

Taxation (Research and Development Tax Credits) Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (Research and Development Tax Credits) Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Income Tax Act 2007 and the Tax Administration Act 1994. It would introduce a research and development (R&D) tax credit.

The purpose of the bill is to increase the amount of R&D undertaken in New Zealand. The R&D tax credit would lower the cost to businesses of performing R&D, which would create an incentive for businesses to undertake R&D.

The bill sets out the conditions that would need to be satisfied for a firm to receive a tax credit, and clarifies the types of activities that would not be eligible for the tax credit.

Proposed amendments

This commentary covers the main amendments that we recommend to the bill as introduced. We do not discuss minor or technical amendments.

How research and development tax credits are applied

Ordering rules

We recommend amending clause 8, section LA 4 of the Income Tax Act 2007. Our amendment would specify that a company's oldest R&D tax credits, such as those carried forward from the previous tax year, should be used before R&D tax credits

from the current year. This would reduce the chance of R&D tax credits being lost following a shareholding change.

Our recommendation would insert new section LA 4(1)(cb) and (cc) into the Income Tax Act.

Refundability for taxpayers who derive exempt income

The intent of the exempt income provision in clause 9 of the bill as introduced is to prevent organisations that do not pay tax from being eligible for a refund. We consider the exempt income provision too broad as it could prevent some organisations that pay tax from being eligible.

We recommend amending the exempt income provision in clause 9, section LA 5(4B)(a)(iii) and (iv) to provide that taxpayers who derive exempt income from foreign dividends, or dividends within wholly New Zealand-owned groups, would not be ineligible for a refund. This would be consistent with the treatment of exempt income provisions elsewhere in the Income Tax Act.

Part-year continuity rules

We recommend amending clause 10 to insert new section LY 8(5) and (6) into the Act.

Our amendment would allow companies to carry forward R&D tax credits from the part of the year where shareholder continuity rules were met, if they breached the continuity rules provided for in clause 10. This would maximise the amount of R&D tax credits a company could carry forward following a change in shareholders and would be consistent with the tax rules that apply to carrying forward losses.

Changes to the purpose statement

We recommend amending clause 10, section LY 1(1)(b) to provide a narrower definition of activities which would not qualify for the R&D tax credit.

We believe it would be unduly restrictive to exclude “business as usual activities” from qualifying for the credit, as proposed in the bill as introduced. This is because a wide range of activities could be considered “business as usual”. This provision could prevent some R&D activities that would generate new knowledge from qualifying for the credit, which is not the intent of the bill.

Our amendment would replace “business as usual activities” in clause 10, section LY 1(1) of the Income Tax Act with “activities, expenditure and losses”. This would narrow the scope of excluded activities.

Changes to the eligibility criteria for the credit

Inclusion of joint ventures

We recommend several amendments to ensure that joint ventures undertaking R&D are eligible for the tax credit.

Sole controlling rights requirement

We recommend deleting the sole controlling rights requirement in clause 10, section LY 3(1)(c) so that joint ventures would be eligible for the R&D tax credit. The sole controlling rights requirement would prevent joint ventures from receiving the credit because, in joint ventures, neither party has the sole right to control R&D activities.

We believe that the purpose of the controlling rights requirement in the bill as introduced is to ensure that R&D contractors are not able to claim for R&D activities they perform for other people. If section LY 3(1)(c) were deleted, then other provisions in the bill (such as section LY 3(2)(c)) would prevent contractors from claiming the credit for activities they perform for other people.

Ownership requirement

We recommend amending clause 10, section LY 3(1) so that joint ventures would be able to satisfy section LY 3(1)(a) to (c) as a collective.

Tax residency rule

We recommend amending section LY 3(2)(e) so that a member of a joint venture would only be eligible for the credit if they were a New Zealand tax resident.

Allocation of R&D tax credits to members of joint ventures

We recommend inserting new section LY 1(3B) so that the R&D tax credit would be allocated to members of a joint venture in accordance with their interest in the joint venture. This amendment would be consistent with how R&D tax credits would be allocated to members of partnerships.

Minimum expenditure threshold

We recommend amending clause 10, section LY 4(1)(a) so that joint ventures would be able to satisfy the minimum expenditure threshold to receive the R&D tax credit (\$50,000) as a collective.

Access to the significant performer regime

We recommend amending clause 43, section 68CC(1)(a) and (b) so that a joint venture would be able to satisfy, as a collective, the \$2 million R&D threshold to opt into the significant performer regime. Our amendment would make the treatment of joint ventures consistent with the treatment of corporate groups and partnerships.

Subsidiaries of multinationals

We consider it unclear whether clause 10, section LY 3 would allow a New Zealand subsidiary of a foreign company, which was doing R&D in New Zealand on behalf of its foreign parent, to qualify for the credit.

We recommend amending clause 10, section LY 3(2)(c) to allow a subsidiary of a multinational to receive the credit if it satisfied the tax credit eligibility criteria and the foreign parent company does not carry on businesses through a fixed establishment in New Zealand.

The policy intent of the credit would be to incentivise R&D activities being undertaken in New Zealand because of their spill-over benefits. Our amendment would incentivise R&D activities being performed in New Zealand, without the risk of the same expenditure qualifying for the credit twice.

Eligible expenditure

No double-dip provision

We recommend inserting a “no double-dip” provision into clause 10, section LY 5 to prevent the same expenditure being claimed twice by different people.

In most situations clause 10, section LY 3(2)(c) would prevent a principal and their contractor from claiming the credit on the same expenditure. However, we consider that there could be some situations where both parties may think they could claim the credit. Our amendment would be a safeguard against this possibility.

Our recommendation would insert new section LY 5(3), which sets out the terms of the no double-dip provision, into the Income Tax Act.

Claiming the credit for a contractor’s profit margin

We recommend amending clause 10, sections LY 6(2) and LY 7(3) so that a principal’s claim, when engaging a contractor, is not reduced by 20 percent to account for the contractor’s profit margin.

The intent of this provision is to remove the contractor’s profit margin from the calculation of the credit. The purpose of this was to give equal treatment to expenditure on in-house R&D and R&D done by contractors. This is because a person doing R&D in their own right would not be able to claim the credit on any profit margin.

However, we consider that contractors’ profit margins would be part of the true cost of performing R&D, so we recommend it be considered eligible expenditure for the credit. We consider that splitting out the profit margin could incentivise businesses to conduct R&D in-house when it would be more efficient to outsource it.

Our recommendation would amend the formula used to calculate the amount of expenditure eligible for the credit in clause 10, new sections LY 6(2) and LY 7(3) so that the profit margin was not split out.

Accruals basis

We recommend amending clause 10, section LY 6 and schedule 21B to provide that eligible R&D expenditure is recognised when it is incurred, rather than when it is paid.

A general concept in the tax system is that a taxpayer can claim a deduction on expenditure once the expenditure has been incurred, rather than when it is paid. Therefore, the use of “paid” in the bill as introduced would not be consistent with how other expenditure is recognised for tax purposes. This would result in companies needing to keep separate accounts for R&D purposes.

Integrity measures

Constraints on Orders in Council powers

We recommend inserting criteria, consultation, and purpose safeguards into clause 10, section LY 9. Our amendment would constrain the Orders in Council powers in the bill as introduced.

The Orders in Council powers would allow the Governor-General to make changes to schedules 21 and 21B (which determine what activities and expenditure are considered to be R&D) on the joint recommendation of the Minister of Revenue and the Minister of Research, Science and Innovation. We consider that these powers would be too expansive.

Our recommendation would amend new section LY 9 of the Income Tax Act by inserting the following safeguards:

- a requirement for the Ministers to consult with affected parties before making a recommendation, having regard to the purpose statement in section LY 1(1), and the effect and fiscal impact of the recommendation
- a requirement that an addition or removal by Order in Council would only apply from the following year
- a sunset clause which would provide for the expiry of the Order in Council after 3 years.

Ability to dispute assessments

We recommend amending clause 35, section 113E. Our amendment would require a person to file their R&D supplementary return by the due date if they wanted to make a request to amend their R&D tax credit assessment.

Our amendment would limit a claimant's ability to retrospectively reclassify expenditure as R&D expenditure. We note that the policy intent of the bill is to incentivise claimants to undertake additional R&D. We wish to avoid claimants reclassifying expenditure because this would not encourage additional R&D.

Our recommendation would delete clause 35, section 113E and substitute our proposed new section 113E.

Time frame for amending R&D tax credit assessments

We recommend amending clause 33, section 108(1E) to reduce the maximum amount of time within which the Commissioner would be able to increase a person's R&D credit claim. Our amendment would reduce the maximum time frame from 2 years to 1 year.

As with the previous recommendation, our amendment would limit claimants' ability to retrospectively reclassify expenditure as R&D expenditure.

Software development

Internal software development cap

We recommend amending schedule 21B, part B, clause 17. Our amendment would increase the internal software development cap from \$3 million to \$25 million.

In the bill as introduced, expenditure on internal software development over \$3 million would not be eligible for the credit. We consider that this provision would unduly cap some internal software development expenditure that would have a spill-over benefit for New Zealand. Our amendment to increase the cap would better reflect the imprecise distinction between internal software development which has an external focus and external software development.

Ineligible internal software development

We recommend amending clause 21 and schedule 21, parts A and B, clause 11 so that internal software development, undertaken for the purpose of internal administration, would be excluded from receiving the credit.

We consider that the spill-over benefits of development of internal administration software would be limited and specific to the firm developing the software. Therefore, it would not be appropriate for these activities to receive the R&D tax credit. Our amendment would exclude internal software development, other than that which would improve a company's services to customers, from receiving the credit.

Our recommendation would insert new clause 21(8B) to define ineligible internal software development and amend the definition of internal software development expenditure in clause 21(10). It would also replace schedule 21, parts A and B, clause 11. Our proposed new clause 11 in these parts would provide that activities captured by the definition of ineligible internal software development in clause 21(8B) would be excluded outright.

Integrating existing systems with new software platforms

We recommend amending schedule 21, part A, clause 20 to exclude the integration of existing systems with new software platforms from being considered an R&D activity.

We consider that integrating existing systems with new software platforms should not qualify as an R&D activity because it would result in limited spill-over benefit and the cost of integration could be large.

Research and development certifiers

Timing of research and development certifier status

We recommend amending clause 42, section 124ZI(5) and (6) to clarify when a firm's status as an accepted R&D certifier starts and ends.

The bill as introduced does not set out what would be considered the date of approval or revocation of a firm's certifier status. Our amendment provides that an R&D cer-

tifier's status would start from the certifier's date of application and end on the date that its revocation is published in the Commissioner's chosen publication.

Revoking R&D certifier status

We recommend amending clause 42, section 124ZI(7) so that the certifier penalty regime would need a higher standard of non-compliance to be triggered.

We consider that the penalty regime in the bill as introduced would be overly punitive given that an R&D certifier would be a firm as a whole rather than an individual. Our amendment would provide that an R&D certifier's status would only be revoked if a certifier received a promoter penalty, or provided an R&D certificate to someone who was liable for shortfall penalties for either tax avoidance, taking an abusive tax position, or tax evasion.

No time bar on reapplication after requested revocation

In the bill as introduced the Commissioner would have to decline a firm's application to be a certifier if its certifier status had been revoked within the past 2 years, irrespective of why its certifier status had been revoked.

We recommend amending clause 42, section 124ZI(4) to provide that the 2 year time bar on reapplication would not apply to certifiers who requested revocation, unless the certifier had done so in anticipation of revocation by the Commissioner.

In-year approval

General approval

General approval for significant performers

We recommend deleting clause 43, section 68CB(1) so that businesses in the significant performer regime would be able to obtain general approval.

In the bill as introduced, a business in the significant performer regime would not be able to access the general approval process for any of its R&D activities. If a significant performer was unsure whether its activities would satisfy the core or supporting R&D activity definitions, we consider that it would be beneficial to allow the business to obtain general approval for these activities.

General approval for supporting research and development activities

The bill as introduced would only provide a mechanism for granting general approval for core R&D activities. We consider that it would be beneficial for supporting R&D activities to obtain general approval.

We recommend amending clause 43, section 68CB(2), (5), and (6) so that a person would be required to obtain general approval for supporting R&D activities.

Pilot programme for in-year approval

We recommend amending clause 30 to insert new sections 68CB and 68CC into the Tax Administration Act.

Our amendment would implement a pilot programme for the in-year approval mechanisms (the general approval process and significant performer regime) for year 1 of the regime. We consider that a pilot programme would allow IRD to improve the in-year approval processes before they would be rolled out to all claimants in year 2.

Process for declining applications

We recommend amending clause 43 to insert new sections 68CB(6B) and 68CC(6B), which would require the Commissioner to contact a claimant before declining their application.

Where an application would otherwise be declined, our amendment would provide claimants with an opportunity to discuss their application and provide additional supporting information if appropriate.

Ineligible expenditure

Eligibility of expenditure on employee share schemes

We consider employee share schemes to be a common form of remuneration for start-ups performing R&D. Therefore, we recommend deleting clause 9 in schedule 21B, part B, so that expenditure on employee share schemes would be eligible for the credit.

Eligibility of employee-related payments

We recommend deleting clauses 10 and 11 in schedule 21 B, part B so that expenditure on employee recruitment, relocation, and bonuses would be eligible for the credit.

In the bill as introduced employee-related payments would be excluded because there is a risk that they would not be appropriately allocated. However, we believe expenditure on employee-related payments would be a genuine cost of performing R&D, and should be eligible for the credit.

Applying the associated persons rule

We consider that the purpose of the associated persons rule is to prevent a person from splitting their R&D expenditure across their associates in order to exceed the cap on eligible expenditure. In the bill as introduced, the associated persons rule would only apply to the general \$120 million cap.

We recommend amending schedule 21B, part B, clause 1 so that the associated persons rule would also apply to a person's approved R&D cap for expenditure in excess of \$120 million.

Loss on sale or write-off of depreciable property

We recommend inserting clause 5B into schedule 21B, part B so that depreciation loss, arising from an asset being written off or sold for less than its adjusted tax value, would not be eligible for the R&D tax credit.

In the bill as introduced, there is no claw-back of R&D tax credits when depreciable property used in R&D is sold for more than its adjusted tax value, for compliance and administration cost reasons. Our amendment would ensure symmetry of treatment.

Cost of purchasing land

We recommend inserting clause 11B into schedule 21B, part B to provide that the cost of purchasing land would not be eligible for the R&D tax credit.

We consider that the cost of purchasing land for the purpose of undertaking R&D should be excluded from the credit because the cost of land does not reflect the cost of R&D. This is because land could be used for purposes other than R&D, or sold for a higher price than it was purchased for, to recoup costs.

Transition from the Callaghan Innovation Growth Grant

Late balance date Growth Grant recipients

The bill as introduced would replace the Callaghan Innovation Growth Grant with the R&D tax credit as of 31 March 2021.

While firms with an early balance date or a balance date of 31 March would have two financial years to transition to the R&D tax credit, firms with a late balance date (April to September) would only have one year to transition. We consider that all firms should have a two year transition period.

We therefore recommend inserting clause 39B into the bill. New clause 39B would provide that Growth Grant recipients with a late balance date could receive the R&D tax credit for the balance of their financial year after 31 March 2021.

New clause 39B would insert section LZ 13 into the Income Tax Act to provide for the part-year override of clause 10, section LY 3(2)(b).

Receiving the Growth Grant and R&D tax credit

The bill as introduced would prevent a “person” from receiving the Growth Grant and the R&D tax credit in the same financial year. We consider that this would create a loophole whereby an associated person, such as a subsidiary, would be able to receive the R&D tax credit, while the parent company received the Growth Grant.

We recommend amending clause 10, section LY 3(2)(b) to close this loophole.

Appendix

Committee process

The Taxation (Research and Development Tax Credits) Bill was referred to the committee on 1 November 2018. The closing date for submissions was 14 December 2018. We received and considered 32 submissions from interested groups and individuals. We heard oral evidence from 13 submitters.

We received advice from the Inland Revenue Department, the Ministry of Business, Innovation and Employment, and Callaghan Innovation. We also received advice from our independent adviser, Gwenan Riley.

The Regulations Review Committee reported to the committee on the powers contained in clause 10, section LY 9.

Committee membership

Michael Wood (Chairperson)

Hon Amy Adams

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Hon Judith Collins

Ian McKelvie

Willow-Jean Prime

Dr Deborah Russell

David Seymour

Fletcher Tabuteau

Dr Duncan Webb

Dr Parmjeet Parmar participated in our consideration of this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Dr Megan Woods

Taxation (Research and Development Tax Credits) Bill

Government Bill

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21		Section YA 1 amended (Definitions)	20
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24		Section 3 amended (Interpretation)	23
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29	Section 36C amended (Particulars furnished in electronic format)	25
30	New heading and sections <u>68CB</u> , <u>68CC</u> , <u>68CD</u> , and <u>68CE</u> inserted	25

Research and development

<u>68CB</u>	<u>Research and development tax credits: general approval 2019–20 income year pilot</u>	<u>25</u>
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Amendments to Income Tax Act 2007

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39	Section LY 3 amended (When this subpart applies)	30
<u>39B</u>	<u>New heading and section LZ 13 inserted</u>	<u>31</u>

Research and development tax credits

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Research and Development Tax Credits) Act **2018**.

2 Commencement

- (1) **Part 1** of this Act comes into force on 1 April 2019. 5
- (2) **Part 2** of this Act comes into force on 1 April 2020.

Part 1

Research and development tax credits: year 1

3 Application

This Part applies for the 2019–20 and later income years. 10

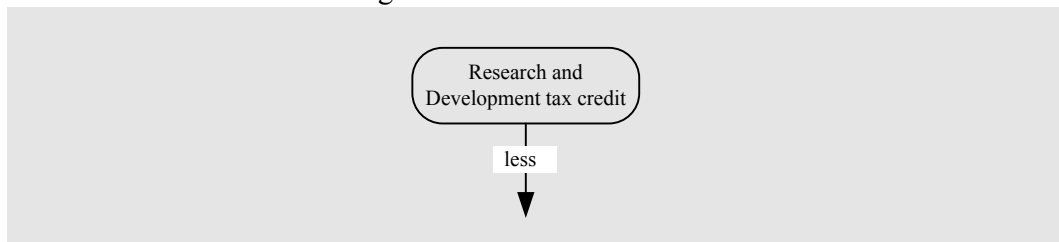
Amendments to Income Tax Act 2007

4 Income Tax Act 2007 amended

Sections 5 to 22 amend the Income Tax Act 2007.

5 Flowchart B4 amended (Satisfying income tax liability)

Flowchart B4 is amended by inserting the following immediately before the box labelled “Remaining credits”: 15



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

- (1) In section EE 6(1)(b), replace “income.” with “income; or”, and insert:

- (c) in deriving exempt income, and it is used in performing research and development activities.
- (2) In section EE 6, in the list of defined terms, insert “research and development ~~tax credit~~activities”.
- 7 New heading and section GB 56 inserted** 5
- Before the heading to subpart GC, insert:
- Arrangements involving research and development tax credits*
- GB 56 Arrangements involving research and development tax credits**
- When this section applies*
- (1) ~~This section applies when—~~ 10
- (a) ~~an arrangement has a direct or indirect purpose or effect, not being a merely incidental purpose or effect, of defeating the intent and application of **subpart LY** (Research and development tax credits):~~
- (b) ~~eligible research and development expenditure under **section LY 5** (Eligible research and development expenditure) for relevant goods and services is more than the market value consideration for them (an **inflated transaction**).~~ 15
- (1) This section applies when an arrangement has a purpose or effect, not being a merely incidental purpose or effect, of defeating the intent and application of **subpart LY** (Research and development tax credits). 20
- Credit reduced*
- (2) A person’s entitlement to a research and development tax credit is reduced to the amount that the Commissioner thinks appropriate~~considers would have arisen had the arrangement or inflated transaction not occurred~~, whether or not the person is a party to the arrangement~~or the inflated transaction~~. 25
- Defined in this Act: arrangement, eligible research and development expenditure, goods, research and development tax credit, services
- 8 Section LA 4 amended (When total tax credit more than income tax liability)**
- (1) After section LA 4(1)(c), insert: 30
- (cb) fourth, a research and development tax credit under **section LY 1(3)(b)**:
- (cc) fifth, a research and development tax credit under **section LY 1(3)(a)**:
- (2) In section LA 4(1)(d), replace “fourth” with “~~fifth~~sixth”.
- (3) In section LA 4, in the list of defined terms, insert “research and development tax credit”. 35

9 Section LA 5 amended (Treatment of remaining credits)

(1) After section LA 5(4), insert:

Research and development tax credits

(4B) A person's research and development tax credit is used by—

- (a) first, the Commissioner refunding the tax credit up to a maximum of \$255,000, by treating it as a refundable tax credit and applying section LA 6(2), if the person—
 - (i) meets the corporate eligibility criteria in section MX 2 (Corporate eligibility criteria); and
 - (ii) meets the wage intensity criteria in section MX 3 (Wage intensity criteria); and
 - (iii) does not derive exempt income, ignoring exempt income under sections CW 9 and CW 10 (which relate to income from dividends); and
 - (iv) is not associated with a person that derives exempt income, ignoring exempt income under sections CW 9 and CW 10;
- (b) secondly, applying **section LY 8** (Carry forward for remaining research and development tax credits), to the extent to which **paragraph (a)** does not apply to the tax credit.

(2) In section LA 5, in the list of defined terms, insert “associated person”, “exempt income”, “listed company”, and “research and development tax credit”.

10 New subpart LY inserted (Research and development tax credits)

After subpart LX, insert:

Subpart LY—Research and development tax credits

LY 1 Research and development tax credits

Purpose

(1) The purpose of this subpart is to—

- (a) provide a tax credit (a **research and development tax credit**) as an incentive to a person for performing, or contracting for the performance of, activities to create new knowledge, or new or improved processes, services, or goods; and
- (b) ensure that ~~business as usual activities do not~~ activities, expenditure and losses do not inappropriately qualify for research and development tax credits.

General structure of this subpart

(2) In this subpart—

- (a) **research and development activity** is defined in **section LY 2**, along with other key terms:
- (b) **section LY 3** provides when this subpart applies:
- (c) the amount of a person's research and development tax credit for a tax year is calculated under **section LY 4** by reference to their expenditure or loss in relation to their research and development activities. **Sections LY 5, 6, and 7** provide detailed rules as to what is eligible expenditure: 5
- (d) **section LY 8** provides for the carry forward of unused research and development tax credits from the current tax year:
- (e) **section LY 9** provides an empowering provision for the Governor-General to make Orders in Council to maintain the lists in **schedules 21 and 21B** (which relate to activities and expenditure or loss for the research and development tax credit): 10
- (f) **section LY 10** provides for a 5-yearly evaluation of the research and development tax credit regime. 15

Tax credit

- (3) A person has a tax credit for the tax year equal to the total of—
 - (a) their credit calculated under **section LY 4**; and
 - (b) their credit carried forward and credited to the year, as provided by **section LY 8**. 20

Tax credit: joint venturers' apportionment

- (3B) Despite **subsection (3)**, a person who is a member of a joint venture in relation to research and development activities has a tax credit for the tax year equal to their proportion of their interest in the income of the joint venture. 25

Anti-avoidance

- (4) **Section GB 56** (Arrangements involving research and development tax credits) provides a specific anti-avoidance provision.

~~Expenditure or loss: GST~~

- (5) ~~For the purposes of this subpart, a person's expenditure or loss for a corresponding income year for the supply of goods or services to the person is reduced by subtracting the amount, if any, of input tax applying to the supply of the goods or services to the person. This subsection is overridden by **subsections (6) and (7)**.~~ 30

~~Deductions from output tax~~

- (6) ~~Expenditure or loss is reduced by the amount of any relevant adjustment taken into account in the income year under section 20(3)(c) of the Goods and Services Tax Act 1985.~~ 35

<i>Adjustments for output tax</i>	
(7) Expenditure or loss is increased by adding a relevant amount of deductible output tax that the person has for the income year.	
<i>Expenditure or loss: GST</i>	
(5) <u>For the purposes of calculating the amount of a person's expenditure or loss, section DB 2 (Goods and services tax) is applied to the amounts.</u>	5
Defined in this Act: amount, deductible output tax , goods, income year, research and development activity, research and development tax credit, services, tax year	
LY 2 Key terms	
<i>Meaning of core research and development activity</i>	10
(1) Core research and development activity—	
(a) means an activity that—	
(i) is conducted using a systematic approach; and	
(ii) has a material purpose of creating new knowledge, or new or improved processes, services, or goods; and	15
(iii) has a material purpose of resolving scientific or technological uncertainty; and but	
(iv) has its day-to-day management conducted in New Zealand; but	
(b) does not include an activity, if knowledge required to resolve the uncertainty, described in paragraph (a)(iii) , is—	20
(i) publicly available:	
(ii) deductible by a competent professional working in the relevant scientific or technological field; and	
(c) does not include an activity to the extent to which it is performed outside New Zealand; and	25
(d) does not include an activity to the extent to which it is described in schedule 21, part A.	
<i>Meaning of research and development activity</i>	
(2) Research and development activity , for a person, means an activity that is—	
(a) a core research and development activity:	30
(b) a supporting research and development activity.	
<i>Meaning of supporting research and development activity</i>	
(3) Supporting research and development activity—	
(a) means an activity that has the only or main purpose of, is required for, and integral to, conducting a person's core research and development activity; but	35

- (b) does not include an activity to the extent to which ~~the supporting activity~~ it is described in **schedule 21, part B**.

Defined in this Act: core research and development activity, goods, New Zealand, research and development activity, services, supporting research and development activity

LY 3 When this subpart applies

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When this subpart applies

- (1) This subpart applies for a person for an income year, if—

- (a) the person or a joint venture of which the person is a member performs a core research and development activity in New Zealand, or, if the person does not perform a core research and development activity in New Zealand, a research and development contractor performs a core research and development activity in New Zealand on behalf of the person as part of a business that the contractor carries on in New Zealand through a fixed establishment in New Zealand; and

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- (b) the person or a joint venture of which the person is a member carries on a business in New Zealand through a fixed establishment in New Zealand; and

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- ~~(e) the person or a company in the same group of companies as the person has the following bundle of rights in relation to the relevant core research and development activity:~~

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- ~~(i) the sole right to start the activity; and
(ii) the sole right to stop the activity; and
(iii) the sole right to change the direction of the activity; and
(iv) the sole right to choose whether results are followed up on or not; and~~

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- ~~(d) either—~~

- ~~(i) the person or a company that is both resident in a country with which New Zealand has a double tax agreement, and in the same group of companies as the person, owns the results of the relevant core research and development activity and any related supporting research and development activities; or~~

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- ~~(ii) the person may use the results of the relevant core research and development activity and any related supporting research and development activities for no consideration.~~

- (c) the person or a joint venture of which the person is a member may use the results of the relevant core research and development activity and any related supporting research and development activities for no consideration, or the results of the relevant core research and development activity and any related supporting research and development activity are—

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	(i) <u>owned by the person:</u> (ii) <u>if the person is a company, owned by another company that is resident in New Zealand or in a country with which New Zealand has a double tax treaty, and the other company is in the same group of companies as the person:</u> (iii) <u>owned by a joint venture of which the person is a member; and</u> (d) <u>where the person is part of the in-year approval pilot under section 68CB or 68CC of the Tax Administration Act 1994, the relevant research and development activity and the person, as applicable, are approved under those sections. If the Commissioner declines to approve the relevant research and development activity or the person under the in-year approval pilot, the person may choose to ignore this paragraph.</u> <i>When this subpart does not apply</i> (2) Despite subsection (1), this subpart does not apply for a person, <u>for an income year,—</u> (a) if they fail to file a return of income for the income year on or before the date that is 1 year after the latest date for them to file the return of income for the year under section 37 of the Tax Administration Act 1994: (b) <u>if they receive a Callaghan Innovation Growth Grant, or they are directly or indirectly controlled by, or associated with, a recipient of a Callaghan Innovation Growth Grant:</u> (c) to the extent to which the person is a research and development contractor for another person (person B) in relation to a research and development activity, <u>if person B carries on a business in New Zealand through a fixed establishment in New Zealand:</u> (d) if the person is, or is directly or indirectly controlled by, or is associated with,— (i) a Crown research institute: (ii) a district health board: (iii) a tertiary education organisation: (e) if the person is a <u>member of a joint venture or a partner in a partnership</u> or has owner's interests for a look-through company, and the person is not resident in New Zealand in the tax year. <i>Exception: carry forward</i> (3) Despite subsection (1), sections LY 1(3)(b) and LY 8 may apply to carry forward a person's research and development tax credit.	5 10 15 20 25 30 35
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Special rule: non-business researcher

- (4) For the purposes of **subsection (1)**, a person that is a non-business researcher is treated as carrying on a business in New Zealand through a fixed establishment in New Zealand.

Defined in this Act: associated, business, core research and development activity, fixed establishment, ~~group of companies, look-through company~~, New Zealand, non-business researcher, ~~look-through company~~, owner's interests, partner, partnership, research and development contractor, return of income

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LY 4 Calculation of tax credit*When this section applies: thresholds*

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- (1) This section applies for a tax year and a person, ignoring, for purposes of this subsection only, sections HB 1 and HG 2 (which relate to entity transparency) and substituting as the relevant person the person's partnership or look-through company, when—

(a) the person's eligible research and development expenditure, together with eligible research and development expenditure for any joint venture of which the person is a member, is \$50,000 or more for the year:

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(b) the person has, for the year, eligible research and development expenditure for an approved research provider performing a research and development activity on behalf of the person.

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Calculation of tax credit

- (2) A person's research and development tax credit for a tax year is calculated using the formula—

$$0.15 \times \text{total eligible R \& D expenditure.}$$

Definition of item in formula

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- (3) In the formula, **total eligible R & D expenditure** means the lesser of—

(a) ~~\$120,000,000~~ million, or the person's approved research and development cap if the person has an approved research and development cap:

(b) the total amount of the person's eligible research and development expenditure for the corresponding income year.

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Defined in this Act: amount, approved research and development cap, approved research provider, eligible research and development expenditure, look-through company, loss, partnership, research and development activity, tax year

LY 5 Eligible research and development expenditure*Eligible research and development expenditure*

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- (1) For the purposes of this subpart, **eligible research and development expenditure**—

(a) means expenditure or loss, described in **schedule 21B, part A**, to the extent to which the expenditure or loss is incurred on a research and development activity for ~~an~~ the income year; but

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(b) does not include expenditure or loss, to the extent to which the expenditure or loss is described in **schedule 21B, part B**:

(c) does not include expenditure or loss that would have been incurred in the absence of the research and development activity, if—

(i) the research and development activity is performed in the course of commercial production; and

(ii) the expenditure or loss is not in relation to an employee's contribution to a research and development activity.

Modification of eligible research and development expenditure

(2) Despite **subsection (1)**, for an amount that is otherwise eligible research and development expenditure,—

(a) an amount that is for a research and development contractor to perform research and development activities for the person is only eligible research and development expenditure to the extent to which **section LY 6** provides:

(b) an amount that is incurred on a research and development activity performed outside New Zealand, or is a payment of salary or wages to a non-resident, or is a payment for a service performed by a non-resident is only eligible research and development expenditure to the extent to which **section LY 7** provides.

No double dip for contractors and others

(3) A person does not have eligible research and development expenditure to the extent to which the relevant expenditure or loss is eligible research and development expenditure of another person.

Defined in this Act: amount, eligible research and development expenditure, income year, loss, New Zealand, non-resident, pay, research and development activity, research and development contractor, salary or wages

LY 6 Contracted research and development expenditure

When this section applies

(1) This section applies for a person for the purposes of **section LY 5(2)(a)** if the person has an amount of expenditure or loss (**contracted research and development expenditure**) for a research and development contractor to perform research and development activities for them.

Calculation of eligible research and development expenditure: contracted research and development expenditure

(2) For the purposes of **section LY 5(2)(a)**, eligible research and development expenditure includes an amount of contracted research and development expenditure, described in **subsection (1)**, to the extent of the amount calculated using the formula—

$$0.8 \times (\text{contract amount} - \text{ineligible expenditure}).$$

Definition of items in formula

- (3) In the formula,—
- (a) **contract amount** means the amount of consideration paid or payable by the person to a contractor to perform research and development activities: 5
 - (b) **ineligible expenditure** means the contractor's expenditure or loss in relation to performing the research and development activity, to the extent to which the expenditure or loss is not eligible research and development expenditure under **section LY 5(1)**, treating the contractor as the relevant person for the purposes of that section. 10

Relationship with subject matter

- (4) If an amount of contracted research and development expenditure, described in **subsection (1)**, is also foreign research and development expenditure, described in **section LY 7(1)**, then **section LY 7** overrides this section in relation to that amount. 15

Defined in this Act: amount, eligible research and development expenditure, loss, research and development activity, research and development contractor

LY 7 Foreign research and development expenditure*When this section applies*

- (1) This section applies for a person for the purposes of **section LY 5(2)(b)** if the person has an amount of expenditure or loss (**foreign research and development expenditure**) that— 20
- (a) is incurred on a supporting research and development activity performed outside New Zealand, ~~and the research and development activity has the sole or main purpose of, and is required for, and is integral to, conducting a core research and development activity:~~ 25
 - (b) is a payment of salary or wages to a non-resident person, and the non-resident performs the relevant activity in New Zealand:
 - (c) is a payment for a service performed by a non-resident person, and the non-resident performs the relevant activity in New Zealand. 30

Calculation of eligible research and development expenditure: foreign research and development expenditure

- (2) For the purposes of **section LY 5(2)(b)**, **eligible research and development expenditure** includes an amount of foreign research and development expenditure, described in **subsection (1)**, to the extent the amount is less than or equal to the lesser of— 35
- (a) the amount given by the formula in **subsection (3)**:
 - (b) the amount given by the formula in **subsection (5)**.

Actual overseas expenditure amount

- (3) For the purposes of **subsection (2)(a)**, the amount is calculated using the formula—

~~$(0.8 \times (\text{contract amount} - \text{ineligible expenditure}))$~~ + foreign in-house amount.

Definition of items in formula

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

(a) **contract amount** means the amount of foreign research and development expenditure, described in **subsection (1)(a) and (c)**, for another person (a **foreign contractor**) to perform research and development activities on behalf of the person:

(b) **ineligible expenditure** means the foreign contractor's expenditure or loss in relation to performing the research and development ~~activity~~ activities, to the extent to which the expenditure or loss is not eligible research and development expenditure under **section LY 5(1)**, treating the foreign contractor as the relevant person for the purposes of that section:

(c) **foreign in-house amount** means the amount of foreign research and development expenditure, described in **subsection (1)**, under **section LY 5(1)** but ignoring amounts for a foreign contractor to perform research and development activities for the person.

Capped overseas expenditure amount

- (5) For the purposes of **subsection (2)(b)**, the amount is calculated using the formula—

$0.1 \times \text{total NZ R \& D expenditure} \div 0.9.$

Definition of item in formula

- (6) In the formula in **subsection (5)**, **total NZ R & D expenditure** means the amount of eligible research and development expenditure under **section LY 5**, but excluding any amount in relation to foreign research and development expenditure, described in **subsection (1)**, ~~that would otherwise be eligible research and development expenditure.~~

Defined in this Act: amount, core research and development activity, eligible research and development expenditure, loss, New Zealand, non-resident, research and development activity

LY 8 Carry forward for remaining research and development tax credits*Carry forward*

- (1) For the purposes of **section LA 5(4B)** (Treatment of remaining credits), a person's remaining research and development tax credit for a tax year is carried forward to the next tax year and credited under **section LY 1(3)(b)** for that next tax year.

Carry forward: exception

- (2) Despite **subsection (1)**, if the person is a company, the remaining tax credit is extinguished and must not be carried forward and credited, unless the continuity rules in **subsection (3)** are met.

Continuity rules

- (3) For a company, the remaining tax credit ~~is may be~~ carried forward and credited if a group of persons exists that has, for the continuity period,—

- (a) minimum voting interests in the company that total 49% or more; and
- (b) when a market value circumstance exists for the company in the continuity period, minimum market value interests in the company that total 49% or more.

Some definitions

- (4) In this section,—

continuity period means the period that starts on the first day of the income year that corresponds to the tax year in which the research and development tax credit first arises and ends on the last day of the income year that corresponds to the tax year to which the credit is being carried forward and credited to:

minimum market value interest means the lowest market value interest that a person has in the company for the continuity period:

minimum voting interest means the lowest voting interest that a person has in the company for the continuity period.

Credits for earlier income years

- (5) Despite a breach of continuity under **subsection (3)**, a person's remaining research and development tax credit for an earlier tax year is carried forward to a tax year (**year A**) and credited under **section LY 1(3)(b)** to the extent to which—

- (a) the requirements for continuity of ownership would be met if the continuity period included only part of the income year of the company that corresponds to year A; and
- (b) the company provides the Commissioner with adequate financial statements relating to the continuity period, calculating the amount of the person's income tax liability for the relevant part of the corresponding income year.

Credits for year of breach

- (6) Despite a breach of continuity under **subsection (3)**, a person's remaining research and development tax credit is carried forward to the tax year (**year B**) from year A and credited under **section LY 1(3)(b)** to the extent to which—

- (a) the requirements for continuity of ownership would be met if the continuity period included only part of the income year of the company that corresponds to year A; and

- (b) the company provides the Commissioner with adequate financial statements relating to the continuity period, calculating the amount of the person's research and development tax credit for the relevant part of the corresponding income year.

Defined in this Act: company, continuity period, corresponding income year, group of persons, income year, market value circumstance, market value interest, minimum market value interest, minimum voting interest, research and development tax credit, tax credit, tax year, voting interest

LY-9 Orders in Council

~~The Governor General may, by Order in Council made on the joint recommendation of the Minister of Revenue and the Minister of Research, Science, and Innovation,—~~

- (a) ~~add the description of an activity or of an expenditure or loss, as applicable, to—~~

(i) ~~**schedule 24:**~~

(ii) ~~**schedule 24B:**~~

- (b) ~~remove the description of an activity or of an expenditure or loss, as applicable, from—~~

(i) ~~**schedule 24:**~~

(ii) ~~**schedule 24B:**~~

Defined in this Act: loss

LY 9 Orders in Council

Purpose

- (1) The purpose of **subsection (2)** is to provide a power to maintain the intent of the research and development tax credit regime in accordance with its stated purpose in **section LY 1(1).**

Order in Council

- (2) The Governor-General may, by Order in Council made on the joint recommendation of the Minister of Revenue and the Minister of Research, Science, and Innovation,—

- (a) add the description of an activity or of an expenditure or loss, as applicable, to—

(i) **schedule 21:**

(ii) **schedule 21B:**

- (b) remove the description of an activity or of an expenditure or loss, as applicable, from—

(i) **schedule 21:**

(ii) **schedule 21B.**

Recommendation

(3) Before making a recommendation referred to in **subsection (2)**, the Ministers must be satisfied that—

(a) they have consulted with persons they consider to be appropriate in light of the relevant addition or removal; and

(b) they have had regard to—

(i) the purpose in **section LY 1(1)** and maintaining the intent of the definitions of research and development activity and eligible research and development expenditure; and

(ii) the effect of the recommendation on the creation of new scientific or technological knowledge; and

(iii) the fiscal impact of the recommendation.

Application for future tax years

(4) An addition or removal by Order in Council under this section must apply for the income year corresponding to the tax year after the tax year in which it is made, and subsequent income years.

Sunset

(5) An Order in Council under this section expires on the date that is 3 years after the last day of the tax year that the Order first applies for.

Defined in this Act: eligible research and development expenditure, income year, loss, research and development activity, research and development tax credits, tax year

LY 10 Evaluation

The Minister of Research, Science, and Innovation will lay a report before the House of Representatives as soon as practicable after the end of the 2023–24 tax year, and every 5 years subsequent, objectively and independently evaluating the research and development tax credit regime in terms of all of the following:

(a) the delivery of the policy intent of the regime:

(b) the stimulation of spending on research and development activities:

(c) the compliance costs of the regime:

(d) the administration of the regime:

(e) the compliance with the legal requirements of the regime by taxpayers:

(f) any other criteria specified by the Minister of Research, Science, and Innovation.

Defined in this Act: research and development activities, research and development tax credits

11 Section OB 4 amended (ICA payment of tax)

(1) After section OB 4(3)(f), insert:

(fb) income tax paid by crediting a research and development tax credit against income tax liability; or

- (2) In section OB 4, in the list of defined terms, insert “research and development tax credit”.

12 New section OB 9C inserted (ICA credit for research and development tax credit) 5

After section OB 9B, insert:

OB 9C ICA credit for research and development tax credit

Credit

- (1) An ICA company has an imputation credit for the amount of research and development tax credit it is entitled to. 10

Table reference

- (2) The imputation credit in **subsection (1)** is referred to in **table O1: imputation credits, row 7C** (Research and development tax credits).

Credit date

- (3) The credit date is the date the company files its ~~research and development supplementary return under section 33E of the Tax Administration Act 1994~~ return of income for the income year. 15

Defined in this Act: amount, ICA company, imputation credit, research and development tax credit

13 Table O1 amended (Imputation credits) 20

After table O1, row 7B, insert:

7C	Research and development tax credits	day on which research and development supplementary return <u>return of income</u> for income year is filed	section OB 9C
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14 Section OK 2 amended (MACA payment of tax)

- (1) After section OK 2(3)(c) insert:

(cb) income tax paid by crediting a research and development tax credit against income tax liability; or 25

- (2) In section OK 2, in the list of defined terms, insert “research and development tax credit”.

15 New section OK 6C inserted (MACA research and development tax credit)

After section OK 6B, insert:

OK 6C MACA research and development tax credit*Credit*

- (1) A Maori authority has a Maori authority credit for the amount of research and development tax credit it is entitled to.

Table reference

- (2) The Maori authority credit in **subsection (1)** is referred to in **table O17: Maori authority credits, row 6C** (Research and development tax credits).

Credit date

- (3) The credit date is the date the Maori authority files its ~~research and development supplementary return under section 33E of the Tax Administration Act 1994~~ return of income for the income year.

Defined in this Act: amount, ICA company, imputation credit, research and development tax credit

16 Table O17 amended (Maori authority credits)

After table O17, row 6B, insert:

6C	Research and development tax credits	day on which research and development supplementary return <u>return of income</u> for income year is filed	section OK 6C
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17 Section OP 5 amended (When credits and debits arise only in consolidated imputation group accounts)

Replace section OP 5(2)(bb) with:

(bb) **section OP 11C, row 6C** (Research and development tax credits):

18 Section OP 7 amended (Consolidated ICA payment of tax)

- (1) After section OP 7(3)(g), insert:

(gb) income tax paid by crediting a research and development tax credit against income tax liability; or

- (2) In section OB 7, in the list of defined terms, insert “research and development tax credit”.

19 New section OP 11C inserted (Consolidated ICA credit for research and development tax credit)

Before section OP 12, insert:

OP 11C Consolidated ICA credit for research and development tax credit*Credit*

- (1) A consolidated imputation group has an imputation credit for the amount of research and development tax credit that a group company is entitled to.

Table reference

- (2) The imputation credit in **subsection (1)** is referred to in table **O19: imputation credits of consolidated imputation groups, row 6C** (Research and development tax credits).

Credit date

- (3) The credit date is the date the group company files its ~~research and development supplementary return under **section 33E** of the Tax Administration Act 1994~~ return of income for the income year.

Defined in this Act: amount, company, consolidated imputation group, imputation credit, research and development tax credit

20 Table O19 amended (Imputation credits of consolidated imputation groups)

Before table O19, row 7, insert:

6C	Research and development tax credits	day on which research and development supplementary return <u>return of income</u> for income year is filed	section OP 11C
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21 Section YA 1 amended (Definitions)

- (1) This section amends section YA 1. 15
- (2) Insert, in appropriate alphabetical order:
approved research and development cap is defined in **section 3(1)** of the Tax Administration Act 1994
- (3) Insert, in appropriate alphabetical order:
approved research provider is defined in **section 3(1)** of the Tax Administration Act 1994 20
- (4) In the definition of **continuity period**, after paragraph (b), insert:
(c) is defined in **section LY 8(3)(4)** (Carry forward for remaining research and development tax credits) for the purposes of that section
- (5) In the definition of **continuity provisions**, before paragraph (fb), insert: 25
(fba) **section LY 8** (Carry forward for remaining research and development tax credits):
- (6) Insert, in appropriate alphabetical order:
core research and development activity is defined in **section LY 2** (Key terms) 30
- (7) Insert, in appropriate alphabetical order:
eligible research and development expenditure is defined in **section LY 5** (Eligible research and development expenditure)

- (8) In the definition of **goods**,—
- (a) replace “in subpart MX (Tax credits for R&D tax losses)” with “in **subparts LY** (Research and development tax credits) and MX (Tax credits for R&D tax losses)”;
 - (b) replace “and EA 3 (Prepayments)” with “EA 3 (Prepayments), and GB 56 (Arrangements involving research and development tax credits)”

(8B) Insert, in appropriate alphabetical order:

ineligible internal software development—

- (a) means software development for the purpose of the internal administration of a person’s business or an associate’s business; but 10
- (b) does not include software development if and to the extent to which—
 - (i) the software development is for the main purpose of disposing of the software or a right to use the software to recipients who are not associated with the person;
 - (ii) the software is an integral part of goods that the person disposes of in the ordinary course of business; 15
 - (iii) the software is developed for the purpose of providing services, and the main reason why the recipients of the services use the services is not the use of the person’s computer technology or software itself, but rather the services themselves. 20

(9) Insert, in appropriate alphabetical order:

ineligible technology expenditure—

- (a) means, for a person, expenditure or loss that is incurred to acquire the right to use technology upon which a core research and development activity is based: 25
- (b) includes expenditure or loss that is incurred to acquire the right to use technology, if the relevant research and development activities to which the technology relates are an extension, continuation, development, or completion of the activities that produced that technology

(10) Insert, in appropriate alphabetical order: 30

internal software development expenditure—

- (a) ~~means, for a person, expenditure or loss that is incurred on developing software for the purpose of—~~
 - (i) ~~the internal administration of the person’s business or of an associate’s business;~~ 35
 - (ii) ~~providing services, and the main reason why the recipients of the services use the services is not the use of the person’s computer technology or software itself, but rather the services themselves; but~~

- (a) means, for a person, expenditure or loss that is incurred on developing software for the purpose of providing services, and the main reason why the recipients of the services use the services is not the use of the person's computer technology or software itself, but rather the services themselves; but 5
- (b) does not include expenditure or loss that is incurred for the purpose of developing software, if—
- (i) the person's main purpose is disposing of the software or a right to use the software to recipients who are not associated with the person: 10
- (ii) the software is an integral part of goods that the person disposes of in the ordinary course of business
- (11) In the definition of **minimum market value interest**, after paragraph (b), insert:
- (c) is defined in **section LY 8(4)** (Carry forward for remaining research and development tax credits) for the purposes of that section 15
- (12) In the definition of **minimum voting interest**, after paragraph (b), insert:
- (c) is defined in **section LY 8(4)** (Carry forward for remaining research and development tax credits) for the purposes of that section
- (13) Insert, in appropriate alphabetical order: 20
- non-business researcher** means—
- (a) a tax charity:
- (b) an industry organisation to which a levy is payable under New Zealand statute
- (14) Insert, in appropriate alphabetical order: 25
- research and development activity** is defined in **section LY 2** (Key terms)
- (15) Insert, in appropriate alphabetical order:
- research and development contractor**—
- (a) means, for a research and development activity and a person (**person A**), another person (the **contractor**) that performs the research and development activity on behalf of person A: 30
- (b) does not include a non-business researcher described in the definition of **non-business researcher, paragraph (b)**
- (16) Insert, in appropriate alphabetical order:
- research and development tax credit** means a tax credit under **section LY 1** (Research and development tax credits) 35
- (17) In the definition of **residual income tax**, after paragraph (b)(ix), insert:
- (x) **section LY 1** (Research and development tax credits):

- (18) In the definition of **services**,—
- (a) in paragraph (a), delete “, and subpart MX (Tax credits for R&D tax losses),”:
 - (b) in paragraph (b), replace “in subpart MX, in” with “**GB 56** (Arrangements involving research and development tax credits), **subparts LY** and MX, and”.
- (19) Insert, in appropriate alphabetical order:
- supporting research and development activity** is defined in **section LY 2** (Key terms)
- 22 New schedules 21 and 21B inserted** 10
- After schedule 20, insert, as set out in schedule 1 of this Act, **schedules 21 and 21B**.

Amendments to Tax Administration Act 1994

- 23 Tax Administration Act 1994 amended** 15
- Sections 24 to 37** amend the Tax Administration Act 1994.
- 24 Section 3 amended (Interpretation)**
- (1) This section amends section 3(1).
 - (2) Insert, in appropriate alphabetical order:
- approved research and development cap** means the approved research and development cap described in **section 68CD** 20
- (3) Insert, in appropriate alphabetical order:
- approved research provider** means an approved research provider described in **section 45ZB124ZH**
- (4) In the definition of **proscribed question**, after paragraph (d), insert:
- (e) a question related to research and development tax credits under **subpart LY** of the Income Tax Act 2007 25

25 New heading and section 45ZB124ZH inserted

~~After section 15Z~~ Before section 125A, insert:

Research and development

- 45ZB124ZH Approved research providers** 30
- (1) A person is an **approved research provider**, if the Commissioner approves the person, as provided by **subsections (2) to (7)**, and the person keeps records in accordance with **section 22(2)(kd)**.
 - (2) The Commissioner may, in accordance with this section, approve a person, if the person makes an application in accordance with **subsection (3)**. 35

- (3) A person must apply to the Commissioner for approval in the form prescribed by the Commissioner.
- (4) The Commissioner may only approve a person if, in the opinion of the Commissioner, the person—
- (a) is capable of performing research and development activities on behalf of other persons; and
 - (b) has in New Zealand the facilities needed to perform research and development activities; and
 - (c) is available to perform research and development activities on behalf of other persons not associated with them; and
 - (d) performs or will perform research and development activities on behalf of other persons for market value consideration.
- (5) A person may apply for approval as an approved research provider by providing information to the Commissioner in the prescribed form. They may also apply for a revocation of approval.
- (6) If the Commissioner approves a person, the Commissioner must notify the person and publish the approval, in a publication chosen by the Commissioner.
- (7) The Commissioner may, at the Commissioner’s discretion, revoke approval as an approved research provider. The Commissioner must give the person reasons for the exercise of the Commissioner’s discretion, and specify the date from which the revocation takes effect.

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

- (1) In section 22(2)(eb), replace “section LH 2” with “**subpart LY**”.
- (2) Replace section 22(2)(ec) with:
- (ec) is an approved research provider:
- (3) In section 22(2)(kc), replace “section LH 2” with “**subpart LY**”.
- (4) Replace section 22(2)(kd) with:
- (kd) if the person is an approved research provider, the following matters:
 - (i) ongoing compliance with **section 45ZB(4)124ZH(4)**; and
 - (ii) amounts derived and incurred by the person performing research and development activities on behalf of other persons; and

27 New section 33E inserted (Research and development tax credits: supplementary return)

After section 33D, insert:

- 33E Research and development tax credits: supplementary return**
- A person who is entitled to a research and development tax credit must file a research and development supplementary return for a tax year in an electronic

format prescribed by the Commissioner on or before the day that is 30 days after ~~they file a return of income for the tax year under section 37.~~

- (a) the due date on which they are required to file a return of income for the tax year under section 37; or
- (b) the due date on which they would be required to file a return under section 37, if they had assessable income.

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28 New section 36BE inserted (Research and development tax credits: electronic formats)

After section 36BD, insert:

36BE Research and development tax credits: electronic formats

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- (1) The Commissioner must prescribe 1 or more electronic formats in which a research and development supplementary return under **section 33E** must be filed.
- (2) The Commissioner may, from time to time, set specifications for software for use in populating the research and development supplementary return, and related criteria for the use of specified software.

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29 Section 36C amended (Particulars furnished in electronic format)

In section 36C(1), replace “35, 36” with “**33E**, 35, 36, **36BE**”.

30 New heading and sections 68CB, 68CC, 68CD, and 68CE inserted

After section 68C, insert:

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Research and development

68CB Research and development tax credits: general approval 2019–20 income year pilot

- (1) This section applies in accordance with **section LY 3(1)(d)** of the Income Tax Act 2007, for the purpose of instituting an in-year approval pilot for a representative group of taxpayers for the 2019–20 income year. For a taxpayer to be part of the in-year approval pilot, the taxpayer and the Commissioner must agree that they are part of it.
- (2) A person’s research and development activities are approved for the income year, if the Commissioner approves the activities, as provided by **subsections (3) to (7)**, and—
 - (a) the person’s application for approval does not contain a material omission or misrepresentation; and
 - (b) the person complies with any conditions in the Commissioner’s approval; and
 - (c) there is no material change in the provisions in **subpart LY** of that Act and any associated provisions.

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- (3) The Commissioner may, in accordance with this section, approve a person's research and development activities for the 2019–20 income year, if the person makes an application in accordance with **subsection (4)** on or before the date prescribed by the Commissioner for the purpose of the pilot approval scheme.
- (4) A person must apply to the Commissioner for approval in the form prescribed by the Commissioner, including— 5
- (a) the activities the person wants the Commissioner to approve; and
- (b) any other information required by the Commissioner.
- (5) The Commissioner may only approve a person's activities to the extent to which, in the opinion of the Commissioner, the relevant activity is a core research and development activity or a supporting research and development activity. 10
- (6) If the Commissioner approves a person's activities for the income year, the Commissioner must notify the person what activities of the person the Commissioner approves of as core research and development activities or supporting research and development activities, and any conditions upon which the approval is made. 15
- (7) The Commissioner must notify the person of the intention to decline the application before the application is declined.
- 68CC Research and development tax credits: greater than \$2 million approval 2019–20 income year pilot** 20
- (1) This section applies in accordance with **section LY 3(1)(d)** of the Income Tax Act 2007, for the purpose of instituting an in-year approval pilot for a representative group of taxpayers for the 2019–20 income year. For a taxpayer to be part of the in-year approval pilot, the taxpayer and the Commissioner must agree that they are part of it. 25
- (2) This section applies ignoring, for purposes of this subsection only, sections HB 1 and HG 2 of the Income Tax Act 2007 (which relate to entity transparency) and substituting as the relevant person the person's partnership or look-through company, if a person chooses to apply this section, and— 30
- (a) has, or reasonably estimates that the person together with any joint venture of which the person is a member will have, eligible research and development expenditure greater than \$2 million for an income year; or
- (b) is a member of a group of companies that has, or reasonably estimates that they will have, eligible research and development expenditure greater than \$2 million for an income year. 35
- (3) A person is approved for the income year to the extent to which the Commissioner approves the person's criteria and methodologies, as provided by **subsections (4) to (8)**, and—

- (a) the person's application for approval does not contain a material omission or misrepresentation; and
- (b) the person complies with any conditions in the Commissioner's approval; and
- (c) there is no material change in the provisions in **subpart LY** of the Income Tax Act 2007 and any associated provisions. 5
- (4) The Commissioner may, in accordance with this section, approve a person's criteria and methodologies for the 2019–20 income year, if the person makes an application in accordance with **subsection (5)** on or before the date prescribed by the Commissioner for the purposes of the pilot. 10
- (5) A person must apply to the Commissioner for approval in the form prescribed by the Commissioner, including—
- (a) the criteria and methodologies the person wants the Commissioner to approve; and
- (b) any other information required by the Commissioner. 15
- (6) The Commissioner may approve—
- (a) appropriate criteria and methodologies for determining whether an activity is a core research and development activity, a supporting research and development activity, or not a research and development activity at all;
- (b) appropriate criteria and methodologies for determining whether an amount of expenditure or loss is or is not an amount of eligible research and development expenditure. 20
- (7) If the Commissioner approves a person's criteria and methodologies for the income year, the Commissioner must notify the person those criteria and methodologies of the person that the Commissioner approves of, and any conditions upon which the approval is made. 25
- (8) The Commissioner must notify the person of the intention to decline the application before the application is declined.
- (9) The Commissioner may revoke an approval, with effect from the beginning of the income year in which the revocation is made, if the Commissioner considers that the person has classified an activity, or an expenditure or loss, in such a way so as to defeat the purpose and application of **subpart LY** of the Income Tax Act 2007. 30
- 68CD Research and development tax credits: approved research and development cap** 35
- (1) For the purposes of **section LY 4** of the Income Tax Act 2007, the Commissioner may, in accordance with this section, approve for a person an amount greater than \$120,000,000 million as the person's **approved research and development cap** for an income year.

- (2) A person may request approval for an approved research and development cap by providing information to the Commissioner in the prescribed form on or before the 7th day of the 2nd month after the end of the income year.
- (3) The Commissioner must not approve an approved research and development cap for a person unless—
- (a) the relevant research and development activities give rise to substantial net benefit for New Zealand; and
 - (b) the Commissioner has first consulted with the chief executive of the Ministry of Business, Innovation, and Employment.

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68CE Research and development tax credits: publication of details

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- (1) The Commissioner must publish, in a publication chosen by the Commissioner, the names of people who have received a research and development tax credit under **subpart LY** of the Income Tax Act 2007 and where the amount of their research and development tax credit falls for a tax year, using appropriate dollar bands.
- (2) The names and bands must not be published before 2 years elapse after the end of the tax year to which the relevant tax credit relates.

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31 ~~Section 81 amended (Officers to maintain secrecy)~~

Replace section 81(4)(w) and (x) with:

- (w) ~~communicating to an officer, employee, or agent of the Treasury (as defined in section 2 of the Public Finance Act 1989), of Callaghan Innovation, of the Ministry of Business, Innovation, and Employment, or of a state sector entity responsible for any function related to research and development advice or incentives, information reasonably necessary for that person to perform their work in relation to evaluating (in accordance with **section LY 10** of the Income Tax Act 2007), administering, statistical reporting on, and policy formation for, tax credits provided in **subparts LY and MX** of that Act:~~
- (x) ~~communicating to an officer, employee, or agent of Callaghan Innovation or of the Ministry of Business, Innovation, and Employment, information reasonably necessary for that person to perform their work in relation to offering research and development advice and incentives:~~

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32 Section 89DA amended (Taxpayer may issue notice of proposed adjustment for taxpayer assessment)

After section 89DA(1)(a), insert:

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- (ab) to the extent to which the assessment relates to an amount of research and development tax credit and the taxpayer has not filed a research and development supplementary return in relation to the credit within the time allowed under **section 33E**:

33 Section 108 amended (Time bar for amendment of income tax assessment)

(1) Repeal section 108(1B).

(2) After section 108(1D), insert:

(1E) Despite subsection (1), the Commissioner may not amend an assessment so as to increase an amount of research and development tax credit if ~~2 years have~~1 year has passed from the latest date to provide a return of income for the relevant tax year.

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34 Section 113D repealed (Amended assessments for research and development tax credits)

Repeal section 113D.

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35 New section 113E inserted (Amended assessments: research and development tax credits)

Before section 114, insert:

113E Amended assessments: research and development tax credits

~~⊕ A person may, in relation to research and development tax credits, only either issue a notice of proposed adjustment or make request for the Commissioner to amend under section 113 once within the time limit referred to in **section 108(1E)**. The Commissioner may not amend an assessment so as to increase the amount of tax credit in relation to any subsequent notice of proposed adjustment or request (for example: A person requests an increase in the amount of research and development tax credit already assessed. They cannot issue a NOPA or make another request in relation to the tax credit. Neither could the Commissioner make any adjustment in relation to the subsequent NOPA or request.)~~

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(1) A person may only—

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(a) issue 1 notice of proposed adjustment in relation to an increase in the amount of a person's research and development tax credit for a tax year within 1 year after the due date to provide a return of income for the tax year; or

(b) make 1 request under section 113 in relation to an increase in the amount of a person's research and development tax credit for a tax year within 1 year after the due date to provide a return of income for the tax year.

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(2) A person must not make a request under section 113 in relation to research and development tax credits for a tax year unless they have filed a research and development supplementary return under **section 33E** for the year.

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36 Section 138E amended (Certain rights of challenge not conferred)

In section 138E(1)(e)(iv), replace "~~sections 120U,~~" with "~~sections **152B** 120U, **124ZH**,~~".

37 Section 141EC amended (Definition of promoter)

- (1) In section 141EC(1)(a),—
- (a) replace “a plan” with “a plan, software,”;
 - (b) replace “; or” with “:”.
- (2) In section 141EC(1)(b), replace “.” with “:”, and insert:
- (c) a person who provides services on a contingency fee basis in relation to research and development tax credit claims.

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37B Schedule 7 amended (Disclosure rules)

Replace schedule 7, clause 39 with:

39 Agencies for research and development

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- (1) Section 18 does not prevent the Commissioner communicating to an officer, employee, or agent of the Treasury (as defined in section 2 of the Public Finance Act 1989), of Callaghan Innovation, of the Ministry of Business, Innovation and Employment, or of a state sector entity responsible for any function related to research and development advice or incentives, information reasonably necessary for that person to perform their work in relation to evaluating (in accordance with **section LY 10** of the Income Tax Act 2007), administering, statistical reporting on, and policy formation for, tax credits provided in **subparts LY and MX** of that Act.
- (2) Section 18 does not prevent the Commissioner communicating to an officer, employee, or agent of Callaghan Innovation or of the Ministry of Business, Innovation and Employment, information reasonably necessary for that person to perform their work in relation to offering research and development advice and incentives.

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Part 2

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Research and development tax credits: year 2 and subsequent years**38 Application**

This Part applies for the 2020–21 and later income years.

Amendments to Income Tax Act 2007

38B Income Tax Act 2007 amended

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Sections 39 and 39B amend the Income Tax Act 2007.

39 Section LY 3 amended (When this subpart applies)

- ⊕ After ~~**section LY 3(1)(b)**~~ of the Income Tax Act 2007, insert:

~~(bb) the relevant core research and development activity or the person, as applicable, is approved under either **section 68CB** or **section 68CC**, of the Tax Administration Act 1994; and~~

(1) Replace **section LY 3(1)(d)** with:

(d) the relevant research and development activity and the person, as applicable, are approved under **section 68CB** or **68CC** of the Tax Administration Act 1994 (which relate to in-year approval).

(2) After **section LY 3(4)**, insert:

Relationship with subject matter

(5) **Section LY 13** (Part-year override of section LY 3(2)(b)) overrides **subsection (2)(c)** for the 2020–21 income year.

39B New heading and section LZ 13 inserted

After section LZ 8, insert:

Research and development tax credits

LZ 13 Part-year override of section LY 3(2)(b)

When this section applies

(1) This section applies for a person's 2020–21 income year if—

(a) the person's 2020–21 income year starts after 1 April 2020; and

(b) the person receives a Callaghan Innovation Growth Grant for only part of the 2020–21 income year.

*Part-year override of **section LY 3(2)(b)***

(2) Despite **section LY 3(2)(b)** (When this subpart applies), a person is eligible for a research and development tax credit for the part of the year after their Callaghan Innovation Growth Grant contract ends, to the extent to which they appropriately apportion their eligible research and development expenditure to the research and development tax credit and not to the Callaghan Innovation Growth Grant for that part of the year.

Defined in this Act: eligible research and development expenditure, income year, research and development tax credit

Amendments to Tax Administration Act 1994

40 Tax Administration Act 1994 amended

Sections 41 to 44 amend the Tax Administration Act 1994.

41 Section 3 amended (Interpretation)

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

(2) Insert, in appropriate alphabetical order:

research and development certificate means a research and development certificate described in section ~~45ZC~~**124ZI**

42 New section ~~45ZC~~124ZI** inserted (Certificates for research and development)**

After ~~section 45ZB~~**section 124ZH**, as inserted by this Act, insert:

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~~45ZC~~**124ZI** **Certificates for research and development**

- (1) For the purposes of **section 68CC**, a **research and development certificate** is a certificate, in the form prescribed by the Commissioner, in relation to a person's research and development tax credit for an income year given to the person by another person who is an accepted research and development certifier that is not associated with the person. 10
- (2) For the purposes of this section, an **accepted research and development certifier** means any person that the Commissioner has approved as an accepted research and development certifier, if the person makes a statutory declaration of the following matters and gives it to the Commissioner, namely a declaration— 15
 - (a) that the person is competent in applying appropriate accounting and legal standards in relation to research and development tax credits; and
 - (b) declaring any other matters required by the Commissioner to be declared for the purposes of assuring the Commissioner that the person has the legal, accounting, and scientific or technical expertise to complete a research and development certificate. 20
- (3) A person may request approval as an accepted research and development certifier by providing information to the Commissioner in the prescribed form. They may also ~~request revocation of surrender~~ approval. 25
- (4) The Commissioner must not approve a person whose approval the Commissioner has revoked under **subsection (7)** in the last 2 years. Also, the Commissioner must not approve a person who has surrendered their approval in the last 2 years, if the surrender was in anticipation of a revocation.
- (5) If the Commissioner approves a person, the Commissioner must notify the person, and publish the approval in a publication chosen by the Commissioner. The approval starts from the date that the person requests approval. 30
- (6) The Commissioner may, at the Commissioner's discretion, revoke approval as an accepted research and development certifier. If the Commissioner revokes a person's approval, the Commissioner must notify the person, and publish the revocation in a publication chosen by the Commissioner. The revocation starts from the date that the revocation is published. 35
- (7) ~~The Commissioner must revoke a person's approval if the person has given a research and development certificate to a person (**person B**) who has, in the 2 years before the income year, been liable to a shortfall penalty in relation to~~ 40

~~research and development tax credits, unless person B wilfully misled the person.~~

- (7) The Commissioner must revoke a person's approval if—
- (a) the person is liable for a promoter penalty under section 141EB;
 - (b) the person has given a research and development certificate to another person who has, in the 2 years before the income year, been liable to a shortfall penalty under section 141D or 141E in relation to research and development tax credits.

43 ~~New~~ Sections 68CB and 68CC ~~inserted~~ replaced

~~Before—~~ Replace ~~section 68CB~~ **sections 68CB and 68CC**, as inserted by this Act, ~~insert~~ with:

68CB Research and development tax credits: general approval

- (1) ~~This section does not apply if a person—~~
- (a) ~~meets the requirements of **section 68GG(1)**; and~~
 - (b) ~~chooses to apply **section 68GG**.~~
- (2) For the purposes of **section LY 3(1)(bb)(d)** of the Income Tax Act 2007, a person's ~~core~~ research and development activities are approved for the income year, if the Commissioner approves the activities, as provided by **subsections (3) to (7)**, and—
- (a) the person's application for approval does not contain a material omission or misrepresentation; and
 - (b) the person complies with any conditions in the Commissioner's approval; and
 - (c) there is no material change in the provisions in **subpart LY** of that Act and any associated provisions; and
 - (d) if the Commissioner approves a person and their activities for more than 1 income year, the person has given the Commissioner, on or before the 7th day of the 2nd month after the end of the relevant income year, notice that there have been no material changes for their business for the relevant income year.
- (3) The Commissioner may, in accordance with this section, approve a person's ~~core~~ research and development activities for an income year (the **first income year**) and up to 2 further consecutive income years, if the person makes an application in accordance with **subsection (4)** on or before the 7th day of the 2nd month after the end of the first income year.
- (4) A person must apply to the Commissioner for approval in the form prescribed by the Commissioner, including—
- (a) the activities the person wants the Commissioner to approve; and

- (b) the income years for which approval is sought; and
- (c) any other information required by the Commissioner.
- (5) The Commissioner may only approve a person's activities to the extent to which, in the opinion of the Commissioner, the relevant activity is a core research and development activity or a supporting research and development activity. 5
- (6) If the Commissioner approves a person's activities for an income year, the Commissioner must notify the person what activities of the person the Commissioner approves of as core research and development activities or supporting research and development activities, for which income years, and any conditions upon which the approval is made. 10
- (6B)** The Commissioner must notify the person of the intention to decline the application before the application is declined.
- (7) The Commissioner may vary an approval, upon application, if the variation application meets the requirements in **subsection (2)(a)**, the variation applied for meets the requirements of **subsection (5)**, and the application is made on or before the 7th day of the 2nd month after the end of the relevant income year. If the Commissioner accepts the variation, then the Commissioner must notify the person in accordance with **subsection (6)**. 15
- 68CC Research and development tax credits: greater than \$2 million approval** 20
- (1) This section applies ignoring, for purposes of this subsection only, sections HB 1 and HG 2 of the Income Tax Act 2007 (which relate to entity transparency) and substituting as the relevant person the person's partnership or look-through company, if a person chooses to apply this section, and—
- ~~(a) has, or reasonably estimates that the person will have, eligible research and development expenditure greater than \$2 million for an income year; or~~ 25
- ~~(b) is a member of a group of companies that has or reasonably estimates that they will have eligible research and development expenditure greater than \$2 million for an income year.~~ 30
- (a) has, or reasonably estimates that the person together with any joint venture of which the person is a member, will have eligible research and development expenditure greater than \$2 million for an income year; or
- (b) is a member of a group of companies that has or reasonably estimates that they will have eligible research and development expenditure greater than \$2 million for an income year. 35
- (2) For the purposes of **section LY 3(1)(bb)(d)** of that Act, a person is approved for the income year to the extent to which—
- (a) the person and the relevant members of the group under **subsection (1)(b)**, if applicable, have,— 40

- (i) on or before the 7th day of the 2nd month after the end of the income year, notified the Commissioner that they elect to use this section and, in the case of an estimate under **subsection (1)**, further notified the amount of the estimate; and
 - (ii) for the income year, given to the Commissioner a research and development certificate with their research and development supplementary returns (*see: ~~sections 15G and section 33E~~sections 33E and 124ZL*):
- (b) the Commissioner approves the person's criteria and methodologies, as provided by **subsections (3) to (7)**, and—
 - (i) the person's application for approval does not contain a material omission or misrepresentation; and
 - (ii) the person complies with any conditions in the Commissioner's approval; and
 - (iii) there is no material change in the provisions in **subpart LY** of the Income Tax Act 2007 and any associated provisions; and
 - (iv) has, for the income year, given to the Commissioner a research and development certificate with the person's research and development supplementary return (*see: ~~sections 15ZG and 33E~~sections 33E and 124ZL*).
- (3) The Commissioner may, in accordance with this section, approve a person's criteria and methodologies for an income year (the **first income year**) and up to 2 further consecutive income years, if the person makes an application in accordance with **subsection (4)** on or before the 7th day of the 2nd month after the end of the first income year.
- (4) A person must apply to the Commissioner for approval in the form prescribed by the Commissioner, including—
 - (a) the criteria and methodologies the person wants the Commissioner to approve; and
 - (b) the income years for which approval of a criterion or methodology is sought; and
 - (c) any other information required by the Commissioner.
- (5) The Commissioner may approve—
 - (a) appropriate criteria and methodologies for determining whether an activity is a core research and development activity, a supporting research and development activity, or not a research and development activity at all;
 - (b) appropriate criteria and methodologies for determining whether an amount of expenditure or loss is or is not an amount of eligible research and development expenditure.

- (6) If the Commissioner approves a person's criteria and methodologies for an income year, the Commissioner must notify the person ~~what those~~ criteria and methodologies of the person that the Commissioner approves of, for which income years, and any conditions upon which the approval is made.
- (6B)** The Commissioner must notify the person of the intention to decline the application before the application is declined. 5
- (7) The Commissioner may vary an approval, upon application, if the variation application meets the requirements in **subsection (2)(b)**, the variation applied for meets the requirements of **subsection (5)**, and the application is made on or before the 7th day of the 2nd month after the end of the relevant income year. If the Commissioner accepts the variation, then the Commissioner must notify the person in accordance with **subsection (6)**. 10
- (8) The Commissioner may revoke an approval, with effect from the beginning of the income year in which the revocation is made, if the Commissioner considers that the person has classified an activity, or an expenditure or loss in such a way so as to defeat the ~~intent~~purpose and application of **subpart LY** of the Income Tax Act 2007. 15
- 44 Section 138E amended (Certain rights of challenge not conferred)**
- (1) In section 138E(1)(e)(iv), replace "~~45ZB124ZH~~" with "~~45ZB124ZH~~, ~~45ZG124ZI~~". 20
- (2) In section 138E(1)(e)(iv), replace "63" with "63, **68CB, 68CC**".

Schedule 1

New schedules 21 and 21B inserted

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Schedule 21

Excluded activities for research and development activities tax credits

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s LY 2

Part A	
Activities that are excluded from the definition of <i>core research and development activity</i>	
1	Preproduction activities, including demonstration of commercial viability and tooling up.
2	Routine de-bugging of existing computer software.
3	Supporting or making minor improvements to existing computer software using known methods.
4	Routine software and computer maintenance.
5	Prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy.
6	Market research, market testing, market development, or sales promotion, including consumer surveys.
7	Commercial, legal, or administrative aspects of patenting, licensing, or other similar activities.
8	Activities involved in complying with statutory requirements or standards.
9	Management studies.
10	Activities relating to organisational design.
11	Software development undertaken for the only or main purpose of using the resultant software in the payroll, accounting, executive or management information, human resources, enterprise resource planning, invoicing, or inventory systems of the person's business or of an associate's business. <u>Ineligible internal software development.</u>
12	Research in social sciences, arts, or humanities.
13	Quality control or routine testing of processes, services, or goods.
14	Routine collection of information.
15	Minor adaption of, or improvement to, existing processes, services, or goods.

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16	Bug testing, beta testing, system requirement testing, user acceptance testing, and data integrity testing.	
17	Data mapping and data migration testing.	
18	Testing or comparing the efficiency of algorithms that are already known to work.	5
19	Testing security protocols or arrangements.	
20	Converting existing systems to <u>or integrating existing systems with</u> new software platforms.	
21	Making cosmetic or stylistic changes to processes, services, or goods.	
22	Reproduction of a commercial product or process by a physical examination of an existing <u>product or system</u> , or from plans, blueprints, detailed specifications, or publicly available information.	10
23	Carrying out routine operations on data, including presentation of data.	
24	If section 68CB of the Tax Administration Act 1994 applies for the person, activities that are not approved under that section.	15

Part B

Activities that are excluded from the definition of *supporting research and development activity*

1	Preproduction activities, including demonstration of commercial viability and tooling up.	20
2	Routine de-bugging of existing computer software.	
3	Supporting or making minor improvements to existing computer software using known methods.	
4	Routine software and computer maintenance.	
5	Prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy.	25
6	Market development <u>Market research, market testing, market development</u> , or sales promotion, including consumer surveys.	
7	Commercial, legal, or administrative aspects of patenting, licensing, or other similar activities.	30
8	Activities involved in complying with statutory requirements or standards for pre-existing processes, services, or goods.	
9	Management studies.	
10	Activities relating to organisational design.	
11	Software development undertaken for the only or main purpose of using the resultant software in the payroll, accounting, executive or management information, human resources, enterprise resource planning, invoicing, or inventory	35

~~systems of the person's business or of an associate's business.~~ Ineligible internal software development.

Schedule 21B**Expenditure or loss for research and development tax credits****s LY 5****Part A****Eligible expenditure or loss for research and development tax credits** 5

- 1 Depreciation loss for an item of depreciable property to the extent to which the depreciable property is used in performing a research and development activity.
- 2 Expenditure or loss, including amounts deductible under sections DB 49 and DB 50, that is not ~~paid to~~for employees and is incurred in acquiring goods and services that are not depreciable property, to the extent to which ~~the goods and services relate to performing a research and development activity.~~ 10
- (a) the goods and services relate to performing a research and development activity; and
- (b) the expenditure or loss is not an unexpired amount under section CH 1 or CH 2 (which relate to end of year adjustments). 15
- 3 Amounts ~~paid to~~for employees, to the extent to which the employee's employment relates to performing a research and development activity.

Part B**Ineligible expenditure or loss for research and development tax credits** 20

- 1 Amounts that, but for this clause, are eligible research and development expenditure under **section LY 5**, to the extent to which the amounts, together with associated persons' eligible research and development expenditure returned by them in their research and development supplementary return, are greater than ~~\$120,000,000~~ million or their approved research and development cap, as the case may be. 25
- 2 Expenditure or loss incurred in acquiring depreciable property.
- 3 Expenditure or loss to the extent to which it contributes to the cost of depreciable tangible property, if the depreciable tangible property is not used solely in performing a research and development activity. 30
- 4 Depreciation loss for an item of depreciable property to the extent to which the item's cost is eligible research and development expenditure under **section LY 5**.
- 5 Depreciation loss for an item of depreciable property, if the item is in a pool of depreciable property and an item in the pool is not used solely in performing a research and development activity. 35

5B	<u>Depreciation loss for an item of depreciable property under sections EE 11(2) to (6), and EE 39.</u>	
6	Depreciation loss for an item of depreciable property acquired from an associated person, if the associate has used the item for a research and development activity, to the extent to which the depreciation loss relates to consideration paid <u>or payable</u> to the associated person for the acquisition of the item in excess of the associate's adjusted tax value for the property at the time of acquisition.	5
7	Amounts for goods or services, other than a right to use property, acquired directly or indirectly from an associated person to the extent to which the consideration paid <u>or payable</u> to the associated person for the goods or services is more than the lowest cost of the goods and services to an associate.	10
8	Amount for a right to use property acquired from an associate, to the extent to which the consideration paid <u>or payable</u> to the associate for the goods or services that relate to the right is more than the market value of the right.	15
9	Expenditure on employee share schemes.	
10	Expenditure on employee recruitment and relocation.	
11	Payments of bonuses to employees.	
11B	<u>Expenditure to purchase land.</u>	
12	Expenditure under a financial arrangement.	20
13	A deduction under sections DB 5 to DB 15 (which relate to financing and financial arrangement adjustments).	
14	Professional fees incurred in determining a person's entitlement or lack of entitlement to a research and development tax credit.	
15	Expenditure or loss <u>to purchase, lease, or otherwise acquire</u> in relation to acquiring an interest in intangible property other than software.	25
16	Expenditure or loss <u>to purchase, lease, or otherwise acquire</u> in relation to software that is bespoke or customised, or is not widely commercially available.	
17	Amounts that, but for this clause, are both eligible research and development expenditure under section LY 5 and internal software development expenditure, to the extent to which the amounts, together with associated persons' amounts that are both eligible research and development expenditure and internal software development expenditure, returned by them in their research and development supplementary return, are greater than \$3 <u>25</u> million. For the purposes of this clause only, sections HB 1 and HG 2 (which relate to entity transparency) are ignored and the person's partnership or look-through company is substituted as the relevant person.	30 35
18	Expenditure or loss in relation to goods and services, to the extent to which the consideration paid <u>or payable</u> for the goods and services is greater than market value consideration.	40

19	Gifts.	
20	Expenditure or loss that is ineligible technology expenditure.	
21	Expenditure or loss for plant, machinery, or materials to commercialise research and development activities' results, including preproduction expenditure or loss.	5
22	Expenditure or loss that is a precondition to, subject to the terms of, required by, or otherwise related to a grant made by the Crown or a local authority.	
23	Expenditure or loss incurred in acquiring or producing goods, including expenditure or loss for energy (inputs), to the extent to which the expenditure or loss does not exceed the market value of goods that result from the total inputs being used in, or subject to, a process or transformation.	10
24	Expenditure or loss to the extent to which a country or territory outside New Zealand allows a credit of tax (a foreign credit) of a similar nature to the research and development tax credit for the expenditure or loss, and the person receives the foreign credit for the expenditure or loss.	15
25	Expenditure or loss that is not for an approved research provider performing a research and development activity on behalf of the person, if section LY 4(1)(b) applies, and section LY 4(1)(a) does not apply.	

Legislative history

25 October 2018
1 November 2018

Introduction (Bill 108–1)
First reading and referral to Finance and Expenditure Committee