section 89N in clause 84 prevents the Commissioner, in cases where a dispute has not been resolved between the parties, from amending the assessment without first completing the disputes process. The intended meaning of the phrase "completing the disputes process" is unclear in this section. We understand it was intended that the Commissioner would issue a statement of position, to be considered and responded to in the taxpayer's statement of position, which would in turn be considered by the Commissioner within the 4-year period. We recommend amending new section 89N to clarify this.

Exceptions to following the full resolution process

We recommend amending new section 89N(1)(c)(i) to clarify the intended application of the section. New section 89N(1)(c) in clause 84 details a number of situations where the Inland Revenue Department is not required to follow the full dispute resolution process. Subparagraph (i) creates one such exemption where the dispute involves allegations of criminal matters. This provision was intended to apply where it is necessary for the Commissioner to act

quickly to issue an assessment where criminal activities are alleged. It was not intended to be so wide to capture circumstances where, for example, the taxpayer was being assessed for the proceeds of crime. In addition, subparagraph (vi) exempts the Inland Revenue Department from following the full process where the taxpayer fails to comply with a statutory request to provide information. We recommend amending subparagraph (vi) to clarify the circumstances where this applies. Where a taxpayer has failed to voluntarily provide the Inland Revenue Department with the information necessary to consider the issue under dispute, the department is likely to invoke a statutory power to obtain that information, with a specified time limit for the provision of information. Subparagraph (vi) is intended to apply only where the taxpayer has failed to provide the information within the time frame stated in the notice, and this should be clarified in the legislation.

Taxpayer-issued notice of proposed adjustment

New section 89F(3) in clause 80 details the requirements for a taxpayer-issued notice of proposed adjustment. Included in these is a requirement for a clear and detailed statement of the facts and law that make the adjustment necessary. We are concerned that this may be interpreted as requiring the provision of an unnecessary level of detail, with a resulting increase in the compliance costs imposed on the taxpayer. We recommend the word “detailed” be omitted from new section 89F(3)(a), and replaced with the word “complete”, or similar wording. This should clarify that the notice should state the facts as completely as possible without requiring the provision of excessive detail.

We also recommend amending new section 89F(3)(c) to require only the inclusion of all key documentary evidence in a taxpayer-initiated notice of proposed adjustment. The bill currently requires that all material documentary evidence must be attached to a notice of proposed adjustment. While it is important that the Commissioner has all the information necessary to respond to the notice, significant compliance costs would arise if all material documents were required to be attached. Therefore, we consider an appropriate compromise would be for the clause to require the attachment of the material documents relevant to the issue under dispute.

New section 89F(2) requires a notice of proposed adjustment, issued by the Commissioner, to identify the adjustments that must be made

to the assessment. At the same time new section 89F(3) does not clearly impose a similar requirement for taxpayer-issued notices. We see no reason for this distinction, and recommend amending new section 89F(3) to require a taxpayer-issued notice of proposed assessment to identify the adjustments proposed to a disputable decision.

Associated persons test

We were concerned that problems may arise with the definition of an “associated person”, as people may be unaware of the activities of a fourth degree relative in dispute with the Inland Revenue Department. We recommend amendment of the bill to provide that the associated person test captures only those people that are related to the taxpayer within the second degree of relationship.

New section 89N(1)(c)(v) allows the Commissioner to not complete the disputes process if a person associated with the taxpayer (as defined by section OD 8(3) of the Income Tax Act 1994) has commenced judicial review proceedings regarding a different dispute involving similar issues. In our view, the definition of “associated person” in section OD 8(3) was too wide to apply in this provision, as it would have captured any two persons who are related, including cousins, to within the fourth degree of relationship. It would also have captured a partnership and any person associated with a partner in that partnership, including their relatives to the fourth degree.

Similar issues

We did not recommend including in the bill a definition of the term “similar issues”. We noted the concern that as the term is not defined in the bill, it could potentially be given a wide interpretation, that may capture two different tax schemes and arrangements, provided the two disputes had some vague similarity. We considered that the parameters of this term could, however, be defined administratively, rather than in the legislation.

Time bar exceptions

The dispute resolution process is subject to a 4-year time bar, limiting the time available for the Commissioner to amend a taxpayer’s assessment. Under section 108(2) as currently in the legislation, where the tax return is fraudulent or wilfully misleading, or does not mention gross income of a particular nature or derived from a

particular source, the Commissioner may amend an adjustment at any time, despite the time bar.

New section 108(2) in clause 95 alters the section by allowing an exception in three cases—where the return was fraudulent or misleading, where gross income was materially understated, or where a deduction amount was materially overstated. We recommend omitting clause 95 from the bill.

Submitters suggest that the exceptions as drafted are too broad, and that uncertainty may arise around the application of the “materiality” test. We agree, and consider it appropriate that the exceptions contained in clause 95 be omitted from the bill. This will have the effect of continuing the application of the current section 108(2) for the moment. We understand the Inland Revenue Department intends to consider this issue further at a later date.

Suspension of time bar on application to High Court

Under new section 89N(3) in clause 84, the Commissioner may apply to the High Court for an order to issue an assessment or complete the dispute resolution process. We consider that the 4-year time bar should be suspended from the time the application is made to the High Court until the assessment is issued, the Court directs the completion of the process, or the dispute is otherwise resolved. We recommend amending new section 89N(3) to allow for the time bar to be suspended.

Waiver of time bar

Under current legislation, the taxpayer and the Commissioner may, by agreement, waive the 4-year time bar by up to 6 months, effectively increasing the time available for the dispute-resolution process. The bill extends this waiver period to 12 months, in order to ensure sufficient time for the dispute to be resolved.

In the past, taxpayers have been reluctant to grant the waiver because of a concern that the Inland Revenue Department may then seek to raise new issues during the waiver period. While it was intended in the bill that the Commissioner be prevented from raising new issues in the waiver period not identified and known by both parties before the waiver was granted, we do not consider the bill to be sufficiently clear in making this point. We therefore recommend amending new section 108B(1B) in clause 97 to state explicitly that

the Commissioner cannot raise new issues during the period of the extension.

We also recommend allowing taxpayers the right to extend the time bar waiver by a further 6-month period, without a requirement for this extension to be agreed to by the Inland Revenue Department. This would provide taxpayers with certainty that the issues at dispute will be finalised, even when the time bar has reached its limit.

Refunds of excess tax

Currently, refunds on excess tax paid to the Inland Revenue Department are subject to a time bar of 8 years from the year the original assessment was made. The bill reduces this limitation period to 4 years, but allows the Commissioner to extend this to 8 years in cases involving clear mistakes and oversights or rebate claims. It does not, however, allow for a refund to be paid after this period where the taxpayer has made a written application for the refund before the expiration of the time bar, as occurred with the previous provision. This means that, where the Commissioner resolves a dispute close to the end of the time bar period, payment of a resulting refund may be prevented from being made. This is not appropriate, and we recommend amending the changes to section MD 1 in clause 34, and new section 45 in clause 134, to provide that, where the taxpayer has applied for an amended assessment that has been determined by the Commissioner, any refund resulting may be paid after the end of the 4-year time limit.

Period for claiming input tax credit

Currently, no time limit is imposed in legislation for claiming a goods and services tax input tax credit from a prior goods and services tax period. The bill retains this unlimited period for claiming an input tax credit, but only in cases where the inability to claim the credit arises out of a clear mistake, simple oversight, or an inability to obtain a tax invoice. If the taxpayer wishes to claim an input tax credit after the relevant period has ended, and none of those reasons detailed apply to the circumstances, the taxpayer must use a notice of proposed adjustment to seek a change. The time limit for issuing a taxpayer notice of proposed adjustment has been extended to 2 years for goods and services tax input tax credit claims.

We do not consider that the claiming of a goods and services tax input tax credit should require the issuing of a notice of proposed

adjustment. This proposal would increase compliance costs for those claiming the credit. We also note that there are many legitimate reasons why a taxpayer may fail to claim a credit in the correct period that would not involve mistake, oversight, or inability to obtain a tax invoice. In such cases, it would not be appropriate to require the taxpayer to undergo the process of issuing a notice of proposed adjustment in order to claim the credit. We recommend that the bill be amended to provide for an unqualified 2-year period in which to make a current period input tax credit claim, without the use of a taxpayer notice of proposed adjustment, while retaining the unlimited time period currently allowed for specific situations.

We also note that a failure to claim an input tax credit may arise outside the 2-year period if the taxpayer:

- made a supply that they believed not to be a taxable supply, and therefore did not claim input tax credits on the goods and services tax cost, but learned later that the supply was taxable
- had disputed the amount charged on the supply and there had been a delay in resolving the dispute
- was unable to obtain a tax invoice
- had made a clear mistake or simple oversight.

In such circumstances, the taxpayer should have an unlimited time to claim the credit, and we recommend amendment to clause 129 to provide for this.

Expenditure on resource consent application

We recommend amending new section DJ 14B to include expenditure in relation to a resource consent application that is not fixed life intangible property, but would have been depreciable had the application been granted. New section DJ 14B, in clause 11, outlines the deductibility of expenditure incurred as part of an unsuccessful or withdrawn resource consent application under the Resource Management Act 1991. The clause, as introduced, limited the deduction to expenditure that would have been part of the cost of a resource consent that is fixed life intangible property, if the application was granted. Some consents may not have a fixed life, and would be classed instead as depreciable intangible property. In other circumstances, the consent may form part of the cost of other depreciable property. In neither of these cases would the cost be deductible if the

application is withdrawn or is unsuccessful, although it should be under the policy intent of this provision.

Horticultural plants

Under current tax legislation, a grower must apply a single amortisation rate to all plants and vines. This fails to recognise the fact that the useful life of a plant varies significantly depending on the plant type. The bill allows the Commissioner to determine different amortisation rates for different plants, in order to ensure the amortisation offers a more accurate reflection of the particular plant's useful life.

We understand from representatives of the wine industry that they wish to be excluded from the scope of the rules contained in this bill. In order to comply with the industry's wishes, we recommend including vines used for growing grapes for wine production in the list of excluded plants in the definition of a "listed horticultural plant". This would have the effect of defining wine grape vines as non-listed horticultural plants, which would therefore remain subject to the current treatment of horticultural plants.

Under new section 91 AAB, in clause 90, the Commissioner is required to take into account the estimated useful life of the plant when determining the amortisation rate. The term "estimated useful life" is defined in clause 65, and requires the Commissioner to have regard to factors such as natural and incidental damage, decay, disease, or exhaustion, when determining the period of time the plant may be useful in deriving income or as part of a business operation. At the same time, other factors may also have a significant impact on the useful life of a plant. We therefore recommend amending the definition of "estimated useful life" to clarify that the Commissioner is not limited to considering only those factors specifically listed in the definition.

New section DO 4C, in clause 13, provides for the deduction of expenditure relating to new planting. As drafted, the provision fails to recognise the increasingly common separation between the ownership and operation of orchards. This means that, in many cases, neither the owner nor the operator would be able to claim the deduction provided for in the section. To remedy this issue, we recommend amending section DO 4C to refer to "developed land", rather than to development by the taxpayer operating the orchard. This would allow the operator to claim the deduction for any planting development expenditure. Where the lease agreement ends, the

landowner will be able to either amortise the value of development if they choose to operate the orchard, or pass the ability to amortise the value to a subsequent lessee. In cases where the landowner is responsible for the planting, the lease or contractual arrangements with the orchard operators should provide for recognition of the landowner's planting activities.

New section DO 4D, in clause 13, allows the taxpayer to elect to make a deduction in the current income year for replacement planting, using the formulae set out in either of sections DO 4D(3) and (4). The bill does not detail how this election is to be made. We recommend amending new section DO 4D to state explicitly that an election is given effect by taking a tax position in filing a return.

Sale and leaseback of intangible assets

The bill amends the finance lease rules in the Income Tax Act 1994 in response to certain situations involving a person selling an intangible asset, such as a trademark, and then leasing back the same asset. In such cases, lease payments may, in substance, be partly repayments of loan principal, and it is necessary to amend the law on finance leases to ensure people in such arrangements are not able to claim a deduction for these repayments.

Clause 65 contains an expanded definition of the term “finance lease”, to be inserted in section OB 1 of the Income Tax Act 1994. The definition in the bill now includes a situation where the lessee is a former owner of the leased asset, and the lessor has no substantial rights or obligations regarding the asset other than those relating to the enforcement of the lease. As currently drafted, the definition appears to be very broad and imprecise, and may inadvertently capture other leasing transactions, causing some operating leases to be treated as finance leases. We therefore recommend amending clause 65, to replace paragraph (d) of the definition of “finance lease” with a new paragraph that includes arrangements where an associate of the lessee has an option to acquire the lease asset, but under that option is not entitled to all the lease payments accruing after the acquisition of the asset. This captures the main point of concern with these arrangements, which is that the associate does not receive all of the rental payments after the associate acquires the lease asset, and that lease payments still flow to the lessor and financier.

Early payment discount

New self-employed or partnership businesses are currently not required to pay provisional tax in the first year of operation. In the second year, these businesses are required to pay both income tax for the previous year and provisional tax for the current year, often imposing substantial cash flow pressures on the businesses. To ease this, the bill seeks to encourage the voluntary payment of tax in the first year of operation by offering a 6.7 percent tax rebate.

We recommend replacing the phrase “early payment rebate” in clause 33 with the phrase “early payment discount”. This terminology offers a more accurate description and is consistent with the structure and core provisions of the Income Tax Act 1994.

We recommend amending clause 33 to provide for the discount rate to be amended by Order in Council, in order to allow for adjustments to the level of discount as a response to future interest rate changes.

We recommend clause 33 be amended to include an effective date of payment—to be the day after the end of the income year in which the discount is claimed. To enable the early payment discount to be transferred and offset against other taxes owed by the taxpayer, it is necessary for the bill to specify an effective payment date.

We also recommend amending clause 33 to provide that taxpayers are required, before the last date for furnishing the return for the income year where the discount is claimed, to make an election on whether they will claim the discount. This should allow taxpayers that mistakenly fail to claim the early payment discount in their tax return to apply to the Commissioner to claim the discount, while preventing taxpayers from making a retrospective application for the discount.

As drafted, the bill could potentially allow a taxpayer to make voluntary income tax payments in the first year of business, claim the discount, and then withdraw the money shortly after 1 April. This would be inappropriate, and we recommend amending the bill to provide that the taxpayer would be required to make voluntary tax payments, but that for the period from the end of the income year in which the credit was claimed until their terminal tax date the lesser of the following amounts will have to remain with the Inland Revenue Department—the voluntary payment or the amount of terminal tax for that income year.

Non-resident contractors

The bill imposes a penalty on employers that fail to withhold the correct amount of tax when making a withholding payment to a non-resident contractor, provided the non-resident contractor is not liable to pay tax on the withholding payment under a double tax agreement. We recommend amending the bill to refer to “contract payment” rather than “withholding payment”, as this is the correct term to describe the payment from the New Zealand employer to the non-resident contractor.

Currently, the bill applies the penalty only in cases where the non-resident is exempt from paying tax under a double tax agreement. We consider that there is no reason for limiting the application of a penalty based on the reason for the exemption, and that the penalty should be imposed in all cases where the non-resident contractor is completely exempt from tax in New Zealand. We recommend the bill be amended to achieve this.

We consider the bill should refer to the non-resident contractor’s income tax liability in New Zealand, rather than the contractor’s liability to pay tax on the withholding payment, and recommend amending new section 141AA(1) in clause 107 to achieve this. This should create a clearer distinction between the liabilities of the payer and the non-resident contractor.

The bill also reduces the non-declaration rate imposed where a non-resident contractor, being a company, fails to make a withholding declaration. We recommend amending clause 59 to provide that this proposal will apply from the date of enactment.

PAYE by intermediaries

The Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 introduced provisions allowing employers to use accredited intermediaries to assume the employer’s PAYE obligations. The bill includes several small amendments to these rules, intended to improve their operation.

Clause 54 replaces the term “an officer” in sections NBB 2(1)(c) and NBB 2(4)(b) with the phrase “a director, secretary or statutory officer”, and will clarify that, where the applicant is not a natural person, that is, the applicant is a body corporate, the term “officer” means a director, secretary or statutory officer of the applicant. The proposed amendment fails to recognise that an unincorporated body

of persons, such as a partnership, may also seek accreditation as a PAYE intermediary. In such cases, it is important that each individual partner (or member, in the case of an incorporated body generally) should be subject to the accreditation requirements, and we therefore recommend clause 54 be amended to state that, where the applicant is an unincorporated body of persons, sections NBB 2(1)(c) and NBB 2(4)(b) apply to each individual member.

Incorporated societies

The bill allows incorporated societies to carry forward tax losses and offset income and losses against the income and losses of companies in the same group. This change is achieved by amending the definition of “special corporate entity” to capture incorporated societies. The new rules are intended to ensure that incorporated societies that are treated as companies can access the same provisions available to other corporate entities for the carrying forward and offsetting of losses.

We recommend amending the application date for this proposal, so that it applies from the 1992/93 income year for incorporated societies that filed on the basis of group offset, and from the 2000/01 income year for incorporated societies that did not file on that basis. The redrafting of the loss carry-forward rules in 1992 inadvertently prevented incorporated societies from accessing the loss carry-forward rules if these societies did not issue shares. This change resulted in a situation where some entities incorrectly applied the loss rules, while others applied them correctly. Our recommended change will protect the position of those societies that have filed on the incorrect basis since 1992/93, and will also allow those societies that correctly applied the rules to amend their returns for the 2000/01 and subsequent years and take advantage of the new proposal.

Tax shortfalls for loss attributing qualifying companies

The bill addresses an issue of the incidence of double penalties in cases where both a loss attributing qualifying company and its shareholders are penalised for what is effectively the same shortfall. It provides for any penalties to be charged to the shareholder, and not the company, where an adjustment reduces the net loss of the company. No penalty will be charged if the shareholder has not claimed a deduction for the attributed loss.

We recommend amending clause 110(2) to state that new section 141FD applies to shortfalls that relate to periods starting on or after 1 April 2005. Although clause 110(2) currently applies the section to shortfall penalties that are imposed on or after 1 April 2005, it incorrectly states the intended application date.

We recommend the wording in new section 141FD(1)(a) be reworked to reflect the intent accurately. Currently, the section refers to the income year “in which” the company had the loss. Since the net loss for a company is usually not known until after the end of the relevant year, when the full year’s position is determined, it is more appropriate to refer to the income year for which the company had the loss.

We received a submission proposing that, in cases where a loss attributing qualifying company qualifies for a reduction in penalties because of a voluntary disclosure, the reduction should also flow through to shareholders. Unfortunately the submission was received extremely late, and there was insufficient time to consider all the implications of the proposal adequately. We therefore recommend no amendment to this bill, but note that the proposal may have some merit. We encourage the Inland Revenue Department to consider this issue further, and address it in future tax bills if the Department determines this to be an appropriate change to make.

Supplementary Order Papers

During our consideration of this bill, the Minister of Finance asked that we consider two Supplementary Order Papers. Supplementary Order Paper 210 addresses issues around the use of Australian unit trusts to reduce paying tax. Supplementary Order Paper 218 responds to tax issues that have arisen as a consequence of the storms of February 2004. We recommend the provisions in these Supplementary Order Papers, subject to the amendments detailed below, be incorporated into this bill.

Australian unit trusts

Currently, New Zealand resident investors are able to use Australian unit trusts to derive investment income that is taxed neither in New Zealand nor Australia. New Zealand beneficiaries of unit trusts may agree in advance to having income reinvested in new units that are distributed as a non-taxable bonus issue of new units.

We understand that work was progressing on developing a long-term solution to this and other problems around the tax rules for offshore portfolio investments in equity. Since this work has been deferred for later consideration—at the same time as domestic reform of the savings tax rules—it was necessary to use the Supplementary Order Paper 210 for this issue. The proposed amendments would clarify that an amount vesting absolutely in a unit holder is treated as a taxable dividend, and include in the definition of “taxable bonus issue” an issue of units as part of an arrangement involving the investment of amounts that are absolutely vested in the unit holder.

We recommend limiting the proposed vesting rules to offshore unit trusts. At the moment, the proposal could potentially prevent New Zealand resident unit trusts from making non-taxable bonus issues, even though the trusts are fully taxable on both New Zealand— and non-New Zealand—sourced income, and no revenue leakage occurs from these unit trusts. It is therefore appropriate to apply the proposal to non-resident unit trusts specifically, and exclude New Zealand trusts.

Bonus issue

Clause 65(27) adds a new paragraph to the definition of “taxable bonus issue”. This amendment to the term could result in capturing a case where a New Zealand company provides rebates in the form of additional units, or where a wholesale unit trust provides units as payment for expense deductions received from its retail unit-trust investors. It was never intended that this proposal amend the tax treatment of such arrangements, and we therefore recommend amending clause 65 to limit the application of the new paragraph (c) in the definition of “taxable bonus issue” to offshore unit trusts.

One issue arises as a result of the change in treatment of certain bonus issues of units from unit trusts. These bonus issues were previously non-taxable, but under these rules would be treated as taxable dividends. Where a company holds units in such a unit trust, the issue of the units would be treated as an exempt dividend, and subject to a 33 percent dividend withholding payment deduction. At the same time, any expenditure incurred to derive the dividend would not be tax-deductible, as the expenditure was incurred to derive exempt income. Since the dividend is subject to a deduction, which is equivalent to the imposition of tax, it is appropriate that the

expenditure incurred to derive the dividend should be tax-deductible. We therefore recommend amending the bill to allow a deduction for expenditure incurred by a company deriving dividends that are exempt under section CB 10(1) to the extent that the dividend withholding payment on the dividends is not relieved by the conduit tax rules.

It is necessary to include in the proposal rules that will assist in determining the value of a bonus issue, in order to determine the amount of any dividend arising from the bonus issue. If the bill contains no such valuation rule, unit trusts would be able to use section CF 8 to determine for themselves the amount of taxable dividend arising from the bonus issue, and consequently may value the units at a nominal amount. This would obviously be inappropriate. We therefore recommend amending section CF 8 to specify that a taxable bonus issue arising under these rules cannot be valued under that section. In addition, we recommend the introduction of a new valuation rule that calculates the amount of taxable dividend arising from the bonus issue by determining the amount that would have vested in the unit holder if the arrangement had not been entered into.

We recommend amending section CF 3(2)(c)(ii) in the Income Tax Act 1994, to confirm that when calculating the available subscribed capital per share, a taxable bonus issue is to be treated as an amount paid. An entity's available subscribed capital per share is the level of shareholder's funds that will ultimately be returned to the shareholder tax-free. Under the new rules, a taxable bonus issue will be taxed as a dividend when it is derived, and should therefore be counted as available subscribed capital per share. Section CF 3(2)(c)(ii), however, calculates available subscribed capital per share on the basis of the amount paid for the share. It is therefore necessary to amend the section to confirm that a taxable bonus issue is regarded as an amount paid in order to calculate accurately available subscribed capital per share.

February 2004 storms

In the aftermath of the storms and resulting flooding that hit the country in February 2004, a number of issues about the application of business tax policy to particular circumstances arising out of that occurrence were identified. At the time, the Taxation (Disaster Relief) Act 2004 was passed, and Supplementary Order Paper 218

introduces further technical amendments intended to clarify the tax rules as they apply to those impacted by those particular storms. They are not intended to have wider application to circumstances involving other extreme weather events, but the Inland Revenue Department informed us that a wider review of this area of tax policy is planned.

After Supplementary Order Paper 218 was released, the Bay of Plenty was also affected by storms. While these storms were more localised and on a smaller scale, they gave rise to similar issues as those addressed by the Supplementary Order Paper. It is therefore appropriate to extend these provisions, along with those in the Taxation (Disaster Relief) Act 2004, to those storms. We recommend amending the amendments contained in Supplementary Order Paper 218 to extend the provisions to apply to people affected by recent storms in the Bay of Plenty.

The Taxation (Disaster Relief) Act, in defining “qualifying event”, referred only to emergencies where a declaration of civil emergency was made under the Civil Defence Emergency Management Act 2002. It is also possible for a declaration to be made under the Civil Defence Act 1983, and we recommend amending the definition of “qualifying event” introduced by the Taxation (Disaster Relief) Act to provide for declarations under the 1983 Act, to apply from 1 February 2004, being the date that the latest Act came into force.

One submitter expressed concern that businesses receiving restoration grants may give rise to unexpected use-of-money interest liabilities arising out of an increased tax liability. We recognise that the submitter has raised a legitimate issue of concern. However, at this point in time, the scope of the problem is unclear, as the issue will arise only in a specific set of circumstances, and specific details around the provision of grants have not yet been determined. It is therefore not appropriate to make legislative amendment on this issue. We do encourage the Inland Revenue Department to consider this further to determine whether significant tax policy matters arise that need to be resolved.

Use of the colon

During our consideration of the bill, we were informed that many tax practitioners are uncertain about the use of the colon in tax legislation to separate items in a list, and how the appearance of a colon in a particular provision should be interpreted. To assist future users of

tax legislation in understanding the intended meaning of the provisions, we have provided the following interpretation of the use of the colon in legislation.

The colon is essentially intended to be interpreted as an indication that the statements in the items are not linked conjunctively or disjunctively, that is, it would not be appropriate to link them with either an “and” or an “or”. In some instances, each statement in a list that is punctuated with colons may apply independently, without relying on the operation of the statements in the other items. If the items are statements representing preconditions for a statutory result, the effect of linking the items with colons is that the result will follow if one or more of the preconditions are satisfied. If such items were linked with “and”, the result would follow where all the items were satisfied. If the items were linked with “or”, the result would follow where only one item, but no more than one item, was satisfied.

We are informed that the use of colons in legislation drafted by the Inland Revenue Department is consistent with drafting guidelines developed by the Parliamentary Counsel Office. We understand that New Zealand legislation is unique in using the colon in this manner, but that other jurisdictions use the semi-colon in a similar manner. The Inland Revenue Department intends to issue a Tax Information Bulletin explaining this point, and we endorse this action.

Minority views

Green Party

The Green Party does not support giving certain non-residents a tax advantage on profits from the sale of shares in unlisted New Zealand companies. We believe this undermines the tax base, discriminates against New Zealand resident venture capital investors, and could lead to pressure to remove tax on other capital gains.

The Green Party believes the 6 percent tax differential between the SSCWT rate of 33 percent and the top PAYE rate of 39 percent should be extended to all salary and wage earners. This would involve amending the variable SSCWT rate to 9 percent for incomes up to \$9,500; 15 percent for incomes between \$9,500 and \$38,000; and 27 percent for incomes between \$38,000 and \$60,000. We intend to introduce an SOP to give effect to this proposal.

ACT New Zealand

The ACT Party view is that adopting a low flat rate of tax, below those of our trading partners, would overcome much of the problems this bill seeks to solve.

United Future

In line with the submission received from the chartered accounting firm KPMG, United Future believes that personal marginal tax thresholds should be inflation adjusted.

It is estimated that cumulative inflation between 1 April 2000 and 1 April 2005 will be about 13 percent. This means that to preserve the present tax thresholds in purchasing power terms the present bands should be adjusted as follows:

- \$9,500 to \$10,750 ¹
- \$38,000 to \$43,000
- \$60,000 to \$68,000

The Government's failure to index the tax bands for inflation means that taxpayers' marginal tax rate is increasing as wages and salaries rise to offset the movement in the Consumer Price Index. The resultant over taxation is as follows:

- Up to \$38,000 – up to \$75 p.a.
- Between \$38,000 and \$43,000 – up to \$675 p.a.
- Between \$43,000 and \$60,000 – \$675 p.a.
- Between \$60,000 and \$68,000 – up to \$1,155 p.a.
- Over \$68,000 – \$1,155 p.a.

It is anomalous and incongruous of the Government to have such things as excise taxes on alcohol and tobacco indexed on the one hand, yet not give taxpayers the benefit of indexation in their tax rate thresholds on the other.

The anomaly in this situation is further exacerbated by the decision, (supported by United Future), announced in this year's Budget to index the various payments arising from the Working for Families initiative when the cumulative CPI increase has reached 5 percent.

¹ This preserves the current relationship between the low income rebate and the \$ 43,000 threshold.

United Future notes that tax bracket indexation is a feature of the individual taxation systems in the United Kingdom, the United States, and Canada.

Appendix

Committee process

The Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill was referred to the committee on 7 April 2004.

The closing date for submissions was 21 May 2004. We received and considered 29 submissions from interested groups and individuals. We heard 16 submissions. Hearing of evidence took 4 hours and 18 minutes and consideration took a further 3 hours and 3 minutes.

We received advice from the Inland Revenue Department.

Committee membership

Clayton Cosgrove (Chairperson)

Gordon Copeland (Deputy Chairperson)

Rod Donald

Hon Mark Gosche

Rodney Hide (until 15 June 2004)

John Key

Luamanuvao Winnie Laban

Janet Mackey

Craig McNair

David Parker

Rt Hon Winston Peters

Hon Richard Prebble (from 16 June 2004)

Pansy Wong

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)	
Subject to this Act,	Text struck out unanimously
New (unanimous)	
Subject to this Act,	Text inserted unanimously
<i>(Subject to this Act,)</i>	Words struck out unanimously
<u>Subject to this Act,</u>	Words inserted unanimously

Hon Dr Michael Cullen

Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill

Government Bill

Contents

1	Title	15	Deduction to lessee in non-specified lease
2	Commencement	16	Application of subpart
	Part 1	17	Defined terms for subpart
	Annual Rates of Income Tax 2004–05	18	Deferral of surplus allowable deductions from arrangement
3	Rates of income tax for 2004–05 income year	19	Rules for lease asset during term of finance lease
	Part 2	20	Taxation of hire purchase agreements
	Amendments to Income Tax Act 1994	21	Special provisions relating to dispositions of property
4A	Income Tax Act 1994	22	Companies that may constitute imputation group
4	Non-residents' exempt income	23	Income assessable to beneficiaries
5	Branch equivalent income calculation	24	Part HC repealed
6	Cases where assessable income calculation cannot be undertaken	25	Gross income assessable to beneficiaries
7	Certain withdrawal amounts are gross income of superannuation fund	26	Election to become Maori authority
8	Exception for withdrawal when member ceases employment	27	Distributions by Maori authority
9	Expenditure relating to determination of liability to tax	28	Amount distributed to member by Maori authority
10	Patent expenses	29	Table HI 8—Transitional rules
11	New section DJ 14B inserted	30	Net losses may be offset against future net income
	DJ 14B Expenditure on unsuccessful application for resource consent	31	Net loss offset between group companies
12	Expenditure on land improvements used for farming or agriculture	32	Rebate for gifts of money
13	New sections DO 4B to DO 4D inserted	33	New Part MBC inserted
	DO 4B Accounting for expenditure on listed horticultural plants under sections DO 4C and DO 4D		Subpart BC—Early-payment discount of income tax
	DO 4C Expenditure on land—planting of listed horticultural plants		MBC 1 Purpose
	DO 4D Expenditure on land—horticultural replacement planting		MBC 2 Availability of early-payment discount
14	Amalgamated company entitled to deductions for farming, agriculture, and aquaculture expenditure		MBC 3 Credit treated as being payment as income tax
		34	Refund of excess tax
		35	Limits on refunds of tax in relation to Maori authorities
		36	Application of income tax or dividend withholding payments not refunded
		37	Amount of dividend for imputation rules if paid in Australian currency

38	Consolidated imputation group to maintain separate imputation credit account	60	Amount of tax deductions for pay period current when tax deductions altered
39	Debits arising to imputation credit account of group	61	Special filing rule for employer who stops employing staff during year
40	Credits and debits arising to policyholder credit account of company	62	Application of RWT rules
41	Election to use credit balance as credit against policyholder base income tax liability or as credit in imputation credit account	63	Liability to make deduction in respect of foreign withholding payment dividend
42	Credits and debits arising to group policyholder credit account	64	Application of specific dividend withholding payment provisions to consolidated groups
43	Credits and debits arising to branch equivalent tax account of company	65	Definitions
44	Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability	66	Meaning of income tax
45	Debits and credits arising to group branch equivalent tax account	67	Voting interests
46	Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability	68	Schedule 7—Expenditure on land and aquaculture improvements
47	Debits arising to dividend withholding payment account		Part 3
48	Allocation rules for dividend withholding payment credits		Amendments to Tax Administration Act 1994
49	New section MG 8B inserted MG 8B Policyholder credit account companies and dividend withholding payment credits	69A	Tax Administration Act 1994
50	Further dividend withholding payment payable by company	69	Purpose of Act
51	Debits arising to group dividend withholding payment account	70	Interpretation
52	Application of specific dividend withholding provisions to consolidated groups	71	Information to be furnished on request of Commissioner
53	Further tax payable for end of year debit balance or when Maori authority ceases to exist	72	Officers to maintain secrecy
54	Accreditation requirements of PAYE intermediaries	73	Disclosure of information for matching purposes
55	Employer having PAYE intermediary—responsibilities and status under PAYE rules and SSCWT rules	74	Disclosure of address information in relation to debtors
56	PAYE intermediary—responsibilities and status under PAYE rules and SSCWT rules	75	Further secrecy requirements
57	Operation of trust account	76	Notices of proposed adjustment required to be issued by Commissioner
58	Amounts of tax deductions	77	Taxpayers and others with standing may issue notices of proposed adjustment
59	Delivery of withholding declaration	78	Taxpayer may issue notice of proposed adjustment for taxpayer assessment
		79	Election of small claims jurisdiction of Taxation Review Authority
		80	Section 89F replaced
		89F	Content of notice of proposed adjustment
		81	Issue of response notice
		82	Late actions deemed to occur within response period
		83	Disclosure notices
		84	New sections 89N and 89O inserted
		89N	Completing the disputes process
		89O	Test cases

85	Determinations in relation to financial arrangements	111	Application of Part 9 to PAYE intermediaries
86	Determinations relating to financial arrangements	112	Recovery of tax deductions from employers or PAYE intermediaries
87	Notification of determinations	113	Employer or PAYE intermediaries failing to make tax deductions
88	Section 90AE replaced 90AE Four-year period in which determination not required to be applied	114	Unpaid tax deductions, etc., to constitute charge on employer's or PAYE intermediary's property
89	Determinations in relation to apportionment of interest costs	115	Transfer of excess tax within taxpayer's accounts
90	New section 91AAB inserted 91AAB Determinations relating to types and diminishing values of listed horticultural plants	116	Write-off of tax by Commissioner
91	Commissioner to make private rulings on request	117	New section 181D inserted 181D Remission of late payment penalties and interest incurred due to obligation by Maori authority to pay further income tax
92	Taxpayer assessment	118	Remission for reasonable cause
93	New section 92B inserted 92B Taxpayer assessment of GST	119	Remission consistent with collection of highest net revenue over time
94	Assessment where default made in furnishing returns	120	Payment out of Crown Bank Account
96	Time bar for assessment of GST	121	Regulations—Income tax related
97	Extension of time bars	122	Power to extend time for doing anything under Act
98	Commissioner to give notice of assessment to taxpayer		
99	Commissioner may at any time amend assessments		
100	Section 114 replaced 114 Validity of assessments		
101	Variation to definitions for determining interest chargeable or payable to PAYE intermediaries		
102	When disputant entitled to challenge assessment		
103	Certain rights of challenge not conferred		
104	Challenging disputable decisions which are not assessments		
105	Late filing penalties		
106	Tax shortfalls		
107	New section 141AA inserted 141AA Shortfall penalty if non-resident contractor relieved from all liability to pay tax on contract payment		
108	Section 141FB replaced 141FB Reduction of penalties for previous behaviour		
109	Section 141FC repealed		
110	New section 141FD inserted 141FD Shareholders of loss attributing qualifying companies		
			Part 4 Amendments to other Acts and Regulations
			<i>Amendments to Goods and Services Tax Act 1985</i>
		123	Goods and Services Tax Act 1985
		124	Interpretation
		125	Zero-rating of services
		126	Taxable period returns
		127	Special returns
		128	Particulars to be furnished and prepared where change in accounting basis
		129	Calculation of tax payable
		130	Goods and services tax incurred relating to determination of liability to tax
		131	Application of section 21F
		132	Payment of tax
		133	Part 4 repealed
		134	Section 45 replaced 45 Refund of excess tax
		135	Section 50 repealed
		136	New section 51B inserted 51B Persons treated as registered
		137	Section 61B repealed
		138	Section 80 repealed

**Taxation (Annual Rates, Venture Capital
and Miscellaneous Provisions)**

139	Section 81 repealed	154	Determining tax liabilities
140	Supplies of services made before insertion of section 8(4B)	155	New section DB 13B inserted DB 13B Expenses of failed or withdrawn application for resource consent
	<i>Amendment to Taxation Review Authorities Act 1994</i>	156	New section DB 28B inserted DB 28B Expenses of failed or withdrawn patent application
141	Small claims jurisdiction of authorities	156B	New heading and new section DB 44 inserted DB 44 Expenditure incurred in deriving exempt dividend
	<i>Amendment to Income Tax Act 1976</i>	157	Calculation of FIF loss
142	Interpretation—voting and market interests	158	Improvements to farm land
	<i>Amendments to Taxation Review Authorities Regulations 1998</i>	159	New sections DO 4B to DO 4E inserted DO 4B Expenditure on land: plant- ing of listed horticultural plants DO 4C Expenditure on land: horti- cultural replacement planting DO 4D Accounting for expenditure on listed horticultural plants under sections DO 4B and DO 4C DO 4E Some definitions
143	Interpretation	159B	Farming expenditure of lessor or sublessor
144	Decisions	159C	New section DO 5B inserted DO 5B Improvement destroyed or made useless by qualifying event
	<i>Amendment to Partnership Act 1908</i>	159D	New section DP 3B inserted DP 3B Improvement destroyed or made useless by qualifying event
145	Duration of partnerships	160	Cost of acquiring timber: forestry business on land bought from Crown, Maori owners, or holding company
	Part 5	161	Amalgamated company: expendi- ture on improvements for farming, aquacultural, and forestry businesses
	Amendments to Income Tax Act 2004	162	Partnership interests and disposal of part of asset before 16 December 1991
146	Income Tax Act 2004		
147	New sections CD 7B and 7C inserted CD 7B Interests in money or prop- erty of foreign unit trust CD 7C Bonus issue by foreign unit trust instead of money or property		
148	New section CD 21B inserted CD 21B Transfer by unit trust of legal interest after beneficial interest vests		
149	When attributed CFC income arises		
150	Calculation of FIF income		
151	Withdrawals		
152	Exclusion of withdrawal when member ends employment		
153	New section CW 11B inserted CD 11B Proceeds of share disposal by qualified foreign equity investor		
153B	Section CW 49 replaced CW 49 Providing standard-cost household service		
153C	New section CX 41B inserted CX 41B Amounts remitted as con- dition of new start grant		

**Taxation (Annual Rates, Venture Capital
and Miscellaneous Provisions)**

163	Petroleum mining operations outside New Zealand before 16 December 1991	189	Ascertainment of New Zealand income tax liability
163B	Prepayments	190	Granting of underlying foreign tax credit
164	Calculation rule: income year in which item disposed of	191	Estimated provisional tax
164B	Effect of disposal or event	192	New section MB 3B inserted
164C	New section EW 47B inserted		MB 3B Provisional taxpayer affected by qualifying event
	EW 47B Consideration when debtor released as condition of new start grant	193	New subpart MBB inserted
165	Direct control interests		Subpart MBB—Early-payment discount of income tax
166	Associates and 10% threshold		MBB 1 Purpose
167	Branch equivalent income or loss: calculation rules		MBB 2 Availability of early-payment discount
168	Rules for personal property lease asset during term of finance lease		MBB 3 Credit treated as being payment as income tax
169	Taxation of hire purchase agreements		MBB 4 Some definitions
170	Premiums derived by non-resident general insurers treated as being derived from New Zealand	194	Refund of excess tax
171	Special provisions relating to dispositions of property	195	Limits on refunds of tax in relation to Maori authorities
172	Companies that may constitute imputation group	195B	Companies required to maintain imputation credit account
173	Amalgamation not to result in deemed income or remission of liabilities	195C	Companies electing to maintain imputation credit account
174	Application of sections GC 29 to GC 31	196	Amount of dividend for imputation rules if paid in Australian currency
175	Defined terms for sections GC 29 to GC 31	197	Consolidated imputation group to maintain separate imputation credit account
176	Deferral of surplus deductions from arrangement	197B	Credits arising to imputation credit account of group
177	Sale of trading stock for inadequate consideration	198	Debits arising to imputation credit account of group
178	Subpart HC repealed	199	Credits and debits arising to policyholder credit account of company
179	Election to become Maori authority	200	Election to use credit balance as credit against policyholder base income tax liability or as credit in imputation credit account
180	Distributions by Maori authority	201	Credits and debits arising to group policyholder credit account
181	Amount distributed to member by Maori authority	202	Credits and debits arising to branch equivalent tax account of company
182	Treatment of companies and trusts that elect to apply this subpart	203	Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability
182B	No offset in calculating some income tax liabilities	204	Debits and credits arising to group branch equivalent tax account
183	Net losses may be offset against future net income	205	Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability
184	Net loss offset between group companies	206	Debits arising to dividend withholding payment account
185	Calculations of rebates producing negative amounts		
186	Rebate in respect of gifts of money		
187	Determination of net income		
188	Parental tax credit		

cl 1		Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions)	
207	Allocation rules for dividend with- holding payment credits	222	Special filing rule for employer who stops employing staff during year
208	New section MG 8B inserted	223	Application of RWT rules
	MG 8B Policyholder credit account	224	Liability to make deduction in respect of foreign withholding pay- ment dividend
	companies and dividend with- holding payment credits	225	Application of specific dividend withholding payment provisions to consolidated groups
209	Further dividend withholding pay- ment payable by company	226	Definitions
209B	Transfer of credit balance to imputa- tion credit account	227	Meaning of income tax
210	Debits arising to group dividend withholding payment account	229	Further definitions of associated persons
211	Application of specific dividend withholding provisions to consoli- dated groups	230	Schedule 7—Expenditure on farm- ing, aquacultural, and forestry improvements
212	Allocation rules for Maori authority credit account credits	231	Schedule 9—Categories of livestock for which national standard costs to be declared
213	Further tax payable for end of year debit balance or when Maori autho- rity ceases to exist	232	Schedule 21—Enactments amended
214	Section MZ 7 repealed	233	Schedule 22—Amendments to Tax Administration Act 1994
215	Accreditation requirements of PAYE intermediaries	234	Schedule 22A—Identified policy changes
216	Employer having PAYE intermedi- ary: responsibilities and status under PAYE rules and SSCWT rules	235	Schedule 23—Comparative tables of old and new provisions
217	PAYE intermediary: responsibilities and status under PAYE rules and SSCWT rules		
218	Operation of trust account		
219	Amounts of tax deductions		
220	Delivery of withholding declaration		
221	Amount of tax deductions for pay period current when tax deductions altered		

Schedule 1
Other amendments to Income Tax Act
2004

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Act 2004**.

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) **Sections 15 and 65(11)(a)(i)** are treated as coming into force on 20 May 1999.
- (3) **Section 61 (1)** is treated as coming into force on 1 April 2000, subject to **subsection (4)**.

- (4) **Subsection (3)** does not apply to an employer in relation to a period for which the employer has, before 29 March 2004, filed a fringe benefit tax return that relies on section ND 12 as that section was before the enactment of **section 61**.
- (5) **Section 131** is treated as coming into force on 10 October 2000.
- (6) **Section 65(15)** is treated as coming into force on 1 July 2002.
- (7) **Sections 22, 36B, 38, 38B, 39, 40(1) and (4), 41, 65(24), and 105** are treated as coming into force on 1 April 2003.
- (8) **Section 37** is treated as coming into force on 1 October 2003.
- (9) **(Section 140 is) Sections 4BA, 29B, 65(24BA), 71B, 89B, and 140** are treated as coming into force on 25 November 2003.
- (10) **Sections 54 to 57** are treated as coming into force on 15 January 2004.

New (unanimous)

- (10B) **Sections 14B, 14C, 18B, 18C, 23B, 65(2B), 65(15B), 65(20B), 116B, and 134B** are treated as coming into force on 1 February 2004.
- (11) **Sections 3, 4, 65(21), and 66 (and 145)** are treated as coming into force on 1 April 2004.
- (12) **Sections 24, 26 to 32, 34, 35, 53, 65(3) and (27), 92, (95) and 117** come into force on 1 October 2004.

New (unanimous)

- (12B) **Sections 125 and 130B** come into force on 1 January 2005.
- (13) **Sections 9, 69, 70(2) and (4), 91, 96, (103 ,) 115, 118, 119, (and) 143, 215 to 225, 226(3), 226(3B), 226(5B), 226(13B), 226(14), 226(16), 226(26) and 231 to 235** come into force on 1 April 2005.

Struck out (unanimous)

- (14) **Section 125** comes into force on the date that is to be appointed by the Governor-General by Order in Council under section 2(19) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003.

New (unanimous)

- (15) **Sections 147 to 214, 226(2), 226(4) to (5), 226(6) to (13), 226(13C), 226(15), 226(17) to (25), and 227 to 230** come into force on 1 October 2005.

Part 1**Annual Rates of Income Tax 2004–05****3 Rates of income tax for 2004–05 income year**

- (1) Income tax imposed by section BB 1 of the Income Tax Act 1994 must, for the 2004–05 income year, be paid at the basic rates specified in Schedule 1 of that Act.
- (2) The Taxation (Annual Rates of Income Tax 2003–04) Act 2003 is repealed.

Part 2**Amendments to Income Tax Act 1994**

New (unanimous)

4A Income Tax Act 1994

This Part amends the Income Tax Act 1994.

4 Non-residents' exempt income

- (1) In section CB 2(1)(f), “company.” is replaced by “company:” and the following is added:
- “(g) any amount derived by a *(qualifying foreign equity investor)* person from the sale or other disposition by a qualifying foreign equity investor of a share, or option to buy a share, in a company (called in this paragraph the resident company) that is resident in New Zealand, if—
- “(i) the share or option, or an option or convertible note relating to the share, is purchased *(by the qualifying foreign equity investor)* on a day that is 12 months or more before the day of the sale or other disposition; and

New (unanimous)

“(ib) the person who purchases the share or option, or the option or convertible note relating to the share, and sells or disposes of the share or option is a qualifying foreign equity investor from the time of the purchase to the time of the sale or other disposition; and

Struck out (unanimous)

“(ii) the shares of the resident company are quoted on the official list of a recognised exchange at no time in a period that—
“(A) begins within the 12-month period beginning on the day on which the share is purchased;
“(B) ends on the day of the sale or disposition or on the day that is 12 months after the day on which the period begins, whichever is the earlier; and

New (unanimous)

“(ii) the shares of the resident company are quoted on no official list of a recognised exchange—
“(A) at the time of the purchase referred to in **subparagraph (i)**:
“(B) at some time in the 12-month period that begins from the time of the purchase referred to in **subparagraph (i)**; and

“(iii) throughout the period referred to in **subparagraph (ib)**, the resident company does not have a main activity that is one or more of—

- “(A) *(property)* land development:
- “(B) land ownership:
- “(C) mining:
- “(D) provision of financial services:
- “(E) insurance:
- “(F) construction of public infrastructure assets:
- “(G) acquisition of public infrastructure assets:
- “(H) investing with a main aim of deriving, from the investment, gross income in the form of interest, dividends, *(royalties)* or lease payments that are not royalties:
- “(h) any amount derived by a *(qualifying foreign equity investor)* person from the sale or other disposition by a qualifying foreign equity investor of a share, or option to buy a share, in a company (called in this paragraph the resident company) that is resident in New Zealand, if—
 - “(i) the share or option, or an option or convertible note relating to the share, is purchased *(by the qualifying foreign equity investor)* on a day that is 12 months or more before the day of the sale or other disposition; and

New (unanimous)

- “(ib) the person who purchases the share or option, or the option or convertible note relating to the share, and sells or disposes of the share or option is a qualifying foreign equity investor throughout the period that—
 - “(A) begins at the time of the purchase referred to in **subparagraph (i)**; and
 - “(B) ends on the day of the sale or other disposition; and

Struck out (unanimous)

- “(ii) the shares of the resident company are quoted on the official list of a recognised exchange at no time in a period that—

Struck out (unanimous)

“(A) begins within the 12-month period beginning on the day on which the share is purchased:

“(B) ends on the day of the sale or disposition or on the day that is 12 months after the day on which the period begins, whichever is the earlier; and

New (unanimous)

“(ii) the shares of the resident company are quoted on no official list of a recognised exchange at some time in the 12-month period that begins from the time of the purchase referred to in **subparagraph (i)**; and

“(iii) throughout the period referred to in **subparagraph (ib)**, the main activity of the resident company is providing capital in the form of debt or equity funding to other companies *(, each of which is resident in New Zealand and in the same wholly-owned group of companies as the resident company)*; and

Struck out (unanimous)

“(iv) each member, other than the resident company, of the wholly-owned group referred to in **subparagraph (iii)** satisfies **paragraph (g)(ii) and (iii)**.

New (unanimous)

“(iv) each other company that is referred to in **subparagraph (iii)** and is resident in New Zealand—

“(A) does not have, as a main activity, an activity that is referred to in **paragraph (g)(iii)(A) to (C) and (E) to (G)**; and

New (unanimous)

- “(B) does not have, as a main activity, an activity that is referred to in **paragraph (g)(iii)(D) or (H)** and is not the provision of capital to other companies; and
- “(C) does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in **paragraph (g)(iii)(A) to (C) and (E) to (G)**; and
- “(D) does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in **paragraph (g)(iii)(D) or (H)** and is not the provision of capital to other companies; and
- “(v) each other company that is referred to in **subparagraph (iii)** and is not resident in New Zealand does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in **paragraph (g)(iii)(A) to (H)**; and
- “(vi) for each other company that is referred to in **subparagraph (iii)**, there is a time in the period referred to in **subparagraph (ib)** at which—
 - “(A) the shares of the other company are quoted on no official list of a recognised exchange; and
 - “(B) the shares of the resident company are quoted on no official list of a recognised exchange.”

- (2) In section CB 2(4), after the definition of **pleasure craft**, the following is added:

“**qualifying foreign equity investor** means a person who is not resident in New Zealand and who is one or more of the following—

- “(a) a person who—

“(i) is resident in a territory (*, under a double tax agreement between New Zealand and the territory,*) that is approved for the purpose of this (*paragraph*) definition by the Governor-General by an Order in Council; and

New (unanimous)

“(ib) is not part of an unincorporated body that satisfies **paragraph (b)(i) to (iii)**; and

“(ic) is not a legal entity that satisfies **paragraph (c)(i) to (iii)**; and

“(ii) is treated by the taxation laws of the territory referred to in **subparagraph (i)**, or by the taxation laws of a part of the territory, as the person who (*, other than as a body that handles income of an other person or persons,*) derives the proceeds from a sale or other disposition of shares or options that are held by the person; and

Struck out (unanimous)

“(iii) would in no circumstances be entitled, under the laws of the territory, to receive from the Government of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for a payment of the tax that would, in the absence of **section CB 2(1)(g) and (h)**, be imposed by this Act on an amount derived by the person from a sale or other disposition of shares to which **section CB 2(1)(g) or (h)** would apply:

New (unanimous)

“(iii) is not a person who—

“(A) would, under this Act and in the absence of **section CB 2(1)(g) and (h)**, be subject to tax on an amount derived from a sale or other

New (unanimous)

disposition of shares or options to which **section CB 2(1)(g) or (h)** would apply; and

- “(B) would in any circumstances, under the taxation laws of the territory referred to in **subparagraph (i)** or under the taxation laws of part of the territory, be entitled to receive from the government of the territory or of the part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for a payment of the tax referred to in **sub-subparagraph (A)**:

- “(b) a person who is a non-resident and is part of an unincorporated body *(that consists of persons (called **partners**) and)* that—

- “(i) is established under the laws of a territory that is approved for the purpose of this *(paragraph and **paragraph (c)**)definition* by the Governor-General by an Order in Council or under the laws of a part of such a territory; and

New (unanimous)

- “(ib) consists of persons who include the person (called in this paragraph **partners**); and

- “(ic) is treated by the taxation laws of the territory, or by the taxation laws of a part of the territory, as not being subject to a tax on income other than as a body that handles income of the partners; and

- “(ii) has at least 1 partner (called in this paragraph a **general partner**) who is liable for all debts of the unincorporated body and who has significant involvement in, and control of, the business activities of the unincorporated body; and

- “(iii) has at least 1 partner (called in this paragraph a **special partner**) whose liability for debts of the unincorporated body is limited and who has

limited involvement in, and control of, the business activities of the unincorporated body; and

“(iv) ~~(has no) does not have a~~ general partner who is not resident ~~(of) in~~ a territory ~~(, under a double tax agreement between New Zealand and the territory,)~~ that is approved for the purpose of this ~~(paragraph and paragraph (c)) definition~~ by the Governor-General by an Order in Council; and

“(v) ~~(has no) does not have a~~ partner who—

“(A) has, when treated as holding the interests of any person who is associated with the partner under section OD 8(~~(3)~~1) ~~(of the Income Tax Act 1994)~~, an interest of 10% or more in the capital of the unincorporated body; and

“(B) is resident ~~(of) in~~ a territory that is not approved for the purpose of ~~(paragraph (a)) this definition~~ by the Governor-General by an Order in Council; and

“(vi) ~~(has no) does not have a~~ partner who, when treated as holding the interests of any person who is associated with the partner under section OD 8(1), has an interest of 10% or more in the capital of the unincorporated body and—

Struck out (unanimous)

“(A) has, when treated as holding the interests of any person who is associated with the partner under section OD 8(3) of the Income Tax Act 1994 , an interest of 10% or more in the capital of the unincorporated body; and

New (unanimous)

“(A) would, under this Act and in the absence of **section CB 2(1)(g) and (h)**, be subject to tax on an amount derived from a sale or other

New (unanimous)

disposition of shares to which **section CB 2(1)(g) or (h)** would apply; and

- “(B) would in any circumstances, under the taxation laws of the territory in which the partner is resident or under the taxation laws of part of the territory, be entitled to receive from the government of the territory or of the part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for a payment of the tax referred to in **subsubparagraph (A)**:

Struck out (unanimous)

- “(B) would in any circumstances be entitled, under the laws of the territory in which the partner is resident, to receive from the Government of the territory a benefit in the form of a payment, credit, rebate or other compensation for a payment of the tax that would, in the absence of **section CB 2(1)(g) and (h)**, be imposed by this Act on an amount derived by the unincorporated body or the partner from a sale or other disposition of shares to which **section CB 2(1)(g) or (h)** would apply.

- “(vii) is treated by the laws of the territory as not being subject to a tax on income other than as a body that handles income of the partners; and

- “(viii) has a status under the laws of the territory that resembles the status of a special partnership under the laws of New Zealand:

- “(c) a person who—

- “(i) is established as a legal entity under the laws of a territory that is approved for the purpose of this *(paragraph and **paragraph (b)**) definition* by the

- Governor-General by an Order in Council or
under the laws of a part of such a territory; and
- “(ii) has persons (called in this paragraph **members**)
who hold interests in the capital of the legal entity
and who are entitled to shares of the income of
the legal entity *(that are in proportion to those
interests)*; and
- “(iii) is treated by the taxation laws of the territory
referred to in **subparagraph (i) (I)**, or by the taxation
laws of the part of the territory, as not being
subject to a tax on income other than as a body
that handles income of the members; and

Struck out (unanimous)

- “(iv) is resident in—
- “(A) the territory under whose laws the person is
established; or
- “(B) another territory that is approved, for the
purpose of this paragraph and **paragraph (b)** ,
by the Governor-General by an Order in
Council, and has laws that treat the legal
entity as having for the purpose of taxation
the status that is described in **subparagraph**
(iii); and

New (unanimous)

- “(iv) is resident in no territory that has laws that treat
the legal entity as being subject to a tax on
income other than as a body that handles income
of the members; and
- “(v) **(has no)** does not have a member who—
- “(A) has, when treated as holding the interests
of any person who is associated with the
member under section OD 8(~~13~~1) *(of the
Income Tax Act 1994)*, an interest of 10%
or more in the capital of the legal entity;
and

“(B) is not (a) resident (of) in a territory that is approved for the purpose of **(paragraph (a))** this definition by the Governor-General by an Order in Council; and

New (unanimous)

“(vi) does not have a member who, when treated as holding the interests of any person who is associated with the member under section OD 8(1), has an interest of 10% or more in the capital of the legal entity and who—

“(A) would be entitled to receive an amount derived from a sale or other disposition, to which **section CB 2(1)(g) or (h)** would apply, of shares or options held by the legal entity; and

“(B) would receive an amount referred to in **sub-subparagraph (A)** that, in the absence of **section CB 2(1)(g) and (h)**, would have been reduced by a tax imposed by this Act on the amount or on the proceeds of the sale or other disposition in the hands of the legal entity; and

“(C) would in any circumstances, under the taxation laws of the territory in which the member is resident or under the taxation laws of part of the territory, be entitled to receive from the government of the territory or of the part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for the reduction referred to in **subsub-paragraph (B)**.”

Struck out (unanimous)

“(vi) has no member who—

“(A) has, when treated as holding the interests of any person who is associated with the

Struck out (unanimous)

member under section OD 8(3) of the
Income Tax Act 1994 , an interest of 10%
or more in the capital of the legal entity;
and

“(B) would in any circumstances be entitled,
under the laws of the territory in which the
member is resident, to receive from the
Government of the territory a payment,
credit, rebate or other compensation for a
payment of the tax that would, in the
absence of **section CB 2(1)(g) and (h)**, be
imposed by this Act on an amount derived
by the legal entity or the member from a
sale or other disposition of shares to which
section CB 2(1)(g) or (h) would apply.”

- (3) After section CB 2(5), the following is added:
- “(6) For the purpose of **subsection (1)(g) and (h)** and the definition of **qualifying foreign equity investor** in **subsection (4)**, whether a person is resident in a territory other than New Zealand is determined—
- “(a) *(if there is) in the presence of* a double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, under the double tax agreement:
- “(b) *(if there is no) in the absence of a* double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, under the laws of the territory.
- “(7) The Governor-General may, from time to time by Order in Council—
- “(a) approve a territory for the purpose of **(paragraph (a) of)** the definition of **qualifying foreign equity investor** in **subsection (4)**:

Struck out (unanimous)

“(b) approve a territory for the purpose of **paragraphs (b) and (c)** of the definition of **qualifying foreign equity investor** in **subsection (4)**:

“(c) withdraw the approval of a territory for the purpose of **paragraph (a)** of the definition of **qualifying foreign equity investor** in **subsection (4)**:

“(d) withdraw the approval of a territory for the purpose *(of paragraphs (b) and (c))* of the definition of **qualifying foreign equity investor** in **subsection (4)**.”

New (unanimous)**4B Other exempt income**

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

“(gb) any amount derived from providing a standard-cost household service if—

“(i) the amount does not exceed the total amount of the costs that, under a determination of the Commissioner under section 91AA of the Tax Administration Act 1994, may be treated as being incurred by the taxpayer in deriving the amount; and

“(ii) the taxpayer, in calculating the taxpayer’s income tax liability for the income year, elects to include in the taxpayer’s annual allowable deductions no amount that, in the absence of this paragraph, would be an allowable deduction incurred by the taxpayer in providing the standard-cost household service:”.

(2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

4C Meaning of term “dividends”

(1) Section CF 2(1)(i) is replaced by the following:

“(i) all distributions by a unit trust to a unit holder and all other payments to and transactions with a unit holder, in

New (unanimous)

relation to the unit holder's interest in the unit trust, that—

“(i) would be dividends if made to or with a shareholder in relation to shares in a company; and

“(ii) are not the transfer to the unit holder of money or property referred to in **paragraph (ib)**:

“(ib) money or property, of a unit trust that is a foreign company, in which a beneficial interest vests absolutely in a unit holder:”.

(2) After section CF 2(6)(a), the following is inserted:

“(ab) a taxable bonus issue, within the meaning of **paragraph (c)** of the definition of that term, shall be the value of the money or property in which a beneficial interest would have vested in the unit holder if the taxable bonus issue had not been made; and”.

(3) **Subsections (1) and (2)** apply for beneficial interests that vest on or after the day on which this Act receives the Royal assent.

4D Exclusions from term “dividends”

(1) Section CF 3(2)(c)(ii) is replaced by the following:

“(ii) the available subscribed capital per share will be deemed to be equal to—

“(A) the value of the money or property in which a beneficial interest would have vested in the shareholder had the share not been issued, if the share is a taxable bonus issue within the meaning of **paragraph (c)** of the definition of that term; or

“(B) the amount paid to the trust in respect of the issue of the share, if **subsubparagraph (A)** does not apply.”

(2) **Subsection (1)** applies for shares that are issued on or after the day on which this Act receives the Royal assent.

New (unanimous)**4E Election whether bonus issue taxable**

In the words before section CF 8(a), “or a distribution that satisfies **paragraph (c)** of the definition of **taxable bonus issue**” is inserted after “bonus issue in lieu”.

5 Branch equivalent income calculation

- (1) In section CG 11(7), “, **DO 4B, DO 4C, DO 4D,**” is inserted after “DO 4”.
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

6 Cases where assessable income calculation cannot be undertaken

In the heading to section CG 25, “assessable income” is replaced by “foreign attribution”.

Struck out (unanimous)

- (2) **Subsection (1)** comes into force on the date on which this Act receives the Royal assent.

7 Certain withdrawal amounts are gross income of superannuation fund

- (1) In section CL 4(2)—
 - (a) the formula is replaced by the following:

$$\frac{0.05}{\text{tax rate}} \times ((\text{withdrawn}) \text{ withdrawal} - \text{other contributions})$$
 - (b) after “where—”, the following is inserted:

“**withdrawal** is the amount withdrawn

“**other contributions** is the part, if any, of the amount withdrawn that the trustee of the superannuation fund establishes is not employer contributions to superannuation savings”.
- (2) Section CL 4(6) is omitted.
- (3) **Subsections (1) and (2)** apply to a withdrawal from a superannuation fund that is made on or after 14 September 2000.

8 Exception for withdrawal when member ceases employment

Section CL 8(2) is replaced by the following:

New (unanimous)

- “(2) Subsection (3) applies for a withdrawal if, when the member ceases employment with the employer—
- “(a) the member has been in employment throughout the period (called in this subsection and **subsection (2B)** the **minimum employment period**) that—
 - “(i) begins on the 1st day of the 2nd-to-last of the income years that end on or before the day on which the member ceases employment; and
 - “(ii) ends on the day on which the member ceases employment; and
 - “(b) the employer or another employer has made, on behalf of the member, specified superannuation contributions that—
 - “(i) have been made to the superannuation fund or to another superannuation fund that has transferred to the superannuation fund, whether directly or indirectly, the funds relating to the member; and
 - “(ii) have not been part of a withdrawal, other than as a result of a transfer between superannuation funds that is referred to in **subparagraph (i)**; and
 - “(c) the specified superannuation contributions that are part of the withdrawal—
 - “(i) satisfy **subsection (2B)**:
 - “(ii) do not include employer contributions to superannuation savings that exceed the amount found by multiplying \$5,000 by the number of income years for which the specified superannuation contributions were made on behalf of the member.
- “(2B) Specified superannuation contributions that are made on behalf of a member satisfy this subsection if—
- “(a) the contributions have been made for all or part of the minimum employment period and—
 - “(i) have not, for each of the complete income years in the minimum employment period, been 150%

New (unanimous)

- or more of the specified superannuation contributions made on behalf of the member in the previous income year; and
- “(ii) do not, for the income year in which the member ceases employment, have an annualised value that is 150% or more of the specified superannuation contributions made on behalf of the member in the previous income year:
- “(b) the contributions have been made for all or part of the minimum employment period and the Commissioner considers that the contributions made by each employer are—
- “(i) consistent in size and frequency with the specified superannuation contributions made by the employer on behalf of other employees in comparable positions; and
- “(ii) consistent in size and frequency during the period or periods to which the specified superannuation contributions relate.”

Struck out (unanimous)

- “(2) Subsection (3) applies if, when the member ceases employment with the employer—
- “(a) the employer or another employer has made, on behalf of the member, specified superannuation contributions that—
- “(i) have been made throughout the period that includes the last 2 complete income years before the member ceases employment and ends when the member ceases employment; and—
- “(ii) have been made to the superannuation fund or to a superannuation fund that has transferred, whether directly or indirectly, the funds relating to its members to the superannuation fund; and
- “(iii) have not been part of a withdrawal, other than as a result of the application of section CL 13 to a

Struck out (unanimous)

transfer between superannuation funds that is referred to in **subparagraph (ii)**; and

- “(iv) have not, in each of the last 2 complete income years in the period, been 150% or more of the specified superannuation contributions made on behalf of the member in the previous income year; and
- “(v) do not, if made in the income year in which the member ceases employment, have an annualised value that is 150% or more of the specified superannuation contributions made on behalf of the member in the previous income year:
- “(b) the employer or another employer has made, on behalf of the member, employer specified superannuation contributions that—
 - “(i) relate to part, but not all, of the period that includes the last 3 complete income years before the member ceases employment and ends when the member ceases employment; and
 - “(ii) have been made to the superannuation fund or to a superannuation fund that has transferred, whether directly or indirectly, the funds relating to its members to the superannuation fund; and
 - “(iii) have not been part of a withdrawal, other than as a result of the application of section CL 13 to a transfer between superannuation funds that is referred to in **subparagraph (ii)**; and
 - “(iv) the Commissioner considers to be consistent in size and frequency with the employer specified superannuation contributions for other employees in comparable positions; and
 - “(v) the Commissioner considers to be consistent in size and frequency during the period or periods to which the employer specified contributions relate.”

9 Expenditure relating to determination of liability to tax

In section DJ 5(4), in paragraph (b)(i) of the definition of **goods and services tax payable**, “section 27(6)” is replaced by “section (51A)51B”.

10 Patent expenses

(1) Before section DJ 6(1), the following is inserted:

“(1A) A taxpayer who applies for the grant of a patent and is refused the grant or withdraws the application is allowed, in the income year of the refusal or withdrawal, a deduction for expenditure—

“(a) that the taxpayer incurs in relation to the application; and

“(b) that would have been part of the cost of fixed life intangible property if the application had been granted; and

“(c) for which the taxpayer is not allowed a deduction under another provision.”

(2) **Subsection (1)** applies for applications of a taxpayer that are refused or withdrawn in the 2004–05 and subsequent income years.

New (unanimous)**10B New section DJ 11B inserted**

After section DJ 11, the following is inserted:

“DJ 11B **Expenditure incurred by company in respect of dividend from foreign company**

Despite section BD 2(2)(b), a company that incurs expenditure in deriving a dividend that is exempt income of the company under section CB 10(1) is allowed a deduction of—

“(a) the amount of expenditure, if the company is not a conduit tax relief company:

“(b) the amount calculated using the following formula if the company is a conduit tax relief company:

$$a \times (1 - b)$$

where—

New (unanimous)

- | | |
|--|---|
| <ul style="list-style-type: none"> a b | <p>is the amount of the expenditure incurred by the company in deriving the dividend</p> <p>is the fraction of the company's shareholders that are not resident in New Zealand, as calculated under section NH 7(2) and (4)."</p> |
|--|---|

11 New section DJ 14B inserted

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

“DJ 14B Expenditure on unsuccessful application for resource consent

A taxpayer who applies for the grant of a resource consent under the Resource Management Act 1991 and is refused the grant or withdraws the application is allowed, in the income year of the refusal or withdrawal, a deduction for expenditure—

- “(a) that the taxpayer incurs in relation to the application; and
- “(b) that would have been part of the cost of *(fixed life intangible)* a resource consent that is depreciable property if the application had been granted; and
- “(c) for which the taxpayer is not allowed a deduction under another provision.”

- (2) **Subsection (1)** applies for applications of a taxpayer that are refused or withdrawn in the 2004–05 and subsequent income years.

12 Expenditure on land improvements used for farming or agriculture

- (1) In section DO 4—

- (a) in subsection (1), “Subject to **sections DO 4B, DO 4C and DO 4D,**” is inserted before “Any taxpayer”;
- (b) in subsection (2), “Subject to **sections DO 4B, DO 4C and DO 4D,**” is inserted before “Any taxpayer”;
- (c) in subsection (4), “vines or trees” is replaced by “non-listed horticultural plants”.

- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

13 New sections DO 4B to DO 4D inserted

(1) After section DO 4, the following are inserted:

“DO 4B Accounting for expenditure on listed horticultural plants under sections DO 4C and DO 4D

“(1) In this section and **sections DO 4C and DO 4D**—

“**planting** for a taxpayer and an income year means 1 or more listed horticultural plants that are involved in the business of the taxpayer during the income year and for which the taxpayer must account under **sections DO 4C and DO 4D**, for the income year, separately from *(any)* other listed horticultural plants, *if any*, that are involved in the business of the taxpayer

“**plot** means the land occupied by the listed horticultural plants in a planting

“**replaced area fraction** for a planting and an income year means the amount *(given by the following)* calculated using the formula (:)—

$$\frac{a}{b} \times 100\%$$

where—

a is the area, at the end of the income year, of the part of the plot on which listed horticultural plants in the planting are planted or regrafted during the income year as replacement plants

b is the total area, at the end of the income year, of the plot.

“(2) Subject to **subsection (3)**, (A) a taxpayer to whom **section DO 4C** applies and who has had (a) an allowable deduction under **section DO 4D** for either or both of the 2 income years that immediately precede an income year must, for the income year and subsequent income years, account separately under **sections DO 4C and DO 4D** for the listed horticultural plants that—

“(a) the taxpayer acquires in the income year; and

“(b) benefit the business of the taxpayer in the income year; and

“(c) are not replacement plants.

“(3) A taxpayer to whom **section DO 4C** applies and who has had no allowable deduction under **section DO 4D** for listed horticultural plants for both of the 2 income years that immediately precede an income year *(and who would, but for this subsection, be*

required by **subsection (2)** to account under **sections DO 4C and DO 4D** for the listed horticultural plants as 2 or more plantings for the income year) may account under (those sections) **sections DO 4C and DO 4D** for (all of) the listed horticultural plants as 1 planting for the income year and subsequent income years.

“DO 4C Expenditure on land—planting of listed horticultural plants

- “(1) This section applies (if) to a taxpayer if—
- “(a) the taxpayer carries on a farming or agricultural business (including a horticultural business) on land in New Zealand; and
 - “(b) (develops) the land is developed by the planting on the land of listed horticultural plants.
- “(2) Subject to **subsection (3)**, in an income year in which the (planting) development of the land benefits the business, the taxpayer (is allowed) has an allowable deduction relating to expenditure incurred by the taxpayer, or by another person, in the development of the land.

Struck out (unanimous)

- “(a) if the taxpayer owns the land, a deduction relating to expenditure incurred by the taxpayer, or by another person, in developing the land:
- “(b) if the taxpayer does not own the land, a deduction relating to expenditure incurred by the taxpayer in developing the land.

- “(3) The taxpayer (is not allowed a) does not have an allowable deduction under **subsection (2)** in an income year in which—
- “(a) if the taxpayer owns the land, the taxpayer disposes of the land; or
 - “(b) if the taxpayer does not own the land, the taxpayer ceases carrying on the business on the land.
- “(4) Subject to **subsections (5) and (6)**, the amount of the allowable deduction is calculated using the (following) formula (:)—

$$1.2 \times a \times b$$

where—

- a is the percentage rate determined for the type of listed horticultural plant by the Commissioner under **section 91AAB** of the Tax Administration Act 1994
 - b is the diminished value of the expenditure.
- “(5) If a listed horticultural plant of the taxpayer ceases in an income year to exist or to be used in deriving gross income and the taxpayer has no allowable deduction under **section DO 4D** for the income year for expenditure incurred in replacing the listed horticultural plant, the taxpayer has (a) an allowable deduction—
- “(a) of the amount of the diminished value of the expenditure on the listed horticultural plant at the time that the listed horticultural plant ceases to exist or to be used in deriving income:
 - “(b) for the income year.

Struck out (unanimous)

- “(6) If a listed horticultural plant in a planting of the taxpayer ceases in an income year to exist or to be used in deriving gross income and the taxpayer has a deduction under **section DO 4D** for the income year for all or some of the expenditure incurred in replacing the listed horticultural plant, the diminished value, immediately before the replacement, of the expenditure on the listed horticultural plant is added, in the way chosen by the taxpayer, to the diminished values, at the end of the income year, of the expenditure on listed horticultural plants that are in the planting at the end of the income year.”

New (unanimous)

- “(6) A taxpayer who has an allowable deduction under **section DO 4D** for an income year for expenditure incurred on a replacement plant in a planting may, by taking a tax position in a tax return for the income year—
- “(a) elect to increase the diminished value, at the end of the income year, of the expenditure on listed horticultural plants that are in the planting at the end of the income year by the diminished value, immediately before the

New (unanimous)

- replacement, of the expenditure on a listed horticultural plant that is replaced; and
- “(b) choose a method of making the increase referred to in **paragraph (a).**”

“DO 4D Expenditure on land—horticultural replacement planting

- “(1) This section applies to a taxpayer who carries on a horticultural business on land in New Zealand and who, in an income year (called the **current income year**)—
- “(a) plants, or causes to be planted, on the land a listed horticultural plant as a replacement plant;
- “(b) regrafts, or causes to be regrafted, a listed horticultural plant on the land as a replacement plant.
- “(2) The taxpayer *(is allowed a)* has an allowable deduction for the current income year, of the amount given by one of **subsections (3) and (4)** for the expenditure incurred in the current income year by the taxpayer in replacing a listed horticultural plant if, in the current income year—
- “(a) the replacement plant benefits the business; and
- “(b) the taxpayer does not dispose of the land on which the listed horticultural plant is cultivated; and
- “(c) the taxpayer elects, by taking a tax position in a tax return for the current year, that this section apply to the expenditure.
- “(3) For a taxpayer who has had no allowable deduction under this section for either or both of the 2 income years that immediately precede the current income year, the amount of the allowable deduction under **subsection (2)** for expenditure incurred in replacing a listed horticultural plant in a planting is *(given by the following)* calculated using the formula (:)—

$$c \times \frac{7.5\%}{d}$$

where—

c is the amount of the expenditure incurred by the taxpayer

d is the greater of 7.5% and the replaced area fraction for the planting for the current year.

“(4) For a taxpayer who has had (a) an allowable deduction under this section for a planting for both of the 2 income years that immediately precede the current income year, the amount of the allowable deduction under **subsection (2)** for expenditure incurred in replacing a listed horticultural plant in the planting is the smaller of—

“(a) the amount that is *(given by the following)* calculated using the formula (:)—

$$c \times \frac{7.5\%}{d}$$

where—

c is the amount of the expenditure incurred by the taxpayer

d is the greater of 7.5% and the replaced area fraction for the planting for the current year:

“(b) the amount *(given by the following)* that is calculated using the formula:

$$c \times \frac{15\% - f - g}{e}$$

where—

c is the amount of the expenditure incurred by the taxpayer

e is the replaced area fraction for the planting for the current year

f is the smaller of 7.5% and the replaced area fraction for the planting for the earlier of the 2 income years that immediately precede the current year

g is the smaller of 7.5% and the replaced area fraction for the planting for the later of the 2 income years that immediately precede the current year.”

(2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

14 Amalgamated company entitled to deductions for farming, agriculture, and aquaculture expenditure

- (1) In section DO 8(c), “or section DO 5” is replaced by “, **DO 4C, DO 4D** or DO 5”.
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

New (unanimous)

14B Accrual expenditure

- (1) Section EF 1(5)(a) is replaced by the following:
 - “(a) where the expenditure relates to the purchase of goods, the amount of expenditure incurred on goods that—
 - “(i) are not used in deriving gross income; and
 - “(ii) are not destroyed or rendered useless for the purpose of deriving gross income.”
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

14C Disposition of depreciable property

- (1) Section EG 19(3) is replaced by the following:
 - “(3) Subject to subsection (4), a taxpayer who in an income year disposes of depreciable property for a consideration that is less than the adjusted tax value of the property at the time of disposition is allowed for the income year a deduction that is equal to the amount by which the adjusted tax value of the property on the date of disposition exceeds the consideration derived by the taxpayer if the depreciable property—
 - “(a) is not a building; or
 - “(b) is a building that is destroyed or rendered useless for the purpose of deriving gross income as a result of an event that is a qualifying event under **paragraph (a) or (b)** of the definition of that term.”
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

15 Deduction to lessee in non-specified lease

- (1) In section EO 2(1), “or a finance lease” is inserted after “specified lease”.

- (2) In section EO 2(2), “or a finance lease” is inserted after “specified lease”.

16 Application of subpart

Struck out (unanimous)

- (1) Section ES 1(1)(b)(i)(B) is replaced by the following:
- “(B) net losses of a loss attributing qualifying company, to the extent that shareholders with effective interests in the company are deemed under section HG 16 to incur amounts of loss that correspond to the net losses; and”.

New (unanimous)

- (1) In section ES 1(1)(b)—
- (a) in the words before subparagraph (i)(A), “or losses” is omitted;
- (b) subparagraph (i)(B) is replaced by the following:
- “(B) net losses of a loss attributing qualifying company, to the extent that shareholders with effective interests in the company are deemed under section HG 16 to have allowable deductions that correspond to the net losses; and”;
- (c) in subparagraph (ii), “and losses” is omitted.
- (2) In section ES 1(1)(e)(i), “date:” is replaced by “date; and”.
- (3) In section ES 1(1)(e)(ii)(F), “section CH 2.” is replaced by “section CH 2:” and the following is added:
- “(G) shares in a foreign company, if the proceeds of a disposition of the shares would not be gross income of the holder other than under the FIF rules.”

New (unanimous)

- (3B) In section ES 1(2), “gross income, allowable deductions and losses” is replaced by “gross income and allowable deductions”.
- (3C) In section ES 1(3), “gross income, allowable deductions and losses” is replaced by “gross income and allowable deductions”.
- (4) **Subsections (1) to (3C)** apply for the 2004–05 and subsequent income years subject to **subsection (5)**.
- (5) **Subsections (1) to (3C)** do not apply to a participant for an arrangement that the participant enters before the 2004–05 income year unless—
- (a) at the time of entering the arrangement, the participant could reasonably expect that 10 or more persons would acquire an interest in the arrangement; and
 - (b) 70% or more of the allowable deductions of the participant from the arrangement for the income year, calculated on the same basis as for section ES 1(1)(b)(i) of the Income Tax Act 1994 as amended by **subsection (1)**, arise from an interest of the participant in—
 - (i) fixed life intangible property:
 - (ii) software.

17 Defined terms for subpart

New (unanimous)

- (1A) In section ES 2(3)(c), in the words before subparagraph (i), “a purpose or effect of achieving” is omitted.
- (1) Section ES 2(3)(d) is replaced by the following:
- “(d) involves money that is provided by—
 - “(i) a lender who is not an associated person of the borrower under a provision of section OD 7 or OD 8(3) and who does not provide the money on *(arms-length)* arm’s-length terms and who—
 - “(A) is not a person who regularly provides money to persons on arm’s-length terms

under arrangements that do not satisfy paragraphs (a) to (c):

“(B) is not resident in New Zealand under section OE 1 or OE 2 and does not carry on business in New Zealand through a fixed establishment in New Zealand; or

“(ii) a lender who is an associated person of the borrower under a provision of section OD 7 or OD 8(3) and who obtains the money under an arrangement that satisfies paragraphs (a) to (c).”

- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years subject to **subsection (3)**.
- (3) **Subsection (1)** does not apply to a participant for an arrangement that the participant enters before the 2004–05 income year unless—
 - (a) at the time of entering the arrangement, the participant could reasonably expect that 10 or more persons would acquire an interest in the arrangement; and
 - (b) 70% or more of the allowable deductions of the participant from the arrangement for the income year, calculated on the same basis as for section ES 1(1)(b)(i) of the Income Tax Act 1994 as amended by **section 16(1)**, arise from an interest of the participant in—
 - (i) fixed life intangible property;
 - (ii) software.

18 Deferral of surplus allowable deductions from arrangement

- (1) In section ES 3(1)—
 - (a) paragraph (a)(i) is replaced by the following:
 - “(i) allowable deductions (*and losses*), including any allowable deduction (*incurred*) under subsection (3) (*and any loss incurred under*) or section HG 16; and”:

New (unanimous)

(ab) in paragraph (a)(ii), “and losses” is omitted:

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

“(i) allowable deductions (*and losses*), including any allowable deduction (*incurred*) under subsection (3) (*and any loss incurred under*) or section HG 16; and”;

New (unanimous)

(bb) in paragraph (b)(ii), “and losses” is omitted.

(2) In section ES 3(2)—

(a) the definitions of items **a** and **b** are replaced by the following:

“a is the amount for the income year by which the allowable deductions (*and losses*), including any allowable deduction (*incurred*) under subsection (3) (*and any loss incurred under*) or section HG 16, of the participant from the arrangement exceed the gross income, other than under this section, of the participant from the arrangement

b is the total amount for the income year by which the allowable deductions (*and losses*), including any allowable deduction (*incurred*) under subsection (3) (*and any loss incurred under*) or section HG 16, from the arrangement exceed the gross income, other than under this section, from the arrangement for the group that consists of—

(a) the participant; and

(b) the affected associates of the participant who are not a loss attributing qualifying company and who each have for the income year allowable deductions (*and losses*), including any allowable deduction (*incurred*) under subsection (3) (*and any loss incurred under*) or section HG 16, from the arrangement that in total exceed the gross income, other than under this section, from the arrangement”;

(b) paragraph (a) of the definition of item (**“c”**) c is replaced by the following:

- “(a) the total amount for the income year by which the allowable deductions (*and losses*), including any allowable deduction (*incurred*) under subsection (3) (*and any loss incurred under*) or section HG 16, from the arrangement exceed the gross income, other than under this section, from the arrangement for the group that consists of—
- (i) the participant; and
 - (ii) the affected associates of the participant who are not a loss attributing qualifying company that has incurred a net loss from the arrangement for the income year; and”.
- (3) **Subsections (1) and (2)** apply for the 2004–05 and subsequent income years subject to **subsection (4)**.
- (4) **Subsections (1) and (2)** do not apply to a participant for an arrangement that the participant enters before the 2004–05 income year unless—
- (a) at the time of entering the arrangement, the participant could reasonably expect that 10 or more persons would acquire an interest in the arrangement; and
 - (b) 70% or more of the allowable deductions of the participant from the arrangement for the income year, calculated on the same basis as for section ES 1(1)(b)(i) of the Income Tax Act 1994 as amended by **section 16(1)**, arise from an interest of the participant in—
 - (i) fixed life intangible property;
 - (ii) software.

New (unanimous)

18B Section EZ 9 replaced

- (1) Section EZ 9 is replaced by the following:

“EZ 9 New start grants for farmers

- “(1) This section applies to a taxpayer if—

- “(a) the taxpayer carries on a business of—
 - “(i) animal husbandry;
 - “(ii) poultry-keeping;
 - “(iii) beekeeping;

- “(iv) breeding horses other than bloodstock:
 - “(v) horticulture:
 - “(vi) cropping; and
 - “(b) the taxpayer is paid a new start grant in respect of the business for an event that is a qualifying event; and
 - “(c) the taxpayer in carrying on the business incurs, before the declaration of the state of emergency that relates to the qualifying event, a liability—
 - “(i) to make a payment under a financial arrangement:
 - “(ii) for expenditure or loss that is, before the date that is 3 months after the expiration of the state of emergency, taken into account in calculating the taxpayer’s taxable income for an income year:
 - “(d) as a prerequisite for the payment of the new start grant and on or before 30 September 2005, the liability referred to in **paragraph (c)** is forgiven or otherwise remitted; and
 - “(e) but for this section, the amount of the remitted liability would be gross income of the taxpayer under the accrual rules or under section CE 4.
- “(2) The amount of a remitted liability referred to in **subsection (1)** is not gross income of the taxpayer to the extent that the amount cannot be set off—
 - “(a) against a loss that is incurred by the taxpayer in carrying on the business in the income year in which the liability is remitted:
 - “(b) under section IE 1, IE 2 or IF 1, against a loss that is incurred by the taxpayer in carrying on the business and is available to be set off against the taxpayer’s net income in the income year in which the liability is remitted:
 - “(c) under **subsection (3)**.
- “(3) The Commissioner may, despite sections IE 1, IE 2 and IF 1, require that an amount of a remitted liability referred to in **subsection (1)** be set off against a loss of another person if—
 - “(a) the other person and the taxpayer are associated persons; and

New (unanimous)

- “(b) the other person—
 - “(i) also carries on or has carried on the business in respect of which the new start grant is paid; or
 - “(ii) is or was the owner of an estate in fee simple or leasehold estate in land used in the business in respect of which the new start grant is paid; and
- “(c) the Commissioner is satisfied that the taxpayer has—
 - “(i) a substantial degree of control over the other person;
 - “(ii) a substantial identity of interests with the other person; and
- “(d) the loss of the other person is—
 - “(i) incurred in respect of the business or the land that is used in the business; and
 - “(ii) of a kind referred to in **subsection (2)(a) and (b)**.
- “(4) In determining the amount that is set off under **subsection (3)**, the Commissioner must have regard to the interests of the associated person that are separate from those of the taxpayer.
- “(5) The Commissioner must give to the associated person notice in writing of a determination under **subsection (3)**.”
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

18C New section EZ 9B

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

“EZ 9B Deduction for diminished value of expenditure on improvements destroyed or rendered useless by qualifying event

Subject to section DJ 1, a taxpayer is allowed for an income year a deduction that is equal to the diminished value for the income year of expenditure of a kind that is referred to in Schedule 7 if—

- “(a) the taxpayer or another person incurred the expenditure on improvements in preparing or developing a business or land that is used in a business; and
- “(b) the improvements were destroyed or rendered useless for the purpose of deriving gross income as a result of

New (unanimous)

- an event that is a qualifying event under **paragraph (a) or (b)** of the definition of that term; and
- “(c) the taxpayer would have been entitled for the income year to a deduction under section DL 2, DO 4 or DO 5 for the expenditure if the improvement had not been destroyed or rendered useless.”
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

19 Rules for lease asset during term of finance lease

- (1) In section FC 8B(2), “before or” is inserted before “on the date”.
- (2) In section FC 8B(3), “at the end of the lease term” is replaced by “by the date that the lease term ends”.
- (3) **Subsections (1) and (2)** apply for an arrangement that is entered on or after 29 March 2004.

20 Taxation of hire purchase agreements

In section FC 10(8)(a), “consideration paid to the lessee for the hire purchase agreement” is replaced by “consideration provided to the lessee under the hire purchase agreement”.

21 Special provisions relating to dispositions of property

- (1) In section FD 10(3)(b), “**DO 4C, DO 4D,**” is inserted after “DO 4,”.
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

22 Companies that may constitute imputation group

- (1) Section FDB 1(1)(e) is repealed.
- (2) After section FDB 1(2)(a), the following is inserted:
“(ab) all members of the consolidated group are or would be members of the imputation group; and”.
- (3) In section FDB 1(2)(b), the words before subparagraph (i) are replaced by “for an imputation group that contains or will contain members of more than 1 consolidated group, all *(the*

members) of the consolidated groups have been (*members*) part of a single wholly-owned group of companies throughout the period that—”.

23 Income assessable to beneficiaries

In the heading to section GC 14, “**assessable to**” is replaced by “**of**”.

New (unanimous)

23B Sale of trading stock for inadequate consideration

- (1) In the heading to section GD 1, “**Sale**” is replaced by “**Sale or other disposition**”.
- (2) Section GD 1(4) is replaced by the following:

“(4) This section does not apply in respect of any trading stock that—

 - “(a) is transferred to a person under a relationship agreement; or
 - “(b) is donated, or supplied for consideration worth less than the market value of the trading stock, to a person as a result of an event that is a qualifying event under **paragraph (a) or (b)** of the definition of that term.”
- (3) **Subsections (1) and (2)** apply for the 2003–04 and subsequent income years.

24 (*Special partnerships*) **Part HC repealed**

- (1) (*Section HC 1*) Part HC is repealed.
- (2) **Subsection (1)** applies to gross income and allowable deductions of a (*special*) partner from a special partnership for the 2004–05 and subsequent income years.

25 Gross income assessable to beneficiaries

In the heading to section HH 3, “**assessable to**” is replaced by “**of**”.

26 Election to become Maori authority

- (1) Section HI 3(3) is replaced by the following:

“(3) A person who elects to become a Maori authority becomes a Maori authority—

- “(a) on the first day of the income year in which the person gives notice of the election to the Commissioner, if **paragraph (b)** does not apply:
- “(b) on the first day of the income year immediately succeeding the income year in which the person gives notice of the election to the Commissioner, if the person nominates that date in the notice of the election.”
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

27 Distributions by Maori authority

- (1) In section HI 4(1)(e), “consideration.” is replaced by “consideration:” and the following is added:
“(f) a taxable bonus issue.”
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

28 Amount distributed to member by Maori authority

- (1) After section HI 5(3), the following is added:
“(4) A taxable bonus issue (*referred to in **section HI 4(1)(f)***) that is made by a Maori authority to a member is a taxable Maori authority distribution.”
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

29 Table HI 8—Transitional rules

- (1) In the transitional rules in Table HI 8, row 4 is replaced by the following:

4	a Maori authority	a trust that is not a Maori authority	taxable income derived by the Maori authority is treated as trustee income.
---	-------------------	---------------------------------------	---
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

New (unanimous)**29B No offset in calculating some income tax liabilities**

- (1) Section ID 1(2) is omitted.
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

30 Net losses may be offset against future net income

- (1) After section IE 1(2), the following is inserted:
“(2B) A taxpayer who is a partner in a special partnership may not under this section carry forward *(under this section)* a net loss if—
- “(a) the taxpayer has a deduction in an income year that arises from the activities of the special partnership; and
- “(b) the net loss arises from the deduction; and
- “(c) during the income year, the taxpayer derives no gross income, whether from the activities of the special partnership or otherwise.

New (unanimous)

- “(2C) A taxpayer may not carry forward under this section a net loss to the extent that the net loss is offset against a remitted amount of an associated person as determined by the Commissioner under **section EZ 9**.”

- (2) **Subsection (1)** applies to a net loss of a taxpayer for the 2004–05 and subsequent income years.

31 Net loss offset between group companies

- (1) Section IG 2(2)(a)(i) is replaced by the following:
“(i) a net loss for the year of offset that does not consist of a mining outgoing excess and is not prevented by **section IE 1(2B) or (2C)** from being carried forward under sections IE 1 and IF 1:”.
- (2) **Subsection (1)** applies to a net loss of a taxpayer for the 2004–05 and subsequent income years.

32 Rebate for gifts of money

- (1) In section KC 5(1)(cl), “Zealand.” is replaced by “Zealand:” and the following is added:
“(cm) Medicine Mondiale:
“(cn) New Zealand Jesuits in India Trust:
“(co) Operation Vanuatu Charitable Trust.”
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

New (unanimous)

32B Granting of underlying foreign tax credit

- (1) After section LF 2(2)(d), the following is inserted:
“(db) if the company, as a result of the payment of the dividend, is liable to pay no income tax in relation to an amount, or part of an amount, from which the dividend is sourced; or”.
- (2) **Subsection (1)** applies for dividends that are derived on or after the day on which this Act receives the Royal assent.

33 New Part MBC inserted

- (1) After Part MBB, the following is inserted:
“Subpart BC— (*Early payment rebate*) Early-payment discount of income tax
“MBC 1 **Purpose**
“(1) The purpose of this subpart is to encourage, by means of a (*rebate*) discount of income tax, payments of amounts as income tax by (*small business*) small-business taxpayers in the income year that precedes the income year in which the taxpayers are first required to pay provisional tax.
“(2) In this subpart—
“(*early payment rebate*) early-payment discount means a (*rebate*) discount of income tax under this subpart
“(*small business*) small-business taxpayer means a taxpayer who—
“(a) conducts a business on the taxpayer’s own account, acting alone or as a partner in a partnership; and

- “(b) does not use a company or a trust in the conduct of the business; and
- “(c) derives gross income that is predominantly—
 - “(i) from the business; and
 - “(ii) not interest, dividends, royalties, rents or beneficiary income.

“MBC 2 **Availability of (*early payment rebate*)early-payment discount**

- “(1) This section applies to a (*small business*) small-business taxpayer for an income year if the (*small business*) small-business taxpayer—
 - “(a) is not required to make payments of provisional tax in the income year; and
 - “(b) on or before the taxpayer’s balance date for the income year, makes payments as income tax for the income year; and

New (unanimous)

- “(bb) throughout the period from the taxpayer’s balance date for the income year to the taxpayer’s terminal tax date for the income year, has a credit in an account with the Commissioner that is greater than or equal to the lesser of the following:
 - “(i) the amount that, on or before the small-business taxpayer’s balance date for the income year, the small-business taxpayer pays as income tax for the income year:
 - “(ii) the amount of terminal tax for the income year for which the taxpayer would be liable in the absence of this section; and

- “(c) has, for earlier income years—
 - “(i) never been required to make payments of provisional tax and—
 - “(A) never received an (*early payment rebate*) early-payment discount; or
 - “(B) derived gross income from a business at no time in a period of 4 income years that began after the latest income year for

which the *(small business)* small-business taxpayer received an *(early payment rebate)* early-payment discount; or

“(ii) derived gross income from a business at no time in a period of 4 income years that began after the latest income year for which the *(small business)* small-business taxpayer was required to make payments of provisional tax.

“(2) If a *(small business)* small-business taxpayer to whom this section applies makes a return of income for the income year and *(in that return)* applies for an *(early payment rebate)* early-payment discount, the Commissioner must credit the income tax account of the *(small business)* small-business taxpayer with an *(early payment rebate)* early-payment discount (equal to 6.7% of) found by multiplying the discount rate referred to in **subsection (4)** by the lesser of the following:

“(a) the amount that, on or before the *(small business)* small-business taxpayer’s balance date for the income year, the *(small business)* small-business taxpayer paid as income tax for the income year:

“(b) 105% of the *(small business)* small-business taxpayer’s residual income tax for the income year.

New (unanimous)

“(3) The small-business taxpayer must make the application required by **subsection (2)** on or before the date given by section 37(5) of the Tax Administration Act 1994 as the last date for filing a return of income for the income year to which the application relates.

“(4) The discount rate is—

“(a) 6.7% if no rate is prescribed under **paragraph (b)**:

“(b) the rate prescribed by the Governor-General by Order in Council.

“MBC 3 Credit treated as being payment as income tax

A credit of an *(early payment rebate)* early-payment discount for a *(small business)* small-business taxpayer for an income year is treated as being a payment made on the day after the

last day of the income year by the (*small business*) small-business taxpayer as income tax for the income year.”

- (2) **Subsection (1)** applies for income years commencing on and after 1 April 2005.

34 Refund of excess tax

- (1) Section MD 1(1) is replaced by the following:
- “(1) Subject to sections MD 2, MD 2A, MD 2B, MD 3 and NH 4, and **subsection (2)**, the Commissioner must refund an amount that a taxpayer has paid as tax if—
- “(a) the Commissioner is satisfied that the amount represents an excess over the tax properly payable by the taxpayer; and
- “(b) the 4-year period referred to in section 108 of the Tax Administration Act 1994 has not expired.”
- (2) Section MD 1(2) is replaced by the following:
- “(2) Subject to sections MD 2, MD 2A, MD 2B, MD 3, and NH 4, the Commissioner must refund an amount that a taxpayer has paid as tax if—
- “(a) the taxpayer paid the amount as a result of an amendment to an assessment that increased the amount of tax payable by the taxpayer; and
- “(b) the Commissioner is satisfied that the amount represents an excess over the tax properly payable by the taxpayer; and
- “(c) the 4-year period beginning at the end of the income year in which the assessment was amended has not expired.

Struck out (unanimous)

- “(2B) The Commissioner may refund an amount that is referred to in **subsection (1) or (2)** within the period of 4 years beginning after the end of the 4-year period referred to in the subsection, if—
- “(a) the Commissioner considers that the overpayment of tax is the result of a clear mistake or simple oversight:
- “(b) the taxpayer is entitled to a rebate of income tax under Part KD.”

New (unanimous)

“(2B) The Commissioner may refund an amount of an overpayment of tax that is referred to in **subsection (1) or (2)** after the end of the 4-year period referred to in the subsection if—

“(a) the overpayment arises from—

“(i) a clear mistake or simple oversight of the taxpayer;

“(ii) an entitlement of the taxpayer to a rebate of income tax under Part KD; and

“(b) the refund is made—

“(i) within the period of 4 years beginning from the end of the 4-year period referred to in the subsection;

“(ii) as a result of an application by or on behalf of the taxpayer that the Commissioner receives before or within the period of 4 years beginning from the end of the 4-year period referred to in the subsection.”

(3) **Subsections (1) and (2)** apply for the 2004–05 and subsequent income years.

35 Limits on refunds of tax in relation to Maori authorities

(1) In section MD 2B(1)(a), “the end” is replaced by “unless **subsection (1B)** applies, the end”.

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

“(1B) Despite subsection (1)(a), a Maori authority that furnishes its Maori authority credit account return for an imputation year before the end of the next imputation year may be refunded income tax in accordance with section MD 1 if—

“(a) the Maori authority has furnished the Maori authority credit account return within an extension of time given by the Commissioner; and

“(b) the amount of the refund does not exceed the credit balance in the Maori authority’s Maori authority credit account on the last day of the imputation year for which the Maori authority credit account return was furnished.”

- (3) In section MD 2B(4), “If income” is replaced by “Unless **subsection (4B)** applies, if income”.
- (4) After section MD 2B(4), the following is inserted:
“(4B) Despite subsection (4), the income tax not refunded may be credited on a provisional tax instalment date if residual income tax is treated as being payable on the date specified in Part VII of the Tax Administration Act 1994.”
- (5) **Subsections (1) to (4)** apply for the 2004–05 and subsequent income years.

36 **Application of income tax or dividend withholding payments not refunded**

- (1) This section amends section MD 4 as it read before being repealed by section 41 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003.
- (2) Section MD 4 is amended by adding the following:
“(2) Subsection (1) does not prevent a credit (called a **permitted credit**), of an amount given by **subsection (3)**, arising in an imputation credit account or dividend withholding payment account if—
 - “(a) a company or consolidated group is entitled to a refund of overpaid income tax or overpaid dividend withholding payment; and
 - “(b) *(the company or consolidated group makes a request for the Commissioner to transfer) the Commissioner transfers the refundable amount to another period or another tax type; and*
 - “(c) after the overpayment that gives rise to the entitlement to a refund and before the *(request for the)* transfer, a debit in the imputation credit account or dividend withholding payment account arises under section ME 5(1)(i), ME 12(1)(h), MG 5(1)(i) or MG 15(1)(i); and
 - “(d) a credit would have arisen to the account of the company or consolidated group in the event that—
 - “(i) the refundable amount had been refunded by the Commissioner at the time of the *(requested)* transfer; and

- “(ii) the company or consolidated group had immediately paid the amount of the refund to the Commissioner in payment of a tax liability for the other period or tax type; and
- “(e) the company or consolidated group requests at any time that this subsection apply to the transfer of the refundable amount.
- “(3) The amount of the permitted credit to which **subsection (2)** refers is the amount of the credit to which **subsection (2)(d)** refers, reduced by the amount of the debit that would have arisen under section ME 5(1)(e), ME 12(1)(d), MG 5(1)(d) or MG 15(1)(d) at the time of the refund to which **subsection (2)(d)(i)** refers.”
- (3) **Subsection (2)** applies for the 1997–98 and subsequent income years.

New (unanimous)

36B Companies required to maintain imputation credit account

Section ME 1(2)(a) is replaced by the following:

- “(a) resident in a country other than New Zealand; or”.

36C Companies electing to maintain imputation credit account

Section ME 1B(4)(a) is replaced by the following:

- “(a) for the purpose of section ME 6, from—
 - “(i) the date that is 30 days after the date on which the Commissioner receives the notice, if none of **subparagraphs (ii) to (iv)** apply; or
 - “(ii) 1 October 2003, if the Commissioner receives the notice before 1 April 2004 and notifies the company that the notice is effective from 1 October 2003; or
 - “(iii) 1 April 2004, if the Commissioner receives the notice before 1 April 2005 and notifies the company that the notice is effective from 1 April 2004; or

New (unanimous)

“(iv) the beginning of the imputation year in which the Commissioner receives the notice, if the company is formed in the imputation year or becomes eligible under this section in the imputation year and the Commissioner notifies the company that the notice is effective from the beginning of the imputation year:”.

37 Amount of dividend for imputation rules if paid in Australian currency

In section ME 1C, the formula is replaced by the following:

“ $a \times b$ ”.

38 Consolidated imputation group to maintain separate imputation credit account

Section ME 10(1D)(b) is replaced by the following:

- “(b) *(are associated with)* arise in relation to a company that, at the time the debit or credit arises—
- “(i) will be a member of the resident imputation subgroup, if the debit or credit arises before the formation of the resident imputation subgroup:
 - “(ii) is a member of the resident imputation subgroup, if the debit or credit arises at or after the formation of the resident imputation subgroup.”

New (unanimous)

38B Credits arising to imputation credit account of group

- (1) After section ME 11(1)(f), the following is inserted:

“(fb) an amount forming all or part of a credit balance in the dividend withholding payment account of a company that is a member of the consolidated imputation group, if the company elects under section MG 11 that the amount be a credit to the imputation credit account of the consolidated imputation group:”.

- (2) After section ME 11 (1)(j), the following is inserted:

New (unanimous)

- “(jb) an amount forming all or part of a credit balance in the policyholder credit account of a company, if the company elects under section ME 19(3)(a) during the imputation year that the amount be a credit to the imputation credit account of the consolidated imputation group:”.
- (3) In section ME 11(2)(d), “paragraphs (g) and (k)” is replaced by “paragraphs **(fb)**, (g) and (k)”.
- (4) After section ME 11 (2)(e), the following is inserted:
- “(eb) in the case of the credit referred to in **paragraph (jb)** of that subsection, on the date the relevant debit arose under section ME 18(4)(b):”.

39 Debits arising to imputation credit account of group

Section ME 12(1)(b) ~~((i))~~ is ~~(omitted.)~~ replaced by the following:

New (unanimous)

- “(b) an amount forming all or part of a credit balance in the imputation credit account of the consolidated imputation group, if the nominated company of the consolidated imputation group elects under section ME 14(1) during the imputation year that the amount be a credit to the policyholder credit account of the consolidated imputation group or of a member of the consolidated imputation group:”.

40 Credits and debits arising to policyholder credit account of company

- (1) In section ME 18(1)(a)—
- (a) “under section ME 7 by” is omitted:
- (b) in subparagraph (i), “under section ME 14 by” is inserted before “nominated company”:
- (c) in subparagraph (ii), “under section ME 7 by” is inserted before “the company,”.
- (2) After section ME 18(1)(b), the following is inserted:

- “(bb) an amount equal to any allocation deficit debit that arises in the company’s dividend withholding payment account under **section MG 8B**, if the amount of the allocation deficit debit is given by **section MG 8B(~~(4)2B~~(a))**;
- “(bc) an amount equal to the credit balance in the company’s dividend withholding payment account immediately before an allocation deficit debit arises in the company’s dividend withholding payment account under **section MG 8B**, if the amount of the allocation deficit debit is given by **section MG 8B(~~(4)2B~~(b))**.”
- (3) After section ME 18(2)(b), the following is inserted:
- “(bb) in the case of a credit referred to in **paragraph (bb) or (bc)** of that subsection, at the end of the imputation year in respect of which the credit arises:”.
- (4) In section ME 18(3)(b)—
- in subparagraph (i), “and not a member of a consolidated group” is omitted;
 - in subparagraph (ii), “or of a consolidated group that is a consolidated imputation group” is omitted.

New (unanimous)

- (4B) In section ME 18(4)(b), “company’s imputation credit account” is replaced by “imputation credit account of the company or imputation group”.
- (5) **Subsections (2) and (3)** apply for *(dividends paid in)* the 2004–05 and subsequent imputation years.
- (6) **Subsections (2) and (3)** apply *(for dividends paid by)* to a company *(in)* for an imputation year that begins after 31 March 1995 and before 1 April 2004 if the company *(elects in writing that)* makes an election under **section MG 8B of the Income Tax Act 1994** that applies for the company *(apply)* for the imputation year.
- (7) **Subsections (2) and (3)** apply for *(dividends paid, in)* an imputation year that begins after 31 March 1995 and before 1 April 2004 *(, by)* to a company that was an amalgamating company if the amalgamated company *(elects in writing that)* makes an election under **section MG 8B of the Income Tax Act 1994** *(apply for*

the dividends and) that applies for the amalgamating company
for the imputation year.

**41 Election to use credit balance as credit against
policyholder base income tax liability or as credit in
imputation credit account**

- (1) In section ME 19(3)(a), “and not a member of a consolidated group” is omitted.
- (2) In section ME 19(3)(b), “or of a consolidated group that is a consolidated imputation group” is omitted.
- (3) In section ME 19(4)(b)(i), “and not a member of a consolidated group” is omitted.
- (4) In section ME 19(4)(b)(ii), “, if the company is not a member of an imputation group or of a consolidated group that is a consolidated imputation group” is omitted.

**42 Credits and debits arising to group policyholder credit
account**

- (1) After section ME 26(2)(c), the following is added:
“(d) an amount equal to any allocation deficit debit that arises in the consolidated group’s dividend withholding payment account under **(sections) section MG 8B (and NH 6(4))**, if the amount of the allocation deficit debit is given by **(sections) section MG 8B((4)2B)(a)**:
“(e) an amount equal to the credit balance in the consolidated group’s dividend withholding payment account immediately before an allocation deficit debit arises in the consolidated group’s dividend withholding payment account under **(sections) section MG 8B (and NH 6(4))**, if the amount of the allocation deficit debit is given by **section MG 8B((4)2B)(b)**:”.
- (2) After section ME 26(3)(c), the following is inserted:
“(d) in the case of a credit referred to in **paragraph (d) or (e)** of that subsection, at the end of the imputation year in respect of which the credit arises:”.
- (3) **Subsections (1) and (2)** apply for *(dividends paid in)* the 2004–05 and subsequent imputation years.

Struck out (unanimous)

- (4) The nominated company for a consolidated imputation group may elect in writing that **subsections (1) and (2)** apply for dividends paid by a member of the consolidated imputation group in an imputation year that begins after 31 March 1995 and before 1 April 2004.

New (unanimous)

- (5) **Subsections (1) and (2)** apply for an imputation year that begins after 31 March 1995 and before 1 April 2004 for a consolidated group if the nominated company for the consolidated group makes an election under **section MG 8B of the Income Tax Act 1994** that applies for the consolidated group for the imputation year.

43 Credits and debits arising to branch equivalent tax account of company

- (1) In section MF 4(2)(a), “or paragraph (b)” is omitted.
- (2) **Subsection (1)** applies for the 1997–98 and subsequent income years, subject to **subsection (3)**.
- (3) **Subsection (1)** does not apply to a taxpayer for an income year if—
- (a) the taxpayer has, before 26 June 2003, filed a return of income for the income year; and
 - (b) the return of income relies on section MF 4 of the Income Tax Act 1994 as the section was before the enactment of section 60 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003.

44 Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability**New (unanimous)**

- (1A) Section MF 5(2) is repealed.

- (1) Section MF 5(6B) is replaced by the following:
- “(6B) If an election under subsection (4) relates to an amount that exceeds the income tax liability, for the income year, of the company that receives the offset under subsection (6), the excess amount is treated as giving rise to a net loss of the company for the purpose of Parts IF and IG of an amount given by the following formula:

$$\frac{a}{b}$$

where—

- a is the amount of the excess
- b is the basic rate of income tax, expressed as a percentage, stated in—
- (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority; or
 - (b) Schedule 1, Part A, clause 2, if the company is a Maori authority.”
- (2) **(Subsection (1) applies)** **Subsections (1A) and (1)** apply for the 1997–98 and subsequent income years, subject to **subsection (3)**.
- (3) **(Subsection (1) does)** **Subsections (1A) and (1)** do not apply to a taxpayer for an income year if—
- (a) the taxpayer has, before 26 June 2003, filed a return of income for the income year; and
 - (b) the return of income relies on section MF 5 of the Income Tax Act 1994 as the section was before the enactment of section 61 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003.

45 Debits and credits arising to group branch equivalent tax account

- (1) In section MF 8(2)(a)—
- (a) in the definition of item **d**, “or LC 5” is replaced by “, LC 5 or LC 16”;
 - (b) in the definition of item **e**, “companies that are members of the consolidated group” is replaced by “other companies”.
- (2) In section MF 8(3)(a)—

- (a) “the credits referred to in paragraphs (a) and (b)” is replaced by “a credit referred to in paragraph (a)”:
- (b) “those paragraphs” is replaced by “that paragraph”.
- (3) **Subsections (1) and (2)** apply for the 1997–98 and subsequent income years, subject to **subsection (4)**.
- (4) **Subsections (1) and (2)** do not apply to a taxpayer for an income year if—
 - (a) the taxpayer has, before 26 June 2003, filed a return of income for the income year; and
 - (b) the return of income relies on section MF 8 of the Income Tax Act 1994 as the section was before the enactment of section 63 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003.

46 Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability

New (unanimous)

(1A) Section MF 10(2) is repealed.

- (1) Section MF 10(5B) is replaced by the following:
“(5B) If an election under subsection (3) or (4) relates to an amount that exceeds the income tax liability, for the income year, of the company or group that receives the offset under subsection (5), the excess amount is treated as giving rise to a net loss of the company or group for the purpose of Parts IF and IG of an amount given by the following formula:

$$\frac{a}{b}$$

where—

- a is the amount of the excess
- b is the basic rate of income tax, expressed as a percentage, stated in—
 - (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority or the group does not consist of Maori authorities; or

- (b) Schedule 1, Part A, clause 2, if the company is a Maori authority or the group consists of Maori authorities.”
- (2) ***(Subsection (1) applies)*** **Subsections (1A) and (1)** apply for the 1997–98 and subsequent income years, subject to **subsection (3)**.
- (3) ***(Subsection (1) does)*** **Subsections (1A) and (1)** do not apply to a taxpayer for an income year if—
 - (a) the taxpayer has, before 26 June 2003, filed a return of income for the income year; and
 - (b) the return of income relies on section MF 10 of the Income Tax Act 1994 as the section was before the enactment of section 64 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003.

47 Debits arising to dividend withholding payment account

New (unanimous)

- (1A) In section MG 5(1)(c), “company’s imputation credit account” is replaced by “imputation credit account of the company or of an imputation group to which the company belongs”.
- (1) In section MG 5(1)(f), “section MG 8” is replaced by “section MG 8(4)”.
- (2) In section MG 5(1)(g), “section MG 8(5)” is replaced by “**section MG 8B**”.
- (3) ***(Subsections (1) and (2) apply for dividends paid in)*** **Subsection (2)** applies for the 2004–05 and subsequent imputation years.
- (4) ***(Subsections (1) and (2) apply for dividends paid by a company in)*** **Subsection (2)** applies to a company for an imputation year that begins after 31 March 1995 and before 1 April 2004 if the company *(elects in writing that)* makes an election under **section MG 8B of the Income Tax Act 1994** (apply) that applies for the company for the imputation year.
- (5) ***(Subsections (1) and (2) apply for dividends paid, in)*** **Subsection (2)** applies for an imputation year that begins after 31 March 1995 and before 1 April 2004 *(, by)* to a company that was an

amalgamating company if the amalgamated company (*elects in writing that*) makes an election under **section MG 8B of the Income Tax Act 1994** (*apply*) that applies for the (*dividends and*) amalgamating company for the imputation year.

48 Allocation rules for dividend withholding payment credits

- (1) Section MG 8(5) to (7) are repealed.
- (2) **Subsection (1)** applies for (*dividends paid in*) the 2004–05 and subsequent imputation years.
- (3) **Subsection (1)** applies (*for dividends paid by*) to a company (*in*) for an imputation year that begins after 31 March 1995 and before 1 April 2004 if the company makes an election under (*elects in writing that*) **section MG 8B of the Income Tax Act 1994** (*apply*) that applies for the company for the imputation year.
- (4) **Subsection (1)** applies for (*dividends paid, in*) an imputation year that begins after 31 March 1995 and before 1 April 2004, (*by*) to a company that was an amalgamating company if the amalgamated company (*elects in writing that*) makes an election under **section MG 8B of the Income Tax Act 1994** (*apply*) that applies for the (*dividends and*) amalgamating company for the imputation year.

49 New section MG 8B inserted

- (1) After section MG 8, the following is inserted:
 “MG 8B **Policyholder credit account companies and dividend withholding payment credits**
 “(1) This section applies to a policyholder credit account company (called the **company**) that is not a conduit tax relief company and an imputation year (called the **dividend year**) in which the company pays a dividend with a dividend withholding payment credit attached.
 “(2) An allocation deficit debit of an amount given by **subsection (4) 2B** arises at the end of the dividend year in the company’s dividend withholding payment account if—
 “(a) the total of the amounts of the company’s policyholder income and policyholder net loss for the DWP reference period, found using the policyholder base calculation for each imputation year, is greater than nil (:); and

- “(b) the shareholder DWP ratio for the DWP reference period exceeds the policyholder DWP ratio for the DWP reference period.

New (unanimous)

“(2B) The amount of the allocation deficit debit that arises under **subsection (2)** is—

- “(a) equal to the maximum deficit debit, if the maximum deficit debit is less than or equal to the credit balance that is in the company’s dividend withholding payment account immediately before any allocation deficit debit arises under this section:
- “(b) equal to the reduced deficit debit, if **paragraph (a)** does not apply.

“(3) In this section—

“**DWP reference period** means the period that consists of—

- “(a) the dividend year:
- “(b) the *(maximum)* longest period of consecutive imputation years—

New (unanimous)

“(ia) that begins on or after the date on which this section applies for the company; and

“(i) that ends immediately before the dividend year; and

“(ii) in which the company paid no dividend that had a dividend withholding payment credit attached

“**maximum deficit debit** means the quantity that is given by the following formula:

$$(a - b) \times d \times (1 - r)$$

where—

- a is the company’s shareholder DWP ratio for the DWP reference period:
- b is the company’s policyholder DWP ratio for the DWP reference period:

- d is the total of the amounts of the company's policyholder income and policyholder net loss found for the DWP reference period using the policyholder base calculation:
- r is the basic rate of income tax, expressed as a percentage, stated in—
- (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority:
 - (b) Schedule 1, Part A, clause 2, if the company is a Maori authority

“**policyholder DWP ratio** means the quantity that is given by the following formula:

$$\frac{c}{d \times (1 - r)}$$

where—

- c is the total for the DWP reference period of all the credits that have arisen in the company's policyholder credit account as a result of an election by the company under section MG 7 in relation to a credit balance in the company's dividend withholding payment account
- d is the total of the amounts of the company's policyholder income and policyholder net loss found for the DWP reference period using the policyholder base calculation
- r is the basic rate of income tax, expressed as a percentage, stated in—
- (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority:
 - (b) Schedule 1, Part A, clause 2, if the company is a Maori authority

“**reduced deficit debit** means the quantity that is given by the following formula:

$$e + f - \frac{g \times (f + c + e)}{g + (d \times (1 - r))}$$

where—

- c is the total for the DWP reference period of all the credits that have arisen in the company's policyholder credit account as a result of an election by the company under section MG 7 in relation to a credit balance in the company's dividend withholding payment account
- d is the total of the amounts of the company's policyholder income and policyholder net loss found for the DWP reference period using the policyholder base calculation
- e is the credit balance in the company's dividend withholding payment account at the end of the dividend year immediately before any allocation deficit debit arises under this section
- f is the total amount of DWP credits that the company has attached to dividends paid by the company in the DWP reference period
- g is the total amount of dividends paid by the company in the DWP reference period
- r is the basic rate of income tax, expressed as a percentage, stated in—
 - (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority:
 - (b) Schedule 1, Part A, clause 2, if the company is a Maori authority

“shareholder DWP ratio means the quantity given by the following formula:

$$\frac{f}{g}$$

where—

- f is the total amount of DWP credits that the company has attached to dividends paid by the company in the DWP reference period
- g is the total amount of dividends paid by the company in the DWP reference period.

Struck out (unanimous)

“(4) The amount of the allocation deficit debit that arises under **subsection (2)** is—

“(a) equal to the maximum deficit debit, if the maximum deficit debit is less than or equal to the credit balance that is in the company’s dividend withholding payment account immediately before any allocation deficit debit arises under this section:

“(b) equal to the reduced deficit debit, if **paragraph (a)** does not apply.

“(5) This section does not apply to a dividend that is the subject of a determination made by a statutory producer board or a co-operative company under section ME 30 or section ME 35.

New (unanimous)

“(6) This section applies for the 2004–05 and subsequent imputation years.

“(7) If a company makes an election in writing for an imputation year that begins after 31 March 1995 and before 1 April 2004, this section applies for the company for the imputation year and for subsequent imputation years.

“(8) If an amalgamated company makes an election in writing for an imputation year that begins after 31 March 1995 and before 1 April 2004 and for a company that was an amalgamating company in relation to the amalgamated company, this section applies for the amalgamating company for the imputation year and for subsequent imputation years.

“(9) If a nominated company for a consolidated group makes an election in writing for an imputation year that begins after 31 March 1995 and before 1 April 2004, this section applies for the consolidated group for the imputation year and for subsequent imputation years.”

Struck out (unanimous)

(2) **Subsection (1)** applies for dividends paid in the 2004–05 and subsequent imputation years.

Struck out (unanimous)

- (3) A company may elect in writing that **subsection (1)** apply for dividends paid by the company in an imputation year that begins after 31 March 1995 and before 1 April 2004.
- (4) An amalgamated company may elect in writing that **subsection (1)** apply for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company in relation to the amalgamated company.

50 Further dividend withholding payment payable by company

- (1) In section MG 9(5C)(b), “payment of income tax” is replaced by “dividend withholding payment”.
- (2) **Subsection (1)** applies for imputation years that begin on and after 1 April 1998.

New (unanimous)

50B Transfer of credit balance to imputation credit account

Section MG 11(1) is replaced by the following:

- “(1) A company that is not a conduit relief company and has a credit balance in the dividend withholding payment account of the company at the end of an imputation year, or immediately before a debit arises in the account under section MG 5(1)(j), may elect that all or part of the credit balance be, for the imputation year in which the credit balance occurs—
- “(a) a debit to the dividend withholding payment account of the company; and
 - “(b) a credit to the imputation credit account of the company, or of an imputation group of which the company is a member at the time the credit balance occurs.”

51 Debits arising to group dividend withholding payment account**New (unanimous)**

(1A) In section MG 15(1)(f), “section MG 8” is replaced by “section MG 8(4)”.

(1) In section MG 15(1)(g), “section MG 8(5)” is replaced by “**section MG 8B**”.

(2) **Subsection (1)** applies for *(dividends paid in)* the 2004–05 and subsequent imputation years *(by)* to a company that is at the time of payment a member of the consolidated group.

(3) **Subsection (1)** applies *(for dividends paid in)* to a consolidated group for an imputation year that begins after 31 March 1995 and before 1 April 2004 *(by a company that is at the time of payment a member of the consolidated group)* if the nominated company for the consolidated group *(elects in writing that)* makes an election under **section MG 8B of the Income Tax Act 1994** that applies *(apply)* for the consolidated group for the imputation year.

52 Application of specific dividend withholding provisions to consolidated groups**Struck out (unanimous)**

- (1) In section MG 16A(1)—
- (a) “Section MG 8 applies” is replaced by “Sections MG 8 and **MG 8B** apply”:
 - (b) “section MG 8(2) to (4)” is replaced by “those sections”.

New (unanimous)

- (1) Section MG 16A(1) is replaced by the following:
- “(1) Section MG 8 applies with any necessary modifications to a consolidated group—
- “(a) as if the consolidated group were a company; and

New (unanimous)

- “(b) for the purpose of section MG 8(2) to (4), without taking into account any dividend that is paid by a member of the consolidated group to another member of the consolidated group.
- “(1B) **Section MG 8B** applies with any necessary modifications to a consolidated group that has a policyholder credit account—
- “(a) as if the consolidated group were a company; and
- “(b) as if a reference to section MG 7 were a reference to section NH 6(2); and
- “(c) without taking into account any dividend that is paid by a member of the consolidated group to another member of the consolidated group.”
- (2) **Subsection (1)** applies for *(dividends paid in)* the 2004–05 and subsequent imputation years.
- (3) **Subsection (1)** applies for *(dividends paid by a company in)* a consolidated group for an imputation year that begins after 31 March 1995 and before 1 April 2004 if the nominated company for the consolidated group *(elects in writing that)* makes an election under **section MG 8B of the Income Tax Act 1994** that applies *(apply)* for the consolidated group for the imputation year.

Struck out (unanimous)

- (4) **Subsection (1)** applies for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company and a member of the consolidated group if the amalgamated company is a member of the consolidated group and the nominated company for the consolidated group elects in writing that **section MG 8B** apply for the dividends and the imputation year.

53 Further tax payable for end of year debit balance or when Maori authority ceases to exist

- (1) Section MK 8(5) is replaced by the following:
- “(5) A Maori authority that pays an amount of further income tax for which the authority is liable may elect, with effect from the

date on which the Commissioner receives the payment, that the amount paid be also credited in payment of a liability of the authority to pay income tax or provisional tax in relation to an income year that corresponds to an imputation year in which the authority was required to establish and maintain a Maori authority credit account.

“(5B) A Maori authority that pays an amount of income tax in relation to an income year in which the authority was required to establish and maintain a Maori authority credit account and that is liable to pay further income tax in relation to an imputation year may elect, with effect from the date on which the Commissioner receives the payment, that the amount of the payment of tax be also credited in payment of the liability of the authority to pay the further income tax.”

(2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

54 Accreditation requirements of PAYE intermediaries

Struck out (unanimous)

(1) In section NBB 2(1)(c), “an officer” is replaced by “a director, secretary or statutory officer”.

New (unanimous)

- (1) In section NBB 2(1)(c), the words before subparagraph (i) are replaced by “the applicant, if a natural person or corporation sole, or each member of the applicant, if the applicant is an unincorporated body, or each of the persons acting as a director, secretary or statutory officer of the applicant, if the applicant is a body corporate, and any principal of the applicant”.
- (2) In section NBB 2(4)(b), the words before subparagraph (i) are replaced by “the person, if a natural person or corporation sole, or a member of the person, if the person is an unincorporated body, or a person acting as a director, secretary or statutory officer of the person, if the person is a body corporate, or a principal of the person”.

Struck out (unanimous)

- (2) In section NBB 2(4)(b), “an officer” is replaced by “a director, secretary or statutory officer”.

55 Employer having PAYE intermediary—responsibilities and status under PAYE rules and SSCWT rules

- (1) Section NBB 4(1) is replaced by the following:

- “(1) An employer who is in an arrangement with a PAYE intermediary that applies to an employee and a pay period must—
- “(a) if the employer has authorised the PAYE intermediary to direct the transfer of amounts from a bank account of the employer in satisfaction of the obligations under the arrangement of the PAYE intermediary to make payments on behalf of the employer, ensure that, at a time specified by the PAYE intermediary, the funds in the bank account of the employer that are available for transfer are sufficient to satisfy the obligations of the PAYE intermediary that relate to the employee and the pay period; or
- “(b) if the employer has not authorised the PAYE intermediary as described in **paragraph (a)**, pay into the trust account established by the PAYE intermediary and identified in the employer’s notice to the Commissioner under section NBB 3—
- “(i) if **subparagraph (ii)** does not apply, the employee’s gross salary or wages for the pay period after deduction of any amount that is owed by the employee to the employer and may be lawfully withheld by the employer from the salary or wages:
- “(ii) if the employer has paid salary or wages to the employee in the way authorised by subsection (4), the amount that the employer is required by **subsection (4)(d)** to make available to the PAYE intermediary:
- “(iii) if the PAYE intermediary has agreed to assume obligations of the employer under the SSCWT rules, the specified superannuation contributions

that are made in the pay period by the employer on behalf of the employee.

“(1B) An employer who is in an arrangement with a PAYE intermediary that applies to an employee and a pay period must—

“(a) keep records of the gross salary or wages of the employee for the pay period and the amounts withheld by the employer for the pay period; and

“(b) provide information requested by the PAYE intermediary within the time agreed by the employer and the PAYE intermediary.”

(2) In section NBB 4(2), “subsection (1)” is replaced by “subsections (1) and **(1B)**”.

(3) In section NBB 4(3), “subsection (1)” is replaced by “subsections (1) and **(1B)**”.

(4) Section NBB 4(4)(c) and (d) are replaced by the following:

“(c) the employer makes from the gross salary or wages of the employee the deduction that the PAYE rules and SSCWT rules would require of an employer who did not have a PAYE intermediary; and

“(d) the employer makes available to the PAYE intermediary, in the way required by **subsection (1)**, the amount of the deduction referred to in **paragraph (c)**.”

56 PAYE intermediary—responsibilities and status under PAYE rules and SSCWT rules

(1) In section NBB 5(1), “and **(1B)**” is inserted after “section NBB 4(1)” in both places that it occurs.

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

“(1B) If a PAYE intermediary has been authorised by an employer to direct the transfer of amounts from a bank account of the employer as described in **section NBB 4(1)(a)**, the PAYE intermediary must direct that, at or before the time of the transfer of the amount of salary or wages owing to the employee, an amount representing the deductions from the gross salary or wages of the employee that are required by the PAYE rules and SSCWT rules be transferred to—

“(a) the Commissioner:

- “(b) the trust account established by the PAYE intermediary and identified in the employer’s notice to the Commissioner under section NBB 3.”
- (3) In section NBB 5(2B), “and **(1B)**” is inserted after “section NBB 4(1)” in both places that it occurs.

57 Operation of trust account

In section NBB 6(2), the following is inserted before paragraph (a):

“(aa) deductions from gross salary or wages that are required by the PAYE rules and SSCWT rules:”.

58 Amounts of tax deductions

- (1) Section NC 6(1) is repealed.
- (2) In section NC 6(1A), “For a period for which the amount of a tax deduction is not fixed by an annual taxing Act, the” is replaced by “A”.
- (3) In section NC 6(1B), “by an annual taxing Act or” is omitted.
- (4) In section NC 6(1C), “by an annual taxing Act or” is omitted.
- (5) Section NC 6(2) is repealed.

59 Delivery of withholding declaration

- (1) Section NC 7(2) is replaced by the following:
- “(2) If a person who is making a withholding payment has not received the withholding declaration required by subsection (1), the person must make from the withholding payment a tax deduction that is equal to the sum of the amount of the tax deduction that would, apart from this subsection, be made from the withholding payment and an amount equal to—
 - “(a) 15% of the amount of the withholding payment, if neither of **paragraphs (b) and (c)** applies; or
 - “(b) 5% of the amount of the withholding payment, if—
 - “(i) the person receiving the withholding payment is a company that is a non-resident contractor for the purposes of the Income Tax (Withholding Payments) Regulations 1979; and
 - “(ii) the person referred to in **subparagraph (i)** receives the withholding payment other than directly or indirectly as a result of a choice that is made for

- purposes that include a purpose of defeating the intent and application of **paragraph (a)**; and
“(iii) **paragraph (c)** does not apply; or
“(c) nil, if the withholding payment is a payment of the class specified in clause 4(b) of Part B of the Schedule to the Income Tax (Withholding Payments) Regulations 1979.”
- (2) **Subsection (1)** applies for withholding payments made on or after (1 April 2005) the date on which this Act receives the Royal assent.
- 60 Amount of tax deductions for pay period current when tax deductions altered**
In section NC 12(1), “by an annual taxing Act or” is omitted.
- 61 Special filing rule for employer who stops employing staff during year**
In section ND 12, “section ND 10(4) and ND 10(5)” is replaced by “section ND 10(3) to (5) (, ND 10(4))”.
- 62 Application of RWT rules**
(1) In section NF 1(2)(a)(x), “Commissioner.” is replaced by “Commissioner; or” and the following is added:
“(xi) interest payable on overpaid tax in accordance with section 120D of the Tax Administration Act 1994.”
(2) Section NF 1(3) and (3A) are repealed.
(3) **Subsections (1) and (2)** apply to payments of interest made on or after 1 April 2005.
- 63 Liability to make deduction in respect of foreign withholding payment dividend**
(1) Section NH 1(2)(a) is replaced by the following:
“(a) a dividend that is paid by a foreign company and that—
“(i) is derived by a company that is resident in New Zealand; and
“(ii) is exempt income under section CB 10(1), (4) or (5) for the company that is resident in New Zealand; and

“(iii) would not, in the absence of section CB 10, be exempt income under section CB 3(b) or CB 4 for the company that is resident in New Zealand:”.

- (2) Section NH 1(3) is repealed.
- (3) **Subsections (1) and (2)** apply for a dividend that is derived *(on)* in or after the *(date on which this Act receives the Royal assent)* 1997–98 income year.

64 Application of specific dividend withholding payment provisions to consolidated groups

Struck out (unanimous)

- (1) In section NH 6(4), “Section MG 8(5), (6), and (7) shall apply” is replaced by “Section **MG 8B** applies”.

New (unanimous)

- (1) Section NH 6(3) and (4) are repealed.
- (1B) In section NH 6(6)(a)(ii), “payment” is inserted after “dividend withholding”.
- (2) **Subsection (1)** applies for *(dividends paid in)* the 2004–05 and subsequent imputation years.
- (3) **Subsection (1)** applies for a consolidated group for *(dividends paid by a company in)* an imputation year that begins after 31 March 1995 and before 1 April 2004 if the nominated company for the consolidated group *(elects in writing that)* makes an election under **section MG 8B of the Income Tax Act 1994** (apply) that applies for the consolidated group for the imputation year.

Struck out (unanimous)

- (4) **Subsection (1)** applies for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company and a member of the consolidated group if the amalgamated company is a

Struck out (unanimous)

member of the consolidated group and the nominated company for the consolidated group elects in writing that **section MG 8B** apply for the dividends and the imputation year.

65 Definitions

- (1) This section amends section OB 1.
- (2) In the definition of **allocation deficit debit**, “or section MG 8(5)” is replaced by “or **MG 8B**”.

New (unanimous)

(2B) The definition of **business of farming** is omitted.

- (3) In the definition of **community trust**, “section 2” is replaced by “section 4”.
- (4) In paragraph (b) of the definition of **depreciable property**—
 - (a) in subparagraph (vi)—
 - (i) “**DO 4D**,” is inserted after “DO 3,”;
 - (ii) “**DO 4C**,” is inserted after “DO 4,”;
 - (b) in subparagraph (viii), “DO 4, **DO 4C**,” is inserted after “DO 3,”.
- (5) In the definition of **diminished value**—
 - (a) in the introductory words, “**DO 4C**” is inserted after “sections DL 2, DO 4,”;
 - (b) in paragraph (b), “sections DL 2, DO 4, **DO 4C**, **DO 4D** and DO 5” replaces “section DL 2 or section DO 4 or section DO 5”.

New (unanimous)

(5B) After the definition of **dual resident company**, the following is inserted:

“**DWP reference period** is defined in **section MG 8B(3)** for the purpose of that section”.

(6) After the definition of **early income year**, the following is inserted:

“(early payment rebate) early-payment discount is defined in **section MBC 1** for the purpose of **Part MBC**”.

- (7) In the definition of **estimated useful life**, the following is added:
- “(c) in respect of a listed horticultural plant, the period of time over which the listed horticultural plant might reasonably be expected to be useful to a person in deriving income or in carrying on a business in New Zealand, *(having regard to such factors as natural and incidental damage, decay, disease, or exhaustion,)* with the expectation based on an assumption of normal and reasonable maintenance”.

Struck out (unanimous)

- (8) In the definition of **finance lease**—
- (a) in the words before paragraph (a), “under which” is replaced by “that involves or is part of an arrangement that involves”;
- (b) paragraph (a) is replaced by the following:
- “(a) the transfer of the ownership of the lease asset to the lessee or an associate of the lessee during or at the end of the lease term; or ”;
- (c) in paragraph (b) , “has” is replaced by “having”;
- (d) in paragraph (c)—
- (i) “the lease term” is replaced by “a lease term that”;
- (ii) “section EG 4(3):” is replaced by “section EG 4(3); or” and the following is added:
- “(d) a lessee who is a former owner of the lease asset, or is associated with such a former owner, and a lessor who has, during the term of the lease, no substantive rights or obligations in relation to the lease asset other than rights or obligations that relate to the enforcement of the lease ”.

New (unanimous)

- (8) The definition of **finance lease** is replaced by the following:

New (unanimous)

“**finance lease** for a taxpayer means a lease of a lease asset that at the time of entry by the taxpayer involves or is part of an arrangement that involves—

- “(a) the transfer of the ownership of the lease asset to the lessee or an associate of the lessee during or at the end of the lease term:
- “(b) the lessee or an associate of the lessee having the option of acquiring the lease asset for an amount that is likely to be substantially lower than the lease asset’s market value on the date of acquisition:
- “(c) a lease term that is more than 75% of the lease asset’s estimated useful life:
- “(d) a right of an associate of the lessee to acquire the lease asset, or a right of the lessor to require an associate of the lessee to acquire the lease asset, during the lease term under an arrangement that does not entitle the associate to receive all of the lease payments that may fall due after the acquisition”.

- (9) The definition of **insurer** is replaced by the following:

“**insurer**, in the definition of **insured person** and in sections CN 4 and OE 4, means a person who assumes liability under a contract of insurance”.

- (10) The definition of **land tax** is repealed.

- (11) In paragraph (f) of the definition of **lease**—

- (a) in the words preceding subparagraph (i)—
 - (i) “operating lease,” is inserted after “lease term,”:
 - (ii) “FC 8G” is replaced by “FC 8I”:

Struck out (unanimous)

- (b) in subparagraph (ii), “ a licence to use intangible property , ” is inserted after “bailment,”.

New (unanimous)

- (b) after subparagraph (ii), the following is inserted:
“(iib) includes a licence to use intangible property;
and”.

- (12) In paragraph (b) of the definition of **lessee**, “, hires, or bails” is omitted.
- (13) In paragraph (a) of the definition of **lessee’s acquisition cost**, “means the consideration provided to the lessee for the finance lease asset (as determined under the definition of **consideration**)” is replaced by “for a finance lease asset, means the consideration provided to the lessee under the finance lease, as determined under the definition of **consideration**,”.
- (14) After the definition of **listed company** the following is inserted:
“**listed horticultural plant**, in sections **DO 4B**, **DO 4C** and **DO 4D**—
“(a) means a horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land, that is of a type that is listed in a determination made by the Commissioner under **section 91AAB of the Tax Administration Act 1994**:
“(b) does not include—
“(i) a tree planted mainly for the purpose of timber production:
“(ii) a tree or other similar plant planted mainly for the purpose of ornament:”

New (unanimous)

- “(iii) a vine planted mainly for the purpose of producing grapes for wine production”.
- (14B) After the definition of **Maui field**, the following is inserted:
“**maximum deficit debit** is defined in **section MG 8B(3)** for the purpose of that section”.
- (14C) After the definition of **minibus**, the following is inserted:
“**minimum employment period** is defined in section CL 8(2) for the purpose of that section”.

- (15) In the definition of **net loss**, “section 177C(4)” is replaced by “section 177C(5)”.

New (unanimous)

- (15B) The definition of **new start grant** is replaced by the following:

“**new start grant** means a grant of money that is designated by the Minister of Agriculture as a new start grant and is paid by the Government of New Zealand to a person in respect of—

- “(a) an adverse event:
“(b) an event that is a qualifying event”.

- (16) After the definition of **non-filing taxpayer**, the following is inserted:

“**non-listed horticultural plant**, in sections DO 4 and Schedule 7, Part A, item 12—

- “(a) means—
“(i) a horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land, that is not a listed horticultural plant:
“(ii) a tree or other similar plant planted mainly for the purpose of ornament:
“(b) does not include a tree planted mainly for the purpose of timber production”.

New (unanimous)

- (16B) The definition of **non-taxable bonus issue** is replaced by the following:

“**non-taxable bonus issue** means a bonus issue that is not a taxable bonus issue”.

- (17) In paragraph (a)(ii) of the definition of **PAYE intermediary**, “section NBB 3; or” is replaced by “section NBB 3; and” and the following is added:

- “(iii) has entered agreements that have been approved by the Commissioner under section NBB 3 with not less than 10 employers; or”.

- (18) After the definition of **physical cost of production**, the following is inserted:
“planting is defined in **section DO 4B(1)** for the purpose of **sections DO 4B, DO 4C and DO 4D”**.
- (19) After the definition of **pleasure craft**, the following is inserted:
“plot is defined in **section DO 4B(1)** for the purpose of **sections DO 4B, DO 4C and DO 4D”**

New (unanimous)

- (19B) After the definition of **policyholder credit account person**, the following is inserted:
“policyholder DWP ratio is defined in **section MG 8B(3)** for the purpose of that section”.
- (20) In the definition of **premium**, paragraph (b) is replaced by the following:
“(b) in the definition of insured person, and in sections CN 4, GD 13 and OE 4, means a premium, guarantee fee or other amount payable in respect of a contract of insurance”.

New (unanimous)

- (20B) The definition of **qualifying event** is replaced by the following:
“qualifying event means—
- “(a) the extreme climatic conditions that occurred during the month of February 2004 in New Zealand:**
- “(b) the storm event that occurred during the month of July 2004 in the Bay of Plenty area:**
- “(c) any naturally-occurring event that occurs after the month of July 2004 and—**
- “(i) in respect of which a state of emergency is declared under the Civil Defence Act 1983 or**

New (unanimous)

under Part 4 of the Civil Defence Emergency
Management Act 2002; and
“(ii) that the Governor-General by Order in Council
declares to be a qualifying event”.

- (21) After the definition of **qualifying (debenture) event**, the
following is inserted:
“**qualifying foreign equity investor** is defined in section CB
2(4) for the purpose of that section”.

New (unanimous)

- (21B) In the definition of **recognised exchange**, “CB 2(1),” is
inserted after “sections”.
(21C) After the definition of **reduced deduction**, the following is
inserted:
“**reduced deficit debit** is defined in **section MG 8B(3)** for the
purpose of that section”.

- (22) After the definition of **rents**, the following is inserted:
“**replaced area fraction** is defined in **section DO 4B(1)** for the
purpose of **sections DO 4B, DO 4C and DO 4D**”.
(23) After the definition of **replacement permit**, the following is
inserted:
“**replacement plant**, in sections DO 4, **DO 4B, DO 4C and DO 4D**,
means a listed horticultural plant that replaces a listed horti-
cultural plant, whether or not it is of the same type of listed
horticultural plant”.
(24) In the definition of **resident in Australia**, paragraph (a) is
omitted.

New (unanimous)

- (24BA) In the definition of **schedular gross income**, paragraph (g)
is omitted.

New (unanimous)

(24B) After the definition of **shareholder dividend statement**, the following is inserted:

“**shareholder DWP ratio** is defined in **section MG 8B(3)** for the purpose of that section”.

(25) After the definition of **significant financial hardship**, the following is inserted:

“**(small business) small-business taxpayer** is defined in **section MBC 1** for the purpose of **Part MBC**”.

(26) In the definition of **special corporate entity**, after paragraph (h), the following is added:

“(j) any body incorporated under the Incorporated Societies Act 1908, for an income year in which the body on no day in the income year has shares on issue to the members of the body”.

(27) The definition of **tax credit advantage** is replaced by the following:

“**tax credit advantage** is defined in—

“(a) section GC 22(9) for the purpose of that section:

“(b) section GC 27B(10) for the purpose of that section”.

New (unanimous)

(27B) In the definition of **taxable bonus issue**, the following is added after paragraph (b):

“(c) a bonus issue that is made by a unit trust that is a foreign company to a unit holder under an arrangement or decision that the unit trust will make the bonus issue instead of causing a beneficial interest in money or property of the unit trust to vest absolutely in the unit holder”.

(28) In the definition of **taxable period**, “1975” is replaced by “1985”.

(29) **Subsection (26)**, other than in the application of Part IG, applies for the 1995–96 and subsequent income years.

(30) **Subsection (26)**, in the application of Part IG—

- (a) in relation to a society and an income year for which section OD 3(4) does not apply, applies for an *(assessment of income tax that is)* income year that is—
 - (i) *(not affected by a time bar under section 107A(1) or 108(1) of the Tax Administration Act 1994; and)* one of the 1995–96 to 1999–2000 income years if before 29 March 2004 the society makes a tax return for the income year in which the society adopts a tax position that is consistent with the amendment made by **subsection (26)**; or
 - (ii) *(for the 1995–96)* the 2000–01 or a subsequent income year:
- (b) in relation to a society and an income year for which section OD 3(4) *(applies)* does apply, applies—
 - (i) for the purpose of section IG 2(1) and (2)(e), for an *(assessment of income tax that is)* income year that is—
 - (A) *(not affected by a time bar under section 107A(1) or 108(1) of the Tax Administration Act 1994; and)* one of the 1995–96 to 1999–2000 income years if before 29 March 2004 the society makes a tax return for the income year in which the society adopts a tax position that is consistent with the amendment made by **subsection (26)**; or
 - (B) *(for the 1995–96)* the 2000–01 or a subsequent income year:
 - (ii) other than for the purpose of section IG 2(1) and (2)(e), for an *(assessment of income tax that is)* income year that is—
 - (A) *(not affected by a time bar under section 107A(1) or 108(1) of the Tax Administration Act 1994; and)* the 1995–96 or 1996–97 income year if before 29 March 2004 the society makes a tax return for the income year in which the society adopts a tax position that is consistent with the amendment made by **subsection (26)**; or
 - (B) *(for the 1995–96, 1996 - 97, 2003 - 04)* the 2003–04 or a subsequent income year.

New (unanimous)

(30B) **Subsection (11)(a)(i)** does not apply for a taxpayer and an income year if before 29 March 2004 the taxpayer furnishes a tax return for the income year in which the taxpayer takes a tax position that is consistent with the definition of **lease** that would apply for the income year but for the amendment made by **subsection (11)(a)(i)**.

(31) **Subsections (8), (11)(b) and (12)** apply for an arrangement entered on or after 29 March 2004.

New (unanimous)

(31B) **Subsections (16B) and (27B)** apply for bonus issues that are made on or after the day on which this Act receives the Royal assent.

(32) **Subsections (2B), (4), (5), (7), (14), (15B), (16), (18), (19), ((22) and (23)) (22), (23) and (24BA)** apply for the 2003–04 and subsequent income years.

(33) **Subsections (3) and (27)** apply for the 2004–05 and subsequent income years.

(34) **Subsections (2), (5B), (14B), (19B), (21C) and (24B)** *(applies)* apply for *(dividends paid in)* the 2004–05 and subsequent imputation years.

(35) **Subsections (2), (5B), (14B), (19B), (21C) and (24B)** *(applies)* apply for a company or consolidated group for *(dividends paid by a company in)* an imputation year that begins after 31 March 1995 and before 1 April 2004 if the company or the nominated company for the consolidated group *(elects in writing that)* makes an election under **section MG 8B of the Income Tax Act 1994** *(apply for)* that applies for the company or consolidated group for the imputation year.

(36) **Subsection (2)** applies for *(dividends paid, in)* an imputation year that begins after 31 March 1995 and before 1 April 2004 *(, by)* for a company that was an amalgamating company if the amalgamated company *(elects in writing that)* makes an election under **section MG 8B of the Income Tax Act 1994** *(apply)* that applies for the *(dividends)* amalgamating company for *(and)* the imputation year.

- (37) **Subsection (17)** applies for pay periods beginning on or after 1 April 2004.
- (38) **Subsections (6) and (25)** apply for income years commencing on and after 1 April 2005.

66 Meaning of “income tax”

In section OB 6(1)(b), “CB 2,” is inserted before “CB 10”.

67 Voting interests

- (1) After section OD 3(3), the following is added:
- “(4) For the purpose of Part IG, other than section IG 2(1) and (2)(e)—
- “(a) if a society that is incorporated under the Incorporated Societies Act 1908 has issued no shares, each member of the society, while being a member, is treated as holding a share issued by the society:
 - “(b) a person who is a member of a society at the beginning of the 1997–98 income year is treated as holding a share referred to in **paragraph (a)** for all previous income years:
 - “(c) a share referred to in **paragraph (a)** is treated as holding all the types of right that are shareholder decision-making rights:
 - “(d) all the shareholder decision-making rights in the society are treated as being carried by the shares that the society is treated as having issued under **paragraph (a)**:
 - “(e) section OD 3(3)(d) does not apply to a share referred to in **paragraph (a)**.”
- (2) After **section OD 3(4)**, as inserted by **subsection (1)**, the following is added:
- “(5) For the purpose of Part IG, other than section IG 2(1) and (2)(e), the members at the beginning of the 2003–04 income year of a society are treated as being the members of the society for the 1997–98 to 2002–03 income years if the society is—
- “(a) subject to subsection (3) for the 2002–03 income year; and
 - “(b) a special corporate entity at the beginning of the 2003–04 income year.”
- (3) **Subsection (1)** applies for a taxpayer and a tax position taken by the taxpayer for the 1997–98 to 2002–03 income years.

- (4) **Subsection (2)** applies for a taxpayer and a tax position taken by the taxpayer for the 2003–04 and subsequent income years.

New (unanimous)

67B Further definitions of associated persons

In section OD 8(1), “CB 2(4),” is inserted after “sections”.

68 Schedule 7—Expenditure on land and aquaculture improvements

- (1) In Schedule 7, Part A, item 12, “vines or trees on the land other than trees planted primarily and principally for the purposes of timber production” is replaced by “non-listed horticultural plants on the land”.
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

Part 3

Amendments to Tax Administration Act 1994

New (unanimous)

69A Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

69 Purpose of Act

In section 2(4), “that are not in Part (6) VI (which relates to assessments) and” is inserted after “provisions of this Act”.

70 Interpretation

- (1) This section amends section 3(1).

New (unanimous)

- (1B) After the definition of **contested tax**, the following is inserted:
 “**contract payment**, for the purpose of **section 141AA**, has the meaning given by regulation 2(1) of the Income Tax (Withholding Payments) Regulations 1979”.

- (2) In paragraph (b)(iii) of the definition of **disputable decision**, “Part VIIIA:” is replaced by “Part (8A) VIIIA; or” and the following is added:
 - “(iv) that is left to the Commissioner’s discretion under sections 89K, 89L, 89M(8) and (10) and **89N(3)**”.
- (3) After the definition of **disputant’s statement of position**, the following is inserted:

“**disqualifying offence** is defined in **section 141FB(3)** for the purpose of section 141FB

“**disqualifying penalty** is defined in **section 141FB(3)** for the purpose of section 141FB”.
- (4) After the definition of **GST**, the following is inserted:

“**GST payable** has the meaning given to **tax payable** by section 2 of the Goods and Services Tax Act 1985”.
- (5) In the definition of **late payment penalty**, “21Q” is replaced by “12Q”.
- (6) The definition of **response period** is replaced by the following:

“**response period** for a notice in response to another notice (called the **initiating notice**) means—

 - “(a) the 2-month period starting on the date of issue of the initiating notice, if the initiating notice is—
 - “(i) a notice of proposed adjustment:
 - “(ii) a notice of disputable decision:
 - “(iii) a notice revoking or varying a disputable decision that is not an assessment:
 - “(iv) a disclosure notice:
 - “(v) a notice from the Commissioner rejecting an adjustment proposed by a disputant:
 - “(b) the 2-month period starting on the date of issue of the initiating notice, if the initiating notice is a disputant’s statement of position:
 - “(c) if the notice is a notice of proposed adjustment that is issued by a taxpayer under section 89D and the initiating notice is a notice of assessment issued by the Commissioner, the 4-month period starting on the date of the initiating notice:

- “(d) if the notice is a notice of proposed adjustment that is issued by a taxpayer under section 89DA and the initiating notice is a notice of assessment issued by the taxpayer, the 4-month period starting on the date on which the taxpayer’s notice of assessment is received at an office of the department”.
- (7) After the definition of **response period**, the following is inserted:
- “**responsible department**, in sections 81(4)(f) and (o), 82 and 85, means—
- “(a) in relation to a benefit that is not a student allowance, the department for the time being responsible for administration of the Social Security Act 1964:
- “(b) in relation to a student allowance, the department for the time being responsible for administration of Part 25 of the Education Act 1989”.
- (8) After the definition of **status ruling**, the following is inserted:
- “**student allowance** means an allowance paid under regulations made under section 303 of the Education Act 1989”.
- (9) **Subsection (6)** applies—
- (a) for notices issued in relation to GST return periods that commence on or after 1 April 2005:
- (b) for notices that are not issued in relation to GST return periods and that are issued on or after 1 April 2005.
- 71 Information to be furnished on request of Commissioner**
- In section 17(1C)(a)(i), “in the knowledge, possession or control of” is replaced by “held by”, in both places where it appears.

New (unanimous)

71B Section 33B repealed

- (1) Section 33B is repealed.
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

72 Officers to maintain secrecy

- (1) In section 81(4)(f), in the portion preceding subparagraph (i), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.
- (2) In section 81(4)(o), “the department for the time being responsible for the administration of the Social Security Act 1964” where it first appears is replaced by “the responsible department” and where it appears for the second time is replaced by “that department”.

73 Disclosure of information for matching purposes

- (1) In section 82(1), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.
- (2) In section 82(2), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.
- (3) In section 82(6), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.
- (4) In section 82(7), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.
- (5) After section 82(7), the following is inserted:

“(7B) If the Commissioner supplies under subsection (6) or (7) information about a person to the responsible department, the Commissioner may also supply to that department the following additional information that is held by the Department and that relates to the person (—) :

 - “(a) the full name and date of birth of the person:
 - “(b) if the information held by the Department includes information about the person’s employment—
 - “(i) the telephone number of each employer of the person(; and) :
 - “(ii) the email address of each employer of the person(; and) :
 - “(iii) the tax code or codes applicable to the person during each period for which the person received a benefit.”

- (6) In section 82(9)—
- (a) in paragraph (a) of the definition of **authorised officer**, “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”;
 - (b) the definition of **beneficiary** is replaced by the following:

“**beneficiary** means—

 - “(a) a person who is receiving, or has received, a benefit or earnings related compensation:
 - “(b) an applicant for a benefit or earnings related compensation:
 - “(c) in the case of a benefit that is a student allowance, a person who is a spouse of the recipient of the benefit under regulation 2 of the Student Allowances Regulations 1998”;
 - (c) after the definition of **beneficiary information**, the following is inserted:

“**benefit** includes a benefit payable under the Social Security Act 1964 and a student allowance payable under Part 25 of the Education Act 1989”.

74 Disclosure of address information in relation to debtors

- (1) Section 85(1) is replaced by the following:
- “(1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the responsible department for the purpose of assisting the responsible department to recover money owed by debtors to the responsible department, acting in the name of the Crown.”
- (2) In section 85(2), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.
- (3) In section 85(3), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.
- (4) Section 85(6) is amended by—
- (a) in the definition of **authorised officer**, replacing “the department for the time being responsible for the

administration of the Social Security Act 1964” by “the responsible department”:

- (b) after paragraph (c) of the definition of **debtor**, adding the following:
- “(d) a person who is not currently receiving a student allowance and from whom a debt relating to an allowance (as defined in section 302 of the Education Act 1989) is recoverable under section 307B of that Act”.

75 Further secrecy requirements

- (1) In section 87(5)(a)(i), “(eb),” is inserted after “(e),”.
- (2) **Subsection (1)** applies for secrecy certificates that are signed on or after the date on which this Act receives the Royal assent.

76 Notices of proposed adjustment required to be issued by Commissioner

- (1) After section 89C(d), the following is inserted:
 - “(db) the assessment is made in relation to a matter for which the material facts and relevant law are identical to those for an assessment of the taxpayer for another income year that is at the time the subject of court proceedings; or”.
- (2) After section 89C(e), the following is inserted:
 - “(eb) the Commissioner has reasonable grounds to believe that the taxpayer has left New Zealand and may have been involved in fraudulent activity; or”.
- (3) **Subsections (1) and (2)** apply to assessments for which notices are issued on or after 1 April 2005.

77 Taxpayers and others with standing may issue notices of proposed adjustment

- (1) After section 89D(2B) the following is inserted:
 - “(2C) A taxpayer who has not provided a GST tax return for a GST return period may not dispute the assessment made by the Commissioner other than by providing a GST return for the GST return period.”
- (2) Section 89D(4) is repealed.
- (3) **Subsections (1) and (2)** apply for GST return periods that begin on or after 1 April 2005.

78 Taxpayer may issue notice of proposed adjustment for taxpayer assessment

- (1) In section 89DA(1), “or a GST return period” is inserted after “income year”.

Struck out (unanimous)

- (2) After section 89DA(1), the following is inserted:

“(1B) If a notice under subsection (1) proposes an adjustment that involves an input tax credit under the Goods and Services Tax Act 1985, other than an amount that is referred to in the proviso to section 20(3) of that Act, the notice must be issued within 2 years of the date on which the taxpayer’s GST tax return to which the adjustment relates is received at an office of the department.”

- (3) Section 89DA(2) is replaced by the following:

“(2) (Subject to **subsection (1B)**, a) A notice of proposed adjustment under this section (must be) is not effective unless it is issued within the response period for the notice.”

- (4) **Subsections (1) (to) and (3)** apply to notices issued in relation to GST return periods that begin on or after 1 April 2005.

79 Election of small claims jurisdiction of Taxation Review Authority

- (1) In section 89E(1), wherever it appears, “\$15,000” is replaced by “\$30,000”.
- (2) **Subsection (1)** applies to disputes that are commenced under Part **(4A)** IVA of the Tax Administration Act 1994 on or after 1 April 2005.

80 Section 89F replaced

- (1) Section 89F is replaced by the following:

“89F Content of notice of proposed adjustment

- “(1) A notice of proposed adjustment must—
- “(a) contain sufficient detail of the matters described in **subsections (2) and (3)** to identify the issues arising between the Commissioner and the *(taxpayer)* disputant; and
- “(b) be in the prescribed form.

“(2) A notice of proposed adjustment issued by the Commissioner must—

“(a) identify the adjustment or adjustments proposed to be made to the assessment; and

Struck out (unanimous)

“(b) state concisely—

“(i) the facts and the law that the Commissioner considers make the adjustment or adjustments necessary; and

“(ii) how the law applies to the facts.

New (unanimous)

“(b) provide a concise statement of the key facts and the law in sufficient detail to inform the disputant of the grounds for the Commissioner’s proposed adjustment or adjustments; and

“(c) state how the law applies to the facts.

“(3) A notice of proposed adjustment issued by a *(taxpayer)* disputant must—

New (unanimous)

“(aa) identify the adjustment or adjustments proposed to be made to the assessment; and

Struck out (unanimous)

“(a) provide a clear and detailed statement of the facts and the law that the taxpayer considers make the adjustment or adjustments necessary; and

New (unanimous)

“(a) provide a statement of the facts and the law in sufficient detail to inform the Commissioner of the grounds for the disputant’s proposed adjustment or adjustments; and

“(b) state how the law applies to the facts; and

New (unanimous)

“(c) include copies of the documents of which the disputant is aware at the time that the notice is issued that are significantly relevant to the issues arising between the Commissioner and the disputant.”

Struck out (unanimous)

“(c) include copies of all document ary evidence in support of the adjustment —
“(i) that is materially relevant to the issues arising between the Commissioner and the taxpayer; and
“(ii) of which the taxpayer is aware at the time that the notice is issued.”

- (2) **Subsection (1)** applies to disputes that are commenced under Part (4A) IVA of the Tax Administration Act 1994 on or after 1 April 2005.

81 Issue of response notice

- (1) Section 89G(2) is replaced by the following:
“(2) A notice of response must state concisely—
“(a) the facts or legal arguments in the notice of proposed adjustment that the issuer of the notice of response considers are wrong; and
“(b) why the issuer of the notice of response considers those facts or legal arguments to be wrong; and
“(c) any facts and legal arguments relied on by the issuer of the notice of response; and
“(d) how the legal arguments apply to the facts; and

- “(e) the quantitative adjustments to any figure referred to in the notice of proposed adjustment that result from the facts and legal arguments relied on by the issuer of the notice of response.”
- (2) **Subsection (1)** applies to disputes that are commenced under Part (4A) IVA of the Tax Administration Act 1994 on or after 1 April 2005.

82 Late actions deemed to occur within response period

- (1) In section 89K(1)(a)(ii), “GST tax return” is replaced by “GST tax return; or” and the following is added:
- “(iii) issuing a statement of position”.

New (unanimous)

- (1B) In section 89K(1)(a)(ii), “in respect of a disputable decision or a GST tax return,—” is replaced by “or 89DA in respect of a disputable decision; or”.
- (1C) After section 89K (1)(a)(ii), the following is added:
- “(iii) issuing a statement of position,—”.
- (1D) In section 89K(1)(b)(ii)(A), “or GST tax return” is omitted.
- (2) In section 89K(1)(b)(ii)(B), “section 89F” is replaced by “section 89F; or” and the following is added:
- “(iii) a statement of position”.
- (3) In section 89K(1)(d), “proposed adjustment” is replaced by “proposed adjustment; or”, and the following is added:
- “(e) the disputant’s statement of position”.
- (4) Section 89K(3)(a) and (b) are replaced by the following:
- “(a) an **exceptional circumstance** arises if—
- “(i) an event or circumstance beyond the control of a disputant provides the disputant with a reasonable justification for not rejecting a proposed adjustment, or for not issuing a notice of proposed adjustment or statement of position, within the response period for the notice:
- “(ii) a disputant is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the

- lateness is minimal, or results from 1 or more statutory holidays falling in the response period:
- “(b) an act or omission of an agent of a disputant is not an exceptional circumstance unless—
 - “(i) it was caused by an event or circumstance beyond the control of the agent that could not have been anticipated, and its effect could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or
 - “(ii) the agent is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the lateness is minimal, or results from 1 or more statutory holidays falling in the response period.”
- (5) **Subsections (1) to (4)** apply to disputes that are commenced under Part (4A) IVA of the Tax Administration Act 1994 on or after 1 April 2005.

83 Disclosure notices

- (1) In section 89M(1), “the Commissioner may issue” is replaced by “and subject to section 89N, the Commissioner must issue”.
- (2) After section 89M(6), the following is inserted:
“(6B) In subsections (4)(b) and (6)(b), **evidence** refers to the available documentary evidence on which the person intends to rely, but does not include a list of potential witnesses, whether or not identified by name.”
- (3) Section 89M(7) is replaced by:
“(7) A disputant who does not issue a statement of position in the prescribed form within the response period for the statement of position, is treated as follows:
 - “(a) if the Commissioner has proposed the adjustment to the assessment, the disputant is treated as having accepted the Commissioner’s notice of proposed adjustment or statement of position:
 - “(b) if the disputant has proposed the adjustment to the assessment, the disputant is treated as not having issued a notice of proposed adjustment.”

- (4) **Subsections (1) to (3)** apply to disputes that are commenced under Part (4A) IVA of the Tax Administration Act 1994 on or after 1 April 2005.

84 New sections 89N and 89O inserted

- (1) After section 89M, the following are inserted:

“89N **Completing the disputes process**

- “(1) This section applies if—

- “(a) a notice of proposed adjustment has been issued; and
- “(b) the dispute has not been resolved by agreement between the Commissioner and the *(taxpayer)* disputant; and
- “(c) none of the following applies:

Struck out (unanimous)

- “(i) the dispute involves allegations of criminal matters :

New (unanimous)

- “(i) the Commissioner notifies the disputant that, in the Commissioner’s opinion, the disputant in the course of the dispute has committed an offence under an Inland Revenue Act that has had an effect of delaying the completion of the disputes process:

- “(ii) the Commissioner has reasonable grounds to believe that the *(taxpayer involved in the dispute)* disputant may take steps in relation to the existence or location of the *(taxpayer’s)* disputant’s assets to avoid or delay the collection of tax from the *(taxpayer)* disputant:

- “(iii) the Commissioner has reasonable grounds to believe that a person who is, under section OD 8(3) of the Income Tax Act ~~(1994)~~ 2004, an associated person of the *(taxpayer involved in the dispute)* disputant may take steps in relation to the existence or location of the *(taxpayer’s)* disputant’s assets to avoid or delay the collection of tax from the *(taxpayer)* disputant:

- “(iv) the *(taxpayer involved in the dispute)* disputant has begun judicial review proceedings in relation to the dispute:
 - “(v) a person who is, under section OD 8(3) of the Income Tax Act *(1994)* 2004, an associated person of the *(taxpayer)* disputant and is involved in another dispute with the Commissioner involving similar issues has begun judicial review proceedings in relation to the other dispute:
 - “(vi) during the disputes process, the disputant *(taxpayer fails to comply with)* receives from the Commissioner a request under a statute *(by the Commissioner)* for information relating to the dispute and fails to comply with the request within a period that is specified in the request:
 - “(vii) the disputant elects under section 89E to have the dispute heard by a Taxation Review Authority acting in its small claims jurisdiction:
 - “(viii) the *(taxpayer)* disputant and the Commissioner agree in writing that they have reached a position in which the dispute would be resolved more efficiently by being submitted to the court or Taxation Review Authority without completion of the disputes process:
 - “(ix) the *(taxpayer)* disputant and the Commissioner agree in writing to suspend proceedings in the dispute pending a decision in a test case referred to in **section 890**.
- “(2) If this section applies, the Commissioner may not amend an assessment under section 113 *(without completing the disputes process set out in this Part)* before one of the following occurs:

New (unanimous)

- “(a) the Commissioner or the disputant accepts a notice of proposed adjustment, notice of response, or statement of position issued by the other:
- “(b) the Commissioner considers a statement of position issued by the disputant.

- “(3) Despite **subsection (2)**, the Commissioner may apply to the High Court for an order that **(to)** allows more time for the completion of the disputes process, or for an order that completion of the disputes process is not required.

New (unanimous)

- “(4) The Commissioner must make an application under **subsection (3)** within the period of time during which the Commissioner would otherwise be required, under the Inland Revenue Acts, to make an amended assessment.
- “(5) If the Commissioner makes an application under **subsection (3)**, the period of time during which the Commissioner must make an amended assessment is the total of—
- “(a) the period of time within which the Commissioner, in the absence of the application, would be required under the Inland Revenue Acts to make the amended assessment:
 - “(b) the period of time that starts on the date on which the Commissioner files the application in the High Court and ends on the earliest of—
 - “(i) the date of the High Court’s decision of the application:
 - “(ii) the date on which the application is otherwise resolved:
 - “(iii) the date on which the dispute is otherwise resolved:
 - “(c) any further period of time that is allowed by an order of a court as a result of the application.

“89O Test cases

- “(1) This section applies if—
- “(a) a dispute between a **(taxpayer) disputant** and the Commissioner has been identified; and
 - “(b) the Commissioner has designated a separate challenge as a test case.
- “(2) The **(taxpayer) disputant** and the Commissioner may agree in writing to suspend the proceedings in the dispute because there is significant similarity between the facts and questions

of law in the dispute and the facts and questions of law in the challenge that has been designated as a test case.

- “(3) A suspension that is agreed under **subsection (2)** starts on the date of the agreement and ends on the earliest of—
- “(a) the date of the court’s decision in the test case:
 - “(b) the date on which the test case is otherwise resolved:
 - “(c) the date on which the dispute is otherwise resolved.
- “(4) The Commissioner may make an assessment or perform an action in relation to a suspended dispute that is consistent with the resolution of the test case.

Struck out (unanimous)

- “(5) The period of time before a time bar , under an Inland Revenue Act, that affects a suspended dispute is extended by the period of the suspension that is described in **subsection (3).**”

New (unanimous)

- “(5) If a suspension is agreed under **subsection (2)**, the period of time during which the Commissioner must make an amended assessment, or perform an action, that is the subject of the suspended dispute is the total of—
- “(a) the period of time within which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment or perform the action:
 - “(b) the period of the suspension that is described in **subsection (3).**”

- (2) **Subsection (1)** applies to disputes that are commenced under Part (4A) IVA of the Tax Administration Act 1994 on or after 1 April 2005.

85 Determinations in relation to financial arrangements

- (1) Section 90(6) is replaced by the following:
- “(6) The Commissioner may at any time—
- “(a) make a determination that varies, cancels, restricts or extends in scope an earlier determination made under this section:

“(b) issue a notice that cancels a determination made under this section.

“(6B) A person who acquires or issues a financial arrangement before the date of notification or publication of a determination, or notice, that is authorised by **subsection (6)** is not required to apply the determination to the financial arrangement, or treat the notice as affecting the financial arrangement, until the date that is 4 years after that date of notification or publication.”

(2) In section 90(7)—

(a) “and notices issued by the Commissioner under **subsection (6)(b)**” is inserted after “subsection (1)”;

(b) “or notice” is inserted after “determination”.

(3) In section 90(8), “or notice” is inserted after “determination”.

86 Determinations relating to financial arrangements

Section 90AC(6) is replaced by the following:

“(6) The Commissioner may at any time—

“(a) make a determination that varies, cancels, restricts or extends in scope an earlier determination under this section:

“(b) issue a notice that cancels a determination made under this section.”

87 Notification of determinations

(1) In the heading to section 90AD, “**and notices**” is added after “**determinations**”.

(2) In section 90AD(1), “or notice” is inserted after “determination” wherever it occurs.

(3) In section 90AD(2), “or notice” is inserted after “determination”.

88 Section 90AE replaced

Section 90AE is replaced by the following:

“90AE Four-year period in which determination not required to be applied

A person who enters into a financial arrangement before the date of notification or publication of a determination, or notice, that is authorised by **section 90AC(6)** is not required to

apply the determination to the financial arrangement, or treat the notice as affecting the financial arrangement, until the date that is 4 years after that date of notification or publication.”

89 Determinations in relation to apportionment of interest costs

- (1) Section 90A(6) is replaced by the following:
“(6) The Commissioner may at any time—
 “(a) make a determination that varies, cancels, restricts or extends in scope an earlier determination under this section:
 “(b) issue a notice that cancels a determination under this section.
“(6B) A person who enters into a financial arrangement before the date of notification or publication of a determination, or notice, that is authorised by **subsection (6)** is not required to apply the determination to the financial arrangement, or treat the notice as affecting the financial arrangement, until the first income year that commences after that date of notification or publication.”
- (2) In section 90A(7)—
 (a) “and notices issued by the Commissioner under **subsection (6)(b)**” is inserted after “subsection (1)”;
 (b) “or notice” is inserted after “determination”.
- (3) In section 90A(8), “or notice” is inserted after “determination”.

New (unanimous)

89B Determinations in relation to standard-cost household service

- (1) In the words before section 91AA(2)(a), “gross income” is replaced by “an amount”.
- (2) In section 91AA(2)(a), “section CB 9(h)” is replaced by “section CB 9(**gb**) and (h) of the Income Tax Act 1994”.
- (3) In section 91AA(3), “gross income” is replaced by “an amount”.
- (4) **Subsections (1) to (3)** apply for the 2003–04 and subsequent income years.

90 New section 91AAB inserted

(1) After section 91AA, the following is inserted:

“91AAB Determinations relating to types and diminishing values of listed horticultural plants

“(1) For the purpose of **sections DO 4B, DO 4C, and DO 4D** of the Income Tax Act 1994, the Commissioner may determine—

“(a) that a type of horticultural plant, tree, vine, bush, cane, or other similar plant that is cultivated on land, is a type of listed horticultural plant:

“(b) the banded rate set out in column 1 of Schedule 11 of the Income Tax Act 1994 that is to be used to calculate the diminishing value for a type of listed horticultural plant.

“(2) In making a determination, the Commissioner must take into account the estimated useful life of the type of plant, and may also take into account—

“(a) the main purpose for which the type of plant is cultivated:

“(b) the manner in which the type of plant is cultivated and managed.

“(3) The determination may set out the income year or income years for which it is to apply, but may not apply for income years before the 2003–04 income year.

“(4) The determination may provide for the extension, limitation, variation, cancellation or revocation of an earlier determination.

“(5) A person affected by a determination made under this section may dispute or challenge the determination under Parts **(4A) IVA** and **(8A) VIIIA**.

“(6) Within 30 days of issuing a determination under this section, the Commissioner must publish a notice in the Gazette that—

“(a) gives notice that the determination has been issued; and

“(b) states where copies of the determination can be obtained.”

New (unanimous)

- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

91 Commissioner to make private rulings on request

Section 91E(6)(d) is repealed.

92 Taxpayer assessment

- (1) The heading to section 92 is replaced by “**Taxpayer assessment of income tax**”.
- (2) Section 92(2) is replaced by the following:
- “(2) An assessment under this section is made on the date on which the taxpayer’s return of income is received at an office of the Department.”
- (3) Section 92(3) is repealed.
- (4) **Subsections (1) to (3)** apply for the 2004–05 and subsequent income years.

93 New section 92B inserted

- (1) After section 92A, the following is inserted:
- “**92B Taxpayer assessment of GST**
- “(1) A taxpayer who is required under the Goods and Services Tax Act 1985 to provide a GST tax return for a GST return period must make an assessment of the amount of GST payable by the taxpayer for the return period.
- “(2) An assessment under this section is made on the date on which the taxpayer’s GST tax return is received at an office of the department.
- “(3) This section does not apply to a taxpayer for a GST return period if the Commissioner has made an assessment of the GST payable by the taxpayer for the return period.”
- (2) **Subsection (1)** applies for GST return periods beginning on or after 1 April 2005.

94 Assessment where default made in furnishing returns

- (1) After section 106(1C), the following is inserted:

- “(1D) If a person who is required to provide a GST tax return for a GST return period does not provide a GST tax return for the return period, or provides a GST tax return with which the Commissioner is not satisfied, the Commissioner may make an assessment of the GST payable by the person for the return period.
- “(1E) A person who is assessed under **subsection (1D)** is liable to pay the GST assessed unless the person establishes in proceedings challenging the assessment that the assessment is excessive, or that the person is not chargeable with GST.”
- (2) **Subsection (1)** applies for GST return periods beginning on or after 1 April 2005.

Struck out (unanimous)

95 Time bar for amendment of income tax assessment

- (1) Section 108(2) is replaced by the following:
- “(2) The Commissioner may, at any time, amend an assessment to increase its amount if the Commissioner considers that a taxpayer has provided a return of income that—
- “(a) is fraudulent or wilfully misleading; or
- “(b) materially understates gross income by not mentioning gross income that is of a particular nature or is derived from a particular source, and for which a return must be provided; or
- “(c) materially overstates the amount of a deduction that is allowed under the Income Tax Act 1994.”
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

96 Time bar for assessment of GST

- (1) The heading to section 108A is replaced by “**Time bar for amending GST assessment**”.
- (2) Section 108A(1) is replaced by the following:
- “(1) Subject to this section and section 108B, if a taxpayer provides a GST tax return for a GST return period and an assessment has been made, the Commissioner may not amend the assessment to increase the amount assessed if 4 years have

passed from the end of the GST return period in which the tax return was provided.”

- (3) Section 108A(2) is repealed.
- (4) Section 108A(3) is replaced by the following:
 - “(3) The Commissioner may, at any time, amend an assessment to increase the amount of the assessment if the Commissioner considers that the person assessed has knowingly or fraudulently failed to disclose to the Commissioner all of the material facts that are necessary for determining the amount of GST payable for a GST return period.”
- ~~(4)~~5 **Subsections (1) to (4)** apply for GST return periods beginning on or after 1 April 2005.

97 Extension of time bars

- (1) Section 108B(1) is replaced by the following:

Struck out (unanimous)

- “(1) The Commissioner and a taxpayer may agree by waiver to an extension of not more than 12 months to the period of time before the application of a time bar that is referred to in subsection (3).
- “(1B) During the period of a waiver under **subsection (1)**, the Commissioner must not investigate issues between the taxpayer and the Commissioner that were not identified and known to both parties before the start of the period.”

New (unanimous)

- “(1) The application of a time bar that is referred to in subsection (3) may be delayed for a taxpayer by a waiver—
 - “(a) for not more than 12 months from the time at which the time bar would otherwise apply, by written agreement between the Commissioner and the taxpayer:
 - “(b) for a further 6 months from the end of the 12-month period referred to in **paragraph (a)**, by written notice given by the taxpayer.

New (unanimous)

“(1B) A waiver under **subsection (1)** does not affect the application of a time bar to an assessment of the taxpayer by the Commissioner on a ground that was not identified and known to the taxpayer and the Commissioner before the time at which the time bar would have applied but for **subsection (1)**.”

- (2) In section 108B(3)(f), “for which the GST return was provided or, as the case may be, the assessment made; and” is replaced by “in which the GST tax return was provided.”
- (3) Section 108B(3)(g) is repealed.
- (4) **Subsections (1)** applies to disputes that are commenced under Part (4A) IVA of the Tax Administration Act 1994 on or after 1 April 2005.
- (5) **Subsections (2) and (3)** apply for GST return periods beginning on or after 1 April 2005.

98 Commissioner to give notice of assessment to taxpayer

- (1) After section 111(7), the following is added:
 - “(8) If the Commissioner makes an assessment in relation to goods that are treated under section 5(2) of the Goods and Services Tax Act 1985 as being supplied by a person, the Commissioner must send a copy of the notice referred to in subsection (1) to whichever of the person whose goods were sold and the person selling the goods is the person who is not assessed.”
(following is the person not assessed:)

Struck out (unanimous)

- “(a) the person whose goods were sold:
- “(b) the person selling the goods.”

- (2) **Subsection (1)** applies to notices that are issued on or after 1 April 2005.

99 Commissioner may at any time amend assessments

- (1) In section 113(1), “The Commissioner may from time to time and at any time make all such alterations in or additions to” is

replaced by “Subject to **section 89N**, the Commissioner may from time to time, and at any time, amend”.

- (2) In section 113(2), “alteration or addition” is replaced by “amendment”.
- (3) **Subsection (1)** applies to amendments for which notices are issued on or after 1 April 2005.

100 Section 114 replaced

Section 114 is replaced by the following:

“114 Validity of assessments

An assessment made by the Commissioner is not invalidated—

- “(a) through a failure to comply with a provision of this Act or another Inland Revenue Act; or
- “(b) because the assessment is made wholly or partially in compliance with—
 - “(i) a direction or recommendation made by an authorised officer on matters relating to the assessment:
 - “(ii) a current policy or practice approved by the Commissioner that is applicable to matters relating to the assessment.”

101 Variation to definitions for determining interest chargeable or payable to PAYE intermediaries

- (1) In section 120OB(1)(a), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”.
- (2) In section 120OB(1)(b), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”.
- (3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004.

102 When disputant entitled to challenge assessment

In section 138B(3)(b), “adjusted.” is replaced by “adjusted; and”, and the following is added:

- “(c) for the purposes of paragraph (b), the written disputable decision from the Commissioner is not limited to the Commissioner’s notice of response.”

103 Certain rights of challenge not conferred

In section 138E(1)(e)(iv), “Act,—” is replaced by “Act; or” and the following is added:

“(v) any of Parts 4, 6, 7 and 11 (other than section 76) of the Goods and Services Tax Act 1985—”.

104 Challenging disputable decisions which are not assessments

In section 138F(1), “under section 138B” is inserted after “challenge”.

105 Late filing penalties

In section 139A(5), “annual imputation return or” is omitted.

106 Tax shortfalls

- (1) In section 141(2), “, subject to **section 141AA(1)**” is inserted after “penalty”.
- (2) **Subsection (1)** applies for withholding payments made on or after 1 April 2005.

107 New section 141AA inserted

- (1) After section 141, the following is inserted:

“141AA Shortfall penalty if non-resident contractor relieved from all liability to pay tax on (withholding) contract payment

- “(1) If a person makes a withholding payment that is a contract payment to a person who is a non-resident contractor for the purposes of the Income Tax (Withholding Payments) Regulations 1979 and (who is relieved by a double tax agreement from all liability to pay tax on the withholding payment) the non-resident contractor is not liable to pay income tax on the contract payment, whether because of a double tax agreement or otherwise, the person who makes the (withholding) contract payment to the non-resident contractor is liable to pay a shortfall penalty of \$250 for each return period—
- “(a) for which the person is required to deliver to the Commissioner an employer monthly schedule; and
 - “(b) in which the person fails to make a required tax deduction from a (withholding) contract payment to the non-resident contractor.(; and)

- “(2) A person who is liable to pay a shortfall penalty under **subsection (1)** is not liable to pay a shortfall penalty based on the tax shortfall that, but for this section, would be calculated under section 141 in relation to the required tax deduction.
- “(3) The liability under **subsection (1)** of a person is limited to a total of \$1,000 for each return period for which the person is required to deliver to the Commissioner an employer monthly schedule.”
- (2) **Subsection (1)** applies for withholding payments made on or after 1 April 2005.

108 Section 141FB replaced

Section 141FB is replaced by the following:

“141FB Reduction of penalties for previous behaviour

- “(1) A shortfall penalty (called the **current penalty**) for which a taxpayer is liable under section 141E is reduced, to 50% of the amount that would be payable by the taxpayer in the absence of this section, if the taxpayer is not—
 - “(a) convicted of an offence that is a disqualifying offence:
 - “(b) liable for another shortfall penalty that is a disqualifying penalty for the purpose of this subsection.
- “(2) A shortfall penalty (called the **current penalty**) for which a taxpayer is liable under any of sections 141A to 141D is reduced, to 50% of the amount that would be payable by the taxpayer in the absence of this section, if the taxpayer is not—
 - “(a) convicted of an offence that is a disqualifying offence:
 - “(b) liable for another shortfall penalty that is a disqualifying penalty for the purpose of this subsection.
- “(3) For the purpose of this section—
 - “**disqualifying offence** means—
 - “(a) an offence under section 143A, 143B, 143F, 143G, 143H or 145 for which a conviction is entered—
 - “(i) on or after 26 March 2003; and
 - “(ii) before the taxpayer takes the tax position to which the current penalty relates:
 - “(b) an offence under section 143 or 144 that relates to the type of tax to which the current penalty relates and for which a conviction is entered—
 - “(i) on or after 26 March 2003; and

“(ii) after the date that precedes, by the period specified in **subsection (4)**, the date on which the taxpayer takes the tax position to which the current penalty relates; and

“(iii) before the taxpayer takes the tax position to which the current penalty relates

“**disqualifying penalty** means—

“(a) for the purpose of **subsection (1)**, a shortfall penalty that—

“(i) relates to the type of tax to which the current penalty relates; and

“(ii) is for evasion or a similar act; and

“(iii) is not reduced for voluntary disclosure by the taxpayer; and

“(iv) relates to a tax position that is taken on or after 26 March 2003 and before the date on which the taxpayer takes the tax position to which the current penalty relates:

“(b) for the purpose of **subsection (2)**, a shortfall penalty that—

“(i) relates to the type of tax to which the current penalty relates; and

“(ii) if the current penalty is—

“(A) for gross carelessness or taking an abusive tax position, is a shortfall penalty for evasion or a similar act or for gross carelessness or taking an abusive tax position:

“(B) for not taking reasonable care or taking an unacceptable tax position, is a shortfall penalty of any sort; and

“(iii) is not reduced for voluntary disclosure by the taxpayer; and

“(iv) relates to a tax position that is taken—

“(A) on or after 26 March 2003; and

“(B) after the date that precedes, by the period specified in **subsection (4)**, the date on which the taxpayer takes the tax position to which the current penalty relates; and

“(C) before the date on which the taxpayer takes the tax position to which the current penalty relates.

- “(4) The period referred to in the definitions of **disqualifying offence** and **disqualifying penalty**, in **subsection (3)**, and in **subsection (5)** is—
- “(a) 2 years, if the current penalty relates to—
- “(i) the taxpayer’s application of the PAYE rules:
 - “(ii) fringe benefit tax:
 - “(iii) goods and services tax:
 - “(iv) resident withholding tax:
- “(b) 4 years, if the period is not given by **paragraph (a)**.
- “(5) For the purpose of **subsection (2)**, a shortfall penalty that relates to a tax shortfall arising from a tax position taken by a taxpayer is determined as if the taxpayer were not liable for a shortfall penalty that relates to a tax shortfall arising from another tax position taken by the taxpayer, if—
- “(a) the Commissioner becomes aware of both tax shortfalls as a consequence of a single investigation or voluntary disclosure; and
- “(b) the taxpayer—
- “(i) takes both tax positions on the same date:
 - “(ii) is not liable for a shortfall penalty at any time in the period specified in **subsection (4)** that ends on the earliest date on which the taxpayer takes a tax position that gives rise to a tax shortfall of which the Commissioner becomes aware as a consequence of the investigation or disclosure to which **paragraph (a)** refers.”

109 Section 141FC repealed

- (1) Section 141FC is repealed.
- (2) **Subsection (1)** applies with respect to *(shortfall penalties imposed on and) a shortfall penalty that is imposed in relation to a return period beginning on or after 1 April 2005.*

110 New section 141FD inserted

- (1) After section 141FB, the following is inserted:
- “141FD **Shareholders of loss attributing qualifying companies**
- “(1) This section applies to a shortfall penalty under Part (9) **IX** that arises because—
- “(a) a loss attributing qualifying company attributes a net loss to a person who, *(is a shareholder of the loss*

- attributing qualifying company*) on any day in the income year *(in)* for which the company had the net loss, is a shareholder of the loss attributing qualifying company; and
- “(b) the net loss is subsequently reduced because—
- “(i) deductions claimed by the loss attributing qualifying company for the income year are disallowed;
- “(ii) the gross income of the loss attributing qualifying company for the income year is increased.
- “(2) The shortfall penalty that would be imposed on the loss attributing qualifying company in the absence of this section may not be imposed on the loss attributing qualifying company.
- “(3) A shortfall penalty may be imposed on the *(person)* shareholder in relation to the amount of a deduction that the *(person)* shareholder claimed in respect of the attributed net loss.
- “(4) No shortfall penalty under Part (9) IX relating to the reduction of the attributed net loss of the company may be imposed on the shareholder other than the shortfall penalty permitted by **subsection (3)**.”
- (2) **Subsection (1)** applies with respect to *(shortfall penalties imposed on and)* a shortfall penalty that is imposed in relation to a return period beginning on or after 1 April 2005.

111 Application of Part 9 to PAYE intermediaries

- (1) In section 141JB(1)(a), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”.
- (2) In section 141JB(1)(b), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”.
- (3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004.

112 Recovery of tax deductions from employers or PAYE intermediaries

- (1) In section 167(2B)(b)(i), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”.
- (2) In section 167(2B)(b)(ii), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”.

- (3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004.

113 Employer or PAYE intermediaries failing to make tax deductions

- (1) In section 168(4)(a), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”.
- (2) In section 168(4)(b), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”.
- (3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004.

114 Unpaid tax deductions, etc., to constitute charge on employer’s or PAYE intermediary’s property

- (1) In section 169(1B)(a), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”.
- (2) In section 169(1B)(b), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”.
- (3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004.

115 Transfer of excess tax within taxpayer’s accounts

In section 173L(2)(a), “taxable period” is replaced by “GST return period”.

116 Write-off of tax by Commissioner

- (1) Section 177C(6) is replaced by the following:
- “(6) For the purpose of subsection (5), the net loss that may be extinguished is the net loss of the taxpayer at the time at which the outstanding tax is written off and the Commissioner may use a figure for that net loss based on the most recent return of income furnished by the taxpayer.”
- (2) **Subsection (1)** applies to tax that is written ~~(-)~~ off on and after the date on which this Act receives the Royal assent.

New (unanimous)

116B Relief to taxpayers to whom new start grants payable

- (1) In section 177D(2)(a), “section EZ 9(3)” is replaced by “**section EZ 9(3) and (4)**”.
- (2) In section 177D(3), “adverse event” is replaced by “event that is a qualifying event, as defined by section OB 1 of the Income Tax Act 1994”.
- (3) **Subsections (1) and (2)** apply for the 2003–04 and subsequent income years.

117 New section 181D inserted

- (1) After section 181C, the following section is inserted:

“181D Remission of late payment penalties and interest incurred due to obligation by Maori authority to pay further income tax

An amount that is interest under section 120D of the Tax Administration Act 1994, or a late payment penalty relating to further income tax, and that is paid or payable by a Maori authority and to which **section MK 8(5) or (5B) of the Income Tax Act 1994** applies must be remitted by the Commissioner to the extent that the amount of further income tax charged in relation to an imputation year is equal to or less than the amount of unpaid income tax.”

- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

118 Remission for reasonable cause

Section 183A(1) is replaced by the following:

- “(1) This section applies to—
- “(a) a late filing penalty:
 - “(b) a non-electronic filing penalty:
 - “(c) a late payment penalty:
 - “(d) imputation penalty tax imposed by section 140B:
 - “(e) dividend withholding payment penalty tax imposed by section 140C:
 - “(f) Maori authority distribution penalty tax imposed by section 140CB:
 - “(g) a shortfall penalty imposed by section 141AA.”

119 Remission consistent with collection of highest net revenue over time

After section 183D(1)(b), the following is inserted:

“(bb) a shortfall penalty imposed by section 141AA; and”.

120 Payment out of Crown Bank Account

- (1) In section 185(1)(a), “or the Goods and Services Tax Act 1985” is added after “Income Tax Act 1994”.

121 Regulations—Income tax related

- (1) The heading to section 225 is replaced by “Regulations”.
- (2) In section 225(1), “or Goods and Services Tax Act 1985” is added after “Income Tax Act 1994” in all the places that it occurs.

122 Power to extend time for doing anything under Act

In section 226, “or the Goods and Services Tax Act 1985” is inserted after “Income Tax Act 1994” in both places that it occurs.

Part 4

Amendments to other Acts and Regulations

Amendments to Goods and Services Tax Act 1985

123 Goods and Services Tax Act 1985

Sections 124 to 140 amend the Goods and Services Tax Act 1985.

124 Interpretation

New (unanimous)

- (1A) In section 2(1), in the words before paragraph (a) of the proviso to the definition of **resident**, “that section” is replaced by “those sections”.

- (1) In section 2(1), in paragraph (a) of the definition of **tax payable**, “section 27(6)” is replaced by “**section 51B**”.
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

125 Zero-rating of services**New (unanimous)**

- (1) Section 11A(1B), as inserted by section 149(6) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003, is replaced by the following:

“(1B) Subsection (1)(j) does not apply to a supply of services that is treated by section 8(4B) as being made in New Zealand unless the nature of the services is such that the services can be physically received at no time and place other than the time and place at which the services are physically performed.”

- (2) Section 11A(5), as added by section 149(8) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003, is repealed and the following is added:

“(6) The availability of a deduction under subsection (1)(q) and (r) must be determined using a method allowed by section 20E.”

126 Taxable period returns

- (1) After section 16(2), the following is added:

“(3) A return must contain a notice of the assessment that must be made under **section 92B** of the Tax Administration Act 1994.”

- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

127 Special returns

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

“(3) A return must contain a notice of the assessment that must be made under **section 92B** of the Tax Administration Act 1994.”

- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

128 Particulars to be furnished and prepared where change in accounting basis

- (1) After section 19B(2), the following is inserted:

“(2B) The particulars required by subsection (1) must be furnished in a return that contains a notice of the assessment that must be made under **section 92B** of the Tax Administration Act 1994.”

- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

129 Calculation of tax payable

- (1) The proviso **(to)** that follows section 20(3)(i) is replaced by the following:

“Provided that a registered person who is entitled to deduct an amount from the output tax attributable to a taxable period may deduct that amount from the output tax attributable to a later taxable period if the amount has not previously been deducted from the output tax of the registered person and—

New (unanimous)

- “(a) the later tax period begins on or before the date that is the 2nd anniversary of the earlier of the following:
 - “(i) the date on which the registered person makes the payment for the taxable supply to which the deduction relates:
 - “(ii) the date on which a tax invoice is issued for the taxable supply to which the deduction relates:
- “(b) the failure of the registered person to make the deduction in the earlier taxable period arises from—
 - “(i) an inability of the registered person to obtain a tax invoice:
 - “(ii) a dispute over the proper amount of the payment for the taxable supply to which the deduction relates:
 - “(iii) a mistaken understanding on the part of the registered person that the supply to which the deduction relates was not a taxable supply:
 - “(iv) a clear mistake or simple oversight of the registered person.”

Struck out (unanimous)

- “(a) the failure to make the deduction in the earlier taxable period arises through an inability to obtain a tax invoice or through a clear mistake or simple oversight; and

Struck out (unanimous)

“(b) the amount has not previously been deducted from the output tax of the registered person.”

- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

130 Goods and services tax incurred relating to determination of liability to tax

- (1) In section 20A(1)(b), in the definition of **goods and services tax payable**, “section 27(6)” is replaced by “**section 51B**”.
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

New (unanimous)

130B Goods and services tax incurred in making certain supplies of financial services

In section 20C, as inserted by section 155 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003, the definition of item **a** is replaced by the following:

- “a is the total amount in respect of the taxable period that the registered person—
- (a) would not be able to deduct under section 20(3) in the absence of this section; and
 - (b) would be able to deduct under section 20(3), other than under section 20(3)(h), if all supplies of financial services by the registered person were taxable supplies:”.

131 Application of section 21F

- (1) In section 21E(4), in the words preceding paragraph (a), “if—” is replaced by “to the extent that—”.
- (2) In section 21E(4)(a), “sections 21 and 21I” are replaced by “sections 21 or 21I”.

132 Payment of tax

- (1) Section 23(3) is repealed.
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

133 Part 4 repealed

- (1) Part 4 is repealed.
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

134 Section 45 replaced

- (1) Section 45 is replaced by the following:

“45 Refund of excess tax

- “(1) Subject to this Part, and to Part 11 of the Tax Administration Act 1994, the Commissioner must refund an amount that a person has paid as tax if—
 - “(a) the Commissioner is satisfied that the amount represents an excess over the amount properly assessed for a taxable period; and
 - “(b) the 4-year period referred to in section 108A of the Tax Administration Act 1994 has not expired.
- “(2) Despite section 20(5), the Commissioner must refund an amount that a person has paid as tax if—
 - “(a) the Commissioner is satisfied that the person paid the amount as a result of an assessment that changed the amount of tax payable by the registered person; and
 - “(b) the Commissioner is satisfied that the amount represents an excess over the amount properly assessed for a taxable period; and
 - “(c) the 4-year period beginning from the end of the year in which the assessment was made has not expired.
- “(3) Despite section 20(5), the Commissioner must refund an amount that a person has paid as tax if—
 - “(a) the Commissioner is satisfied that the amount represents an excess over the amount properly assessed for a taxable period; and
 - “(b) the person has received a refund under section 19C(8), 20(5) or 46; and

- “(c) the Commissioner is satisfied that the amount was properly refundable to the person at the time of the refund but was not refunded at that time; and
- “(d) the 4-year period beginning from the end of the year in which the refund was made has not expired.

Struck out (unanimous)

- “(4) The Commissioner may refund an amount that is referred to in **subsection (2) or (3)** within the period of 4 years beginning after the end of the 4-year period referred to in the subsection, if the Commissioner considers that the overpayment of tax is the result of a clear mistake or simple oversight.”

New (unanimous)

- “(4) The Commissioner may refund an overpayment of tax that is referred to in **subsection (2) or (3)** after the end of the 4-year period referred to in the subsection, if—
- “(a) the overpayment of tax is the result of a clear mistake or simple oversight of the person; and
 - “(b) the refund is made—
 - “(i) within the period of 4 years beginning from the end of the 4-year period referred to in the subsection:
 - “(ii) as a result of an application by or on behalf of the person that the Commissioner receives before or within the period of 4 years beginning from the end of the 4-year period referred to in the subsection.”

- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

New (unanimous)**134B Relief from tax where new start grant made in respect of drought relief**

- (1) In the heading to section 48A, “in respect of drought relief” is omitted.

New (unanimous)

- (2) Section 48A(1) is replaced by the following:
 - “(1) In this section, **new start grant** has the meaning given to the term by section OB 1 of the Income Tax Act 1994.”
 - (3) In section 48A(3), in the words after paragraph (c), “section EZ 9(3)” is replaced by “**section EZ 9(3) and (4)**”.
 - (4) **Subsections (1) to (3)** apply for the 2003–04 and subsequent income years.

135 Section 50 repealed
Section 50 is repealed.

136 New section 51B inserted

- (1) After section 51, the following is inserted:
 - “**51B Persons treated as registered**
 - “(1) For the purposes of Parts 3 and 6, and of Part 9 of the Tax Administration Act 1994, the following are treated as registered persons:
 - “(a) a person who is not otherwise a registered person but who supplies goods or services, representing that tax is charged on the supply:
 - “(b) if goods are treated by section 5(2) as being supplied by a person—
 - “(i) the person selling the goods, if **subparagraph (ii)** does not apply; or
 - “(ii) the person whose goods are sold, if the person supplies a written statement under section 5(2)(a) to the person selling the goods and the Commissioner considers that the written statement is incorrect:
 - “(c) a person whose registration has been cancelled under section 52(5) with effect from the original date of registration.
 - “(2) If a person referred to in **subsection (1)** represents that tax is being charged on a supply that they make in a taxable period, the person is liable to pay the amount of the tax.
 - “(3) If a person is treated by **subsection (1)(c)** as being a registered person, the person is treated as being registered from the

original date of registration to the date when the Commissioner cancels the registration.”

- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

137 Section 61B repealed
Section 61B is repealed.

138 Section 80 repealed
Section 80 is repealed.

139 Section 81 repealed
Section 81 is repealed.

140 Supplies of services made before insertion of section 8(4B)

- (1) In section 84B(2), “given by section 9 or sections 21 to 21H” is replaced by “the services are performed”.
- (2) In section 84B(3), in the words preceding paragraph (a), “the time given by” is omitted.
- (3) In section 84B(3)(a), “section 9 or sections 21 to 21H” is replaced by “the time the services are performed”.

Amendment to Taxation Review Authorities Act 1994

141 Small claims jurisdiction of authorities

- (1) In section 13B(1)(a) of the Taxation Review Authorities Act 1994, “\$15,000” is replaced by “\$30,000”.
- (2) **Subsection (1)** applies to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Amendment to Income Tax Act 1976

142 Interpretation—voting and market interests

- (1) In section 8B of the Income Tax Act 1976, the definition of **special corporate entity** (as that definition was on 31 March 1994) is amended by adding the following:
- “(j) any body incorporated under the Incorporated Societies Act 1908, for an income year in which the body on no

day in the income year has shares on issue to the members of the body:”.

- (2) **Subsection (1)**, other than in the application of sections 191 and 191A of the Income Tax Act 1976, applies **(to)** for the 1992–93 to 1994–95 income years.

Struck out (unanimous)

- (3) **Subsection (2)**, in the application of sections 191 and 191A of the Income Tax Act 1976, applies for the 1992–93 to 1994–95 income years to an assessment of income tax that is not affected by a time bar under section 25 of that Act.

New (unanimous)

- (3) **Subsection (1)**, in the application of sections 191 and 191A of the Income Tax Act 1976, applies for an incorporated body for an income year that is one of the 1992–93 to 1994–95 income years if—
- (a) the incorporated body before 29 March 2004 makes a tax return for the income year; and
 - (b) the incorporated body adopts a tax position in the tax return that is consistent with the amendment made by **subsection (1)**.

*Amendments to Taxation Review Authorities Regulations
1998*

143 Interpretation

In regulation 2 of the Taxation Review Authorities Regulations 1998, the definition of **disputable decision** is replaced by the following:

“**disputable decision** has the meaning given to it by section 3 of the Tax Administration Act 1994”.

144 Decisions

- (1) After regulation 18(5) of the Taxation Review Authorities Regulations 1998, the following is added:

- “(6) In subclause (5), **precedent** means a decision of the Authority *(in its small claims jurisdiction)* that affects or may affect the

outcome of a separate and unrelated dispute between the Commissioner and a taxpayer other than the disputant.”

- (2) **Subsection (1)** applies to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Struck out (unanimous)

Amendment to Partnership Act 1908

145 Duration of partnerships

Section 57 of the Partnership Act 1908 is repealed.

New (unanimous)

Part 5

Amendments to Income Tax Act 2004

146 Income Tax Act 2004

- (1) **Sections 147 to 235** amend the Income Tax Act 2004.
- (2) **Sections 147 to 214, 226(2) to (15), 226(17) to (26), and 227 to 235** apply for the 2005–06 and subsequent income years.

147 New sections CD 7B and 7C inserted

After section CD 7, the following is inserted:

“CD 7B Interests in money or property of foreign unit trust

“Interest absolutely vested in unit holder

- “(1) If a beneficial interest in money or property of a unit trust that is a foreign company vests absolutely in a unit holder, the money or property is a dividend for the unit holder.

“Amount of dividend

- “(2) The amount of the dividend is the value of the money or property.

“Defined in this Act: dividend, foreign company, unit holder, unit trust

New (unanimous)

“CD 7C Bonus issue by foreign unit trust instead of money or property

“Interest absolutely vested in unit holder

- “(1) A bonus issue made to a unit holder by a unit trust that is a foreign company is a dividend for the unit holder if the issue is made under an arrangement or decision that the unit trust will make the bonus issue instead of causing a beneficial interest in money or property of the unit trust to vest absolutely in the unit holder.

“Amount of dividend

- “(2) The amount of the dividend is the value of the money or property in which a beneficial interest would have vested in the unit holder if the bonus issue had not been made.

“Defined in this Act: bonus issue, dividend, foreign company, unit holder, unit trust”.

148 New section CD 21B inserted

After section CD 21, the following is inserted:

“CD 21B Transfer by unit trust of legal interest after beneficial interest vests

“Transfer of legal interest in money or property that is dividend

If money or property of a unit trust is a dividend under **section CD 7B** for a unit holder, a transfer to the unit holder of the legal interest in the money or property is not a dividend.

“Defined in this Act: dividend, unit holder, unit trust”.

149 When attributed CFC income arises

In section CQ 2(1)(e), “EX 16” is replaced by “EX 17”.

150 Calculation of FIF income

In section CQ 6, “EX 42” is replaced by “EX 38”.

New (unanimous)

151 Withdrawals

- (1) Section CS 1(2) is replaced by the following:

“Income of superannuation fund from withdrawal

- “(2) The superannuation fund derives from the withdrawal an amount of assessable income that is given by the following formula:

$$\frac{0.05}{\text{tax rate}} \times (\text{withdrawn} - \text{other contributions}).”$$

- (2) In section CS 1(3), “subsections (4) and (5)” is replaced by “subsections (4) to (5)”.

- (3) Section CS 1(4) is replaced by the following:

“Withdrawal

- “(4) **Withdrawal** is the total of—

“(a) the amount of money that is withdrawn from the superannuation fund:

“(b) the market value of the part of the withdrawal that is not an amount of money, on the date of the withdrawal.

“Other contributions

- “(4B) **Other contributions** is the part of the withdrawal that the trustee of the superannuation fund establishes is not employer’s contributions to superannuation savings.”

152 Exclusion of withdrawal when member ends employment

- (1) Section CS 7(2) and (3) are replaced by the following:

“Ending employment after period of specified superannuation contributions

- “(2) Section CS 1 does not apply to a withdrawal from a superannuation fund of specified superannuation contributions that have been made for the member by the employer, or another employer, if—

“(a) the member has been in employment throughout the period that—

New (unanimous)

- “(i) starts on the 1st day of the tax year that starts 2 tax years before the start of the tax year in which the member ends their employment; and
- “(ii) ends on the day on which the member ends their employment; and
- “(b) the specified superannuation contributions are made to the superannuation fund or to a superannuation fund that has transferred, whether directly or indirectly, the funds relating to its members to the superannuation fund; and
- “(c) the specified superannuation contributions have not been part of a withdrawal, other than a transfer between superannuation funds that is referred to in **paragraph (b)**; and
- “(d) the withdrawal—
 - “(i) satisfies subsections (3) and (4):
 - “(ii) satisfies **subsection (4B)**:
 - “(iii) does not include employer contributions to superannuation savings of more than the amount found by multiplying \$5,000 by the number of income years for which the specified superannuation contributions were made on behalf of the member; and
- “(e) the withdrawal is made at the time described in subsection (5).

“Limited increase in employer contributions between income years

- “(3) A withdrawal satisfies this subsection if, at the time of the withdrawal, specified superannuation contributions have been made for the member by the employer, or another employer, such that—
 - “(a) the contributions relate to some or all of a period of employment that—
 - “(i) starts on the 1st day of the tax year that starts 2 tax years before the tax year in which the member ends their employment; and

New (unanimous)

- “(ii) ends on the day on which the member ends their employment; and
 - “(b) in each of the first 2 tax years in the period referred to in **paragraph (a)**, the contributions—
 - “(i) are in total less than 150% of the total of specified superannuation contributions made for the member in the previous tax year:
 - “(ii) satisfy **subparagraph (i)** after the application of **subsection (4)**; and
 - “(c) in the tax year in which the member ends their employment, the contributions—
 - “(i) have an annualised value that is less than 150% of the specified superannuation contributions made for the member in the previous tax year:
 - “(ii) satisfy **subparagraph (i)** after the application of **subsection (4)**.”
- (2) The heading to section CS 7(4) is replaced by the following:

“Increases disregarded under subsection (3)(b)(i) or (c)(i)”.
- (3) After section CS 7(3), the following is inserted:

“Increases in employer contributions considered consistent by Commissioner

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

 - “(a) the contributions relate to some or all of the period that—
 - “(i) starts on the 1st day of the tax year that starts 2 tax years before the tax year in which the member ends their employment; and
 - “(ii) ends on the day on which the member ends their employment; and
 - “(b) the Commissioner considers that the contributions are consistent in size and frequency with the employer’s

New (unanimous)

specified superannuation contributions for other employees in comparable positions; and

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

153 New section CW 11B inserted

After section CW 11, the following is inserted:

“CW 11B Proceeds of share disposal by qualified foreign equity investor

“Exempt income: proceeds from disposal of share in resident company

- “(1) An amount that a person derives from the sale or other disposal by a qualifying foreign equity investor of a share, or option to buy a share, in a company (called the **resident company**) is exempt income if—

- “(a) the resident company is resident in New Zealand; and
“(b) the share or option, or an option or convertible note relating to the share, is bought on a day that is 12 months or more before the day of the sale or other disposal; and

- “(c) the person who buys the share or option, or the option or convertible note relating to the share, and disposes of the share or option is a qualifying foreign equity investor from the time of the purchase to the time of the disposal; and

- “(d) at some time in the 12-month period that starts from the time of the purchase referred to in **paragraph (b)**, the shares of the resident company are quoted on no official list of a recognised exchange; and

- “(e) the resident company satisfies either or both of **subsections (2) and (3)**.

New (unanimous)

“Requirements relating to main activity of resident company

- “(2) A resident company satisfies this subsection if, throughout the period referred to in **subsection (1)(c)**, the resident company does not have as a main activity 1 or more of—
- “(a) land development:
 - “(b) land ownership:
 - “(c) mining:
 - “(d) provision of financial services:
 - “(e) insurance:
 - “(f) construction of public infrastructure assets:
 - “(g) acquisition of public infrastructure assets:
 - “(h) investing with a main aim of deriving, from the investment, income in the form of interest, dividends, rent, or personal property lease payments that are not royalties.

“Requirements relating to resident company that provides capital to others

- “(3) A resident company that has a main activity of providing capital in the form of debt or equity funding to other companies satisfies this subsection if—
- “(a) throughout the period referred to in **subsection (1)(c)**, each other company that is resident in New Zealand—
 - “(i) does not have, as a main activity, an activity that is referred to in **subsection (2)(a) to (c) and (e) to (g)**; and
 - “(ii) does not have, as a main activity, an activity that is referred to in **subsection (2)(d) and (h)** and is not the provision of capital to other companies; and
 - “(iii) does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in **subsection (2)(a) to (c) and (e) to (g)**; and
 - “(iv) does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in **subsection (2)(d) and (h)** and is not the provision of capital to other companies; and

New (unanimous)

- “(b) throughout the period referred to in **subsection (1)(c)**, each other company that is not resident in New Zealand does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in **subsection (2)(a) to (h)**; and
- “(c) for each other company there is a time in the period referred to in **subsection (1)(c)** at which—
 - “(i) the shares of the other company are quoted on no official list of a recognised exchange; and
 - “(ii) the shares of the resident company are quoted on no official list of a recognised exchange.

“Some definitions

“(4) In this section—

“**foreign exempt entity** means a person who—

- “(a) is established as a legal entity under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws of a part of such a territory; and
- “(b) has persons (called in this definition **members**) who hold interests in the capital of the legal entity and who are entitled to shares of the income of the legal entity; and
- “(c) is treated by the taxation laws of the territory referred to in **paragraph (a)**, or by the taxation laws of the part of the territory, as not being subject to a tax on income other than as a body that handles income of the members; and
- “(d) is resident in no territory that has laws that treat the legal entity as being subject to a tax on income other than as a body that handles income of the members; and
- “(e) does not have a member who—
 - “(i) has, when treated as holding the interests of any person who is associated with the member under section OD 8(1) (Further definitions of associated persons), an interest of 10% or more in the capital of the legal entity; and

New (unanimous)

- “(ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and
- “(f) does not have a member who, when treated as holding the interests of any person who is associated with the member under section OD 8(1) (Further definitions of associated persons), has an interest of 10% or more in the capital of the legal entity and who—
 - “(i) would be entitled to receive an amount derived from a disposal to which this section would apply; and
 - “(ii) would receive an amount referred to in **subparagraph (i)** that, in the absence of this section, would have been reduced by a tax imposed by the Act on the amount or on the proceeds of the disposal in the hands of the legal entity; and
 - “(iii) would in any circumstances, under the taxation laws of the territory in which the member is resident or under the taxation laws of part of the territory, be entitled to receive from the government of the territory or of the part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for the reduction referred to in **subparagraph (ii)**
- “**foreign exempt partnership** means an unincorporated body that—
 - “(a) is established under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws of a part of such a territory; and
 - “(b) consists of persons (called in this definition **partners**); and
 - “(c) is treated by the taxation laws of the territory, or by the taxation laws of the part of the territory, as not being subject to a tax on income other than as a body that handles income of the partners; and

New (unanimous)

- “(d) has at least 1 partner (called in this definition a **general partner**) who is liable for all debts of the unincorporated body and who has significant involvement in, and control of, the business activities of the unincorporated body; and
- “(e) has at least 1 partner (called in this definition a **special partner**) whose liability for debts of the unincorporated body is limited and who has limited involvement in, and control of, the business activities of the unincorporated body; and
- “(f) does not have a general partner who is resident in no territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and
- “(g) does not have a partner who—
 - “(i) has, when treated as holding the interests of any person who is associated with the partner under section OD 8(1) (Further definitions of associated persons), an interest of 10% or more in the capital of the unincorporated body; and
 - “(ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and
- “(h) does not have a partner who, when treated as holding the interests of any person who is associated with the partner under section OD 8(1) (Further definitions of associated persons), has an interest of 10% or more in the capital of the unincorporated body and who—
 - “(i) would, under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and
 - “(ii) would in any circumstances, under the taxation laws of the territory in which the partner is resident or under the taxation laws of part of the territory, be entitled to receive from the government of the territory or of the part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation

New (unanimous)

for a payment of the tax referred to in **subparagraph (i)**

“**foreign exempt person** means a person who—

- “(a) is resident in a territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and
- “(b) is not part of an unincorporated body that satisfies **paragraphs (a) to (c)** of the definition of **foreign exempt partnership**; and
- “(c) is not a legal entity that satisfies **paragraphs (a) to (c)** of the definition of **foreign exempt entity**; and
- “(d) is treated by the taxation laws of the territory, or by the taxation laws of a part of the territory, as the person who derives the proceeds from a disposal of shares or options that are held by the person; and
- “(e) is not a person who—
 - “(i) would, under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and
 - “(ii) would in any circumstances, under the taxation laws of the territory in which the person is resident or under the taxation laws of part of the territory, be entitled to receive from the government of the territory or of the part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for a payment of the tax referred to in **subparagraph (i)**

“**qualifying foreign equity investor** means a person who is not resident in New Zealand and who is 1 or more of the following:

- “(a) a foreign exempt entity;
- “(b) a person who is part of a foreign exempt partnership;
- “(c) a foreign exempt person.

New (unanimous)

“Residency of territory

- “(5) For the purpose of this section, whether a person is resident in a territory other than New Zealand is determined—
- “(a) in the presence of a double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, under the double tax agreement:
 - “(b) in the absence of a double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, under the laws of the territory.

“Approval and withdrawal of approval for territory

- “(6) The Governor-General may, from time to time by Order in Council—
- “(a) approve a territory for the purpose of this section:
 - “(b) withdraw the approval of a territory for the purpose of this section.

“Defined in this Act: amount, business, company, dividend, double tax agreement, exempt income, foreign exempt entity, foreign exempt partnership, foreign exempt person, income, insurance, interest, land, payment, personal property lease payment, qualifying foreign equity investor, recognised exchange, resident in New Zealand, royalty, share, tax”.

153B Section CW 49 replaced

Section CW 49 is replaced by the following:

“CW 49 Providing standard-cost household service

An amount of income derived in an income year by a natural person from providing a standard-cost household service is exempt income if—

- “(a) the amount is exempt income under a determination made under section 91AA(2)(a) of the Tax Administration Act 1994:
- “(b) the person—
 - “(i) may be treated, under a determination made under section 91AA of the Tax Administration Act 1994, as incurring an amount of costs that is

New (unanimous)

greater than or equal to the amount of income;
and

- “(ii) in calculating the person’s income tax liability for the income year, elects to include in the taxpayer’s annual total deduction no amount that, in the absence of this paragraph, would be a deduction incurred by the taxpayer in providing the standard-cost household service.

“Defined in this Act: amount, annual total deduction, exempt income, income, income tax liability, income year, standard-cost household service”.

153C New section CX 41B inserted

After section CX 41, the following is inserted:

“CX 41B Amounts remitted as condition of new start grant

“When this section applies

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

- “(a) the person carries on a business of—

“(i) animal husbandry:

“(ii) poultry-keeping:

“(iii) beekeeping:

“(iv) breeding horses other than bloodstock:

“(v) horticulture:

“(vi) cropping; and

- “(b) the person is paid a new start grant for the business for an event that is a qualifying event; and

- “(c) the person in carrying on the business—

“(i) incurs a liability for expenditure or loss before the declaration of the state of emergency that relates to the qualifying event; and

“(ii) before the date that is 3 months after the end of the state of emergency, takes the liability into account in calculating the person’s taxable income for an income year; and

- “(d) the liability referred to in **paragraph (c)(i)** is forgiven or otherwise remitted—

“(i) as a prerequisite for the payment of the new start grant; and

New (unanimous)

- “(ii) before the date that is 18 months after the end of the state of emergency; and
 - “(e) the amount of the remitted liability is income of the person under section CG 2 (Remitted amounts).
- “*Excluded income*
- “(2) The remitted liability is excluded income of the person to the extent that is the greater of nil and the amount calculated under the formula—

remitted amount – current loss – available loss – other loss
- “*Definition of items in formula*
- “(3) In the formula—
 - “(a) **remitted amount** is the amount of the remitted liability:
 - “(b) **current loss** is the net loss that the person would have for the income year in which the liability is remitted in the absence of this section:
 - “(c) **available loss** is the available net losses that are available to the person for offset against net income for the income year in which the liability is remitted:
 - “(d) **other loss** is a loss that—
 - “(i) is incurred by a person associated with the person who receives the new start grant; and
 - “(ii) satisfies **subsection (4)**.
- “*Loss incurred by associated person from business or land*
- “(4) The loss referred to in **subsection (3)(d)**—
 - “(a) is incurred by a person who—
 - “(i) carries on or has carried on the business for which the new start grant is paid or owns or has owned an estate in fee simple or leasehold estate in land used in the business; and
 - “(ii) in the opinion of the Commissioner, is under a substantial degree of control by the person; and
 - “(iii) in the opinion of the Commissioner, has a substantial identity of interests with the person; and

New (unanimous)

- “(b) is incurred from—
 - “(i) the business referred to in **paragraph (a)(i)**:
 - “(ii) land that is used in the business; and
- “(c) is, for the income year in which the liability is remitted,—
 - “(i) a net loss of the associated person:
 - “(ii) an available net loss for the associated person; and
- “(d) is included in the calculation in **subsection (3)** to an extent that the Commissioner determines, having regard to the interests of the associated person that are separate from those of the person.

“Notice to associated person

- “(5) The Commissioner must give to the associated person written notice of a determination under **subsection (4)(d)**.

“Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, qualifying event”.

154 Determining tax liabilities

In the definition of **GST payable** in section DB 3(3), paragraph (b)(ii) of the definition of **GST payable** is replaced by the following:

- “(ii) an amount referred to in section 17(2) or **51B** of the Goods and Services Tax Act 1985”.

155 New section DB 13B inserted

After section DB 13, the following is inserted:

“DB 13B Expenses of failed or withdrawn application for resource consent

“Deduction

- “(1) A person who applies for the grant of a resource consent under the Resource Management Act 1991 and is refused the grant or withdraws the application is allowed a deduction for expenditure—
 - “(a) that the person incurs in relation to the application; and

New (unanimous)

- “(b) that would have been part of the cost of a resource consent that is depreciable property if the application had been granted; and
- “(c) for which the person is not allowed a deduction under another provision.

“Timing of deduction

- “(2) The deduction is allocated to the income year in which the grant is refused or the application is withdrawn.

“Link with subpart DA

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

“Defined in this Act: accounting year, capital limitation, deduction, fixed life intangible property, general limitation, general permission, income year”.

156 New section DB 28B inserted

After section DB 28, the following is inserted:

“DB 28B Expenses of failed or withdrawn patent application

“Deduction

- “(1) A person who applies for the grant of a patent and is refused the grant or withdraws the application is allowed a deduction for expenditure—
 - “(a) that the person incurs in relation to the application; and
 - “(b) that would have been part of the cost of fixed life intangible property if the application had been granted; and
 - “(c) for which the person is not allowed a deduction under another provision.

“Timing of deduction

- “(2) The deduction is allocated to the income year in which the grant is refused or the application is withdrawn.

New (unanimous)*“Link with subpart DA*

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

“Defined in this Act: capital limitation, deduction, fixed life intangible property, general limitation, general permission, income year”.

156B New heading and new section DB 44 inserted

After section DB 43, the following is inserted:

Exempt income**“DB 44 Expenditure incurred in deriving exempt dividend***“Deduction*

“(1) A company that derives a dividend that is exempt income of the company under section CW 9 is allowed a deduction of—

“(a) the amount of the expenditure incurred by the company in deriving the dividend, if the company is not a conduit tax relief company:

“(b) the amount calculated using the following formula, if the company is a conduit tax relief company:

expenditure $\times$ (1 – non-resident shareholding).

“Definition of items in formula

“(2) In the formula,—

“(a) **expenditure** is the amount of the expenditure incurred by the company in deriving the dividend:

“(b) **non-resident shareholding** is the fraction of the company’s shareholders that are non-residents, calculated under section NH 7(2) and (4).

New (unanimous)

“Link with subpart DA

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

“Defined in this Act: company, conduit tax relief company, deduction, dividend, exempt income, exempt income limitation, general limitation, general permission, non-resident, shareholder”.

157 Calculation of FIF loss

In section DN 7, “EX 42” is replaced by “EX 38”.

158 Improvements to farm land

- (1) In section DO 4(1)(b), “land.” is replaced by “land; and” and the following is added:

“(c) the expenditure on the improvement is not expenditure to which **sections DO 4B to DO 4D** apply.”

- (2) In section DO 4(6), “vines or trees” is replaced by “non-listed horticultural plants”.

159 New sections DO 4B to DO 4E inserted

After section DO 4, the following is inserted:

“DO 4B Expenditure on land: planting of listed horticultural plants

“Application of section

- “(1) This section applies if—

“(a) a person carries on a farming or agricultural business (including a horticultural business) on land in New Zealand; and

“(b) the land has been developed by the planting of listed horticultural plants on the land.

“Deduction and timing

- “(2) For an income year in which the planting benefits the business and for which **subsection (3)** does not apply, the person is allowed a deduction relating to expenditure incurred by the person, or by another person, in developing the land.

New (unanimous)

“Income year in which no deduction

“(3) The person is not allowed a deduction under **subsection (2)** for an income year in which—

“(a) if the person owns the land, the person disposes of the land:

“(b) if the person does not own the land, the person ceases carrying on the business on the land.

“Amount of deduction other than under subsections (6) and (7)

“(4) For expenditure to which **subsections (6) and (7)** do not apply for the income year, the amount of the deduction under **subsection (2)** is calculated using the formula:

$$1.2 \times \text{rate} \times \text{diminished value}$$

“Definition of items in formula

“(5) In the formula—

“(a) **rate** is the percentage rate determined for the type of listed horticultural plant by the Commissioner under **section 91AAB** of the Tax Administration Act 1994:

“(b) **diminished value** is the diminished value of the expenditure.

“Deduction: expenditure on replaced plant if no deduction under section DO 4C

“(6) If a listed horticultural plant in a planting of the person ceases in an income year to exist or to be used in deriving assessable income and the person has no deduction under **section DO 4C** for the income year for the expenditure incurred in replacing the listed horticultural plant—

“(a) the person is allowed a deduction:

“(b) the amount of the deduction is the diminished value of the expenditure on the listed horticultural plant at the time that the listed horticultural plant ceases to exist or to be used in deriving assessable income:

New (unanimous)

“(c) the deduction is allocated to the income year in which the listed horticultural plant ceases to exist or to be used in deriving income.

*“Treatment of expenditure on replaced plant if deduction under section **DO 4C***

“(7) If a listed horticultural plant in a planting of the person ceases in an income year to exist or to be used in deriving assessable income and the person has a deduction under **section DO 4C** for the income year for all or some of the expenditure incurred in replacing the listed horticultural plant—

“(a) the person is not allowed a deduction under this section; and

“(b) the person may add the diminished value, immediately before the replacement, of the expenditure on the listed horticultural plant to the diminished values, at the end of the income year, of the expenditure on listed horticultural plants that are in the planting at the end of the income year; and

“(c) the person may elect the method of making the addition by applying the method in a return of income for the income year.

“Link with subpart DA

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

“Defined in this Act: assessable income, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, listed horticultural plant, planting, return of income

“DO 4C Expenditure on land: horticultural replacement planting

“Application of section

“(1) This section applies to a person who carries on a horticultural business on land in New Zealand and who, in an income year (called the **current income year**)—

“(a) plants, or causes to be planted, on the land a listed horticultural plant as a replacement plant:

New (unanimous)

“(b) regrafts, or causes to be regrafted, a listed horticultural plant on the land as a replacement plant.

“Deduction

“(2) The person is allowed a deduction of an amount given by 1 of **subsections (3) and (5)** if, in the current income year—

- “(a) the person incurs expenditure in replacing a listed horticultural plant; and
- “(b) the replacement plant benefits the business; and
- “(c) the person does not dispose of the land on which the listed horticultural plant is cultivated; and
- “(d) the person elects that this section apply to the expenditure by making a return of income for the current income year on that basis.

“Amount of deduction if no deduction in 1 or both of 2 preceding income years

“(3) If the person has had no deduction under this section for 1 or both of the 2 income years preceding the current income year, the amount of the deduction under **subsection (2)** is calculated using the formula—

$$\text{replacement expenditure} \times \frac{7.5\%}{\text{fraction.}}$$

“Definition of items in formula

“(4) In the formula—

- “(a) **replacement expenditure** is the amount of the expenditure incurred by the person in replacing the listed horticultural plant:
- “(b) **fraction** is the greater of 7.5% and the replaced area fraction for the planting for the current income year.

“Amount of deduction if deduction in both of 2 preceding income years

“(5) If the person has had a deduction under this section for a planting for both of the 2 income years preceding the current

New (unanimous)

income year, the amount of the deduction under **subsection (2)** is the lesser of—

- “(a) the amount that is calculated using the formula in **subsection (6)**:
- “(b) the amount that is calculated using the formula in **subsection (8)**.

“Formula for first amount

- “(6) The 1st amount is calculated using the formula—

$$\text{replacement expenditure} \times \frac{7.5\%}{\text{fraction.}}$$

“Definition of items in formula

- “(7) In the formula—
- “(a) **replacement expenditure** is the amount of the expenditure incurred by the person:
- “(b) **fraction** is the greater of 7.5% and the replaced area fraction for the planting for the current income year.

“Formula for second amount

- “(8) The 2nd amount is calculated using the formula—

$$\text{replacement expenditure} \times \frac{15\% - \text{earlier fraction} - \text{later fraction}}{\text{replaced area fraction}}$$

“Definition of items in formula

- “(9) In the formula—
- “(a) **replacement expenditure** is the amount of the expenditure incurred by the person:
- “(b) **earlier fraction** is the lesser of 7.5% and the replaced area fraction for the planting for the earlier of the 2 income years preceding the current income year:
- “(c) **later fraction** is the lesser of 7.5% and the replaced area fraction for the planting for the later of the 2 income years preceding the current income year:

New (unanimous)

“(d) **replaced area fraction** is the replaced area fraction for the planting for the current income year.

“Timing of deduction

“(10) The deduction is allocated to the current income year.

“Link with subpart DA

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

“Defined in this Act: assessable income, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, listed horticultural plant, planting, replaced area fraction, replacement plant, return of income.

“DO 4D **Accounting for expenditure on listed horticultural plants under sections DO 4B and DO 4C**

“Separate accounting for additional listed horticultural plants if deduction under section DO 4C

“(1) A person to whom **section DO 4B** applies must, for an income year and for later income years for which **subsection (2)** does not apply, account separately under **sections DO 4B and DO 4C** for listed horticultural plants if—

“(a) the person has had a deduction under **section DO 4C** for 1 or both of the 2 income years preceding the income year; and

“(b) the person acquires the listed horticultural plants in the income year; and

“(c) the listed horticultural plants benefit the business of the person in the income year; and

“(d) the listed horticultural plants are not replacement plants.

“Combined accounting for listed horticultural plants if no deduction under section DO 4C

“(2) A person may, despite **subsection (1)**, account under **sections DO 4B and DO 4C** for listed horticultural plants as 1 planting for an income year and later income years if the person has had no

New (unanimous)

deduction under **section DO 4C** for both of the 2 income years preceding the income year.

“Defined in this Act: deduction, income year, listed horticultural plant, planting, replacement plant

“DO 4E Some definitions

In this section and **sections DO 4B to DO 4D**—

“**planting** for a person and an income year means 1 or more listed horticultural plants—

“(a) that are involved in the business of the person during the income year; and

“(b) for which the person must account under **sections DO 4B and DO 4C**, for the income year, separately from any other listed horticultural plants that are involved in the business of the person

“**plot** means the land occupied by the listed horticultural plants in a planting

“**replaced area fraction** for a planting and an income year means the amount calculated using the formula—

$$\frac{\text{replacement area}}{\text{plot area}} \times 100\%$$

where—

replacement area is the area, at the end of the income year, of the part of the plot on which listed horticultural plants in the planting are planted or regrafted during the income year as replacement plants

plot area is the total area, at the end of the income year, of the plot.

“Defined in this Act: business, deduction, income year, listed horticultural plant, planting, plot, replaced area fraction, replacement plant”.

159B Farming expenditure of lessor or sublessor

- (1) In the heading to section DO 5, “**or horticulture**” is inserted after “**Farming**”.

New (unanimous)

- (2) In section DO 5(1)(c)(i), “or **DO 4B or DO 4C**” is inserted after “DO 4”.
- (3) In section DO 5(1)(c)(ii), “or **DO 4B(2) or DO 4C**” is inserted after “DO 4(2)”.
- (4) In the heading to section DO 5(2), “or **DO 4B or DO 4C**” is inserted after “DO 4”
- (5) In section DO 5(2), “or **DO 4B or DO 4C**” is inserted after “DO 4”.

159C New section DO 5B inserted

After section DO 5, the following is inserted:

**“DO 5B Improvement destroyed or made useless by
qualifying event**

“When this section applies

- “(1) This section applies if in an income year of a person—
 - “(a) the person owns land, or operates a farming or agricultural business on land, to which there has been made an improvement; and
 - “(b) the improvement is destroyed or made useless for the purpose of deriving income as a result of an event that is a qualifying event under **paragraph (a) or (b)** of the definition of that term; and
 - “(c) the person would be entitled for the income year to a deduction under section DO 4 or DO 5 for expenditure on the improvement if the improvement had not been destroyed or made useless.

“Deduction: diminished value of expenditure

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

New (unanimous)

“Link with subpart DA

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

“Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, qualifying event”.

159D New section DP 3B inserted

After section DP 3, the following is inserted:

**“DP 3B Improvement destroyed or made useless by
qualifying event**

“When this section applies

- “(1) This section applies if in an income year of a person—
- “(a) the person operates a forestry business on land, to which there has been made an improvement; and
 - “(b) the improvement is destroyed or made useless for the purpose of deriving income as a result of an event that is a qualifying event under paragraph (a) or (b) of the definition of that term; and
 - “(c) the person would be entitled for the income year to a deduction under section DP 3 for expenditure on the improvement if the improvement had not been destroyed or made useless.

“Deduction: diminished value of expenditure

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

“Link with subpart DA

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

“Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, qualifying event”.

New (unanimous)

160 Cost of acquiring timber: forestry business on land bought from Crown, Maori owners, or holding company
In section DP 8(3)(a), “cost of timber” is replaced by “cost of the timber”.

161 Amalgamated company: expenditure on improvements for farming, aquacultural, and forestry businesses

- (1) In the heading to section DV 13, “**horticultural**,” is inserted after “**farming**,”.
- (2) In section DV 13(1), “**DO 4B** (Expenditure on land: planting of listed horticultural plants), **DO 4C** (Expenditure on land: horticultural replacement planting),” is inserted before “or DO 6”.
- (3) In section DV 13(2), “**DO 4B** (Expenditure on land: planting of listed horticultural plants), **DO 4C** (Expenditure on land: horticultural replacement planting),” is inserted before “or DO 6”.

162 Partnership interests and disposal of part of asset before 16 December 1991

In the words before section DZ 6(a), “DZ 2” is replaced by “DZ 3”.

163 Petroleum mining operations outside New Zealand before 16 December 1991

In section DZ 7, “DZ 2” is replaced by “DZ 3”.

163B Prepayments

Section EA 3(4), except for the heading, is replaced by the following:

- “(4) An amount of expenditure on goods is unexpired at the end of an income year if, by the end of the income year,—
- “(a) the person has not used up the goods in deriving income; and
 - “(b) the goods are not destroyed or rendered useless for the purpose of deriving income.”

New (unanimous)

164 Calculation rule: income year in which item disposed of

In section EE 11(5), “EE 42” is replaced by “FB 7(6) (Depreciation: partial income-producing use)”.

164B Effect of disposal or event

- (1) In section EE 41(2), the second sentence is replaced by “This subsection does not apply if the item is a building unless the item has been destroyed or rendered useless for the purpose of deriving income as a result of an event that is a qualifying event for the purpose of **paragraph (a) or (b)** of the definition of that term.”
- (2) In the list of defined words in section EE 41, “income year” is replaced by “income, income year, qualifying event”.

164C New section EW 47B inserted

After section EW 47, the following is inserted:

“EW 47B Consideration when debtor released as condition of new start grant

“When this section applies

- “(1) This section applies if in an income year of a person—
- “(a) the person carries on a business of—
 - “(i) animal husbandry:
 - “(ii) poultry-keeping:
 - “(iii) beekeeping:
 - “(iv) breeding horses other than bloodstock:
 - “(v) horticulture:
 - “(vi) cropping; and
 - “(b) the person is paid a new start grant for the business for an event that is a qualifying event; and
 - “(c) the person incurs a liability to make a payment under a financial arrangement—
 - “(i) in carrying on the business; and
 - “(ii) before the declaration of the state of emergency that relates to the qualifying event; and
 - “(d) the liability referred to in **paragraph (c)(i)** is forgiven or otherwise remitted—

New (unanimous)

- “(i) as a prerequisite for the payment of the new start grant; and
- “(ii) before the date that is 18 months after the end of the state of emergency; and
- “(e) in the absence of this section, the amount of the remitted liability would be income of the person.

“Consideration

- “(2) The person is treated as having paid, on the date on which the liability is forgiven or remitted, the part of the amount owing that is the greater of zero and the amount calculated under the formula—

remitted amount – current loss – available loss – other loss

“Definition of items in formula

- “(3) In the formula—
- “(a) **remitted amount** is the amount of the remitted liability:
- “(b) **current loss** is the net loss that the person would have for the income year in which the liability is remitted in the absence of this section:
- “(c) **available loss** is the available net losses that are available to the person for offset against net income for the income year in which the liability is remitted:
- “(d) **other loss** is a loss that—
 - “(i) is incurred by a person associated with the person who receives the new start grant; and
 - “(ii) satisfies **subsection (4)**.

“Loss incurred by associated person from business or land

- “(4) The loss referred to in **subsection (3)(d)**—
- “(a) is incurred by a person who—
 - “(i) carries on or has carried on the business in respect of which the new start grant is paid or owns or has owned an estate in fee simple or leasehold estate in land used in the business; and

New (unanimous)

- “(ii) in the opinion of the Commissioner, is under a substantial degree of control by the person; and
- “(iii) in the opinion of the Commissioner, has a substantial identity of interests with the person; and
- “(b) is incurred in respect of—
 - “(i) the business referred to in **paragraph (a)(i)**:
 - “(ii) land that is used in the business; and
- “(c) is, for the income year in which the liability is remitted,—
 - “(i) a net loss of the associated person:
 - “(ii) an available net loss for the associated person; and
- “(d) is included in the calculation in **subsection (3)** to an extent that the Commissioner determines, having regard to the interests of the associated person that are separate from those of the person.

“Notice to associated person

- “(5) The Commissioner must give to the associated person a written notice of a determination under **subsection (4)(d)**.

“Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, qualifying event”.

165 Direct control interests

In section EX 5(4), “of **shareholder decision-making rights**” is inserted after “definition”.

166 Associates and 10% threshold

In section EX 15(1), “EX 46(1)(b)” is replaced by “EX 46(1)(a)”.

167 Branch equivalent income or loss: calculation rules

In section EX 21(14)(b), “**to DO 4D,**” is inserted after “DO 4”.

New (unanimous)

168 Rules for personal property lease asset during term of finance lease

- (1) In section FC 8B(2), “on the date that the term of the lease ends or terminates” is replaced by “by the date on which the lease term ends”.
- (2) In section FC 8B(3)—
 - (a) “at the end of the term of the lease” is replaced by “by the date on which the lease term ends”:
 - (b) “that” is replaced by “on which”.

169 Taxation of hire purchase agreements

In section FC 10(8)(a), “consideration paid to the lessee for the hire purchase agreement” is replaced by “consideration provided to the lessee under the hire purchase agreement”.

170 Premiums derived by non-resident general insurers treated as being derived from New Zealand

In the definition of **premium** in section FC 13(9), paragraphs (a) to (c) are replaced by the following:

- “(a) in relation to insurance of the kind described in subsection (2), an amount payable in respect of a contract of insurance entered by an insured person:
- “(b) in relation to insurance of the kinds described in subsection (3) and (4), an amount payable in respect of a guarantee of a contract of insurance entered by an insured person.”

171 Special provisions relating to dispositions of property

In section FD 10(3)(b), “**DO 4B, DO 4C,**” is inserted after “DO 4,”.

172 Companies that may constitute imputation group

- (1) Section FDA 1(1)(e) is repealed.
- (2) After section FDA 1(2)(a), the following is inserted:
 - “(ab) all members of the consolidated group are or would be members of the imputation group; and”.

New (unanimous)

- (3) In section FDA 1(2)(b), the words before subparagraph (i) are replaced by “for an imputation group that contains or will contain members of more than 1 consolidated group, all the members of the consolidated groups have been members of a single wholly-owned group of companies throughout the period that—”.

173 Amalgamation not to result in deemed income or remission of liabilities

In section FE 9, “IE 1(4)” is replaced by “DB 38”.

174 Application of sections GC 29 to GC 31

- (1) In section GC 29(1)(b)—
- (a) in the words before subparagraph (i)(A), “or losses” is omitted;
 - (b) subparagraph (i)(B) is replaced by the following:

“(B) net losses of a loss attributing qualifying company, to the extent that shareholders with effective interests in the company are deemed under section HG 16 to incur amounts of loss that correspond to the net losses; and”;
 - (c) in subparagraph (ii), “and losses” is omitted.
- (2) In section GC 29(1)(b)(ii), “assessable” is inserted before “income” in both places that it occurs.
- (3) In section GC 29(1)(e)(i), “date:” is replaced by “date; and”.
- (4) In section GC 29(1)(e)(ii)(F), “CE 4.” is replaced by “CE 4:” and the following is added:

“(G) shares in a foreign company, if the proceeds of a disposal of the shares would not be assessable income of the holder other than under the FIF rules.”
- (5) In section GC 29(2), “income, deductions, and losses” is replaced by “assessable income and deductions”.
- (6) In section GC 29(3), “income, deductions, and losses” is replaced by “assessable income and deductions”.

New (unanimous)**175 Defined terms for sections GC 29 to GC 31**

- (1) In section GC 30(3)(c), in the words before subparagraph (i), “a purpose or effect of achieving” is omitted.
- (2) Section GC 30(3)(d) is replaced by the following:
 - “(d) involves money that is provided by—
 - “(i) a lender who is not an associated person of the borrower under a provision of section OD 7 or OD 8(3) and who does not provide the money on arm’s-length terms and who—
 - “(A) is not a person who regularly provides money to persons on arm’s-length terms under arrangements that do not satisfy paragraphs (a) to (c):
 - “(B) is not resident in New Zealand under section OE 1 or OE 2 and does not carry on business in New Zealand through a fixed establishment in New Zealand; or
 - “(ii) a lender who is an associated person of the borrower under a provision of section OD 7 or OD 8(3) and who obtains the money under an arrangement that satisfies paragraphs (a) to (c).”

176 Deferral of surplus deductions from arrangement

- (1) In section GC 31(1)—
 - (a) paragraph (a)(i) is replaced by the following:
 - “(i) deductions, including any deduction under subsection (3) or section HG 16; and”:
 - (b) in paragraph (a)(ii)—
 - (i) “assessable” is inserted before “income”:
 - (ii) “and losses” is omitted:
 - (c) paragraph (b)(i) is replaced by the following:
 - “(i) deductions, including any deduction under subsection (3) or section HG 16; and”:
 - (d) in paragraph (b)(ii)—
 - (i) “assessable” is inserted before “income”:
 - (ii) “and losses” is omitted.
- (2) In section GC 31(2)—

New (unanimous)

- (a) in the words before the formula, “assessable” is inserted before “income”;
- (b) the definitions of items **a** and **b** are replaced by the following:
 - “a is the amount for the income year by which the deductions, including any deduction under subsection (3) or section HG 16, of the participant from the arrangement exceed the assessable income, other than under this section, of the participant from the arrangement
 - b is the total amount for the income year by which the deductions, including any deduction under subsection (3) or section HG 16, from the arrangement exceed the assessable income, other than under this section, from the arrangement for the group that consists of—
 - (a) the participant; and
 - (b) the affected associates of the participant who are not a loss attributing qualifying company and who each have for the income year allowable deductions, including any allowable deduction under subsection (3) or section HG 16, from the arrangement that in total exceed the assessable income, other than under this section, from the arrangement”;
- (c) paragraph (a) of the definition of item **c** is replaced by the following:
 - (a) the total amount for the income year by which the deductions, including any deduction under subsection (3) or section HG 16, from the arrangement exceed the assessable income, other than under this section, from the arrangement for the group that consists of—
 - (i) the participant; and

New (unanimous)

- (ii) the affected associates of the participant who are not a loss attributing qualifying company that has incurred a net loss from the arrangement for the income year; and”.
- (3) In section GC 31(3), “amount of income” is replaced by “amount of assessable income”.
- (4) In section GC 31(4)(b), “assessable” is inserted before “income”.

177 Sale of trading stock for inadequate consideration

- (1) In the heading to section GD 1, “Sale” is replaced by “Sale or other disposal”.
- (2) Section GD 1(4) is replaced by the following:
 - “(4) This section does not apply in respect of any trading stock that—
 - “(a) is transferred to a person under a relationship agreement; or
 - “(b) is donated, or supplied for consideration worth less than the market value of the trading stock, to a person as a result of an event that is a qualifying event under paragraph (a) or (b) of the definition of that term.”

178 Subpart HC repealed

Subpart HC is repealed.

179 Election to become Maori authority

Section HI 3(3) is replaced by the following:

- “(3) A person who elects to become a Maori authority becomes a Maori authority—
 - “(a) on the first day of the income year in which the person gives notice of the election to the Commissioner, if **paragraph (b)** does not apply:
 - “(b) on the first day of the income year immediately succeeding the income year in which the person gives notice of the election to the Commissioner, if the person nominates that date in the notice of the election.”

New (unanimous)

180 Distributions by Maori authority

In section HI 4(1)(e), “consideration.” is replaced by “consideration:” and the following is added:

“(f) a taxable bonus issue.”

181 Amount distributed to member by Maori authority

After section HI 5(3), the following is added:

“(4) A taxable bonus issue that is made by a Maori authority to a member is a taxable Maori authority distribution.”

182 Treatment of companies and trusts that elect to apply this subpart

In section HI 8, row 4 of Table HI 8 is replaced by the following:

4	a Maori authority	a trust that is not a Maori authority	taxable income derived by the Maori authority is treated as trustee income.
---	-------------------	---------------------------------------	---

182B No offset in calculating some income tax liabilities

Section ID 1(2) is omitted.

183 Net losses may be offset against future net income

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

“(2B) A taxpayer who is a partner in a special partnership may not under this section carry forward a net loss if—

“(a) the taxpayer has a deduction in an income year that arises from the activities of the special partnership; and

“(b) the net loss arises from the deduction; and

“(c) during the income year, the taxpayer derives no assessable income, whether from the activities of the special partnership or otherwise.

“(2C) A taxpayer may not carry forward under this section a net loss to the extent that the net loss is offset against a remitted

New (unanimous)

amount of an associated person as determined by the Commissioner under **section CX 41B or EW 47B.**”

184 Net loss offset between group companies

Section IG 2(2)(a)(i) is replaced by the following:

- “(i) a net loss for the year of offset that does not consist of a mining outgoing excess and is not prevented by **section IE 1(2B) or (2C)** from being carried forward under sections IE 1 and IF 1:”.

185 Calculations of rebates producing negative amounts

In section KB 3, “subpart” is replaced by “Part”.

186 Rebate in respect of gifts of money

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

- “(cm) Medicine Mondiale:
“(cn) New Zealand Jesuits in India Trust:
“(co) Operation Vanuatu Charitable Trust.”

187 Determination of net income

- (1) In section KD 1(1)(e)(ii), “EI 3, EI 7, and EJ 1” is replaced by “EI 1, EI 3, and EI 7”.
- (2) In section KD 1(3)(c)(ii), “counted income” is replaced by “assessable income”.

188 Parental tax credit

In section KD 2AB(3)(b), “fortnightly” is omitted.

189 Ascertainment of New Zealand income tax liability

In section LC 14(1), in the definition of item **b**, “counted income” is replaced by “assessable income”.

New (unanimous)

190 Granting of underlying foreign tax credit

After section LF 2(2)(d), the following is inserted:

“(db) if the company, as a result of the payment of the dividend, is liable to pay no income tax in relation to an amount, or part of an amount, from which the dividend is sourced; or”.

191 Estimated provisional tax

After section MB 3(6), the following is added:

“(7) This section is subject to **section MB 3B.**”

192 New section MB 3B inserted

After section MB 3, the following is inserted:

“MB 3B Provisional taxpayer affected by qualifying event

“(1) This section applies to a taxpayer who is significantly affected by a qualifying event.

“(2) A taxpayer to whom this section applies may, despite section MB 3(1), request the Commissioner to accept an estimate or a revised estimate of the residual income tax payable by the taxpayer in respect of an income year.

“(3) The Commissioner may, despite section MB 3(1), accept an estimate or a revised estimate of residual income tax payable by a taxpayer to which this section applies in respect of an income year if the Commissioner is satisfied that—

“(a) the taxpayer is significantly affected by a qualifying event; and

“(b) an effect on the taxpayer of the occurrence of a qualifying event is that—

“(i) it is not reasonable to require the taxpayer to deliver an estimate or a revised estimate of residual income tax payable by the taxpayer in respect of the income year in accordance with section MB 3(1);

“(ii) the basis on which the taxpayer has chosen to pay provisional tax is now inappropriate; and

New (unanimous)

- “(c) the taxpayer’s request that the Commissioner accept the estimate or revised estimate was made as soon as was practicable.
- “(4) If a revised estimate is accepted under **subsection (3)**, the revised estimate is treated as applying on the third instalment date.”

193 New subpart MBB inserted

After subpart MBA, the following is inserted:

“Subpart MBB—Early-payment discount of income tax**“MBB 1 Purpose**

The purpose of this subpart is to encourage, by means of a discount of income tax, payments of amounts as income tax by small-business taxpayers in the income year preceding the income year in which the taxpayers are first required to pay provisional tax.

“MBB 2 Availability of early-payment discount

- “(1) This section applies to a small-business taxpayer for an income year if the small-business taxpayer—
- “(a) is not required to make payments of provisional tax in the income year; and
- “(b) on or before the taxpayer’s balance date for the income year, makes payments as income tax for the income year; and
- “(c) throughout the period from the taxpayer’s balance date for the income year to the taxpayer’s terminal tax date for the income year, has a credit in an account with the Commissioner that is greater than or equal to the lesser of the following:
- “(i) the amount that, on or before the small-business taxpayer’s balance date for the income year, the small-business taxpayer pays as income tax for the income year:
- “(ii) the amount of terminal tax for the income year for which the taxpayer would be liable in the absence of this section; and

New (unanimous)

- “(d) has, for earlier income years—
 - “(i) never been required to make payments of provisional tax and—
 - “(A) never received an early-payment discount; or
 - “(B) derived assessable income from a business at no time in a period of 4 income years that began after the latest income year for which the small-business taxpayer received an early-payment discount; or
 - “(ii) derived assessable income from a business at no time in a period of 4 income years that began after the latest income year for which the small-business taxpayer was required to make payments of provisional tax.
- “(2) If a small-business taxpayer to whom this section applies makes a return of income for the income year and applies for an early-payment discount, the Commissioner must credit the income tax account of the small-business taxpayer with an early-payment discount found by multiplying the discount rate referred to in **subsection (4)** by the lesser of the following:
 - “(a) the amount that, on or before the small-business taxpayer’s balance date for the income year, the small-business taxpayer paid as income tax for the income year:
 - “(b) 105% of the small-business taxpayer’s residual income tax for the income year.
- “(3) The small-business taxpayer must make the application required by **subsection (2)** on or before the date given by section 37(5) of the Tax Administration Act 1994 as the last date for filing a return of income for the income year to which the application relates.
- “(4) The discount rate is—
 - “(a) 6.7% if no rate is prescribed under **paragraph (b)**:
 - “(b) the rate prescribed by the Governor-General by Order in Council.

New (unanimous)

“MBB 3 Credit treated as being payment as income tax

A credit of an early-payment discount for a small-business taxpayer for an income year is treated as being a payment made on the day after the last day of the income year by the small-business taxpayer as income tax for the income year.

“MBB 4 Some definitions

In this subpart—

“early-payment discount means a discount of income tax under this subpart

“small-business taxpayer means a taxpayer who—

- “(a) conducts a business on the taxpayer’s own account, acting alone or as a partner in a partnership; and
- “(b) does not use a company or a trust in the conduct of the business; and
- “(c) derives assessable income that is predominantly—
 - “(i) from the business; and
 - “(ii) not interest, dividends, royalties, rents or beneficiary income”.

194 Refund of excess tax

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

“(1) Subject to sections MD 2, MD 2A, MD 2B, MD 3 and NH 4, and **subsection (2)**, the Commissioner must refund an amount that a taxpayer has paid as tax if—

- “(a) the Commissioner is satisfied that the amount represents an excess over the tax properly payable by the taxpayer; and
- “(b) the 4-year period referred to in section 108 of the Tax Administration Act 1994 has not ended.”

(2) Section MD 1(2) is replaced by the following:

“(2) Subject to sections MD 2, MD 2A, MD 2B, MD 3, and NH 4, the Commissioner must refund an amount that a taxpayer has paid as tax if—

- “(a) the taxpayer paid the amount as a result of an amendment to an assessment that increased the amount of tax payable by the taxpayer; and

New (unanimous)

- “(b) the Commissioner is satisfied that the amount represents an excess over the tax properly payable by the taxpayer; and
 - “(c) the 4-year period beginning at the end of the income year in which the assessment was amended has not ended.
- “(2B) The Commissioner may refund an amount that is referred to in **subsection (1) or (2)** after the end of the 4-year period referred to in the subsection, if—
- “(a) the refund arises from—
 - “(i) a clear mistake or simple oversight of the taxpayer;
 - “(ii) an entitlement of the taxpayer to a rebate of income tax under Part KD; and
 - “(b) the refund is made—
 - “(i) within the period of 4 years beginning from the end of the 4-year period referred to in the subsection;
 - “(ii) as a result of an application by or on behalf of the taxpayer that the Commissioner receives before or within the period of 4 years beginning from the end of the 4-year period referred to in the subsection.”

195 Limits on refunds of tax in relation to Maori authorities

- (1) In section MD 2B(1)(a), “the end” is replaced by “unless **subsection (1B)** applies, the end”.
- (2) After section MD 2B(1), the following is inserted:

“(1B) Despite subsection (1)(a), a Maori authority that furnishes its Maori authority credit account return for an imputation year before the end of the next imputation year may be refunded income tax in accordance with section MD 1 if—

 - “(a) the Maori authority has furnished the Maori authority credit account return within an extension of time given by the Commissioner; and
 - “(b) the amount of the refund does not exceed the credit balance in the Maori authority’s Maori authority credit account on the last day of the imputation year for which

New (unanimous)

the Maori authority credit account return was furnished.”

- (3) In section MD 2B(4), “If income” is replaced by “Unless **subsection (4B)** applies, if income”.
- (4) After section MD 2B(4), the following is inserted:
- “(4B) Despite subsection (4), the income tax not refunded may be credited on a provisional tax instalment date if residual income tax is treated as being payable on the date specified in Part VII of the Tax Administration Act 1994.”

195B Companies required to maintain imputation credit account

Section ME 1(2)(a) is replaced by the following:

- “(a) resident in a country other than New Zealand; or”.

195C Companies electing to maintain imputation credit account

Section ME 1A(4)(a) is replaced by the following:

- “(a) for the purpose of section ME 6, from—
- “(i) the date that is 30 days after the date on which the Commissioner receives the notice, if none of **sub-paragraphs (ii) to (iv)** apply; or
- “(ii) 1 October 2003, if the Commissioner receives the notice before 1 April 2004 and notifies the company that the notice is effective from 1 October 2003; or
- “(iii) 1 April 2004, if the Commissioner receives the notice before 1 April 2005 and notifies the company that the notice is effective from 1 April 2004; or
- “(iv) the beginning of the imputation year in which the Commissioner receives the notice, if the company is formed in the imputation year or becomes eligible under this section in the imputation year and the Commissioner notifies the company that the notice is effective from the beginning of the imputation year:”.

New (unanimous)

196 Amount of dividend for imputation rules if paid in Australian currency

In section ME 1B, the formula is replaced by the following:

“ $a \times b$ ”.

197 Consolidated imputation group to maintain separate imputation credit account

Section ME 10(1C)(b) is replaced by the following:

“(b) arise in relation to a company that, at the time the debit or credit arises—

“(i) will be a member of the resident imputation subgroup, if the debit or credit arises before the formation of the resident imputation subgroup:

“(ii) is a member of the resident imputation subgroup, if the debit or credit arises at or after the formation of the resident imputation subgroup.”

197B Credits arising to imputation credit account of group

(1) After section ME 11(1)(f), the following is inserted:

“(fb) an amount forming all or part of a credit balance in the dividend withholding payment account of a company that is a member of the consolidated imputation group, if the company elects under section MG 11 that the amount be a credit to the imputation credit account of the consolidated imputation group:”.

(2) After section ME 11 (1)(j), the following is inserted:

“(jb) an amount forming all or part of a credit balance in the policyholder credit account of a company, if the company elects under section ME 19(3)(a) during the imputation year that the amount be a credit to the imputation credit account of the consolidated imputation group:”.

(3) In section ME 11(2)(d), “subsection (1) (g) and (k)” is replaced by “subsection (1) **(fb)**, (g) and (k)”.

(4) After section ME 11 (2)(e), the following is inserted:

New (unanimous)

“(eb) in the case of the credit referred to in **subsection (1) (jb)**, on the date the relevant debit arose under section ME 18(4)(b):”.

198 Debits arising to imputation credit account of group

Section ME 12(1)(b) is replaced by the following:

“(b) an amount forming all or part of a credit balance in the imputation credit account of the consolidated imputation group, if the nominated company of the consolidated imputation group elects under section ME 14(1) during the imputation year that the amount be a credit to the policyholder credit account of the consolidated imputation group or of a member of the consolidated imputation group:”.

199 Credits and debits arising to policyholder credit account of company

(1) In section ME 18(1)(a)—

- (a) “under section ME 7 by” is omitted;
- (b) in subparagraph (i), “under section ME 14 by” is inserted before “the nominated company”;
- (c) in subparagraph (ii), “under section ME 7 by” is inserted before “the company,”.

(2) After section ME 18(1)(b), the following is inserted:

“(bb) an amount equal to any allocation deficit debit that arises in the company’s dividend withholding payment account under **section MG 8B**, if the amount of the allocation deficit debit is given by **section MG 8B(3)(a)**:

“(bc) an amount equal to the credit balance in the company’s dividend withholding payment account immediately before an allocation deficit debit arises in the company’s dividend withholding payment account under **section MG 8B**, if the amount of the allocation deficit debit is given by **section MG 8B(3)(b)**:”.

(3) After section ME 18(2)(b), the following is inserted:

New (unanimous)

“(bb) in the case of a credit referred to in **paragraph (bb) or (bc)** of that subsection, at the end of the imputation year in respect of which the credit arises:”.

- (4) In section ME 18(3)(b)—
 - (a) in subparagraph (i), “and not a member of a consolidated group” is omitted:
 - (b) in subparagraph (ii), “or of a consolidated group that is a consolidated imputation group” is omitted.
- (5) In section ME 18(4)(b), “company’s imputation credit account” is replaced by “imputation credit account of the company or imputation group”.

200 Election to use credit balance as credit against policyholder base income tax liability or as credit in imputation credit account

- (1) In section ME 19(3)(a), “and not a member of a consolidated group” is omitted.
- (2) In section ME 19(3)(b), “or of a consolidated group that is a consolidated imputation group” is omitted.
- (3) In section ME 19(4)(b)(i), “and not a member of a consolidated group” is omitted.
- (4) In section ME 19(4)(b)(ii), “, if the company is not a member of an imputation group or of a consolidated group that is a consolidated imputation group” is omitted.

201 Credits and debits arising to group policyholder credit account

- (1) After section ME 26(2)(c), the following is added:
 - “(d) an amount equal to any allocation deficit debit that arises in the consolidated group’s dividend withholding payment account under **section MG 8B**, if the amount of the allocation deficit debit is given by **section MG 8B(3)(a)**:
 - “(e) an amount equal to the credit balance in the consolidated group’s dividend withholding payment account immediately before an allocation deficit debit arises in the consolidated group’s dividend withholding payment

New (unanimous)

account under **section MG 8B**, if the amount of the allocation deficit debit is given by **section MG 8B(3)(b)**.”

- (2) After section ME 26(3)(c), the following is inserted:
- “(d) in the case of a credit referred to in **paragraph (d) or (e)** of that subsection, at the end of the imputation year in respect of which the credit arises:”.

202 Credits and debits arising to branch equivalent tax account of company

In section MF 4(2)(a), “or paragraph (b)” is omitted.

203 Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability

- (1) Section MF 5(2) is repealed.
- (2) Section MF 5(6B) is replaced by the following:
- “(6B) If an election under subsection (4) relates to an amount that exceeds the income tax liability, for the income year, of the company that receives the offset under subsection (6), the excess amount is treated as giving rise to a net loss of the company for the purpose of subparts IF and IG of an amount given by the following formula:

$$\frac{a}{b}$$

where—

- a is the amount of the excess
- b is the basic rate of income tax, expressed as a percentage, stated in—
- (a) schedule 1, part A, clause 5, if the company is not a Maori authority; or
- (b) schedule 1, part A, clause 2, if the company is a Maori authority.”

204 Debits and credits arising to group branch equivalent tax account

- (1) In section MF 8(2)(a)—

New (unanimous)

- (a) in the definition of item **d**, “or LC 5” is replaced by “, LC 5 or LC 16”;
- (b) in the definition of item **e**, “companies that are members of the consolidated group” is replaced by “other companies”.
- (2) In section MF 8(3)(a)—
 - (a) “the credits referred to in subsection (2)(a) and (b)” is replaced by “a credit referred to in subsection (2)(a)”;
 - (b) “those paragraphs” is replaced by “that paragraph”.

205 Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability

- (1) Section MF 10(2) is repealed.
- (2) Section MF 10(6) is replaced by the following:
- “(6) If an election under subsection (3) or (4) relates to an amount that exceeds the income tax liability, for the income year, of the company or group that receives the offset under subsection (5), the excess amount is treated as giving rise to a net loss of the company or group for the purpose of subparts IF and IG of an amount given by the following formula:

$$\frac{a}{b}$$

where—

- a is the amount of the excess
- b is the basic rate of income tax, expressed as a percentage, stated in—
 - (a) schedule 1, part A, clause 5, if the company is not a Maori authority or the group does not consist of Maori authorities; or
 - (b) schedule 1, part A, clause 2, if the company is a Maori authority or the group consists of Maori authorities.

New (unanimous)

206 Debits arising to dividend withholding payment account

- (1) In section MG 5(1)(c), “company’s imputation credit account” is replaced by “imputation credit account of the company or of an imputation group to which the company belongs”.
- (2) In section MG 5(1)(f), “section MG 8” is replaced by “section MG 8(4)”.
- (3) In section MG 5(1)(g), “section MG 8(5)” is replaced by “**section MG 8B**”.

207 Allocation rules for dividend withholding payment credits

Section MG 8(5) to (7) are repealed.

208 New section MG 8B inserted

After section MG 8, the following is inserted:

“MG 8B Policyholder credit account companies and dividend withholding payment credits

- “(1) This section applies to a policyholder credit account company (called the **company**) that is not a conduit tax relief company and an imputation year (called the **dividend year**) in which the company pays a dividend with a dividend withholding payment credit attached.
- “(2) An allocation deficit debit of an amount given by **subsection (3)** arises at the end of the dividend year in the company’s dividend withholding payment account if—
 - “(a) the total of the amounts of the company’s policyholder income and policyholder net loss for the DWP reference period, found using the policyholder base calculation for each imputation year, is greater than nil:
 - “(b) the shareholder DWP ratio for the DWP reference period exceeds the policyholder DWP ratio for the DWP reference period.
- “(3) The amount of the allocation deficit debit that arises under **subsection (2)** is—
 - “(a) equal to the maximum deficit debit, if the maximum deficit debit is less than or equal to the credit balance

New (unanimous)

that is in the company's dividend withholding payment account immediately before any allocation deficit debit arises under this section:

“(b) equal to the reduced deficit debit, if **paragraph (a)** does not apply.

“(4) In this section—

“**DWP reference period** means the period that consists of—

“(a) the dividend year:

“(b) the longest period of consecutive imputation years—

“(i) that begins on or after the date on which this section applies for the company; and

“(ii) that ends immediately before the dividend year; and

“(iii) in which the company paid no dividend that had a dividend withholding payment credit attached

“**maximum deficit debit** means the quantity that is given by the following formula:

$$(a - b) \times d \times (1 - r)$$

where—

a is the company's shareholder DWP ratio for the DWP reference period:

b is the company's policyholder DWP ratio for the DWP reference period:

d is the total of the amounts of the company's policyholder income and policyholder net loss found for the DWP reference period using the policyholder base calculation:

r is the basic rate of income tax, expressed as a percentage, stated in—

(a) schedule 1, part A, clause 5, if the company is not a Maori authority:

(b) schedule 1, part A, clause 2, if the company is a Maori authority

“**policyholder DWP ratio** means the quantity that is given by the following formula:

New (unanimous)

$$\frac{c}{d \times (1 - r)}$$

where—

- c is the total for the DWP reference period of all the credits that have arisen in the company's policyholder credit account as a result of an election by the company under section MG 7 in relation to a credit balance in the company's dividend withholding payment credit account
- d is the total of the amounts of the company's policyholder income and policyholder net loss found for the DWP reference period using the policyholder base calculation
- r is the basic rate of income tax, expressed as a percentage, stated in—
 - (a) schedule 1, part A, clause 5, if the company is not a Maori authority:
 - (b) schedule 1, part A, clause 2, if the company is a Maori authority

“reduced deficit debit means the quantity that is given by the following formula:

$$e + f - \frac{g \times (f + c + e)}{g + (d \times (1 - r))}$$

where—

- c is the total for the DWP reference period of all the credits that have arisen in the company's policyholder credit account as a result of an election by the company under section MG 7 in relation to a credit balance in the company's imputation credit account
- d is the total of the amounts of the company's policyholder income and policyholder net loss found for the DWP reference period using the policyholder base calculation

New (unanimous)

- e is the credit balance in the company’s dividend withholding payment account at the end of the dividend year immediately before any allocation deficit debit arises under this section
- f is the total amount of DWP credits that the company has attached to dividends paid by the company in the DWP reference period
- g is the total amount of dividends paid by the company in the DWP reference period
- r is the basic rate of income tax, expressed as a percentage, stated in—
 - (a) schedule 1, part A, clause 5, if the company is not a Maori authority:
 - (b) schedule 1, part A, clause 2, if the company is a Maori authority

“**shareholder DWP ratio** means the quantity given by the following formula:

$$\frac{f}{g}$$

where—

- f is the total amount of DWP credits that the company has attached to dividends paid by the company in the DWP reference period
- g is the total amount of dividends paid by the company in the DWP reference period.

“(5) This section does not apply to a dividend that is the subject of a determination made by a statutory producer board or a co-operative company under section ME 30 or section ME 35.”

209 Further dividend withholding payment payable by company

In section MG 9(5A)(b), “payment of income tax” is replaced by “dividend withholding payment”.

New (unanimous)

209B Transfer of credit balance to imputation credit account

Section MG 11(1) is replaced by the following:

- “(1) A company that is not a conduit relief company and has a credit balance in the dividend withholding payment account of the company at the end of an imputation year, or immediately before a debit arises in the account under section MG 5(1)(j), may elect that all or part of the credit balance be, for the imputation year in which the credit balance occurs—
- “(a) a debit to the dividend withholding payment account of the company; and
 - “(b) a credit to the imputation credit account of the company, or of an imputation group of which the company is a member at the time the credit balance occurs.”

210 Debits arising to group dividend withholding payment account

- (1) In section MG 15(1)(f), “section MG 8” is replaced by “section MG 8(4)”.
- (2) In section MG 15(1)(g), “section MG 8(5)” is replaced by “**section MG 8B**”.

211 Application of specific dividend withholding provisions to consolidated groups

Section MG 16A(1) is replaced by the following:

- “(1) Section MG 8 applies with any necessary modifications to a consolidated group—
- “(a) as if the consolidated group were a company; and
 - “(b) for the purpose of section MG 8(2) to (4), without taking into account any dividend that is paid by a member of the consolidated group to another member of the consolidated group.
- “(1B) **Section MG 8B** applies with any necessary modifications to a consolidated group that has a policyholder credit account—
- “(a) as if the consolidated group were a company; and
 - “(b) as if a reference to section MG 7 were a reference to section NH 6(2); and

New (unanimous)

“(c) without taking into account any dividend that is paid by a member of the consolidated group to another member of the consolidated group.”

212 Allocation rules for Maori authority credit account credits

In section MK 7(5), “distributions”, where it appears after “where—”, is replaced by the following:

“**distributions** is the total of all taxable Maori authority distributions made by the Maori authority during the imputation year, exclusive of any Maori authority credit attached to the distributions”.

213 Further tax payable for end of year debit balance or when Maori authority ceases to exist

Section MK 8(5) is replaced by the following:

- “(5) A Maori authority that pays an amount of further income tax for which the authority is liable may elect, with effect from the date on which the Commissioner receives the payment, that the amount paid be also credited in payment of a liability of the authority to pay income tax or provisional tax in relation to an income year that corresponds to an imputation year in which the authority was required to establish and maintain a Maori authority credit account.
- “(5B) A Maori authority that pays an amount of income tax in relation to an income year in which the authority was required to establish and maintain a Maori authority credit account and that is liable to pay further income tax in relation to an imputation year may elect, with effect from the date on which the Commissioner receives the payment, that the amount of the payment of tax be also credited in payment of the liability of the authority to pay the further income tax.”

214 Section MZ 7 repealed

Section MZ 7 is repealed.

New (unanimous)

215 Accreditation requirements of PAYE intermediaries

- (1) In section NBA 2(1)(c), the words before subparagraph (i) are replaced by “the applicant, if a natural person or corporation sole, or each member of the applicant, if the applicant is an unincorporated body, or each of the persons acting as a director, secretary or statutory officer of the applicant, if the applicant is a body corporate, and any principal of the applicant”.
- (2) In section NBA 2(4)(b), the words before subparagraph (i) are replaced by “the person, if a natural person or corporation sole, or a member of the person, if the person is an unincorporated body, or a person acting as a director, secretary or statutory officer of the person, if the person is a body corporate, or a principal of the person”.

216 Employer having PAYE intermediary: responsibilities and status under PAYE rules and SSCWT rules

- (1) Section NBA 4(1) is replaced by the following:
 - “(1) An employer who is in an arrangement with a PAYE intermediary that applies to an employee and a pay period must—
 - “(a) if the employer has authorised the PAYE intermediary to direct the transfer of amounts from a bank account of the employer in satisfaction of the obligations under the arrangement of the PAYE intermediary to make payments on behalf of the employer, ensure that, at a time specified by the PAYE intermediary, the funds in the bank account of the employer that are available for transfer are sufficient to satisfy the obligations of the PAYE intermediary that relate to the employee and the pay period; or
 - “(b) if the employer has not authorised the PAYE intermediary as described in **paragraph (a)**, pay into the trust account established by the PAYE intermediary and identified in the employer’s notice to the Commissioner under section NBA 3—
 - “(i) if **subparagraph (ii)** does not apply, the employee’s gross salary or wages for the pay period after deduction of any amount that is owed by the employee to the employer and may be lawfully

New (unanimous)

withheld by the employer from the salary or wages:

“(ii) if the employer has paid salary or wages to the employee in the way authorised by subsection (4), the amount that the employer is required by **subsection (4)(d)** to make available to the PAYE intermediary:

“(iii) if the PAYE intermediary has agreed to assume obligations of the employer under the SSCWT rules, the specified superannuation contributions that are made in the pay period by the employer on behalf of the employee.

“(1B) An employer who is in an arrangement with a PAYE intermediary that applies to an employee and a pay period must—

“(a) keep records of the gross salary or wages of the employee for the pay period and the amounts withheld by the employer for the pay period; and

“(b) provide information requested by the PAYE intermediary within the time agreed by the employer and the PAYE intermediary.”

(2) In section NBA 4(2), “subsection (1)” is replaced by “subsections (1) and **(1B)**”.

(3) In section NBA 4(3), “subsection (1)” is replaced by “subsections (1) and **(1B)**”.

(4) Section NBA 4(4)(c) and (d) are replaced by the following:

“(c) the employer makes from the gross salary or wages of the employee the deduction that the PAYE rules and SSCWT rules would require of an employer who did not have a PAYE intermediary; and

“(d) the employer makes available to the PAYE intermediary, in the way required by **subsection (1)**, the amount of the deduction referred to in **paragraph (c)**.”

217 PAYE intermediary: responsibilities and status under PAYE rules and SSCWT rules

(1) In section NBA 5(1), “and **(1B)**” is inserted after “section NBA 4(1)” in both places that it occurs.

New (unanimous)

- (2) After section NBA 5(1), the following is inserted:
- “(1B) If a PAYE intermediary has been authorised by an employer to direct the transfer of amounts from a bank account of the employer as described in **section NBA 4(1)(a)**, the PAYE intermediary must direct that, at or before the time of the transfer of the amount of salary or wages owing to the employee, an amount representing the deductions from the gross salary or wages of the employee that are required by the PAYE rules and SSCWT rules be transferred to—
- “(a) the Commissioner:
 - “(b) the trust account established by the PAYE intermediary and identified in the employer’s notice to the Commissioner under section NBA 3.”
- (3) In section NBA 5(2A), “and **(1B)**” is inserted after “section NBA 4(1)” in both places that it occurs.

218 Operation of trust account

- (1) In section NBA 6(2), paragraphs (aa) and (ab) are replaced by the following:
- “(ab) deductions from gross salary or wages that are required by the PAYE rules and SSCWT rules:
 - “(ac) specified superannuation contributions paid by employers:
 - “(ad) deductions under section NBA 4(4) made by employers from salary or wages:”.
- (2) In section NBA 6(3), paragraphs (aa) and (ab) are replaced by the following:
- “(ab) specified superannuation contributions paid by employers:
 - “(ac) deductions under section NBA 4(4) made by employers from salary or wages:”.

219 Amounts of tax deductions

- (1) Section NC 6(1) is repealed.
- (2) In section NC 6(1A), “For a period for which the amount of a tax deduction is not fixed by an annual taxing Act, the” is replaced by “A”.

New (unanimous)

- (3) In section NC 6(1B), “by an annual taxing Act or” is omitted.
- (4) In section NC 6(1C), “by an annual taxing Act or” is omitted.
- (5) Section NC 6(2) is repealed.

220 Delivery of withholding declaration

Section NC 7(2) is replaced by the following:

- “(2) If a person who is making a withholding payment has not received the withholding declaration required by subsection (1), the person must make from the withholding payment a tax deduction that is equal to the sum of the amount of the tax deduction that would, apart from this subsection, be made from the withholding payment and an amount equal to—
 - “(a) 15% of the amount of the withholding payment, if neither of **paragraphs (b) and (c)** applies; or
 - “(b) 5% of the amount of the withholding payment, if—
 - “(i) the person receiving the withholding payment is a company that is a non-resident contractor for the purposes of the Income Tax (Withholding Payments) Regulations 1979; and
 - “(ii) the person referred to in **subparagraph (i)** receives the withholding payment other than directly or indirectly as a result of a choice that is made for purposes that include a purpose of defeating the intent and application of **paragraph (a)**; and
 - “(iii) **paragraph (c)** does not apply; or
 - “(c) nil, if the withholding payment is a payment of the class specified in clause 4(b) of Part B of the Schedule to the Income Tax (Withholding Payments) Regulations 1979.”

221 Amount of tax deductions for pay period current when tax deductions altered

In section NC 12(1), “by an annual taxing Act or” is omitted.

New (unanimous)

222 Special filing rule for employer who stops employing staff during year

In section ND 12, “section ND 10(4) and (5)” is replaced by “section ND 10(3) to (5)”.

223 Application of RWT rules

- (1) After section NF 1(2)(a)(x), the following is added:

“(xi) interest payable on overpaid tax in accordance with section 120D of the Tax Administration Act 1994:”
- (2) Section NF 1(3) and (3A) are repealed.

224 Liability to make deduction in respect of foreign withholding payment dividend

- (1) Section NH 1(2)(a) is replaced by the following:

“(a) a dividend that is paid by a foreign company and that—
 “(i) is derived by a company that is resident in New Zealand; and
 “(ii) is exempt income under section CW 9 or CW 11 for the company that is resident in New Zealand; and
 “(iii) is not exempt income under 1 or more of sections CW 29 to 33 and CW 35 to 40 for the company that is resident in New Zealand:”.
- (2) Section NH 1(3) is repealed.

225 Application of specific dividend withholding payment provisions to consolidated groups

- (1) Section NH 6(3) and (4) are repealed.
- (2) In section NH 6(6)(a)(ii), “payment” is inserted after “dividend withholding”.

226 Definitions

- (1) This section amends section OB 1.
- (2) In the definition of **allocation deficit debit**, “or (5)” is replaced by “or **MG 8B**”.

New (unanimous)

- (3) In the definition of **community trust**, “section 2” is replaced by “section 4”.
- (3B) After the definition of **cost**, the following is inserted:

“**cost of timber**, for some timber, means the amount given for the timber by section DP 10(1) (Cost of timber) that is a deduction under section DP 10(2)”
- (4) In the definition of **diminished value**—
 - (a) in the introductory words, “**DO 4B** (Expenditure on land: planting of listed horticultural plants), **DO 4C** (Expenditure on land: horticultural replacement planting),” is inserted before “DO 6”;
 - (b) in paragraph (b), “**DO 4B** (Expenditure on land: planting of listed horticultural plants), **DO 4C** (Expenditure on land: horticultural replacement planting),” is inserted before “DO 6”.
- (4B) After the definition of **dual resident company**, the following is inserted:

“**DWP reference period** is defined in **section MG 8B(4)** (Policy-holder credit account companies and dividend withholding payment credits) for the purposes of that section”
- (5) After the definition of **early balance date**, the following is inserted:

“**early-payment discount** is defined in **section MBB 4** (Some definitions) for the purpose of **subpart MBB**”.
- (5B) In paragraph (e) of the definition of **eligible period**, “changes” is replaced by “does not change”.
- (6) In the definition of **estimated useful life**, the following is added:

“(c) for a listed horticultural plant, means the period of time over which the listed horticultural plant might reasonably be expected to be useful to a person in deriving income or in carrying on a business in New Zealand, with the expectation based on an assumption of normal and reasonable maintenance”.
- (7) In the definition of **finance lease**, paragraph (b) is replaced by the following:

New (unanimous)

- “(b) involves or is part of an arrangement that involves—
 - “(i) the transfer of the ownership of the lease asset to the lessee or an associate of the lessee during or at the end of the lease term:
 - “(ii) the lessee or an associate of the lessee having the option of acquiring the asset for an amount that is likely to be substantially lower than the asset’s market value on the date of acquisition:
 - “(iii) a lease term that is more than 75% of the asset’s estimated useful life as that term is defined in section EE 53 (Meaning of estimated useful life):
 - “(iv) a right of an associate of the lessee to acquire the lease asset, or a right of the lessor to require an associate of the lessee to acquire the lease asset, during the lease term under an arrangement that does not entitle the associate to receive all of the lease payments that may fall due after the acquisition”.
- (8) After the definition of **foreign dividend**, the following is inserted:
 - “**foreign exempt entity** is defined in **section CW 11B(3)** (Proceeds of share disposition by qualified foreign equity investor) for the purposes of that section
 - “**foreign exempt partnership** is defined in **section CW 11B(3)** (Proceeds of share disposition by qualified foreign equity investor) for the purposes of that section
 - “**foreign exempt person** is defined in **section CW 11B(3)** (Proceeds of share disposition by qualified foreign equity investor) for the purposes of that section”.
- (9) The definition of **insurer** is replaced by the following:
 - “**insurer**—
 - “(a) means a person who assumes liability under a contract of insurance:
 - “(b) is defined in section FC 13(9) (Premiums derived by non-resident general insurers treated as being derived from New Zealand) for the purposes of sections FC 13

New (unanimous)

to FC 17 (which relate to non-resident general insurers)”.

- (10) In paragraph (d) of the definition of **lease**—
 - (a) in the words preceding subparagraph (i)—
 - (i) “FC 8G” is replaced by “FC 8I”;
 - (ii) “operating lease,” is inserted before “outstanding balance,”;
 - (b) after subparagraph (ii), the following is inserted:

“(iib) includes a licence to use intangible property; and”.
- (11) In paragraph (b)(i) of the definition of **lessee**, “, hires, or bails” is omitted.
- (12) In paragraph (a) of the definition of **lessee’s acquisition cost**, “means the consideration provided to the lessee for a finance lease asset (as determined under the definition of **consideration**)” is replaced by “for a finance lease asset, means the consideration provided to the lessee under the finance lease, as determined under the definition of **consideration**,”.
- (13) After the definition of **listed company** the following is inserted:

“**listed horticultural plant**, in sections **DO 4B to DO 4E**—

 - “(a) means a horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land, that is of a type that is listed in a determination made by the Commissioner under **section 91AAB of the Tax Administration Act 1994**;
 - “(b) does not include—
 - “(i) a tree planted mainly for the purpose of timber production;
 - “(ii) a tree or other similar plant planted mainly for the purpose of ornament;
 - “(iii) a vine planted mainly for the purpose of producing grapes for wine production”.
- (13B) In paragraph (b)(viii) of the definition of **local authority**, “section CW 32(4)(c)” is replaced by “section CW 32(4) (Local authorities)”.

New (unanimous)

- (13C) After the definition of **maturity**, the following is inserted:
- “**maximum deficit debit** is defined in **section MG 8B(4)** (Policyholder credit account companies and dividend withholding payment credits) for the purposes of that section”
- (14) In paragraph (a) of the definition of **net loss**, “section 177C(4)” is replaced by “section 177C(5)”.
- (14B) After the definition of **new provisional taxpayer**, the following is inserted:
- “**new start grant** means a grant of money that is designated by the Minister of Agriculture as a new start grant and is paid by the Government of New Zealand to a person in respect of—
- “(a) an adverse event:
- “(b) an event that is a qualifying event”.
- (15) After the definition of **non-filing taxpayer**, the following is inserted:
- “**non-listed horticultural plant**, in section DO 4 and schedule 7, part A, item 8—
- “(a) means—
- “(i) a horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land, that is not a listed horticultural plant:
- “(ii) a tree or other similar plant planted mainly for the purpose of ornament:
- “(b) does not include a tree planted mainly for the purpose of timber production”.
- (16) In paragraph (a)(ii) of the definition of **PAYE intermediary**, “PAYE intermediary); or” is replaced by “PAYE intermediary); and” and the following is added:
- “(iii) has entered agreements that have been approved by the Commissioner under section NBA 3 (Approval by Commissioner of employer arrangements with PAYE intermediary) with not less than 10 employers:”.
- (17) After the definition of **physical cost of production**, the following is inserted:

New (unanimous)

- “**planting** is defined in **section DO 4E** (Some definitions) for the purposes of **sections DO 4B to DO 4E**”.
- (18) After the definition of **pleasure craft**, the following is inserted:
- “**plot** is defined in **section DO 4E** (Some definitions) for the purposes of **sections DO 4B to DO 4E**”
- (18B) After the definition of **policyholder credit account person**, the following is inserted:
- “**policyholder DWP ratio** is defined in **section MG 8B(4)** (Policyholder credit account companies and dividend withholding payment credits) for the purposes of that section”
- (19) After the definition of **qualifying debenture**, the following is inserted:
- “**qualifying event** means—
- “(a) the extreme climatic conditions that occurred during the month of February 2004 in New Zealand:
- “(b) the storm event that occurred during the month of July 2004 in the Bay of Plenty area:
- “(c) any naturally-occurring event that occurs in a subsequent year and—
- “(i) for which a state of emergency is declared under the Civil Defence Act 1983 or Part 4 of the Civil Defence Emergency Management Act 2002; and
- “(ii) that the Governor-General by Order in Council declares to be a qualifying event
- “**qualifying foreign equity investor** is defined in **section CW 11B(3)** (Proceeds of share disposition by qualified foreign equity investor) for the purposes of that section”.
- (19B) After the definition of **reduced deduction**, the following is inserted:
- “**reduced deficit debit** is defined in **section MG 8B(4)** (Policyholder credit account companies and dividend withholding payment credits) for the purposes of that section”
- (20) After the definition of **repairs**, the following is inserted:
- “**replaced area fraction** is defined in **section DO 4E** (Some definitions) for the purposes of **sections DO 4B to DO 4E**”.

New (unanimous)

- (21) After the definition of **replacement permit**, the following is inserted:
- “**replacement plant**, in sections DO 4 and **DO 4B to DO 4E**, means a listed horticultural plant that replaces a listed horticultural plant, whether or not it is of the same type of listed horticultural plant”.
- (22) In the definition of **resident in Australia**, paragraph (a) is omitted.
- (22B) In the definition of **schedular income**, paragraph (i) is omitted.
- (22C) After the definition of **shareholder dividend statement**, the following is inserted:
- “**shareholder DWP ratio** is defined in **section MG 8B(4)** (Policyholder credit account companies and dividend withholding payment credits) for the purposes of that section”
- (23) After the definition of **slice rule**, the following is inserted:
- “**small-business taxpayer** is defined in **section MBB 4** (Some definitions) for the purposes of **subpart MBB**”.
- (24) In the definition of **special corporate entity**, after paragraph (i), the following is added:
- “(j) any body incorporated under the Incorporated Societies Act 1908, for an income year in which the body on no day in the income year has shares on issue to the members of the body”.
- (25) The definition of **taxable bonus issue** is replaced by the following:
- “**taxable bonus issue** means—
- “(a) a bonus issue in lieu:
- “(b) a bonus issue that a company chooses to treat as a dividend under section CD 7 (Elections to make bonus issue into dividend):
- “(c) in the case of a bonus issue made before the enactment of this Act, a bonus issue that a company chose to treat as a dividend under a provision of an earlier Act corresponding to section CD 7 (Elections to make bonus issue into dividend):

New (unanimous)

“(d) a bonus issue that is a dividend under **section CD 7C** (Bonus issue by foreign unit trust instead of money or property)”.

(26) In the definition of **timber**, paragraph (e) is omitted.

227 Meaning of income tax

In section OB 6(1)(b), “**CW 11B**,” is inserted after “CD 11,”.

229 Further definitions of associated persons

In section OD 8(1), “**CW 11B**,” is inserted after “sections”.

230 Schedule 7—Expenditure on farming, aquacultural, and forestry improvements

(1) In the heading to schedule 7, “horticultural,” is inserted after “farming,”.

(2) In schedule 7, part A, item 8, “vines or trees on the land other than trees planted mainly for the purposes of timber production” is replaced by “non-listed horticultural plants on the land”.

231 Schedule 9—Categories of livestock for which national standard costs to be declared

In schedule 9, column 2, in the entry that corresponds to the item “Pigs”, “Growing pigs 10 to 18 weeks of age” is replaced by “Growing pigs 10 to 17 weeks of age”.

232 Schedule 21—Enactments amended

(1) This section amends schedule 21.

(2) The amendment to section 48A of the Goods and Services Tax Act 1985 is replaced by the following:

“In section 48A(3)(a), replace ‘**section EZ 9(3)** of the Income Tax Act 1994’ by ‘**section CX 41B(4) or EW 47B(4)** of the Income Tax Act 2004’.

New (unanimous)

“In the words after section 48A(3)(c), replace ‘**section EZ 9(3) and (4)** of the Income Tax Act 1994’ by ‘**section CX 41B(4) and (5) or section EW 47B(4) and (5)** of the Income Tax Act 2004’.”

- (3) The amendment to section 49(2) of the Student Loan Scheme Act 1992 is replaced by the following:

“In section 49(2), replace ‘an income year’ by ‘a tax year’.

“In section 49(2), replace ‘that income year’ by ‘that tax year’.”

- (4) In the heading to the amendments to the Taxation Review Authorities Act 1994, “1994 No 156” is replaced by “1994 No 165”.

- (5) The amendment to the Financial Reporting Order 1994 is replaced by the following:

“In clause 4, replace ‘rates permitted under the Income Tax Act 1976’ in all places in which it appears by ‘rates permitted under the Income Tax Act 2004’.

“In clause 4, replace ‘section 222A of the Income Tax Act 1976’ by ‘section OB 1 of the Income Tax Act 2004’.”

233 Schedule 22—Amendments to Tax Administration Act 1994

- (1) In the amendment to section 2(4), “that are not in Part VI (which relates to assessments) and” is inserted after “provisions of this Act”.
- (2) In the definition of **notice** that is inserted in section 3(1), “14A or 14B” is replaced by “**14B or 14C**”.
- (3) In the heading to the 2nd of the sections that replace section 14, “14A” is replaced by “14B”.
- (4) In the heading to the 3rd of the sections that replace section 14, “14B” is replaced by “14C”.
- (5) In the subsection that is inserted after section 33A(2), “(2A)” is replaced by “(2B)”.

New (unanimous)

- (6) In the 1st amendment to section 33A(3), “(2A)” is replaced by “(2B)”.
- (7) In the amendment to section 33A(5), “(2A)” is replaced by “(2B)”.
- (8) The amendments to section 33B are omitted.
- (9) In subsection (3) of the section that is inserted after section 44B, “the definitions of **listed horticultural plants** and **non-listed horticultural plant** in section OB 1 of the Income Tax Act 2004 and under” is inserted after “arises under”.
- (10) The amendment to section 90A(6) is replaced by the following:

“In section 90A(6B), replace ‘income year’ by ‘tax year’.”
- (11) In the subsection that is inserted after section 91(1), “(1A)” is replaced by “(1B)”.
- (12) In the amendment to section 91AA(2)(a), “CB 9(h)” is replaced by “CB 9(**gb**) or (h) of the Income Tax Act 1994”.
- (13) In the amendment that follows the amendment to section 91AA(7), “section 91AA” is replaced by “section 91AAB”.
- (14) After the amendment to section 91AA(7), the following are inserted:

“In section 91AAB(1), replace ‘**sections DO 4B, DO 4C, and DO 4D** of the Income Tax Act 1994’ by ‘**sections DO 4B to DO 4E** of the Income Tax Act 2004’.

“In section 91AAB(1)(b), replace ‘column 1 of Schedule 11 of the Income Tax Act 1994’ by ‘schedule 11, column 1 of the Income Tax Act 2004’.”
- (15) In the heading to the 1st of the sections that are inserted by the amendment referred to in **subsection (13)**, “91AAA” is replaced by “91AAC”.
- (16) In the heading to the 2nd of the sections that are inserted by the amendment referred to in **subsection (13)**, “91AB” is replaced by “91AAD”.

New (unanimous)

- (17) In the heading to the 3rd of the sections that are inserted by the amendment referred to in **subsection (13)**, “91AC” is replaced by “91AAE”.
- (18) In the heading to the 4th of the sections that are inserted by the amendment referred to in **subsection (13)**, “91AD” is replaced by “91AAF”.
- (19) In the 5th of the sections that are inserted by the amendment referred to in **subsection (13)**—
 - (a) in the heading, “91AE” is replaced by “91AAG”;
 - (b) in subsection (1)(a), “91AD” is replaced by “91AAF”;
 - (c) in subsection (1)(b), “91AD” is replaced by “91AAF”;
 - (d) in subsection (6), “91AD” is replaced by “91AAF”.
- (20) In the 6th of the sections that are inserted by the amendment referred to in **subsection (13)**—
 - (a) in the heading, “91AF” is replaced by “91AAH”;
 - (b) in subsection (1), “91AE” is replaced by “91AAG”;
- (21) In the 7th of the sections that are inserted by the amendment referred to in **subsection (13)**—
 - (a) in the heading, “91AG” is replaced by “91AAI”;
 - (b) in subsection (4)(a), “91AK(5)” is replaced by “91AAM(5)”.
- (22) In the 8th of the sections that are inserted by the amendment referred to in **subsection (13)**—
 - (a) in the heading, “91AH” is replaced by “91AAJ”;
 - (b) in subsection (1)(a), “91AE” is replaced by “91AAG”;
 - (c) in subsection (1)(b)—
 - (i) “91AE” is replaced by “91AAG”;
 - (ii) “91AE(5)(b)” is replaced by “91AAG(5)(b)”.
- (23) In the 9th of the sections that are inserted by the amendment referred to in **subsection (13)**—
 - (a) in the heading, “91AI” is replaced by “91AAK”;
 - (b) in the words before paragraph (a), “91AD” is replaced by “91AAF”.
- (24) In the heading to the 10th of the sections that are inserted by the amendment referred to in **subsection (13)**, “91AJ” is replaced by “91AAL”.

New (unanimous)

- (25) In the 11th of the sections that are inserted by the amendment referred to in **subsection (13)**—
- (a) in the heading, “91AK” is replaced by “91AAM”;
 - (b) in the words before subsection (1)(a), “91AE” is replaced by “91AAG”;
 - (c) in the words before subsection (4)(a), “91AE(4)” is replaced by “91AAG(4)”;
 - (d) in the words before subsection (5)(a), “91AG(2)” is replaced by “91AAI(2)”.
- (26) In the paragraph that is inserted after section 91C(1)(e)—
- (a) “(ea)” is replaced by “(eb)”;
 - (b) in subparagraph (iv), “91AB or 91AC” is replaced by “91AAD or 91AAE”;
 - (c) in subparagraph (v), “91AD to 91AK” is replaced by “91AAF to 91AAM”.
- (27) In the subsection that is inserted after section 108(3), “(3A)” is replaced by “(3B)”.
- (28) In the heading to the 1st of the sections that are inserted after section 113, “113A” is replaced by “113B”.
- (29) In the heading to the 2nd of the sections that are inserted after section 113, “113B” is replaced by “113C”.
- (30) The amendments to section 120OB are replaced by the following:
- “In section 120OB(1)(a), replace ‘**section NBB 4(1)** of the Income Tax Act 1994’ by ‘**section NBA 4(1)** of the Income Tax Act 2004’.
- “In section 120OB(1)(b), replace ‘**section NBB 4(1B)(b)** of the Income Tax Act 1994’ by ‘**section NBA 4(1B)(b)** of the Income Tax Act 2004’.”
- (31) The amendments to section 141FC are omitted.
- (32) The amendments to section 141JB are replaced by the following:
- “In section 141JB(1)(a), replace ‘**section NBB 4(1)** of the Income Tax Act 1994’ by ‘**section NBA 4(1)** of the Income Tax Act 2004’.

New (unanimous)

“In section 141JB(1)(b), replace ‘**section NBB 4(1B)(b)** of the Income Tax Act 1994’ by ‘**section NBA 4(1B)(b)** of the Income Tax Act 2004’.”

- (33) The amendments to section 167 are replaced by the following:

“In section 167(2B)(b)(i), replace ‘**section NBB 4(1)** of the Income Tax Act 1994’ by ‘**section NBA 4(1)** of the Income Tax Act 2004’.

“In section 167(2B)(b)(ii), replace ‘**section NBB 4(1B)(b)** of the Income Tax Act 1994’ by ‘**section NBA 4(1B)(b)** of the Income Tax Act 2004’.”

- (34) The amendments to section 168(4) are replaced by the following:

“In section 168(4)(a), replace ‘**section NBB 4(1)** of the Income Tax Act 1994’ by ‘**section NBA 4(1)** of the Income Tax Act 2004’.

“In section 168(4)(b), replace ‘**section NBB 4(1B)(b)** of the Income Tax Act 1994’ by ‘**section NBA 4(1B)(b)** of the Income Tax Act 2004’.”

- (35) The amendments to section 169 are replaced by the following:

“In section 169(1B)(a), replace ‘**section NBB 4(1)** of the Income Tax Act 1994’ by ‘**section NBA 4(1)** of the Income Tax Act 2004’.

“In section 169(1B)(b), replace ‘**section NBB 4(1B)(b)** of the Income Tax Act 1994’ by ‘**section NBA 4(1B)(b)** of the Income Tax Act 2004’.”

- (36) The amendment to section 177C(6) is omitted.

- (36B) The amendment to section 177D is replaced by the following:

“In section 177D(2)(a), replace ‘section EZ 9(3) and (4) of the Income Tax Act 1994’ with ‘**section CX 41B(4) and (5)** or **section EW 47B(4) and (5)** of the Income Tax Act 2004.’ ”

- (37) After the amendment to section 181C, the following is inserted:

New (unanimous)

“In section 181D, replace ‘Income Tax Act 1994 by
‘Income Tax Act 2004’.”

234 Schedule 22A—Identified policy changes

- (1) In schedule 22A, in the heading to column 1, “Income Tax Act 2002” wherever it appears is replaced by “Income Tax Act 2004”.
- (2) In schedule 22A in column 1, “CB 7(2),” is inserted after “CB 6,”.

235 Schedule 23—Comparative tables of old and new provisions

- (1) In schedule 23, part A, column 3—
 - (a) in the entry that corresponds to section CB 5(1)(a), “CW 23(1)(a)” is replaced by “CW 23(1)(a), (b)”:
 - (b) in the entry that corresponds to section CD 2, “CC 10(1)” is replaced by “CC 9(1)”:
 - (c) in the entry that corresponds to section DK 2, “DT 16(1), (2)” is replaced by “DT 15”:
 - (d) in the entry that corresponds to section DM 1(2)(b), “DT 5” is replaced by “DT 5(2)”:
 - (e) in the entry that corresponds to section DM 7(1), “CT 5” is replaced by “CT 5, DT 20”:
 - (f) in the entry that corresponds to section EB 1(1), “BD 3(3)” is replaced by “BD 3(4)”:
 - (g) in the entry that corresponds to section ED 5, “CC 9” is replaced by “CC 8”:
 - (h) in the entry that corresponds to section EG 3(2), “EE 12(1)” is replaced by “EE 12(2)(b)”:
 - (i) in the entry that corresponds to section EG 3(3), “EE 12(3)” is replaced by “EE 12(3), (4)”:
 - (j) in the entry that corresponds to section EG 3(4), “EE 12(4), (5)” is replaced by “EE 12(5), (6)”:
 - (k) in the entry that corresponds to section EG 3(5), “EE 12(6)” is replaced by “EE 12(2)(c)”:
- (2) In schedule 23, part A, column 3—
 - (a) in the entry that corresponds to section EF 1(3), “91AAA” is replaced by “91AAC”:

New (unanimous)

- (b) in the entry that corresponds to section EF 1(4), “91AAA” is replaced by “91AAC”:
- (c) in the entry that corresponds to section EG 4(2), “91AD” is replaced by “91AAF”:
- (d) in the entry that corresponds to section EG 4(6), “91AD” is replaced by “91AAF”:
- (e) in the entry that corresponds to section EG 4(7), “91AD” is replaced by “91AAF”:
- (f) in the entry that corresponds to section EG 10(1), “91AE” is replaced by “91AAG”:
- (g) in the entry that corresponds to section EG 10(2), “91AE” is replaced by “91AAG”:
- (h) in the entry that corresponds to section EG 10(3), “91AE” is replaced by “91AAG”:
- (i) in the entry that corresponds to section EG 10(4), “91AF” is replaced by “91AAH”:
- (j) in the entry that corresponds to section EG 10(5), “91AE” is replaced by “91AAG”:
- (k) in the entry that corresponds to section EG 10(6), “91AG” is replaced by “91AAI”:
- (l) in the entry that corresponds to section EG 10(7), “91AG” is replaced by “91AAI”:
- (m) in the entry that corresponds to section EG 10(8), “91AH” is replaced by “91AAJ”:
- (n) in the entry that corresponds to section EG 10(9), “91AH” is replaced by “91AAJ”:
- (o) in the entry that corresponds to section EG 11(6), “91AJ” is replaced by “91AAL”:
- (p) in the entry that corresponds to section EG 11(7), “91AJ” is replaced by “91AAL”:
- (q) in the entry that corresponds to section EG 13, “91AK” is replaced by “91AAM”:
- (r) in the entry that corresponds to section EG 14(1), “91AK” is replaced by “91AAM”:
- (s) in the entry that corresponds to section EG 14(2), “91AK” is replaced by “91AAM”:
- (t) in the entry that corresponds to section EG 14(2)(b), “91AI” is replaced by “91AAK”:

New (unanimous)

- (u) in the entry that corresponds to section EL 3A(2), “91AC” is replaced by “91AAE”:
 - (v) in the entry that corresponds to section EL 3A(3), “91AC” is replaced by “91AAE”:
 - (w) in the entry that corresponds to section EL 4(6), “91AB” is replaced by “91AAD”:
 - (x) in the entry that corresponds to section EL 4(7), “91AC” is replaced by “91AAE”:
 - (y) in the entry that corresponds to section EL 4(8), “91AC” is replaced by “91AAE”:
 - (z) in the entry that corresponds to section EL 8(2), “91AC” is replaced by “91AAE”:
 - (zb) in the entry that corresponds to section EL 8(3), “91AC” is replaced by “91AAE”:
- (3) In schedule 23, part A —
- (a) after the entry that corresponds to section EG 19(2), the following entry is inserted:

2A	omitted
----	---------
 - (b) after the entry that corresponds to section EO 4(1), the following entry is inserted:
 - (c) in the 3rd column, in the entry that corresponds to section EO 4B, “DS 3(3)” is replaced by “DS 3(6)”:
 - (d) after the entry that corresponds to section GC 27, the following entry is inserted:

1B	DS 2(3)
----	---------
 - (e) after the entry that corresponds to section HI 5, the following entries are inserted:

GC 27B	GC 27A
HI 6	HI 6
HI 7	HI 7
HI 8	HI 8
HI 9	HI 9

New (unanimous)

- (f) after the entry that corresponds to section LD 3, the following entry is inserted:

LD 3B	LD 3A
-------	-------

- (g) the entry that corresponds to section MB 2AB is omitted:
- (h) after the entry that corresponds to section MB 12, the following entries are inserted:

Subpart MBB	
MBB 1	MBA 1
MBB 2	MBA 2
MBB 3	MBA 3
MBB 4	MBA 4
MBB 5	MBA 5
MBB 6	MBA 6
MBB 7	MBA 7
MBB 8	MBA 8
MBB 9	MBA 9

- (i) after the entry that corresponds to section MD 2A, the following entry is inserted:

MD 2B	MD 2B
-------	-------

- (j) after the entry that corresponds to section MJ 8, the following entries are inserted:

Subpart MK	
MK 1	MK 1
MK 2	MK 2
MK 3	MK 3
MK 4	MK 4
MK 5	MK 5
MK 6	MK 6
MK 7	MK 7
MK 8	MK 8

New (unanimous)

MK 9	MK 9
(k) in the 3rd column, in the entry that corresponds to section MZ 7, “MZ 7” is replaced by “omitted”:	
(l) after the entry that corresponds to section NB 1, the following entries are inserted:	
Subpart NBB	
NBB 1	NBA 1
NBB 2	NBA 2
NBB 3	NBA 3
NBB 4	NBA 4
NBB 5	NBA 5
NBB 6	NBA 6
NBB 7	NBA 7
NBB 8	NBA 8
NBB 9	NBA 9
(m) after the entry that corresponds to section NF 8, the following entry is inserted:	
NF 8B	NF 8A
(n) after the entry that corresponds to section OB 3, the following entry is inserted:	
OB 3B	OB 3A
(o) in the 3rd column, in the entry that corresponds to section OB 7, “EW 40” is replaced by “EW 34”.	
(4) In schedule 23, part B—	
(a) after the entry that corresponds to section HI 5, the following entries are inserted:	
HI 6	HI 6
HI 7	HI 7
HI 8	HI 8
HI 9	HI 9
(b) after the entry that corresponds to section MB 12, the following entries are inserted:	

New (unanimous)

Subpart MBA

MBA 1	MBB 1
MBA 2	MBB 2
MBA 3	MBB 3
MBA 4	MBB 4
MBA 5	MBB 5
MBA 6	MBB 6
MBA 7	MBB 7
MBA 8	MBB 8
MBA 9	MBB 9

- (c) after the entry that corresponds to section MJ 8, the following entries are inserted:

Subpart MK

MK 1	MK 1
MK 2	MK 2
MK 3	MK 3
MK 4	MK 4
MK 5	MK 5
MK 6	MK 6
MK 7	MK 7
MK 8	MK 8
MK 9	MK 9

- (d) the entry that corresponds to section MZ 7 is omitted:
(e) after the entry that corresponds to section NB 1, the following entries are inserted:

Subpart NBA

NBA 1	NBB 1
NBA 2	NBB 2
NBA 3	NBB 3
NBA 4	NBB 4
NBA 5	NBB 5
NBA 6	NBB 6

New (unanimous)

NBA 7	NBB 7
NBA 8	NBB 8
(f) after the entry that corresponds to section NF 8, the following entry is inserted:	
NF 8A	NF 8B
(g) after the entry that corresponds to section OB 3, the following entry is inserted:	
OB 3A	OB 3B
(5) In schedule 23, part C, column 1—	
(a) “14A” is replaced by “14B”:	
(b) “14B” is replaced by “14C”:	
(c) “91(1A)” is replaced by “91(1B)”:	
(d) “91AAA” is replaced by “91AAC”:	
(e) “91AB” is replaced by “91AAD”:	
(f) “91AC” is replaced by “91AAE”:	
(g) “91AD” is replaced by “91AAF”:	
(h) “91AE” is replaced by “91AAG”:	
(i) “91AF” is replaced by “91AAH”:	
(j) “91AG” is replaced by “91AAI”:	
(k) “91AH” is replaced by “91AAJ”:	
(l) “91AI” is replaced by “91AAK”:	
(m) “91AJ” is replaced by “91AAL”:	
(n) “91AK” is replaced by “91AAM”:	
(o) “108(3A)” is replaced by “108(3B)”:	
(p) “113A” is replaced by “113B”:	
(q) “113B” is replaced by “113C”.	

New (unanimous)

Schedule

Other amendments to Income Tax Act 2004

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
AA 1	(a) and (b)	; and	:
BA 1	(a) to (c)	; and	:
BD 1	(5)(a) and (b)	; or	:
BF 1	(a) to (d)	; and	:
BH 1	(4)(a) and (b)	; or	:
CB 5	(1)(a)	; or	:
CB 8	(2)(a)	; or	:
CB 12	(2)(a) to (k)	; or	:
CB 19	(2)(a) to (d)	; and	:
CB 24	(a) and (b)	; or	:
CC 1	(2)(a) to (e)	; or	:
CC 9	(2)(a) to (h)	; or	:
	(3)(a) to (c)	; or	:
CC 10	(2)(a) to (e)	; or	:
	(3)(a)(i) to (iv)	; and	:
CD 9	(1)(a)	; and	:
CD 14	(3)(a) to (d)	; or	:
CD 16	(2)(a)(i) and (ii)	; and	:
CD 28	(11)(a)	; or	:
CD 29	(2)	113A	113B
CD 30	(3)	113A	113B
CD 37	(1)(a) to (c)	; and	:
CD 39	(12)(a)	113B	113C
CE 1	(a) to (f)	; and	:
CE 5	(3)(a) to (h)	; or	:
CF 1	(1)(a) to (g)	; and	:

New (unanimous)

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
CF 1(2)	accident com- pensation payment (a), (b), (d), (e)	; or	:
CG 2	(4)(a) to (c)	; or	:
CG 6	(1)(a)	; or	:
CH 1	(1)(a) and (b)	; or	:
CH 5	(2)(a) and (b)	; or	:
CQ 5	(1)(c)(i) to (v)	; or	:
CS 1	(7)(a)	; or	:
CS 2	(9)(a)	; and	:
CT 4	(a)	; and	:
CT 6	(3)(a) to (d)	; or	:
CT 7	(1)(a) and (b)(ii)	; and	:
	(3)(a) to (c)	; or	:
CU 2	(3)(a)	; and	:
CU 3	(3)(a)	; or	:
	(6)(c)(i)	; or	:
CU 11	(3)(a)	; and	:
CU 19	(6)(a) to (c)	; and	:
CU 23	(2)(a) to (c), (d)(i) to (iv), (e), (f) and (g)(ii)	; or	:
CU 24	(2)(a) to (e)	; or	:
	(3)(a)	; or	:
CU 28	(1)(a)	; and	:
	(2)(a) and (b)	; or	:
CW 1	(2)(a)	; and	:

Schedule		Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions)	
New (unanimous)			
Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
CW 12	(a)	; and	:
CW 14	(3)(a) to (e)	; or	:
	(4)(a) and (b)	; and	:
CW 18	(1)(b)(i) to (iii)	; or	:
	(2)(a)(i) to (iii)	; or	:
CW 23	(1)(a) to (d)	; and	:
	(2)(a)(ii)	; and	:
CW 25	(a)(i) and (b)(i)	; or	:
CW 26	(a)	; and	:
CW 27	(1)(a), (b)(v), and (c) to (e)	; and	:
	(1)(b)(i) to (iv)	; or	:
CW 28	(1)(a) to (f)	; or	:
CW 28(2)	payment relating to incapacity for work (a) to (c)	; or	:
CW 31	(5)(a) to (c)	; or	:
CW 33	(1)(a)(i)	; or	:
	(2)(a)	; or	:
CW 34	(1)(a)	; and	:
CW 35	(8)(a),(b)(ix), and (c)	; and	:
	(8)(b)(i) to (viii)	; or	:
CW 38	(a)(i) and (ii)	; and	:
CW 40	(1)(a) to (c)	; or	:
CX 1	(a)	; and	:
CX 5	(2)(a)	; or	:

New (unanimous)

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
CX 9	(2)(a) and (b)	; or	:
CX 10	(3)(a)	; and	:
CX 16	(4)(a)	; and	:
CX 29	(1)(a)(i)	; or	:
	(2)(a) and (b)	; or	:
CX 33	(1)(a)	; and	:
CZ 2	(2)(a) and (b)	; and	:
CZ 3(5)	loan (a)(iii), (b)(ii) and (c)(ii)	; and	:
CZ 11	(1)(a) and (b)	; or	:
CZ 14	(3)(a)	; and	:
	(2)(b)(i) to (iii)	; or	:
DB 1	(1)(a) and (b)	; and	:
	(2)(a)(i) to (v)	; and	:
	(2)(b)(i)	; or	:
DB 2	(5)(a)	; and	:
DB 3	(1)(a) to (c)	; and	:
	(2)(a) to (d)	; or	:
DB 4	(4)(a)	; and	:
DB 32	(1)(a)	; and	:
DB 40	(1)(a) and (b)	; or	:
DC 1	(2)(a)	; or	:
DC 9	(4)(a)	; and	:
DC 14(1)	employee (a)	; or	:
DC 14(1)	normal retir- ing age (a) and (b)	; and	:
DD 2	(2)(a)(i)	; or	:
	(6)(a)	; or	:

New (unanimous)

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
DD 4	(3)(a)	; or	:
DD 5	(1)(b)(i) and (ii)	; or	:
	(2)(a)	; or	:
DD 9	(a)	; or	:
DD 10	(a)	; and	:
DD 11	business con- tacts (a)(i) and (ii)	; and	:
	business premises (a)	; and	:
DE 1	(2)(a) and (b)	; or	:
DE 3	(a) and (b)	; or	:
DE 8	(2)(a) to (c)	; or	:
	(3)(a) to (c)	; or	:
DN 6	(1)(c)(i) to (v)	; or	:
	(1)(a), (b), (c)(vi), (d), and (e)	; and	:
DO 1	(1)(a) to (e)	; or	:
DP 1	(1)(a) to (e), (f)(ii), (g) and (h)(ii)	; or	:
DP 4	(3)(a)	; or	:
DP 8	(2)(a)	; and	:
DS 2	(1)(b)(i) and (ii)	; or	:
DS 4	(2)(a) and (b)(i)	; or	:
DT 19	(a)	; and	:

New (unanimous)

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
DU 2	(2)(a) to (c)	; and	:
DU 8	(1)(a)(i)	; or	:
DU 11	(2)(a)(ii)	; and	:
DV 2	(10)(a)(i) to (iii)	; and	:
DV 4	(2)(a), (b), and (c)(ii)	; and	:
	(8)(a)	; and	:
DV 5	(10)(a)	; and	:
DV 9	(3)(a)	; and	:
DV 10	(1)(a) and (b)	; and	:
DV 11	(1)(a)	; and	:
DX 1	(3)(a)	; and	:
DZ 6	(a)	; and	:
EA 1	(1)(a) and (b)	; and	:
EA 2	(1)(a) to (f)	; or	:
EA 3	(2)(a) to (g)	; or	:
	(8)	91AAA	91AAC
EB 2	(2)(a)(i) and (ii), (b) and (c)	; and	:
	(3)(a) to (f)	; or	:
EB 4	(1)(a) to (c)	; and	:
EB 11	(3)(a) to (c)	; and	:
EB 17	(2)(a) to (f)	; and	:
EC 1	(2)(a) to (c)	; and	:
EC 7	(1)(a) to (c)	; and	:
EC 24	(2)(a) and (b)	; and	:
	(3)	91AB	91AAD
EC 30	(a) to (c)	; or	:

New (unanimous)

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
EC 31	(2)(a) and (b)	; and	:
EC 34	(3)(a)	; and	:
EE 7	(a) to (i)	; or	:
EE 12	(2)(a)(ii), and (b)(ii) (c)(i) and (ii)	; and	:
EE 16	(4)(a)	; and	:
EE 17	(4)(a)	; and	:
EE 25	(2)(b)	91AD	91AAF
EE 26	(2)(a) and (b)(iv)	; or	:
EE 28		91AE to 91AH	91AAG to 91AAJ
EE 30	(3)(a)	; and	:
	(5)(a)	; or	:
EE 34	(2)(a) to (i)	; or	:
	(4)(a)(ii) and (b)	; or	:
	(5)(a)	; or	:
EE 38	(1)(a)	; and	:
	(2)(a) and (b)	; and	:
	(3)(a)	; and	:
	(6)(a)	; and	:
	(7)(a)	; and	:
EE 46	(a)	; or	:
EE 48	(3)(a) to (c) and (d)(i)	; and	:
EE 50	(5)(a) to (c)	; and	:
EE 51	(2)(a) and (b)	; or	:
EE 56	(1)(b)	91AJ	91AAL

New (unanimous)

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
EF 3	(5)(a)(ii), (b)(ii), (c)(ii), (d)(ii), (e)(ii), (f), (g) and (h)	; or	:
EH 1	(2)(a) and (b)	; and	:
	(3)(a) and (b)	; and	:
EH 4	(1)(a) and (b)	; and	:
EH 12	(1)(a) to (c)	; and	:
EH 15	(1)(a)	; or	:
	(3)(a) and (b)	; or	:
EH 18	(4)(a)	; or	:
EH 21	(3)(a)	; or	:
EH 22	(5)(b)(i)	; or	:
EH 34	(2)(a)	; or	:
EH 36	(2)(a)	; or	:
EH 37	date the deposit ends (a) to (f)	; and	:
	fishing busi- ness (a) and (b)	; and	:
EH 45	(1)(a) to (c)	; and	:
EH 49	(4)(a)	; or	:
EH 52	(3)(a)	; or	:
EH 53	(5)(b)(i)	; or	:
EH 61	(2)(a)	; and	:
EH 63	(2)(a)	; or	:
EH 64	date the deposit ends (a) to (f)	; and	:

New (unanimous)

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
EH 72	(1)(a)	; and	:
EH 75	(3)(a)	; or	:
EH 80	(3)(a)	; or	:
EH 81	date the deposit ends	; and	:
	(a) and (b)		
EI 2	(3)(a) and (b)	; or	:
EI 6	(3)(a) and (b)	; and	:
EI 7	(4)(a) to (c)	; and	:
	(5)(a)	; and	:
EJ 3	(5)(a) to (c)	; and	:
EJ 6	(2)(a)	; or	:
EJ 14	(1)(a) and (b)	; or	:
EJ 15	(a)	; and	:
EJ 17	(2)(a) to (c)	; or	:
EJ 18	(2)(a) to (c)	; or	:
EW 2	(2)(a) to (h)	; or	:
EW 3	(3)(a) to (c)	; and	:
	(4)(a)	; and	:
EW 5	(1)(a)	; and	:
	(2)(a)	; and	:
	(3)(a) and (b)	; and	:
EW 11	(a) to (c)	; or	:
EW 17	(2)(b)(i) and (ii)	; or	:
EW 26	(4)(a)	; and	:
EW 32	(3)(a)	; and	:
EW 46	(2)(b)(i)	; or	:
EW 54	(1)(a)	; and	:

New (unanimous)

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
EW 57	(2)(a) and (b)	; or	:
EW 62	(9)(a)	; and	:
EX 1	(1)(a) and (b)(iii)	; or	:
EX 2	(2)(a) to (c)	; and	:
EX 3	(a) to (c)	; and	:
EX 5	(1)(a) to (c)	; or	:
EX 8	(a)	; and	:
EX 9	(1)(a) to (c)	; or	:
EX 11	(3)(a)	; or	:
	(4)(a) and (b)	; or	:
EX 17	(4)(a)	; and	:
EX 21	(13)(a) to (j)	; or	:
	(14)(a) to (c)	; and	:
EX 24	(1)(a) to (c)	; or	:
EX 26	(3)(a) to (c)	; and	:
EX 29	(a) to (c)	; or	:
EX 31	(1)(a) to (c)	; or	:
EX 40	(4)(b)(i)	; or	:
EX 42	(4)(a) and (b)	; and	:
EX 43	(4)(a) and (b)	; and	:
EX 45	(11)(b)(i)	; or	:
	(14)(b)(i)	; or	:
EX 50	(2)(a) to (d)	; or	:
	(6)(a)(ii)	; or	:
EX 60	(1)(a) and (b)	; or	:
	(3)(a) to (e)	; or	:
EY 2	(a) to (f)	; and	:
EY 7	(1)(a) and (b)	; and	:

New (unanimous)

Provision in Income Tax Act 2004		Amendment to provision	
		Item omitted	Item substituted
	(2)(a) to (e)	; and	:
EY 15	(2)(a) and (b)	; and	:
EY 16	(2)(a) and (b)	; and	:
EY 25	(2)(a) to (c)	; and	:
EY 26	(2)(a) to (c)	; and	:
EY 35	(2)(a)	; and	:
EZ 10	(a) and (b)	; or	:
EZ 15	(1)(b)(i)	; or	:
	(2)(a) to (e)	; or	:
	(5)(a)	; and	:
EZ 19	(1)(a) and (b)	; and	:

Legislative history

29 March 2004
7 April 2004

Introduction (Bill 110–1)
First reading and referral to the Finance and Expendi-
ture Committee