

Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

Government Bill

Explanatory note

General policy statement

This taxation omnibus Bill introduces amendments to the following legislation:

- KiwiSaver Act 2006
- Student Loan Scheme Act 2011
- Income Tax Act 2007
- Income Tax Act 2004
- Income Tax Act 1994
- Income Tax Act 1976
- Tax Administration Act 1994
- Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019
- Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018
- Taxation (Research and Development Tax Credits) Act 2019
- Accident Compensation Act 2001
- Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995.

Broadly, the policy proposals in this Bill have 3 main objectives:

- to continue the Government’s simplifying and modernising of social policy administration
- to further improve the application of our broad-base, low-rate framework, and
- to further encourage research and development expenditure.

The first category relates to proposals aimed at modernising and improving the settings for the administration of social policy by Inland Revenue as part of the Government's programme of transforming the revenue system through business process and technology change. This category includes measures to simplify and modernise the administration of the KiwiSaver and student loan schemes.

The second of these categories comprises proposals aimed at improving current tax settings within a broad-base, low-rate framework. Under this framework, the treatment of alternative forms of income and expenditure is intended to be as even as possible. This treatment ensures that overall tax rates can be kept low, while also minimising the biases that taxation introduces into economic decisions. This framework underpins the Government's revenue strategy and helps maintain confidence that the tax system is broadly fair, which is crucial to encouraging voluntary compliance with tax obligations.

Although New Zealand has relatively strong tax settings, it is important to maintain the tax system and ensure that it continues to be fit for purpose. Changes in the economic environment, business practice, or interpretation of the law can mean that the tax system becomes unfair, inefficient, complex, or uncertain. The tax system needs to be responsive to accommodate these concerns.

The third objective of this Bill is aimed at extending the refundability of research and development tax credits, to support Government objectives relating to increasing business expenditure on research and development.

The main policy measures within this Bill have been developed in accordance with the Generic Tax Policy Process (GTPP). It is a very open and interactive engagement process between the public and private sectors, which helps ensure that tax and social policy changes are well thought through. This process is designed to ensure better, more effective policy development through early consideration of all aspects, and likely impacts, of proposals, and increased opportunities for public consultation.

The GTPP means that major tax initiatives are subject to public scrutiny at all stages of their development. As a result, Inland Revenue and Treasury officials have the opportunity to develop more practical options for reform by drawing on information provided by the private sector and the people who will be affected.

The final stage of the GTPP is a post-implementation review of new legislation and identification of remedial issues that need correcting for the new legislation to have its intended effect. Further information on the GTPP can be found at <http://taxpolicy.ird.govt.nz/how-we-develop-tax-policy>.

The following is a brief summary of the specific policy measures contained in this Bill. A comprehensive explanation of all the policy items is provided in a commentary on the Bill that is available at <http://taxpolicy.ird.govt.nz/publications/2019-commentary-ksslr-bill/overview>.

KiwiSaver changes

The Bill proposes a number of changes to improve the administration of the KiwiSaver scheme. These changes facilitate faster transfers of funds, improve the administrative efficiency and enhance members' experience with the scheme.

Payment of employer contributions

The Bill proposes to allow Inland Revenue to pass KiwiSaver employer contribution amounts (both compulsory and voluntary) to scheme providers, before the contribution amount has been received by Inland Revenue. Employer contributions would be forwarded to providers as soon as practicable after employment income information has been provided to Inland Revenue. This would improve the administrative efficiency of the KiwiSaver scheme and members would receive the benefit of their contributions being invested with scheme providers sooner. The change would align with the existing treatment of employee contributions.

Calculating interest on contributions from the employee's payday

The Bill contains changes to ensure that interest on employer and employee contributions begins to accrue from the employee's payday, until the contributions are forwarded to the KiwiSaver scheme provider. When KiwiSaver was introduced Inland Revenue's systems could not calculate interest from the employee's payday without imposing compliance costs on employers. The introduction of payday filing overcomes this obstacle.

Reducing the KiwiSaver provisional period and holding period

When automatically enrolled in KiwiSaver, members are provisionally allocated to a default provider. Inland Revenue is not able to transfer contributions to scheme providers until the end of the provisional period. The Bill reduces the provisional period and the initial holding period from 3 months to 2 months.

Reducing the timeframe for the transfer of member's information and funds between providers

When a KiwiSaver member decides to transfer schemes, the old provider must transfer funds and information within 10 working days for default providers and 35 days for non-default providers. The Bill proposes that this period be reduced to 10 working days for all providers.

Giving employees more ways to change their contribution rates

Currently, members can only change their employee contribution rate by giving notice to their employer. The Bill proposes that members would also be able to change their contribution rate by notifying either their scheme provider or Inland Revenue.

*Removing the 3-month grace period for people who were invalidly enrolled in
KiwiSaver to gain residence*

There is currently a 3-month grace period for those who are invalidly enrolled in KiwiSaver to meet the scheme's residence requirement. In practice, members who do not have residence are typically individuals not intending to become residents in the short term (such as individuals on temporary work visas). The Bill proposes the removal of this grace period. This would mean that a person who does not meet the residence requirement would have their account closed immediately. They would be able to open a new KiwiSaver account if they later meet the residence requirement.

*Requiring employers to provide information to Inland Revenue on the
employee's income and ESCT rate*

The Bill proposes that employers would be required to provide Inland Revenue with information on any difference between an employee's income for PAYE and KiwiSaver purposes and information on the employee's employer superannuation contribution tax (ESCT) rate. This would enable Inland Revenue to more easily verify that the correct KiwiSaver contributions have been made and that the correct tax is paid. It would also reduce the likelihood that employers are subject to penalties in the case of any miscalculation.

Student loan changes

The Bill proposes 5 student loan policy changes. These changes seek to improve the administration of the student loan scheme.

Limiting changes to a borrower's repayment obligations prior to 1 April 2013

The Bill proposes that changes to a borrower's repayment obligations will only occur due to changes in residency status, where fraud is involved, or where a tax return has not been filed and it is cost effective to make changes. The Bill also contains a clause to allow the Commissioner to correct the position of any borrower who is made worse off as a result of this change. The purpose of this section is to limit the reassessment of historical changes beyond this point.

*Renaming the student loan repayment holiday to temporary repayment
suspension*

The Bill proposes that the current repayment holiday be renamed "temporary repayment suspension". This wording change will better signal to borrowers who receive a repayment suspension that their repayment obligations have been suspended, and that they will have repayment obligations after the end of their repayment suspension.

*Giving Inland Revenue the ability to write-off student loans taken out before
2000 in cases of fraud*

This will allow Inland Revenue to write-off loans that have been taken out fraudulently, in cases where the correct borrower cannot be identified. Inland Revenue does not currently have the ability to write-off these loans.

*Allowing employers to be notified of an employee's loan balance when their
student loan is close to being fully repaid*

The Bill proposes that employers would be notified of an employee's loan balance when their loan balance is close to zero, so that the amount of any final deduction can be reduced, to avoid an over-deduction. This will prevent employers deducting more than the loan balance from an employee's salary and wages, and then contact between Inland Revenue and the borrower to arrange a refund of the excess.

*Treating overseas-based borrowers with serious illnesses or disabilities as
physically in New Zealand*

The Bill proposes that borrowers who are unable to meet their overseas-based repayment obligation as a result of serious illnesses or disabilities can be treated as physically in New Zealand for the purpose of determining whether they are New Zealand-based or overseas-based. This will mean that their repayment obligations are based on their income, and the borrowers will not be subject to loan interest.

Other changes

Granting overseas donee status to additional charities

The Bill gives overseas donee status to the following charities from the 2019–20 income year:

- Little Brothers and Sisters International
- Partners Relief & Development - New Zealand
- Project Moroto
- UN Women National Committee Aotearoa New Zealand Incorporated.

Extending the refundability of research and development tax credits

The Bill proposes changes to extend the refundability of research and development tax credits (R&D tax credits). These changes are intended to apply from the 2020–21 income year. It is proposed that R&D tax credits be more broadly refundable, with a cap based on the payroll taxes paid by a firm in each year. The proposed cap would not apply to tax credits resulting from eligible expenditure on activities performed by approved research providers and would not apply to R&D tax credits refunded to levy bodies.

Excluding tax exempt entities from the research and development tax credit regime

Refundability would not be available to entities who receive exempt income (other than income that is exempt under section CW 9 or CW 10 of the Income Tax Act 2007). Any surplus credits claimed in the 2019–20 income year by these entities would not be carried forward by these entities and would be extinguished from the 2020–21 income year.

Remedial research and development tax credit amendments

There are a small number of cases where the legislation supporting the new R&D tax credit does not align with the policy intent. The Bill proposes remedial changes for issues related to allocating tax credits to members of joint ventures, the timeframe for businesses to dispute R&D tax credit claims, the R&D certifier regime, the definition of *internal software development*, and taxpayers' ability to challenge decisions of the Commissioner. The Bill proposes that most of these amendments apply from the beginning of the regime (the 2019–20 income year).

Allowing the Commissioner to correct the tax rate of PIE investors on the default rate

Currently, investors in PIE funds are expected to elect a tax rate. If they do not notify the PIE fund of a tax rate to apply, the top 28% PIE tax rate will apply by default. Inland Revenue is currently able to provide a multi-rate PIE with an alternative tax rate for an investor where the investor had provided a tax rate to the PIE that is different from what it should be. However, Inland Revenue cannot use this power where an investor has been defaulted onto the top rate. The Bill proposes an amendment to allow Inland Revenue to correct an investor's tax rate if they have been defaulted onto the top rate.

Allowing the Commissioner to withdraw short-process rulings

An oversight in the drafting of the short-process rulings legislation prevents the Commissioner from being able to withdraw short-process rulings. The Bill proposes an amendment to the Tax Administration Act 1994 to enable the Commissioner to withdraw short-process rulings, which mirrors the existing rule that allows her to withdraw private rulings.

Clarifying the date that withdrawal takes effect for binding rulings withdrawn on matters not involving arrangements

Since 18 March 2019 the Commissioner has been able to issue binding rulings on a broader range of matters without the need for an arrangement (for example, on a person's New Zealand tax residence). The Bill proposes an amendment to ensure that where a binding ruling has been issued for a matter not involving an arrangement and that ruling is subsequently withdrawn, taxpayers can continue to rely on the ruling for the period specified in the ruling.

Income attribution rules

The Bill proposes 2 changes to the income attribution rules. The income attribution rules apply when an individual earns income from providing their own services through an entity that has 1 main source of such income: the entity is disregarded and the income is taxed directly to the person performing the services, to prevent higher income earners from avoiding the top personal rate by paying tax on their income from personal services at the company rate instead.

The Bill proposes to clarify that if the entity provides services to a foreign buyer and pays tax overseas, foreign tax credits are available to the individual.

The Bill also proposes an amendment to ensure that dividends paid by the entity to the person can only be tax exempt if they are paid out of income that has already been attributed to the person.

Trusts

Following an administrative review of the income tax treatment of trusts, a number of technical matters for remedial amendment have been identified. These changes seek to improve the clarity of the law and better reflect the policy intent. The amendments:

- ensure there is consistency within the trust rules on the treatment of distributions when a trustee pays New Zealand tax on worldwide trustee income
- clarify the relationship of the residence rules to trustees and their obligations under the Income Tax Act 2007
- clarify rules relating to the value of a settlement
- ensure there is internal consistency between the treatment of distributions, beneficiary income, taxable distributions, and the ordering rules, and
- address minor matters such as terminology and notice requirements.

Disclosure of information about representatives

The Bill contains an amendment to extend the coverage of the existing rules which allow Inland Revenue to disclose information about tax agents to their professional bodies. The change will extend this to include representatives (including bookkeepers). This follows changes made by the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019 which added “representatives” as a new class of intermediary to the Tax Administration Act 1994.

Tax treatment of non-resident international aircraft operators

Tax legislation allows a reciprocal income tax exemption to be granted to non-resident international aircraft operators, but the wording of the current legislation limits the exemption to outbound aircraft only. The Bill proposes an amendment to ensure that exemptions can extend to inbound aircraft. This aligns with Inland Revenue practice.

Māori authority tax credits

An unintended legislative change arising from the rewrite of the rules relating to Māori authority tax credits means that the current law allows these credits to be attached retrospectively to any distribution from a Māori authority. The policy intent is that these credits can only be attached retrospectively to non-cash distributions occurring under the transfer pricing rules. The Bill proposes an amendment to maintain this treatment. Inland Revenue is not aware of any taxpayer who has retrospectively attached these credits.

Main home exclusion for the bright-line test

The main home exclusion for the bright-line test requires that a person use the land as their main home for most of the time they own the land. However, the period that a person owns land under this general definition can differ from the period that the bright-line test applies to. The Bill proposes an amendment to align the period of ownership for the main home exclusion for the bright-line test with the bright-line period.

Consideration for grant of an easement

The Bill contains a remedial amendment to clarify that a one-off payment for the grant of a permanent easement is not taxable.

Inbound thin capitalisation de minimis

Under the current law a New Zealand taxpayer does not have to make adjustments for being over the thin capitalisation threshold provided they have less than \$1 million of group finance costs. This de minimis was not intended to be available if the New Zealand taxpayer borrowed from a non-resident related party; however, the legislation currently only removes access to the de minimis if the taxpayer has borrowed from an owner who is not a member of the same group. The Bill proposes to align the legislation with the policy intent.

Employee share schemes

The Bill contains 3 amendments to the employee share scheme rules.

The Bill contains a proposal to allow the use of a wider range of methods for determining the “market value” of shares for the purpose of the employee share scheme rules.

Under the exempt employee share scheme rules, shares are required to be held for a “restricted period”, generally 3 years, before they can be released to employees. In the event of a takeover or other corporate reorganisation the restricted period may be breached, making the shares taxable. However, since takeovers and other comparable reorganisations are generally outside the employee’s control, it is proposed that there be an exception to the restricted period for these events.

There is an additional exception to the restricted period to allow for employees leaving employment. Currently, the rules allow employees who leave within the restricted

period to retain their shares if they meet 1 of the specified exemptions. Employees who leave for other reasons, such as to work for a competitor, are not allowed to keep their shares. This rule creates difficulties for trans-Tasman companies, as the equivalent Australian rules allow for exempt shares to be retained by all employees leaving a firm. The Bill proposes that companies be able to choose to either continue to follow the current rules or allow all departing employees the option of keeping their shares.

Availability of GST credits

The Bill contains a proposal to move the day that a GST tax credit becomes available from the day after it arises to the day that it arises. This change will align the legislation with current practice.

Provisional tax

The Bill includes a range of remedial amendments to align tax legislation with Inland Revenue's systems. The changes either have no or a positive impact on taxpayers or are necessary to maintain the integrity of the tax system.

Remedial amendments

A number of minor remedial matters are also addressed in the Bill, consisting mainly of correcting minor faults of expression, reader's aids, and incorrect cross-references.

Departmental disclosure statement

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=158>

Regulatory impact assessment

The Inland Revenue Department produced regulatory impact assessments on 31 January 2019 and 1 March 2019, and the Inland Revenue Department and the Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 10 May 2019, to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/regulatory-impact-assessment>
- <https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments>

Clause by clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the dates on which the provisions of the Act come into force.

Part 1

Amendments to KiwiSaver Act 2006

Clause 3 provides that *Part 1* amends the KiwiSaver Act 2006.

Clause 4 amends section 4 to consequentially amend the definitions of *employer contribution* and *salary or wages*, insert a definition of *payday*, and repeal a provision that deems references in the Act to *3 months* to be references to a period of 92 days.

Clause 5 amends section 18, as a consequence of repealing the provision that deems references in the Act to *3 months* to be references to a period of 92 days.

Clause 6 amends section 48 to reduce the period after which a person's provisional allocation to a KiwiSaver scheme chosen by their employer becomes final, if the employee does not opt out or choose their own KiwiSaver scheme, from 92 days to 62 days after the Commissioner receives the first contribution in respect of the employee.

Clause 7 amends section 51. *Subclause (1)* corrects an incorrect cross-reference. *Subclauses (2) and (3)* reduce the time after which an employee's provisional allocation to a default KiwiSaver scheme becomes final, if the employee does not opt out or choose their own KiwiSaver scheme, from 92 days to 62 days.

Clause 8 amends section 56 to reduce the time within which a KiwiSaver member's old scheme provider, upon receiving notice that the member has transferred to a new scheme provider, must transfer the member's accumulated savings and information to the new scheme provider from 35 days to 10 working days.

Clause 9 amends section 57, as a consequence of the reducing the KiwiSaver provisional period and transfer period for KiwiSaver member's changing scheme providers.

Clause 10 amends section 59B to remove the 3-month grace period persons who have been invalidly enrolled in KiwiSaver as a result of not meeting residency requirements have to meet those requirements after their scheme provider becomes aware of the invalid enrolment, effectively requiring their accounts to be closed as soon as their provider becomes aware of the invalid enrolment.

Clause 11 amends section 59C, which provides for when invalid enrolments in KiwiSaver can be retrospectively validated, as a consequence of removing the 3-month grace period for meeting residency requirements.

Clause 12 amends section 59D, which provides for what must happen when an invalid enrolment in KiwiSaver is not retrospectively validated, as a consequence of removing the 3-month grace period for meeting residency requirements.

Clause 13 inserts *new section 63B* to require employers, in certain circumstances, to provide the Commissioner with information about the amount of salary or wages that an employee KiwiSaver contribution was deducted from.

Clause 14 amends section 64, which relates to KiwiSaver employee contribution rates. *Subclause (1)* replaces subsections (2) and (3) to allow an employee to change their KiwiSaver contribution rate by giving notice to their scheme provider or the Commissioner. *Subclause (2)* amends subsection (4), as a consequence of repealing the provision that deems references in the Act to *3 months* to be references to a period of 92 days.

Clause 15 replaces section 69, which relates to unremitted employee KiwiSaver contributions, to provide that they are treated as received by the Commissioner on the date of the payday on which they were reported as deducted, or on the 15th of the month in which they were deducted if the payday is not reported.

Clause 16 replaces the heading to section 71.

Clause 17 amends section 73, which authorises the Commissioner, based on information received from employers about amounts of employee KiwiSaver contributions they have deducted from their employees' salary or wages, to enter those amounts into the Inland Revenue KiwiSaver Holding account and pay those amounts on to KiwiSaver scheme providers. The amendments extend the section's application to employer KiwiSaver contributions.

Clause 18 amends section 74, to update cross-references, as a consequence of repealing section 76.

Clause 19 amends section 75 to reduce the holding period for a person's initial KiwiSaver contributions from 92 days to 62 days.

Clause 20 repeals section 76, which gives the Commissioner a discretion to hold a person's employer KiwiSaver contributions until the Commissioner next pays employee KiwiSaver contributions for that person to their scheme provider, as a consequence of authorising the Commissioner to pay employer contributions to scheme providers based on information received from employers.

Clause 21 replaces section 78, which authorises the Commissioner to pay amounts out of a Crown Bank Account in respect of unremitted amounts of employee KiwiSaver contributions, to extend the section's application to unremitted amounts of employer KiwiSaver contributions.

Clause 22 amends section 81 to clarify that a provider must refund to the Commissioner contributions paid to the provider by the Commissioner in respect of a member of that provider's KiwiSaver scheme if the member opts out.

Clause 23 replaces section 85, which provides for the time when KiwiSaver contributions are treated as received by the Commissioner for the purpose of the payment of interest. The replacement section provides that employee and employer contributions are generally treated as received on the date of the payday for the payment of salary or wages to which they relate (if reported), or, otherwise, on the 15th day of the month in which the payment of salary or wages to which they relate was made.

Clause 24 amends section 88, as a consequence of repealing the provision that deems references in the Act to *3 months* to be references to a period of 92 days.

Clause 25 amends section 93 to require employers, in certain circumstances, to provide the Commissioner with information about the rate of employer's superannuation contribution tax applied to an employer KiwiSaver contribution.

Clause 26 inserts *new sections 95B to 95D*. *New section 95B* provides that unremitted employer KiwiSaver contributions are treated as received by the Commissioner on the date of the payday reported for the payments of salary or wages to which they relate, or on the 15th of the month in which the payments of salary or wages to which they relate were made if the payday is not reported. *New section 95C* allows the Commissioner to hold unexplained remittances of employer KiwiSaver contributions until satisfied how to deal with them appropriately. *New section 95D* provides for the time when unexplained remittances of employer contributions are treated as received.

Clause 27 replaces the heading to section 96.

Clause 28 repeals section 98, which relates to short payments by employers of KiwiSaver contributions, as a consequence of authorising the Commissioner to pay amounts out of a Crown Bank Account in respect of unremitted amounts of employer KiwiSaver contributions.

Clause 29 amends section 98A, which relates to how short payments of employer KiwiSaver contributions are quantified, as a consequence of repealing section 98, and to remove redundant references to the Income Tax Act 2007.

Clause 30 repeals section 99, which relates to short payments of employer KiwiSaver contributions, as a consequence of authorising the Commissioner to pay amounts out of a Crown Bank Account in respect of unremitted amounts of employer KiwiSaver contributions.

Clause 31 amends section 101, which relates to refunds of employer KiwiSaver contributions by providers, by inserting *new subsection (1B)* to clarify that a provider must refund to the Commissioner contributions paid to the provider by the Commissioner in respect of a member of that provider's KiwiSaver scheme if the member opts out.

Clause 32 inserts *new section 101AA* which sets out what the Commissioner must do with amounts of employer contributions refunded by a KiwiSaver scheme provider after a member opts out.

Clause 33 amends section 104, as a consequence of repealing the provision that deems references in the Act to *3 months* to be references to a period of 92 days.

Clause 34 amends section 108, as a consequence of repealing the provision that deems references in the Act to *3 months* to be references to a period of 92 days.

Clause 35 amends section 112B, as a consequence of repealing the provision that deems references in the Act to *3 months* to be references to a period of 92 days.

Clause 36 inserts *new section 221B* which sets out what the Commissioner is entitled to assume for the purposes of certain provisions in Part 3 of the KiwiSaver Act 2006.

Clause 37 amends section 226, which relates to kick-start contributions by the Crown, as a consequence of reducing the holding period for a person's initial KiwiSaver contributions from 92 days to 62 days.

Clause 38 replaces schedule 1, clause 8(2) to consequentially update when employee KiwiSaver contributions are treated as received for the purpose of withdrawals for the purpose of purchasing a first home.

Part 2

Amendments to Student Loan Scheme Act 2011

Clause 39 provides that *Part 2* amends the Student Loan Scheme Act 2011.

Clauses 40 to 44 enable the Commissioner, on application, to treat certain borrowers as being physically in New Zealand if they have a serious illness.

Clause 45 enables the Commissioner to notify borrowers' employers once a loan balance is close to zero. This is for the purpose of reducing the likelihood that deductions from salary and wages will result in a borrower's loan balance falling below zero.

Clauses 46 to 52 and 54 change the term "repayment holiday" to "temporary repayment suspension".

Clause 53 relates to overseas-based borrowers with serious illnesses. *See clause 42*. This amendment allows a borrower to challenge a decision by the Commissioner.

Clause 55 updates the table of application, savings, and transitional provisions in section 220.

Clause 56 relates to overseas-based borrowers with serious illnesses. *See clause 42*. This amendment requires these borrowers to notify the Commissioner of their worldwide income each tax year in accordance with section 114 of the Student Loan Scheme Act 2011.

Clause 57(1) to (3) amends the savings provision that currently provides that the repealed Student Loan Scheme Act 1992 continues to apply to the tax year ending on 31 March 2012 and all earlier tax years. The effect is to phase out the application of that Act to those earlier tax years except to the extent that a borrower's repayment obligation can be reopened under *new clauses 23 to 27* of Schedule 6 of the Student Loan Scheme Act 2011 or to take into account *new clause 28* of that schedule.

Clause 57(4) has 2 effects. First, it sets out the circumstances in which a borrower's repayment obligation for the tax year ending on 31 March 2013 and all earlier tax years can be reopened. Secondly, it enables loan balances to be reduced to zero if the loan resulted from identity theft, etc.

Part 3 Amendments to other enactments

Income Tax Act 2007

Clause 58 sets out the clauses that amend the Income Tax Act 2007.

Clause 59 amends section BB 2 to correct the description of the coverage of subpart BF.

Clause 60 amends section CB 16A to clarify the period for which the main home exclusion for the bright-line test applies.

Clause 61 amends section CC 1 to repeal a redundant provision.

Clause 62 amends section CC 1B to ensure that a one-off payment in consideration for the grant of a permanent easement is not taxable.

Clause 63 amends section CD 4 to update the defined term used in referring to transfers of value by a company.

Clause 64 amends section CD 5 to update the defined term used in referring to transfers of value by a company.

Clause 65 amends section CD 6 to update the defined term used in referring to transfers of value by a company.

Clause 66 amends section CD 27 to update the defined term used in referring to transfers of value by a company.

Clause 67 amends section CD 29C to update the defined term used in referring to transfers of value by a company.

Clause 68 amends section CD 38 to update the defined term used in referring to transfers of value by a company.

Clause 69 inserts *new section CE 7CB*, to define market value methodologies for the purposes of employee share schemes in terms of volume weighted average prices for listed shares and options.

Clause 70 amends section CW 26C to ensure that share reorganisations do not remove exempt ESS status, and to ensure that there are flexible and appropriate exit provisions in exempt ESSs.

Clause 71 inserts *new section CW 26DB*, to define market value methodologies for the purposes of exempt ESSs in terms of volume weighted average prices for listed shares and options.

Clause 72 amends section CW 38 to replace 2 subsection headings.

Clause 73 amends section CW 38B to replace 2 subsection headings.

Clause 74 amends section CW 39 to replace 2 subsection headings.

Clause 75 amends section CW 56 to ensure that income derived by non-resident aircraft operators, covered by a determination by the Commissioner, from air transport to New Zealand is exempt from New Zealand income tax.

Clause 76 amends section CX 17 to update the defined term used in referring to transfers of value by a company.

Clause 77 amends section CX 22 to update the defined term used in referring to transfers of value by a company.

Clause 78 amends section EE 47 to replace a subsection heading.

Clause 79 amends section FC 1 to update the defined term used in referring to transfers of value by a company.

Clause 80 amends section FE 5 to remediate an inconsistent linkage between paragraphs.

Clause 81 amends section FE 6 so that the section requires apportionment of the total deduction of an entity for interest expenditure if the entity has related-party debt involving a non-resident lender that is not taxable in New Zealand on the interest payments.

Clause 82 amends section FM 8 to update the defined term used in referring to transfers of value by a company.

Clause 83 amends section GB 27 to ensure that, when a company that is required to attribute income from personal services to another person pays a dividend to that other person, the dividend is only exempt from income tax if it is paid out of income that has already been attributed to that other person.

Clause 84 amends section GB 29, which relates to the calculation of attributed income from personal services, to clarify that, in calculating the associated entity's net income for the purpose of determining how much income is to be attributed to another person, the deduction allowed to the associated entity for an amount attributed under the attribution rule for income from personal services is ignored.

Clause 85 amends section GC 10 to remediate inconsistent linkages between paragraphs.

Clause 86 amends section HA 13 to update the defined term used in referring to transfers of value by a company.

Clause 87 amends section HC 2 to clarify the rule determining the country of residence for joint trustees of a trust.

Clause 88 amends section HC 4 to clarify that property contributing to value of the corpus of a trust must be capable of being distributed and that each settlement of property on a trust is valued as at the time of the settlement.

Clause 89 amends section HC 7 so that the amount of trustee income from a settlement of property is reduced by any amount of the settlement that the trustee treats as beneficiary income or as a taxable distribution.

Clause 90 amends section HC 10 so that a trust for which an election is made is treated as having always been a complying trust if the tax obligations of the trustee, treated as the trustee of a complying trust, have been satisfied for the life of the trust up to the time of the election. If those tax obligations have not been satisfied, the trust

is treated as being a complying trust from the time that the election applies to the trust.

Clause 91 amends section HC 15 to provide a rule for determining the source of a taxable distribution arising from a capital gain of a non-complying trust or foreign trust.

Clause 92 amends section HC 16, to clarify the ordering of the elements of a distribution in an income year by a trustee of a non-complying trust or foreign trust. A new first element of the distribution is inserted, referring to beneficiary income of the beneficiary that was derived by the trustee in earlier income years and not previously distributed.

Clause 93 amends section HC 26(1), which relates to foreign-sourced amounts. *Subclause (1)* excludes beneficiary income from amounts derived by a trustee that are exempt income. *Subclause (2)* provides for the situation in which a trust has no surviving settlors. *Subclauses (3) and (4)* provide that an amount of beneficiary income held by the trustee for a minor beneficiary is not exempt income for the trustee.

Clause 94 amends section HC 27(4) so that an indirect settlement may occur when a transaction that is part of a transfer of value involves a person who is associated with the person making the transfer of value.

Clause 95 amends section HC 28 to provide that, when a CFC settles an amount on a trust, the control interest in the CFC of a person may be taken over the accounting period in which the settlement is made.

Clause 96 inserts *new section HC 31B*, which provides a method for quantifying a transfer of value that occurs when a person who provides financial assistance to a debtor forgives an obligation of the debtor, or a guarantor, or does not enforce an obligation of the debtor or guarantor.

Clause 97 amends section HC 33, which relates to elections that trusts be treated as complying trusts although the requirements relating to settlors of the trust have ceased to be met. *Subclause (2)* varies the requirement in subsection (1B) that a trustee indicate in a return of income that the trust is a complying trust. Consequently, a trustee who does not have to provide a tax return for a trust is not excluded from meeting the requirements under the subsection. *Subclause (3)* inserts a *new subsection (1C)*, which restates some of the contents of *current subsection (2)(a)* and gives the basis on which the tax obligations arising from the trust are determined after an election. *Subclause (4)* replaces *current subsection (2)(a)* to remove the overlap with *new subsection (1C)*. *Subclause (5)* replaces section HC 33(3)(a) and (b) with *new paragraphs (a) to (c)*, which give the date from which an election applies for each of the 3 possible ways in which an election may be made. *Subclause (6)* inserts *new subsection (3B)*, which expressly provides for the end of the application period for an election meeting the requirements of subsection (1B). *Subclause (7)* amends *subsection (4)* to provide for the notice of an election by a trustee who is not required to make a tax return for the trust. *Subclause (8)* inserts *new subsection (5)* giving, for a trust for

which an election is made, the treatment of distributions in terms of the status of the trust when the trustee derives the income that is distributed.

Clause 98 amends section HM 3 to remedy a broken linkage between paragraphs.

Clause 99 amends section HM 60 to enable the Commissioner to notify a multi-rate PIE in relation to an investor who is on the 28% tax rate by default but appears to be entitled to have a lower rate of tax applied.

Clause 100 amends section IQ 4 to remediate an inconsistent linkage between paragraphs.

Clause 101 amends section LA 5 to increase the refundability of research and development tax credits subject to a payroll tax-based cap. The cap does not apply to levy bodies, or to research and development tax credits arising from eligible expenditure on approved research providers.

Clause 102 amends section LD 6 to make an addition to the list of defined terms used in the section.

Clause 103 amends section LJ 2, which relates to tax credits for foreign income tax, to clarify that, when an entity attributes foreign-sourced income to another person under the attribution rule for income from personal services, that other person gets a tax credit and the entity does not.

Clause 104 amends section LO 2 so that all distributions to a beneficiary of a trust are included in the calculation of the person's tax credit for Maori authority credits.

Clause 105 amends section LY 1 to correct a minor fault of expression.

Clause 106 amends section LY 3 to correct a minor fault of expression, and to ensure that tax exempts can generally not claim research and development tax credits.

Clause 107 amends section LY 8 to ensure that tax exempts can generally not carry forward research and development tax credits.

Clause 108 amends section OK 19 to restrict the ability of a Maori authority to retrospectively attach Maori authority credits to distributions. The credits may be attached retrospectively if the amounts payable or receivable under a transfer pricing arrangement are adjusted retrospectively.

Clause 109 amends section RC 5 to ensure the correct amounts are used to calculate use of money interest and penalties for provisional tax.

Clause 110 amends section RC 10 to allow a standard method taxpayer to estimate their last instalment.

Clause 111 amends section RD 5 to correct a fault of expression.

Clause 112 amends section RZ 16 to clarify a legislative reference.

Clause 113 amends section YA 1. *Subclause (2)* inserts a new definition of *air transport to New Zealand*, which is used in the exempt income rule for non-resident aircraft operators. *Subclause (3)* amends the definition of *deductible output tax* to remediate an inconsistent linkage between paragraphs. *Subclause (4)* amends the definition of *employee* to remedy a missing linkage between paragraphs. *Subclause (5)*

amends the definition of *internal software development expenditure* as part of ensuring that the cap on internal software development expenditure encompasses all relevant eligible internal software development. *Subclause (6)* inserts a definition of *levy body researcher* as part of ensuring that tax exempts can generally not claim research and development tax credits. *Subclauses (7) and (8)* amend the definition of *market value* as part of allowing methodologies for employee share schemes and exempt ESSs in terms of volume weighted average prices for listed shares and options. *Subclause (9)* repeals the definition of *non-business researcher* as part of ensuring that tax exempts can generally not claim research and development tax credits. *Subclause (10)* inserts a new definition of *payroll tax-based cap*. *Subclause (11)* amends the definition of *premium* to correct an inconsistent linkage between subparagraphs. *Subclause (12)* amends the definition of *RWT proxy* to correct a cross-reference. *Subclause (13)* amends the definition of *research and development contractor* as a consequential matter. *Subclause (14)* amends the definition of *services* to update the defined term used in referring to transfers of value by a company. *Subclause (15)* amends the definition of *services* to correct a cross-reference. *Subclause (16)* inserts a new definition of *transfer of company value*, which reflects the meaning of the term *transfer of value* that is currently used in provisions applying to distributions by companies. *Subclause (17)* consequentially repeals paragraph (a) of the definition of *transfer of value*. *Subclause (18)* amends paragraph (b) of the definition of *transfer of value* so that the term includes money's worth that is not convertible into money. *Subclauses (19) and (20)* amend the definition of *trust rules* by inserting new cross-references. *Subclause (21)* gives the application for the backdated minor amendment in *subclause (11)*. *Subclause (22)* gives the application for the amendment made by *subclause (15)*.

Clause 114 amends schedule 32 to insert entities into the list of recipients of charitable or other public benefit gifts.

Tax Administration Act 1994

Clause 115 sets out the clauses that amend the Tax Administration Act 1994.

Clause 116 amends section 22 to correct a cross-reference.

Clause 117 amends section 36BB to update cross-references.

Clause 118 amends section 78D as a minor drafting remedial matter.

Clause 119 amends section 91EI to specify the period for which a taxpayer can continue to rely on a private ruling that does not relate to an arrangement if the ruling is withdrawn.

Clause 120 inserts *new section 91ESB* to allow the Commissioner to withdraw short-process rulings.

Clause 121 amends section 91FJ to specify the period for which taxpayers can continue to rely on a product ruling that does not relate to an arrangement if the ruling is withdrawn.

Clause 122 amends section 108 to clarify the timebar for amending assessments in relation to research and development tax credits.

Clause 123 amends section 113E to clarify the timelines for amending assessments in relation to research and development tax credits.

Clause 124 amends section 120KB to clarify the relationship between current year RIT and the calculation in section RC 10.

Clause 125 amends section 120KBB to correct faults of expression and clarify the calculation of interest for final instalments of provisional tax.

Clause 126 amends section 120L to remove taxpayers' ability to allocate tax payments to particular provisional tax instalments.

Clause 127 amends section 124ZI to clarify the criteria for research and development certifiers.

Clause 128 amends 138E to correct a cross-reference to prevent a taxpayer from challenging the Commissioner's decision in relation to the in-year approval pilot and exceeding the \$120 million expenditure cap.

Clause 129 amends 139B to correct a minor fault of expression.

Clause 130 amends 139C to clarify the amount of provisional tax final instalments for late payment penalty purposes.

Clause 131 amends 173L to clarify the date on which a goods and services tax credit becomes available.

Clause 132 amends schedule 4 to add 2 items of information related to KiwiSaver that employers may be required to provide to the Commissioner as part of their employment income information.

Clause 133 amends schedule 5 to correct faults of expression.

Clause 134 amends schedule 7 to permit the Commissioner to disclose information about representatives to their industry bodies.

Clause 135 amends schedule 8 to correct a fault of expression.

Income Tax Act 2004

Clause 136 sets out the clauses that amend the Income Tax Act 2004.

Clause 137 amends section CW 45 to ensure that income derived by non-resident aircraft operators, covered by a determination by the Commissioner, from air transport to New Zealand is exempt from New Zealand income tax.

Clause 138 amends section MD 1C to clarify a legislative reference.

Clause 139 amends section OB 1 to insert a new definition of *air transport to New Zealand*, which is used in the exempt income rule for non-resident aircraft operators.

Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019

Clause 140 sets out the clauses that amend the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019.

Clause 141 repeals section 34 as a minor drafting remedial matter.

Clause 142 amends section 375 to delete an incorrect legislative reference.

Other enactments

Income Tax Act 1994

Clause 143 amends section CB 14 of the Income Tax Act 1994 to ensure that income derived by non-resident aircraft operators, covered by a determination by the Commissioner, from air transport to New Zealand is exempt from New Zealand income tax.

Income Tax Act 1976

Clause 144 amends section 64A of the Income Tax Act 1976 to ensure that income derived by non-resident aircraft operators, covered by a determination by the Commissioner, from air transport to New Zealand is exempt from New Zealand income tax.

Taxation (Research and Development Tax Credits) Act 2019

Clause 145 repeals section 46(2) of the Taxation (Research and Development Tax Credits) Act 2019 as a minor consequential matter.

Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018

Clause 146 repeals section 332 of the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 as a minor drafting remedial matter.

Accident Compensation Act 2001

Clause 147 amends section 11(1)(cb) of the Accident Compensation Act 2001 as a minor consequential matter.

Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995

Clause 148 revokes the Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995, as a consequence of the repeal of the adverse events income equalisation scheme.

Hon Stuart Nash

Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

Government Bill

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140	Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019	48
141	Section 34 repealed (Section 36BB amended (Electronic format for details required for tax pooling intermediaries))	48
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Taxation (Research and Development Tax Credits) Act 2019

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***Taxation (Annual Rates for 2017–18, Employment and Investment
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146	Section 332 repealed (Section 78D amended (Evidential requirements for tax credits))	49
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Schedule

**New Part 5 inserted into Schedule 6 of Student Loan Scheme
Act 2011**

51

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act **2019**.

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) **Section 144** comes into force on 1 April 1984.
- (3) **Section 143(1), (3), (4), and (6)** comes into force on 1 April 1995.
- (4) **Section 143(2) and (5)** comes into force on 1 April 1997. 10
- (5) **Sections 137, 138, and 139** come into force on 1 April 2005.
- (6) **Sections 72, 74, 75, 83, 84, 85, 89, 100, 103, 104, 108, 112, and 113(2) and (19)** come into force on 1 April 2008.
- (7) **Section 102** comes into force on 6 January 2010.
- (8) **Section 113(11) and (21)** comes into force on 1 July 2010. 15
- (9) **Section 113(3)** comes into force on 1 April 2011.
- (10) **Section 80** comes into force on 1 July 2011.
- (11) **Section 7(1)** comes into force on 1 December 2014.
- (12) **Sections 61 and 62** come into force on 1 April 2015.
- (13) **Sections 124, 125(1), (2), (3), and (5), and 130** come into force on 1 April 2017. 20
- (14) **Sections 70, 71, 98, 113(4) and (7), and 131** come into force on 29 March 2018.
- (15) **Sections 109(2) and (3), and 126** come into force on 1 April 2018.
- (16) **Section 78** comes into force on 28 June 2018. 25
- (17) **Section 81** comes into force on 1 July 2018.
- (18) **Sections 4(3), 69, 113(8), and 147** come into force on 29 September 2018.
- (19) **Sections 73, 113(12), 119, 121, and 148** come into force on 18 March 2019.
- (20) **Sections 105, 107, 109(1), 110, 111, 113(5), (15), and (22), 114, 116, 122, 123, 125(4) and (6), 128, 129, 133, and 135** come into force on 1 April 2019. 30
- (21) **Section 142** comes into force on 1 October 2019.
- (22) **Sections 4(1), (2), and (4), 5, 6, 7(2) and (3), 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51,** 35

52, 53, 54, 55, 56, 57, 99, 101, 106, 113(6), (9), (10), and (13), 117, 118, 127, 132, and 145 come into force on 1 April 2020.

Part 1 Amendments to KiwiSaver Act 2006

- 3 KiwiSaver Act 2006** 5
This Part amends the KiwiSaver Act 2006.
- 4 Section 4 amended (Interpretation)**
- (1) In section 4(1), definition of **employer contribution**, replace paragraph (c) with:
- (c) does not include an amount that does not count as a contribution under section 68(2) 10
- (2) In section 4(1), insert, in appropriate alphabetical order:
payday has the same meaning as in section 3(1) of the Tax Administration Act 1994
- (3) In section 4(1), definition of **salary or wages**, paragraph (a)(vi), replace “section CE 2(2) or (4) of the Income Tax Act 2007 under a share purchase agreement” with “section CE 2 of the Income Tax Act 2007 under an employee share scheme”. 15
- (4) Repeal section 4(3).
- 5 Section 18 amended (Extension of opt-out period)** 20
In section 18(2), replace “3 months” with “92 days”.
- 6 Section 48 amended (Effect of employer choice of KiwiSaver scheme)**
In section 48(1)(d), replace “3 months” with “62 days”.
- 7 Section 51 amended (Completion of allocation to default KiwiSaver scheme if person does not choose his or her own KiwiSaver scheme)** 25
- (1) In section 51(1B), replace “(bb)” with “(ba)”.
- (2) In section 51(4)(a), replace “3 months” with “the 62nd day”.
- (3) In section 51(4)(b), replace “3 months” with “62 days”.
- 8 Section 56 amended (Notification of transfers and requirement to transfer funds and information)** 30
In section 56(4), replace “35 days” with “10 working days”.
- 9 Section 57 amended (Involuntary transfers)**
In section 57(5), replace “3 months instead of 35 days” with “62 days instead of 10 working days”.

10 Section 59B amended (Initial back-dated validation)

- (1) After section 59B(2)(a), insert:
- (ab) for a person referred to in section 59A(a), ending on the earlier of—
- (i) the day the mistake is discovered by the person’s KiwiSaver scheme provider: 5
 - (ii) the day the mistake is notified to the provider by the Commissioner or another person; and
- (2) In section 59B(2)(b), words before the subparagraphs, delete “(a),”.
- (3) In section 59B(2)(b)(i) and (ii), replace “3 months” with “the 92nd day” in each place. 10

11 Section 59C amended (Confirmed back-dated validation)

- (1) Replace section 59C(1) with:
- (1) This section applies if,—
- (a) during the period of initial back-dated validation under section 59B, the person described in section 59A is a person to whom the automatic enrolment rules were applied because of the mistake described in section 59A(b)(i), and— 15
 - (i) they are less than the New Zealand superannuation qualification age; and
 - (ii) they do not opt out; and 20
 - (b) the person described in section 59A is not a person to whom this Act has been applied because of a mistake described in section 59A(a).
- (2) In section 59C(2)(a), delete “(a) and”.
- (3) In section 59C(2)(b), delete “the requirements of section 6 or”.

12 Section 59D amended (No confirmed backdated validation) 25

- (1) In section 59D(1), after the words before the paragraphs, insert:
- (aa) in relation to a person described in section 59A(a), the period described in section 59B(2)(a) and **(ab)** has ended:
- (2) Replace section 59D(1)(a) with:
- (a) in relation to a person to whom the automatic enrolment rules were applied because of the mistake described in section 59A(b)(i), confirmed backdated validation under section 59C does not occur in the period of initial back-dated validation under section 59B: 30

13 New section 63B inserted (Information on salary or wages from which deductions are made) 35

After section 63A, insert:

63B Information on salary or wages from which deductions are made

An employer who makes a deduction under this subpart must specify the amount of salary or wages from which the deduction was made in their employment income information for the payment of salary or wages from which the deduction was made, if—

- (a) that amount differs from the information required under schedule 4, row 4, item d of the Tax Administration Act 1994; and
- (b) either—
 - (i) the deduction is the first that the employer has made under this subpart for the relevant employee; or
 - (ii) the amount of the difference is not the same as it was when the employer last made a deduction under this subpart for the relevant employee.

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14 Section 64 amended (Contribution rate)

(1) Replace section 64(2) and (3) with:

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(2) Despite subsection (1), the employee may choose a contribution rate of 3%, 4%, 6%, 8%, or 10% of their gross salary or wages by giving notice of the rate they choose to—

- (a) their employer; or
- (b) their KiwiSaver scheme provider; or
- (c) the Commissioner.

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(2B) If an employee gives a notice under **subsection (2)** to their provider or to the Commissioner, the notice must include, as applicable,—

- (a) for a notice given to a provider, the name and address of each employer that the employee intends the new rate will be used by;
- (b) for a notice given to the Commissioner,—
 - (i) the name and address of each employer that the employee intends the new rate will be used by; and
 - (ii) any other information that the Commissioner requires.

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(2C) A provider must, as soon as practicable after receiving a notice under **subsection (2)** in relation to an employee, give notice to the Commissioner of—

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- (a) the employee's name and address; and
- (b) the employee's tax file number; and
- (c) the contribution rate chosen by the employee; and
- (d) the name and address of each of the employee's employers that the employee intends the new rate will be used by; and
- (e) any other information that the Commissioner requires.

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- (2D) The Commissioner must, as soon as practicable after receiving a notice under **subsection (2) or (2C)** in relation to an employee and to an employer, give notice to the employer of—
- (a) the employee’s name; and
 - (b) the employee’s tax file number; and
 - (c) the contribution rate chosen by the employee.
- (3) The new rate applies to the next payment of salary or wages that is calculated after the employer receives the notice under **subsection (2) or (2D)**.
- (2) In section 64(4), replace “3 months” with “92 days”.
- 15 Section 69 replaced (Unremitted deductions made by employers)** 10
- Replace section 69 with:
- 69 Unremitted deductions made by employers**
- (1) This section applies if—
- (a) an amount is included in employment income information received by the Commissioner as a deduction made by an employer under this subpart; and
 - (b) the Commissioner is satisfied that the employer has deducted the amount under this subpart; and
 - (c) the amount of the deduction is not paid to the Commissioner by the employer on or before the date by which the employer is required to pay the deduction to the Commissioner under section RD 4 of the Income Tax Act 2007 (as applied by section 67 of this Act).
- (2) The amount of the deduction is treated, for the purposes of this Act, as having been received by the Commissioner,—
- (a) for employment income information that includes the date of the payday on which the deduction was made, on that date; or
 - (b) otherwise, on the 15th day of the month in which the deduction was made.
- 16 Section 71 amended (Time at which unexplained remittances deemed to be received)** 30
- Replace the heading to section 71 with “**Time at which unexplained remittances of deductions deemed to be received**”.
- 17 Section 73 amended (Deductions entered in and paid out of holding account)**
- (1) Replace the heading to section 73 with “**Certain unremitted deductions and employer contributions entered in and paid out of holding account**”.
- (2) Replace section 73(1) and (2) with:

- (1) This section applies to any amount that—
- (a) is included in employment income information provided under section RD 22 of the Income Tax Act 2007 as—
 - (i) a deduction made from an employee’s salary or wages under subpart 1; or 5
 - (ii) an employer contribution for an employee; and
 - (b) is not received by the Commissioner at the same time as, or before, the Commissioner receives the information described in **paragraph (a)**; and
 - (c) the Commissioner is satisfied,— 10
 - (i) for an amount included in the information as a deduction, has been deducted from salary or wages under subpart 1:
 - (ii) for an amount included in the information as an employer contribution, that the employer to whom the information relates has sufficient funds available, at the time at which that employer makes the payment of salary or wages to which the contribution relates, to be able to pay to the Commissioner. 15
- (2) As soon as practicable after receiving employment income information in relation to an amount described in **subsection (1)**, the Commissioner must enter the amount in the holding account in respect of the person, as applicable,— 20
- (a) from whose salary or wages the deduction was made; or
 - (b) whom the employer contribution is for.
- (3) In section 73(3), replace “sections 75 to 77” with “sections 75 and 77”.
- (4) In section 73(5), replace “sections 70 and 71” with “sections 70, 71, **95C, and 95D**”. 25
- (5) Repeal section 73(6).
- 18 Section 74 amended (Other contributions entered in and paid out of holding account)**
- In section 74(3), replace “sections 75 to 77” with “sections 75 and 77”.
- 19 Section 75 amended (Initial contributions stay in holding account for 3 months)** 30
- (1) In the heading to section 75, replace “**3 months**” with “**62 days**”.
 - (2) In section 75(1), words before the paragraphs, replace “3-month” with “62-day”.
 - (3) In section 75(3), replace “3 months” with “62-day period”. 35

- 20 Section 76 repealed (Employer contributions may stay in holding account until deducted contributions paid)**
Repeal section 76.
- 21 Section 78 replaced (Treatment of unremitted deductions in holding account)** 5
Replace section 78 with:
- 78 Treatment of certain unremitted deductions and employer contributions in holding account**
- (1) This section applies to an amount referred to in **section 73(1)** to the extent to which it is not paid to the Commissioner on or before the date by which the employer is required to pay the deduction or employer contribution to the Commissioner under, as applicable,— 10
- (a) section RD 4 of the Income Tax Act 2007 (as applied by section 67 of this Act); or
- (b) section 93(3) or (4), as applicable. 15
- (2) The Commissioner must pay the amount out of a Crown Bank Account, without further authority than this section.
- (3) The amount is treated, for the purposes of section 73, as having been received by the Commissioner,—
- (a) for employment income information received by the Commissioner that includes the date of the payday for the payment of salary or wages to which the deduction or employer contribution relates, on that date; or 20
- (b) otherwise, on the 15th day of the month in which the payment of salary or wages to which the deduction or employer contribution relates was made. 25
- 22 Section 81 amended (Refund by provider of amounts paid in excess of required amount of contribution)**
- (1) Replace the heading to section 81 with “**Refund by provider of amounts paid in excess of required amount of contribution or if member opts out**”.
- (2) Replace section 81(1) with: 30
- (1) A provider must refund to the Commissioner any amount of contribution paid to the provider by the Commissioner in respect of a member of that provider’s KiwiSaver scheme if—
- (a) the member opts out; or
- (b) the contribution is in excess of the amount that is required to be paid to the provider under the KiwiSaver scheme and this Act. 35
- (3) In section 81(2), replace “the amount” with “any amount”.

23 Section 85 replaced (Time when contributions treated as received for interest purposes)

Replace section 85 with:

85	Time when deductions and employer contributions treated as received for interest purposes	5
(1)	This section applies to any amount that—	
	(a) is included in employment income information provided under section RD 22 of the Income Tax Act 2007 as—	
	(i) a deduction made from an employee’s salary or wages under subpart 1; or	10
	(ii) an employer contribution for an employee; and	
	(b) the Commissioner is satisfied,—	
	(i) for an amount included in the information as a deduction, has been deducted from salary or wages under subpart 1:	
	(ii) for an amount included in the information as an employer contribution, that the employer to whom the information relates has sufficient funds available, at the time at which that employer makes the payment of salary or wages to which the contribution relates, to be able to pay to the Commissioner.	15
(2)	The amount is treated, for the purpose of the payment of interest, as received by the Commissioner, as applicable,—	20
	(a) for employment income information that includes the date of the payday on which the deduction was made, on that date if the Commissioner is satisfied that the deduction has been made on that date; or	
	(b) for employment income information that includes the date of the payday for the payment of salary or wages to which the employer contribution relates, on that date; or	25
	(c) otherwise, on the 15th day of the month in which the payment of salary or wages to which the deduction or employer contribution relates was made.	30

24 Section 88 amended (How and when interest is paid on on-payments)

In section 88, replace “3 months” with “92 days”.

25 Section 93 amended (Employer contributions paid via Commissioner)

(1)	In section 93(5), delete “paid”.	
(2)	After section 93(6), insert:	35
(7)	The employer must specify the tax rate applied to an amount of employer contribution in their employment income information for the payment of salary or wages to which the contribution relates, if—	

- (a) it is the first time the employer has included an employer contribution for the relevant employee in their employment income information; or
- (b) the tax rate applied differs from the rate used when the employer last included an employer contribution for the relevant employee in their employment income information.

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26 New sections 95B to 95D inserted

After section 95, insert:

95B Unremitted employer contributions

- (1) This section applies if—
 - (a) an amount is included in employment income information received by the Commissioner as an employer contribution for an employee; and 10
 - (b) the Commissioner is satisfied that the employer to whom the information relates has sufficient funds available, at the time at which that employer makes the payment of salary or wages to which the contribution relates, to be able to pay the amount of the employer contribution to the Commissioner; and 15
 - (c) the amount of the employer contribution is not paid to the Commissioner by that employer on or before the date by which that employer is required to pay the amount of employer contribution to the Commissioner under section 93(3) or (4), as applicable. 20
- (2) The amount of the employer contribution is treated, for the purposes of this Act, as having been received by the Commissioner,—
 - (a) for employment income information that includes the date of the payday for the payment of salary or wages to which the contribution relates, on that date; or 25
 - (b) otherwise, on the 15th day of the month in which the payment of salary or wages to which the contribution relates was made.

95C Unexplained remittances of employer contributions

- (1) This section applies if—
 - (a) the Commissioner receives an amount (the **received amount**) of employer contributions from an employer; and 30
 - (b) the employer has failed to supply to the Commissioner the particulars required by the Commissioner in relation to the received amount; and
 - (c) the Commissioner is unable to ascertain to the Commissioner's satisfaction, in sufficient time prior to the cut-off day for the making of on-payments to the providers of KiwiSaver schemes, the portion of the received amount attributable to each of the persons in relation to whom an employer contribution has been made by the employer. 35

- (2) The Commissioner may, for the purposes of this Part, hold the received amount until the amount attributable to each of the persons in relation to whom an employer contribution has been made by the employer has been established to the satisfaction of the Commissioner.
- 95D Time at which unexplained remittances of employer contributions deemed to be received** 5
- Any amount that is held by the Commissioner under **section 95C(2)** is treated, for the purposes of this Act (other than sections 84 to 91 (interest on contributions)), as not having been received by the Commissioner until the day on which the amount attributable to each of the persons in relation to whom an employer contribution has been made by the employer has been established to the satisfaction of the Commissioner. 10
- 27 Section 96 amended (What Commissioner must do with contributions received under this subpart)**
- Replace the heading to section 96 with “**What Commissioner must do with contributions received, or treated as received, under this subpart**”. 15
- 28 Section 98 repealed (Short payments by employers if not enough money remitted to Commissioner to cover all of employees’ deductions and employer contributions)**
- Repeal section 98. 20
- 29 Section 98A amended (Quantifying short payments for the purposes of Income Tax Act 2007 and Tax Administration Act 1994)**
- (1) Replace the heading to section 98A with “**Short payments of employer contributions**”.
- (2) In section 98A, words before the paragraphs, delete “the Income Tax Act 2007 and”. 25
- (3) In section 98A(a), replace “treated as received by the Commissioner under section 98(2) of this Act” with “received by the Commissioner”.
- 30 Section 99 repealed (Short payments if not enough employer contribution remitted to cover all employees)** 30
- Repeal section 99.
- 31 Section 101 amended (Refunds of employer contribution by provider)**
- After section 101(1), insert:
- (1B) If an employee opts out after an employer contribution is paid to a provider by the Commissioner, the provider must refund the employer contribution to the Commissioner. 35

32 New section 101AA inserted (What Commissioner must do with employer contribution refunded by provider)

After section 101, insert:

101AA What Commissioner must do with employer contribution refunded by provider

(1) This section applies if an amount of employer contribution is refunded to the Commissioner by a provider under **section 101(1B)**.

(2) The Commissioner must—

(a) refund the amount to a Crown Bank Account, if—

(i) the amount has been paid out of a Crown Bank Account under **section 78**; and

(ii) the amount has not been paid to the Commissioner by the employer to whom the employer contribution relates; or

(b) otherwise, refund the amount to the employer who made the employer contribution.

33 Section 104 amended (Granting of savings suspension)

(1) In section 104(2), replace “3 months” with “92 days”.

(2) In section 104(3)(a), replace “3 months” with “92 days”.

34 Section 108 amended (Savings suspensions have 3-month minimum life)

(1) In the heading to section 108, replace “3-month” with “92-day”.

(2) In section 108(2), replace “3 months” with “92 days”.

35 Section 112B amended (Non-deduction notices)

In section 112B(3), replace “3 months” with “92 days” in each place.

36 New section 221B inserted (Commissioner may make certain assumptions)

After section 221, insert:

221B Commissioner may make certain assumptions

The Commissioner is entitled, in the absence of information to the contrary, to assume the following:

(a) for the purposes of **sections 69(1)(b), 73(1)(c), and 85(1)(b)**, that an amount included in employment income information has been deducted from salary or wages:

(b) for the purposes of **section 85(2)(a)**, if employment income information includes the date of the payday on which an amount was deducted from salary or wages, that the amount was deducted from salary or wages on that date:

(c)	for the purposes of sections 73(1)(c), 85(1)(b), and 95B(1)(b) , that an employer to whom an amount included in employment income information relates has sufficient funds available at the relevant time to be able to pay the amount to the Commissioner.	
37	Section 226 amended (Crown contribution: kick-start contributions)	5
(1)	In section 226(1B), replace “3-month” with “62-day”.	
(2)	In section 226(1C), replace “3 months” with “62 days”.	
38	Schedule 1 amended (KiwiSaver scheme rules)	
	In schedule 1, replace clause 8(2) with:	
(2)	An amount of contribution that is deducted from salary or wages under this Act is treated, for the purposes of subclause (1)(a), as received by the Commissioner,—	10
(a)	for employment income information received by the Commissioner that includes the date of the payday on which the deduction was made, on that date; or	15
(b)	otherwise, on the 15th day of the month in which the deduction was made.	

Part 2

Amendments to Student Loan Scheme Act 2011

39	Student Loan Scheme Act 2011	20
	This Part amends the Student Loan Scheme Act 2011.	
40	Section 22 amended (Meaning of New Zealand-based)	
	In section 22(1)(a) and (b)(ii), replace “section 25(1)” with “section 25”.	
41	Section 23 amended (Meaning of overseas-based)	
	In section 23(1)(c)(i), replace “section 25(1)” with “section 25”.	25
42	Section 25 amended (Commissioner may treat certain borrowers as being physically in New Zealand)	
	Replace section 25(2) with:	
(2)	Subsection (1)(b) to (j) and subsection (3) are subject to the conditions set out in, as applicable, clauses 2 to 11 of Schedule 1.	30
(3)	On application, the Commissioner may, for the purposes of sections 22 to 24 and if the Commissioner considers that it is fair and reasonable to do so, treat a borrower as being physically in New Zealand if the Commissioner is satisfied that the borrower—	
(a)	has a serious illness for the period to which the application relates; and	35

- (b) is unable to meet their overseas-based repayment obligation for that period as a result of that serious illness.
- (4) In **subsection (3)**, **serious illness** means an injury, illness, or disability that—
- (a) results in the borrower being unable to engage in paid work (other than work for which the person is paid a token payment or a very low wage); or
- (b) poses a serious and imminent risk of death.
- 43 Section 26 amended (Method of making application and provision of evidence and information)** 10
- (1) In section 26, replace “section 25(1)” with “section 25”.
- (2) In section 26(b), after “Schedule 1,”, insert “or **section 25(3)**”.
- 44 Section 27 amended (Commissioner must notify borrower and specify period or conditions when granting application)**
- In section 27, replace “section 25(1)” with “section 25”.
- 45 New section 62A inserted (Commissioner may notify employers when loan balance close to zero)** 15
- After section 62, insert:
- 62A Commissioner may notify employers when loan balance close to zero**
- (1) The purpose of this section is to reduce the likelihood that a deduction under this subpart will result in a borrower’s consolidated loan balance falling below zero. 20
- (2) When a borrower’s consolidated loan balance is close to zero, the Commissioner may—
- (a) notify 1 or more of the borrower’s employers of the loan balance; and
- (b) require the employer, or those employers, to reduce the standard deduction that would otherwise be made on the relevant payday or paydays to the amount needed to meet the purpose of this section; and 25
- (c) require the employer, or those employers, then to stop making deductions under this subpart.
- (3) The Commissioner must give a copy of the notification to the borrower if the Commissioner has a valid address for the borrower. 30
- (4) The notification revokes, for the payday or paydays, all other deduction rate certificates previously issued to the employer or those employers in relation to the borrower under this subpart.
- 46 Section 106 amended (Meaning of repayment holiday)** 35
- (1) In the heading to section 106, replace “**repayment holiday**” with “**temporary repayment suspension**”.

- (2) In section 106, replace “**repayment holiday**” with “**temporary repayment suspension**”.
- 47 Cross-heading and section 107 amended**
- (1) In the cross-heading above section 107, replace “*Repayment holiday from*” with “*Temporary repayment suspension of*”. 5
- (2) In the heading to section 107, replace “**repayment holidays**” with “**temporary repayment suspensions**”.
- (3) In section 107(1), replace “repayment holiday” with “temporary repayment suspension”.
- 48 Section 107B amended (Grant of repayment holiday)** 10
- (1) In the heading to section 107B, replace “**repayment holiday**” with “**temporary repayment suspension**”.
- (2) In section 107B(1), (2), (3)(c)(ii)(B), and (3)(d), replace “repayment holiday” with “temporary repayment suspension” in each place.
- (3) In section 107B(3)(a), (b), and (c), replace “repayment holidays” with “temporary repayment suspensions” in each place. 15
- 49 Section 108 amended (Duration of repayment holiday)**
- (1) In the heading to section 108, replace “**repayment holiday**” with “**temporary repayment suspension**”.
- (2) In section 108(1), (2), and (3), replace “repayment holiday” with “temporary repayment suspension” in each place. 20
- 50 Section 108A amended (Borrowers who have had, or are having, repayment holidays under Student Loan Scheme Act 1992)**
- (1) In the heading to section 108A, replace “**repayment holidays**” with “**temporary repayment suspensions**”. 25
- (2) In section 108A(1), replace “repayment holidays” with “temporary repayment suspensions”.
- (3) In section 108A(1), (2), and (3), replace “repayment holiday” with “temporary repayment suspension” in each place.
- 51 Section 110 amended (Repayment obligations of overseas-based borrowers)** 30
- In section 110(1)(a), replace “repayment holiday” with “temporary repayment suspension”.

- 52 Section 115 amended (Repayment obligations of borrowers who are overseas-based for part of tax year)**
In section 115(1)(c), replace “repayment holiday” with “temporary repayment suspension”.
- 53 Section 176 amended (Challenge to decision concerning treating borrowers as being physically in New Zealand)** 5
In section 176(a), replace “section 25(1)” with “section 25”.
- 54 Section 182A amended (Challenge to decision concerning repayment holiday)**
(1) In the heading to section 182A, replace “**repayment holiday**” with “**temporary repayment suspension**”. 10
(2) In section 182A, replace “repayment holiday” with “temporary repayment suspension”.
- 55 Section 220 amended (Application, savings, and transitional provisions)**
In section 220(2), table, after the item relating to the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2016, insert: 15
- | | |
|--|---------------|
| Provisions relating to Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2019 | Part 5 |
|--|---------------|
- 56 Schedule 1 amended (Conditions to borrower being treated as being physically in New Zealand)**
In Schedule 1, clause 11(1), after “section 25(1)”, insert “or under **section 25(3)**”. 20
- 57 Schedule 6 amended (Application, savings, and transitional provisions)**
(1) In Schedule 6, replace the heading to clause 2 with “**Student Loan Scheme Act 1992 applies to tax years prior to 1 April 2012 in limited circumstances**”. 25
(2) In Schedule 6, clause 2(1), replace “continues in full effect to the extent necessary for the proper administration and completion of all matters under that Act” with “continues in effect only to the extent necessary for the proper administration and completion of the matters referred to in **clauses 24 to 28**”.
(3) In Schedule 6, clause 2(2) and (3), replace “a matter under the Student Loan Scheme Act 1992” with “a matter referred to in subclause (1)”. 30
(4) In Schedule 6, after Part 4, insert the **Part 5** set out in the Schedule of this Act.

Part 3
Amendments to other enactments

Income Tax Act 2007

58	Income Tax Act 2007 Sections 59 to 114 amend the Income Tax Act 2007.	5
59	Section BB 2 amended (Main obligations) (1) In section BB 2(5), replace “another ancillary tax” with “income tax or ancillary tax”. (2) In section BB 2, list of defined terms, insert “income tax”.	
60	Section CB 16A amended (Main home exclusion for disposal within 5 years) In section CB 16A(1), replace “if the land has been used predominantly, for most of the time the person owns the land, for a dwelling” with “if, for most of the period starting with the relevant date described in section CB 6A(1) to (4B) and ending with the bright-line date for the residential land, the land has been used predominantly for a dwelling”.	10 15
61	Section CC 1 amended (Land) Repeal section CC 1(2C).	
62	Section CC 1B amended (Consideration relating to grant, renewal, extension, or transfer of leasehold estate or licence) (1) In section CC 1B(1)(a), words before the subparagraphs, replace “is” with “is—”. (2) After section CC 1B(5), insert: <i>Exception for payment as consideration for grant of permanent easement</i>	20
(6)	The amount is not income of the payee if— (a) the payee is the owner of a fee simple estate in land; and (b) the amount— (i) is consideration for the grant, for the duration of the estate, of an easement over the land; and (ii) is not a periodic payment.	25 30
63	Section CD 4 amended (Transfers of value generally) (1) In the heading to section CD 4, replace “ Transfers of value ” with “ Transfers of company value ”. (2) In the heading to section CD 4(1), replace “ <i>Transfers of value</i> ” with “ <i>Transfers of company value</i> ”.	35

- (3) In section CD 4(1), replace “transfer of value” with “transfer of company value”.
- (4) In section CD 4, list of defined terms, replace “transfer of value” with “transfer of company value”.
- 64 Section CD 5 amended (What is a transfer of value?)** 5
- (1) In the heading to section CD 5, replace “**transfer of value**” with “**transfer of company value**”.
- (2) In section CD 5(1), replace “**transfer of value**” with “**transfer of company value**”.
- (3) In section CD 5(3), replace “transfer of value” with “transfer of company value” 10
- (4) In section CD 5, list of defined terms, replace “transfer of value” with “transfer of company value”.
- 65 Section CD 6 amended (When is a transfer caused by a shareholding relationship)** 15
- (1) In section CD 6(1), replace “transfer of value” with “transfer of company value”.
- (2) In section CD 6(3), replace “transfer of value” with “transfer of company value”.
- (3) In section CD 6(4), replace “transfer of value” with “transfer of company value” 20
- (4) In section CD 6, list of defined terms, replace “transfer of value” with “transfer of company value”.
- 66 Section CD 27 amended (Property made available intra-group)**
- (1) In section CD 27(1)(a), replace “transfer of value” with “transfer of company value” 25
- (2) In section CD 27(2),—
- (a) words before the paragraphs, replace “transfer of value” with “transfer of company value”:
- (b) paragraph (c), replace “transfers of value” with “transfers of company value” 30
- (3) In section CD 27(3),—
- (a) heading, replace “*transfers of value*” with “*transfers of company value*”:
- (b) words before the paragraphs, replace “transfer of value” with “transfer of company value” 35
- (c) paragraph (a)(ii), replace “transfer of value” with “transfer of company value”.

- (4) In section CD 27(4), replace “transfer of value” with “transfer of company value”.
- (5) In section CD 27, list of defined terms, replace “transfer of value” with “transfer of company value”.
- 67 Section CD 29C amended (Transfers to shareholders by ASX-listed Australian company of shares in subsidiary)** 5
- (1) In section CD 29C, replace “transfer of value” with “transfer of company value” in the first place it appears.
- (2) In section CD 29C, list of defined terms, replace “transfer of value” with “transfer of company value”. 10
- 68 Section CD 38 amended (General calculation rule for transfers of value)**
- (1) In the heading to section CD 38, replace “**transfers of value**” with “**transfers of company value**”.
- (2) In section CD 38(1), replace “transfer of value” with “transfer of company value”. 15
- (3) In section CD 38, list of defined terms, replace “transfer of value” with “transfer of company value”.
- 69 New section CE 7CB inserted (Meaning of market value)**
- After section CE 7C, insert:
- CE 7CB Meaning of market value** 20
- Market value**, for an employee share scheme—
- (a) has the same meaning as in section YA 1 (Definitions), definition of **market value**, paragraphs (a) and (b); and
- (b) includes, for a share or option quoted on the official list of a recognised exchange, at the time, an amount equal to the 5-day volume weighted average price or any other method that is accepted by the Commissioner or is comparable to the 5-day volume weighted average price, for such shares or options. 25
- 70 Section CW 26C amended (Meaning of exempt ESS)**
- (1) In section CW 26C(7)(a), replace “disposed of” with “disposed of other than as part of a takeover or similar share reorganisation,”. 30
- (2) In section CW 26C(7)(b), replace “disposed of” with “disposed of other than as part of a takeover or similar share reorganisation,”.
- (3) Replace section CW 26C(8), other than the heading, with:
- (8) The arrangement must provide, when the period of restriction provided by subsection (7) ends, 1 of the following: 35

- (a) that the shares are transferred to the employee or, if the employee chooses, that the shares are purchased for the lesser of—
- (i) the cost of the shares to the employee:
 - (ii) the market value of the shares on the date the period of restriction ends; or
- (b) if the employee is currently employed, the provision described in **paragraph (a)**, and if the employee is not currently employed, that the shares are purchased for the lesser of—
- (i) the cost of the shares to the employee:
 - (ii) the market value of the shares on the date the period of restriction ends.

71 New section CW 26DB inserted (Meaning of market value)

After section CW 26D, insert:

CW 26DB Meaning of market value

For the purposes of section CW 26C, **market value**—

- (a) has the same meaning as in section YA 1 (Definitions), definition of **market value**, paragraphs (a) and (b); and
- (b) includes, for a share or option quoted on the official list of a recognised exchange, at the time, an amount equal to the 5-day volume weighted average price or any other method that is accepted by the Commissioner or is comparable to the 5-day volume weighted average price, for such shares or options.

72 Section CW 38 amended (Public authorities)

- (1) Replace the heading to section CW 38(1) with “*Exempt income: sinking funds*”.
- (2) Replace the heading to section CW 38(2) with “*Exempt income: other income*”.

73 Section CW 38B amended (Public purpose Crown-controlled companies)

- (1) Replace the heading to section CW 38B(1) with “*Exempt income: sinking funds*”.
- (2) Replace the heading to section CW 38B(2) with “*Exempt income: other income*”.

74 Section CW 39 amended (Local authorities)

- (1) Replace the heading to section CW 39(1) with “*Exempt income: sinking funds*”.
- (2) Replace the heading to section CW 39(2) with “*Exempt income: other income*”.

- 75 Section CW 56 amended (Non-resident aircraft operators)**
- (1) In section CW 56(1), replace “air transport from New Zealand is exempt income” with “air transport from New Zealand, or from air transport to New Zealand, is exempt income”.
- (2) In section CW 56(3), definition of **air transport from New Zealand**, replace paragraph (b) with: 5
- (b) includes a flight by the aircraft between the airport in New Zealand where the emplaning or embarking occurred and another airport in New Zealand at which the aircraft calls before leaving New Zealand on the international flight for which the emplaning or embarking occurred 10
- (3) In section CW 56(3), insert, in appropriate alphabetical order:
- air transport to New Zealand—**
- (a) means the carriage to an airport in New Zealand by an aircraft of cargo, mail, or passengers emplaned or embarked on the aircraft at an airport in a country or territory outside New Zealand; and 15
- (b) includes a flight by the aircraft to the airport in New Zealand for carriage to which the emplaning or embarking occurred from another airport in New Zealand at which the aircraft calls en route
- (4) In section CW 56, list of defined terms, insert “air transport to New Zealand”.
- (5) **Subsections (1), (2), and (3)** apply for the 2008–09 and later income years. 20
- 76 Section CX 17 amended (Benefits provided to employees who are shareholders or investors)**
- In section CX 17(4)(a), replace “Transfers of value” with “Transfers of company value”.
- 77 Section CX 22 amended (Benefits to non-executive directors)** 25
- (1) In section CX 22, replace “transfer of value” with “transfer of company value”.
- (2) In section CX 22, list of defined terms, replace “transfer of value” with “transfer of company value”.
- 78 Section EE 47 amended (Events for purposes of section EE 44)**
- Replace the heading to section EE 47(2B) with “*Event timing for person’s income becoming tax exempt*”. 30
- 79 Section FC 1 amended (Disposals to which this subpart applies)**
- (1) In section FC 1(1)(d), replace “transfer of value” with “transfer of company value”.
- (2) In section FC 1, list of defined terms, replace “transfer of value” with “transfer of company value”. 35

- 80 Section FE 5 amended (Thresholds for application of interest apportionment rules)**
- In section FE 5(1C)(c), replace “interest:” with “interest; and”.
- 81 Section FE 6 amended (Apportionment of interest by excess debt entity)**
- (1) In section FE 6(3)(ac)(i), after “for the excess debt entity”, insert “or that is related-party debt for which the lender is not a New Zealand resident and does not carry on a business through a fixed establishment in New Zealand”. 5
- (2) In section FE 6, list of defined terms, insert “fixed establishment”, “New Zealand resident”, and “related-party debt”. 10
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2018. 10
- 82 Section FM 8 amended (Transactions between group companies: income)**
- In section FM 8(3)(c), replace “Transfers of value” with “Transfers of company value”.
- 83 Section GB 27 amended (Attribution rule for income from personal services)** 15
- (1) Replace section GB 27(4), other than the heading, with:
- (4) If a company that is required to attribute an amount to the working person under this section pays a dividend, sections HA 14 to HA 19 (which relate to qualifying companies) are treated as applying to the company and the dividend if— 20
- (a) the dividend is paid—
- (i) by the company to the working person no earlier than the end of 6 months after the end of the income year; and
- (ii) from income derived in the income year; and
- (b) the company— 25
- (i) has no net income for the tax year in which it pays the dividend other than income attributed under this section, ignoring interest income that is incidental to the company’s business; and
- (ii) is not a qualifying company; and
- (iii) chooses to have the dividend treated as if it were paid by a qualifying company; and 30
- (iv) keeps sufficient records to enable the Commissioner to verify the matters referred to in **paragraph (a)**.
- (2) In section GB 27(5), replace “subsection (4)(c)” with “**subsection (4)(b)(iii)**”. 35
- (3) In section GB 27, list of defined terms, insert “Commissioner”.

- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years. However, **subsections (1) and (2)** do not apply to a person in relation to a tax position taken by the person—
- (a) in the period that starts on 1 April 2008 and ends on the date on which the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill is introduced; and
 - (b) in relation to a dividend; and
 - (c) relying on section GB 27(4) and (5) as those subsections were before the amendments made by **subsections (1) and (2)**.
- 84 Section GB 29 amended (Attribution rule: calculation)** 10
- (1) After section GB 29(1), insert:
- Associated entity's net income calculated before attribution*
- (1B) For the purposes of calculating the associated entity's net income for the corresponding tax year in the application of subsection (1), section DC 8 (Attribution of personal services) is ignored. 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 85 Section GC 10 amended (Compensating arrangement: person receiving more than arm's length amount)**
- (1) In section GC 10(1)(b)(ii), replace “arrangement:” with “arrangement; and”.
 - (2) In section GC 10(1)(c), replace “amount:” with “amount; and”. 20
- 86 Section HA 13 amended (Qualifying companies' distributions)**
- (1) In section HA 13, replace “transfer of value” with “transfer of company value”.
 - (2) In section HA 13, list of defined terms, replace “transfer of value” with “transfer of company value”.
- 87 Section HC 2 amended (Obligations of joint trustees for calculating income and providing returns)** 25
- (1) After section HC 2(2), insert:
- Residence*
- (3) The notional single person referred to in subsection (2) is—
- (a) a New Zealand resident when 1 or more of the trustees is resident in New Zealand: 30
 - (b) a non-resident when none of the trustees is resident in New Zealand.
- (2) In section HC 2, list of defined terms, insert “New Zealand resident”, “non-resident”, and “resident in New Zealand”.
- (3) **Subsection (1)** applies for income years beginning after the date on which this Act receives the Royal assent. 35

88 Section HC 4 amended (Corpus of trust)

Replace section HC 4(1) with:

Meaning of corpus

- (1) In the trust rules, **corpus** for a trust means the settlement value under **subsection (1B)** of property settled on the trust that— 5
- (a) is capable of being distributed by the trustee of the trust; and
 - (b) is not excluded by subsection (2).

Settlement value of settled property

- (1B) For property meeting the requirements of **subsection (1)(a) and (b)**, the value under this subsection (the **settlement value**) of the property settled on a trust is— 10
- (a) the market value of the property determined at the time of the settlement of the property, for a single settlement on the trust; or
 - (b) the total of the amounts determined under **paragraph (a)** for each settlement of property, if the trustee treats the settlements in the way permitted by section HC 3. 15

89 Section HC 7 amended (Trustee income)

- (1) Replace section HC 7(3), other than the heading, with:
- (3) The trustee of a trust has, from a property settlement that is referred to in section HC 4(3) to (5) and made in an income year, an amount of trustee income for the income year equal to the market value of the property settlement reduced by the amount of the market value that the trustee treats as beneficiary income, or as a taxable distribution made by the trustee, in the income year. 20
- (2) In section HC 7, list of defined terms, insert “taxable distribution”.
- (3) **Subsection (1)** applies for the 2008–09 and later income years. 25

90 Section HC 10 amended (Complying trusts)

- (1) Replace section HC 10(1)(ab) with:
- (ab) the requirements of paragraph (a) are not met and— 30
- (i) a person makes an election meeting the requirements of section HC 30(2) and the requirements of subsection (2) are met; or
 - (ii) a person makes an election meeting the requirements of section HC 33(1) and for all income years beginning on or after the date on which the election applies to the trust and before the time of distribution, the trustee’s tax obligations relating to the trustee’s income tax liability for the trustee income are satisfied; or 35
- (2) **Subsection (1)** applies for a trust and an election under section HC 33(1) made after the date on which this Act receives the Royal assent.

91 Section HC 15 amended (Taxable distributions from non-complying and foreign trusts)

- (1) After section HC 15(5B), insert:
- Source of income from capital gain*
- (5C) The source of a capital gain that is included in a taxable distribution is determined for the trustee under section YD 4 (Classes of income treated as having New Zealand source) as if the capital gain were an amount of income. 5
- (2) In section HC 15(6), replace “disposing of property at less than market value or providing” with “providing financial assistance or”.
- (3) In section HC 15, list of defined terms, insert “financial assistance” and “income”. 10

92 Section HC 16 amended (Ordering rule for distributions from non-complying and foreign trusts)

- (1) Before section HC 16(2)(a), insert:
- (aa) first, an amount derived by the trustee that is beneficiary income of the beneficiary in the previous income year: 15
- (2) In section HC 16(2)(a), replace “first” with “second”.
- (3) In section HC 16(2)(b), replace “second” with “third”.
- (4) In section HC 16(2)(c), replace “third” with “fourth”.
- (5) In section HC 16(2)(d), replace “fourth” with “fifth”. 20
- (6) In section HC 16(5), words before the paragraphs, replace “not being a taxable distribution” with “not being beneficiary income or a taxable distribution”.
- (7) Repeal section HC 16(5)(b).
- (8) **Subsections (1) to (7)** apply for income years beginning after the date on which this Act receives the Royal assent. 25

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

- (1) In section HC 26(1), words before the paragraphs, after “resident trustee derives”, insert “, other than beneficiary income,”.
- (2) In section HC 26(1)(a), after “transitional resident”, insert “or, if no settlor exists in the income year, the last surviving settlor was a non-resident when that settlor ceased to exist”. 30
- (3) In section HC 26(1)(d)(iv), replace “year.” with “year; and”.
- (4) After section HC 26(1)(d), insert:
- (e) the amount is not beneficiary income derived by a minor that is being treated as if it were trustee income. 35
- (5) In section HC 26, list of defined terms, insert “beneficiary income”, “minor”, “non-resident”, and “trustee income”.

94 Section HC 27 amended (Who is a settlor?)

- (1) Replace section HC 27(4), other than the heading, with:
- (4) A transfer, or other action or omission, referred to in subsection (2) (the **act**) is performed by a person if—
- (a) the person directly or indirectly controls or influences the act: 5
 - (b) the act involves an associated person:
 - (c) the act is effected by means of 1 or a number of arrangements meeting the requirements of **paragraph (a) or (b)** for an act.
- (2) In section HC 27, list of defined terms, insert “arrangement” and “associated”.

95 Section HC 28 amended (Activities treated as those of settlor) 10

- (1) Replace section HC 28(3), other than the heading, with:
- (3) A person is treated as a settlor of a trust if a controlled foreign company settles an amount on a trust and the person has a control interest of 10% or more in the CFC—
- (a) at the time of the settlement: 15
 - (b) for the accounting period of the CFC in which the settlement occurs.
- (2) Replace section HC 28(4)(c) with:
- (c) the person would be treated as having a control interest of 10% or more in the company, if the company were a foreign company,—
 - (i) at the time of the settlement: 20
 - (ii) under section EX 1(3), for the accounting period of the company in which the settlement occurs.
- (3) In section HC 28, list of defined terms, insert “accounting period” and “controlled foreign company”.

96 New section HC 31B inserted (Value transfer by deferral, or non-exercise, of right to demand payment) 25

After section HC 31, insert:

HC 31B Value transfer by deferral, or non-exercise, of right to demand payment

When this section applies

- (1) This section applies when a person (the **creditor**) provides financial assistance to or for the benefit of another person with an obligation (the **debtor obligation**) that the other person could meet, if performance of the obligation were demanded immediately after the time of the provision, by paying an amount (the **debt amount**) and—
- (a) the debtor obligation is not forgiven; and 35

- (b) the right of the creditor to demand payment of the debt amount under the debtor obligation, or a guarantee of the debtor obligation, is not exercised or is deferred; and
- (c) the non-exercise, or the deferral, results in a transfer of value by the creditor; and 5
- (d) the transfer of value meets the requirements of—
 - (i) section HC 14 for the transfer of value to be a distribution made by a trustee;
 - (ii) section HC 27(2)(b) for the creditor to be a settlor of a trust.

Valuation 10

- (2) The value transferred by the creditor during a period for which the debtor obligation exists is the amount calculated for the debt amount, treated as a loan, using the formula—

prescribed interest – interest paid.

Definition of items in formula 15

- (3) In the formula—
 - (a) **prescribed interest** is the amount of interest that would have accrued on the debt amount that is unpaid during the period if the interest had been calculated on the daily balance of the loan at the prescribed rate of interest: 20
 - (b) **interest paid** is the total of—
 - (i) the amount of interest that accrues on the debt amount during the period:
 - (ii) the amount that would have accrued as interest on the debt amount during the period if the amount had not been included in a taxable distribution to the debtor: 25
 - (iii) for a period that includes the date on which the Taxation (Kiwi-Saver, Student Loans, and Remedial Matters) Act **2019** receives the Royal assent (the **transition date**), the amount that is prescribed interest for the part of the period that precedes the transition date. 30

Defined in this Act: distribution, interest, prescribed rate of interest, settlor, transfer of value, trustee

97 Section HC 33 amended (Choosing to satisfy income tax liability of trustee)

- (1) In section HC 33(1B), words before the paragraphs, delete “ignoring the requirement in subsection (4),”. 35
- (2) Replace section HC 33(1B)(b) and (c) with:
 - (b) the trust ceases to meet the requirement in section HC 10(1)(a)(i) in an income year (the **non-complying year**); and

- (c) the trustee meets the tax obligations relating to the income tax liability referred to in subsection (2), for the non-complying year and notifies the Commissioner that the trust is a complying trust for the non-complying year,—
- (i) for a trustee that is required to file a return of income for the non-complying year, in the return of income and by the due date for the return of income: 5
- (ii) for a trustee that is not required to file a return of income for the non-complying year, before the end of the income year following the non-complying year. 10
- (3) After section HC 33(1B), insert:
- Status of person making election and settlor*
- (1C) From when an election by a person under subsection (1) applies under subsection (3), the tax obligations of the person arising from the trust are determined on the basis that— 15
- (a) the trustee of the trust is a New Zealand resident; and
- (b) the trust has a settlor who is a New Zealand resident.
- (4) Replace section HC 33(2)(a) with:
- (a) must satisfy the tax obligations of the trustee relating to the income tax liability of the trustee; and 20
- (5) Replace section HC 33(3)(a) and (b) with:
- (a) for an election to which section HC 30 applies, on and after the date on which the election is made; or
- (b) for an election to which section HC 30 does not apply and that does not meet the requirements of **subsection (1B)**, on and after whichever the person making the election chooses of— 25
- (i) the beginning of the income year in which the election is made;
- (ii) the date of the election; or
- (c) for an election to which section HC 30 does not apply and that meets the requirements of **subsection (1B)**, on and after the beginning of the non-complying year referred to in **subsection (1B)(b)**. 30
- (6) After section HC 33(3), insert:
- Period of election under subsection (1B)*
- (3B) An election meeting the requirements of **subsection (1B)** is effective until the beginning of an income year for which the trustee does not— 35
- (a) meet the tax obligations of the trustee relating to the income tax liability of the trustee for the income year:

- (b) notify the Commissioner that the trust is a complying trust for the income year in the way that would be required by **subsection (1B)(c)** for a non-complying year.
- (7) In section HC 33(4), replace “The person must notify the Commissioner of an election under subsection (1)” with “If the trustee of a trust is required to file a return of income for an income year, a person making an election under subsection (1) must notify the Commissioner of the election”. 5
- (8) After section HC 33(4), insert:
- Effect on distributions*
- (5) For a trust (the **distributing trust**) and an election for which the tax treatment of the trust is not given by section HC 30(3) and that applies from a date (the **transition date**) in an income year (the **transition year**),— 10
- (a) a distribution from income derived by the trustee before the transition date is treated as being a distribution by a trust having the status, of foreign trust or non-complying trust or complying trust, that the distributing trust has when the income is derived: 15
- (b) a distribution from income derived on or after the transition date is treated as being made by the trustee as trustee of—
- (i) a complying trust, if the requirements of section HC 10(1)(a) are met for the trustee income derived on or after the transition date: 20
- (ii) a non-complying trust, if **subparagraph (i)** does not apply:
- (c) for the purposes of **paragraphs (a) and (b)**, the amount derived before the transition date by the trustee in the transition year is—
- (i) the amount derived before the transition date in the transition year, if the person making the election does not choose to rely on **subparagraph (ii)**; or 25
- (ii) a proportion of the income derived in the transition year equal to the proportion of the days in the transition year that are before the transition date.
- (9) In section HC 33, list of defined terms, insert “foreign trust”, “income”, and “non-complying trust”. 30
- 98 Section HM 3 amended (Foreign PIE equivalents)**
- In section HM 3(1)(b)(ii), replace “scheme.” with “scheme; and”.
- 99 Section HM 60 amended (Notified investor rates)**
- Replace section HM 60(5) and (6) with: 35
- When no rate notified*
- (5) If an investor does not have a notified investor rate for a multi-rate PIE, the rate applying for a period is 28%.

<i>Notification of rate by Commissioner</i>	
(6)	The Commissioner may notify a multi-rate PIE to apply a rate provided by the Commissioner for an investor in the PIE if—
(a)	the Commissioner considers that the investor’s notified investor rate for the PIE is inconsistent with the investor’s prescribed investor rate; or
(b)	the investor does not have a notified investor rate for the PIE.
	5
<i>Subsequent notification of rate by investor</i>	
(7)	If the Commissioner notifies a multi-rate PIE under subsection (6) , in relation to an investor in the PIE, and the investor subsequently notifies the PIE of a different investor rate, the PIE must apply the rate notified by the investor.
	10
100	Section IQ 4 amended (Group companies using attributed CFC net losses)
(1)	In section IQ 4(2)(c), replace “loss):” with “loss); and”.
(2)	Subsection (1) applies for the 2008–09 and later income years.
101	Section LA 5 amended (Treatment of remaining credits)
(1)	Replace section LA 5(4B), other than the heading, with:
	15
(4B)	A person’s research and development tax credit is used by—
(a)	first, the Commissioner refunding the tax credit up to the maximum limit of the person’s payroll tax-based cap, by treating it as a refundable tax credit and applying section LA 6(2). There is no maximum limit for refunding the tax credit, if and to the extent to which—
	20
(i)	the person is a levy body researcher:
(ii)	the tax credit is for eligible research and development expenditure on approved research providers:
(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.
	25
(2)	After section LA 5(5), insert:
<i>Meaning of payroll tax-based cap</i>	
(5B)	For the purposes of this section, payroll tax-based cap is the amount calculated for the tax year using the formula—
	30
	own payroll + other wholly-owned payroll + other controller payroll – double-dip allocation.
<i>Definition of items in formula</i>	
(5C)	In the formula,—
(a)	own payroll is the total amount of PAYE, ESCT, and FBT that the person (person A) pays for the tax year to the extent to which the total amount has not been allocated under paragraph (b) or (c) to another
	35

	person for the purposes of calculating their payroll tax-based cap for the tax year:	
(b)	other wholly-owned payroll is zero or, if the person is a company and is a member of a wholly-owned group of companies, is the amount of PAYE, ESCT, and FBT that the other members pay for the tax year and that is allocated to person A for the purposes of calculating person A’s payroll tax-based cap for the tax year:	5
(c)	other controller payroll is zero or, if person A is a company, is the total amount of PAYE, ESCT, and FBT that companies that directly or indirectly control person A pay for the tax year and that is allocated to person A for the purposes of calculating their payroll tax-based cap for the tax year:	10
(d)	double-dip allocation means the total amount allocated to person A under paragraphs (b) and (c) that has been allocated to a person other than person A for the purposes of calculating the other person’s payroll tax-based cap for the tax year.	15
(3)	In section LA 5, list of defined terms,—	
(a)	insert “approved research provider”, “eligible research and development expenditure”, “ESCT”, “FBT”, “levy body researcher”, “PAYE”, and “payroll tax-based cap”:	20
(b)	delete “associated person”, “exempt income”, and “listed company”.	
(4)	Subsections (1) and (2) apply for the 2020–21 and later income years.	
102	Section LD 6 amended (When donation is paid to ineligible recipient)	
	In section LD 6, list of defined terms, insert “PAYE intermediary”.	
103	Section LJ 2 amended (Tax credits for foreign income tax)	25
(1)	Replace the heading to section LJ 2(7) with “ <i>Tax credit: attributing interest in FIF</i> ”.	
(2)	After section LJ 2(7), insert:	
	<i>When subsections (9) and (10) apply</i>	
(8)	Subsections (9) and (10) apply when a person (the associated entity) resident in New Zealand derives an amount (the attributed amount) that—	30
(a)	is assessable income of the associated entity that is sourced from outside New Zealand; and	
(b)	is attributed under sections GB 27 to GB 29 (which relate to the attribution rule for income from personal services) in an income year to another person (the working person) who is resident in New Zealand when the associated entity derives the attributed amount.	35

- Tax credit: attributed income from personal services*
- (9) Despite section LJ 1(2)(a), the working person has a tax credit under this subpart for foreign income tax paid on the attributed amount by the associated entity or withheld in relation to the attributed amount. The calculation of the maximum amount of the tax credit is made under section LJ 5(2), modified so that the item **segment** in the formula is the attributed amount for the income year. 5
- No tax credit for associated entity*
- (10) The associated entity does not have a tax credit under this subpart for foreign income tax paid on or withheld in relation to the attributed amount. 10
- (3) In section LJ 2, list of defined terms, insert “income year” and “resident in New Zealand”.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 104 Section LO 2 amended (Beneficiaries of trusts)**
- (1) In section LO 2(3)(a), replace “taxable Maori authority distributions” with “distributions”. 15
- (2) **Subsection (1)** applies for a person and a tax year beginning on or after 1 April 2008, except for a tax year for which the person chooses to rely on a tax position, taken before the day on which this Act receives the Royal assent, that is inconsistent with **subsection (1)**. 20
- 105 Section LY 1 amended (Research and development tax credits)**
- (1) In section LY 1(4), delete “the income of”.
- (2) **Subsection (1)** applies for the 2019–20 and later income years.
- 106 Section LY 3 amended (When this subpart applies)**
- (1) After section LY 3(2)(e), insert: 25
- (f) if the person is not a levy body researcher and the person derives exempt income, ignoring sections CW 9 and CW 10 (which relate to income from dividends).
- (2) In the heading to section LY 3(4), replace “*non-business researcher*” with “*levy body researcher*”. 30
- (3) In section LY 3(4), replace “non-business researcher” with “levy body researcher”.
- (4) In section LY 3(5), replace “LY 13” with “LZ 13”.
- (5) In section LY 3, list of defined terms,—
- (a) insert “levy body researcher”: 35
- (b) delete “non-business researcher”.

- (6) **Subsections (1), (2), (3) and (4)** apply for the 2020–21 and later income years.
- 107 Section LY 8 amended (Carry forward for remaining research and development tax credits)**
- (1) After section LY 8(2), insert: 5
Carry forward: another exception
- (2B) Despite subsection (1), if a person is not a levy body researcher and the person derives exempt income for the tax year, ignoring sections CW 9 and CW 10 (which relate to income from dividends), the remaining tax credit is extinguished and must not be carried forward and credited. 10
- (2) In section LY 8, list of defined terms, insert “exempt income”.
- (3) **Subsection (1)** applies for the 2019–20 and later income years.
- 108 Section OK 19 amended (Maori authority credits attached to distributions)**
- (1) In section OK 19(6), after “Maori authority distribution”, insert “arising from an adjustment, under section GC 7 or GC 8 (which relate to transfer pricing arrangements), of the amount of a distribution that would have been a non-cash dividend if made by a company”. 15
- (2) In section OK 19(7), words before the paragraphs, replace “under this section” with “referred to in subsection (6)”. 20
- (3) In section OK 19(7), before paragraph (a), insert:
(aa) an ICA company were a reference to the Maori authority; and
- (4) In section OK 19, list of defined terms, insert “ICA company” and “non-cash dividend”.
- (5) **Subsections (1), (2), and (3)** apply for a person and a tax year beginning on or after 1 April 2008, except for a tax year for which the person chooses to rely on a tax position, taken before the day on which this Act receives the Royal assent, that is inconsistent with **subsections (1), (2), and (3)**. 25
- 109 Section RC 5 amended (Methods for calculating provisional tax liability)**
- (1) In section RC 5(4), replace “Sections RZ 3” with “Sections **RC 10(5)**, RZ 3”. 30
- (2) After section RC 5(4), insert:
Use of money interest and penalties
- (4B) For a person who uses the standard method, use of money interest and penalties for provisional tax under Parts 7 and 9 of the Tax Administration Act 1994 are calculated using the lowest of the amounts under subsections (2) and (3), for instalment dates prior to the date that the taxpayer provides a return of income for the year before the current income year. 35
- (3) **Subsection (2)** applies for the 2018–19 and later income years.

- 110 Section RC 10 amended (Calculating amount of instalment under standard and estimation methods)**
- (1) After section RC 10(4), insert:
- Some standard method taxpayers*
- (5) A person who uses the standard method may, despite subsection (2), choose that the amount of their final instalment of provisional tax of a tax year is calculated using the formula—
- RIT estimate – tax paid.
- Definition of items in formula*
- (6) In the formula,—
- (a) **RIT estimate** is the person’s estimate of their residual income tax for the tax year:
- (b) **tax paid** is the amount of provisional tax that the person has paid before their final instalment.
- Truncation*
- (7) Amounts calculated under this section are truncated to whole dollars *for example* \$10.98 equals \$10.
- (2) **Subsection (1)** applies for the 2019–20 and later income years.
- 111 Section RD 5 amended (Salary or wages)**
- Replace section RD 5(6)(bh) with:
- (bh) the amount of an honorarium that is paid by Fire and Emergency New Zealand to a volunteer as defined in section CW 62B(4) (Voluntary activities):
- 112 Section RZ 16 amended (Treatment of certain refunds not paid within 4-year period: 1 April 2008 to 31 March 2013)**
- In section RZ 16(1)(c), replace “section 108(1)” with “section 108(1) of the Tax Administration Act 1994”.
- 113 Section YA 1 amended (Definitions)**
- (1) This section amends section YA 1.
- (2) Insert, in appropriate alphabetical order:
- air transport to New Zealand** is defined in section CW 56(3) (Non-resident aircraft operators) for the purposes of that section
- (3) In the definition of **deductible output tax**, paragraph (a)(iv), replace “Act; and” with “Act:”.
- (4) In the definition of **employee**, paragraph (d), replace “ESS)” with “ESS):”.
- (5) In the definition of **internal software development expenditure**,—

- (a) replace paragraph (a) with:
- (a) means, for a person, expenditure or loss that is incurred on developing software; but
- (b) paragraph (b)(ii), replace “business” with “business:”, and insert:
- (iii) the expenditure or loss is for ineligible internal software development 5
- (6) Insert, in appropriate alphabetical order:
levy body researcher means an industry organisation to which a levy is payable under an Act
- (7) In the definition of **market value**, after paragraph (b), insert: 10
(bba) is defined in **section CW 26DB** (Meaning of market value) for the purposes of exempt ESSs
- (8) In the definition of **market value**, after **paragraph (bba)**, insert:
(bbab) is defined in **section CE 7CB** (Meaning of market value) for the purposes of employee share schemes 15
- (9) Repeal the definition of **non-business researcher**.
- (10) Insert, in appropriate alphabetical order:
payroll tax-based cap is defined in **section LA 5(5B)** (Treatment of remaining credits) for the purposes of that section
- (11) In the definition of **premium**, paragraph (a)(ii), replace “premium:” with “premium; and” 20
- (12) In the definition of **RWT proxy**, replace “section 124ZB” with “section 124ZF”.
- (13) In the definition of **research and development contractor**, replace paragraph (b) with: 25
(b) does not include a levy body researcher
- (14) In the definition of **services**, paragraph (a), replace “transfer of value” with “transfer of company value”.
- (15) In the definition of **services**, paragraph (b), replace “subparts LY and MX” with “subpart LY”. 30
- (16) Insert, in appropriate alphabetical order:
transfer of company value is defined in section CD 5 (What is a transfer of company value?)
- (17) In the definition of **transfer of value**, repeal paragraph (a).
- (18) In the definition of **transfer of value**, paragraph (b), replace “money’s worth” with “money’s worth, whether or not convertible into money,” in each place. 35
- (19) In the definition of **trust rules**, after the words before the paragraphs, insert:

- (aa) section BD 1(4)(c) (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income):
- (20) In the definition of **trust rules**, before paragraph (b), insert:
(ab) sections CV 13, CW 53, CW 54, and CX 59 (which relate to distributions by trusts and amounts derived by trustees): 5
- (21) **Subsection (11)** applies—
(a) on and after 1 July 2010, unless **paragraph (b)** applies:
(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year. 10
- (22) **Subsection (15)** applies for the 2019–20 and later income years.
- 114 Schedule 32 amended (Recipients of charitable or other public benefit gifts)** 15
- (1) In schedule 32, insert, in appropriate alphabetical order, “Little Brothers and Sisters International”, “Partners Relief & Development - New Zealand”, “Project Moroto”, and “UN Women National Committee Aotearoa New Zealand Incorporated”.
- (2) **Subsection (1)** applies for the 2019–20 and later income years. 20

Tax Administration Act 1994

- 115 Tax Administration Act 1994**
Sections 116 to 135 amend the Tax Administration Act 1994.
- 116 Section 22 amended (Keeping of business and other records)**
In section 22(2)(ke), replace “section 169B” with “section 124ZG”. 25
- 117 Section 36BB amended (Electronic format for details required for tax pooling intermediaries)**
In section 36BB, replace “sections 15N to 15S” with “sections 124S to 124W and 124ZF”.
- 118 Section 78D amended (Evidential requirements for tax credits)** 30
In section 78D, replace “taxpayer who” with “taxpayer who has not provided their investment income payer with their tax file number and who”.
- 119 Section 91EI amended (Withdrawal of a private ruling)**
(1) In section 91EI(3), replace the words before the paragraphs with “If the Commissioner withdraws a private ruling in relation to an arrangement—”. 35

- (2) After section 91EI(3), insert:
- (4) If the Commissioner withdraws a private ruling on the status of a person, item, or matter under section 91CB otherwise than in relation to an arrangement—
- (a) the ruling continues to apply for the remainder of the period or tax year specified in the ruling; and
 - (b) a status ruling that has been made on the private ruling continues to apply, for the remainder of the period or tax year specified in the ruling.

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120 New section 91ESB inserted (Withdrawal of a short-process ruling)

- (1) After section 91ES, insert:

91ESB Withdrawal of a short-process ruling

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- (1) The Commissioner may at any time withdraw a short-process ruling by notifying the person to whom the ruling applies that the ruling has been withdrawn.
- (2) The short-process ruling is withdrawn from the date stated in the notice of withdrawal. That date may not be earlier than the date on which the person could reasonably be expected to receive the notice of withdrawal.
- (3) If the Commissioner withdraws a short-process ruling in relation to an arrangement—
- (a) the ruling does not apply if the arrangement was entered into after the date of withdrawal; but
 - (b) the ruling continues to apply, for the remainder of the period or tax year stated in the ruling, if the arrangement was entered into before the date of withdrawal.
- (4) If the Commissioner withdraws a short-process ruling on the status of a person, item, or matter under section 91CB otherwise than in relation to an arrangement the ruling continues to apply for the remainder of the period or tax year stated in the ruling.

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- (2) **Subsection (1)** applies in relation to a short-process ruling issued on or after 1 October 2019.

121 Section 91FJ amended (Withdrawal of a product ruling)

- (1) In section 91FJ(4), replace the words before the paragraphs with “If the Commissioner withdraws a product ruling in relation to an arrangement—”.

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- (2) After section 91FJ(4), insert:

- (4B) If the Commissioner withdraws a product ruling on the status of an item or matter under section 91CB otherwise than in relation to an arrangement—
- (a) the ruling continues to apply for the remainder of the period or tax year specified in the ruling; and
 - (b) a status ruling that has been made on the product ruling continues to apply, for the remainder of the period or tax year specified in the ruling.

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- 122 Section 108 amended (Time bar for amendment of income tax assessment)**
- (1) In section 108(1E), replace “tax year.” with “tax year, except if the increase is to take into account a notice of proposed adjustment initiated by a taxpayer in accordance with section 113E.”
- (2) **Subsection (1)** applies for the 2019–20 and later income years. 5
- 123 Section 113E amended (Amended assessments: research and development tax credits)**
- (1) Replace section 113E(1)(a) with:
- (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 before the earlier of— 10
- (i) 1 year after the due date to provide their return of income for the tax year:
- (ii) 4 months after they provide their return of income for the tax year; or 15
- (2) **Subsection (1)** applies for the 2019–20 and later income years.
- 124 Section 120KB amended (Provisional tax instalments and due dates generally)**
- (1) In section 120KB(2), replace “section RC 9 of the Income Tax Act 2007” with “section RC 9 of the Income Tax Act 2007, but using only the current year residual income tax for the item **residual income tax** in section RC 10”. 20
- (2) **Subsection (1)** applies for the 2017–18 and later income years.
- 125 Section 120KBB amended (Interest for most standard method and some estimation method provisional taxpayers)**
- (1) In section 120KBB(3)(a), replace “an instalment” with “those instalments”. 25
- (2) In section 120KBB(3)(b), replace “an instalment” with “each of those instalments”.
- (3) In section 120KBB(3)(b)(ii), replace “date.” with “date; and”, and insert:
- (c) the amount of unpaid tax that a person has in relation to the final instalment is equal to the amount given by section 120KB(2) less the total amount paid for earlier instalments in the tax year. A negative amount is overpaid tax on the final instalment. 30
- (4) Repeal section 120KBB(4)(a)(ii).
- (5) **Subsections (1), (2), and (3)** apply for the 2017–18 and later income years.
- (6) **Subsection (4)** applies for the 2019–20 and later income years. 35

- 126 Section 120L amended (Meaning of unpaid tax and overpaid tax for provisional tax purposes)**
- (1) Replace section 120L(2) with:
 - (2) If a taxpayer makes a payment, the Commissioner must apply the payment towards the provisional tax that is due on the earliest instalment date on which there is an unpaid amount, and then in order from earliest to latest. 5
 - (2) Repeal section 120L(3).
 - (3) **Subsections (1) and (2)** apply for the 2018–19 and later income years but excluding payments that have been applied before the introduction of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill towards provisional tax. 10
- 127 Section 124ZI amended (Certificates for research and development)**
- (1) Replace section 124ZI(4) with:
 - (4) The Commissioner must not approve a person whose approval—
 - (a) would adversely affect the integrity of the tax system: 15
 - (b) the Commissioner has revoked under **subsection (7)** in the last 2 years:
 - (c) was surrendered by the person in the last 2 years in anticipation of a revocation.
 - (2) Replace section 124ZI(7)(b) with:
 - (b) the person has given a research and development certificate to another person who has, in the 2 years before the income year,—
 - (i) been liable to a shortfall penalty under section 141D or 141E in relation to research and development tax credits: 20
 - (ii) entered into a tax avoidance arrangement in relation to research and development tax credits: 25
 - (c) the person’s approval would adversely affect the integrity of the tax system.
 - (3) **Subsections (1) and (2)** apply for the 2020–21 and later income years.
- 128 Section 138E amended (Certain rights of challenge not conferred)**
- (1) In section 138E(1)(e)(iv), replace “63” with “63, 68CB, 68CC, and 68CD”. 30
 - (2) **Subsection (1)** applies for the 2019–20 and later income years.
- 129 Section 139B amended (Late payment penalty)**
- (1) In section 139B(6)(bb), replace “1 or both of the first 2 instalments of provisional tax” with “1 or more of any of the instalments of provisional tax other than the final instalment”. 35
 - (2) **Subsection (1)** applies for the 2019–20 and later income years.

- 130 Section 139C amended (Late payment penalty and provisional tax)**
- (1) In section 139C(1D), replace “the date” with “the date. **Subsection (1E)** applies to the final instalment”.
- (2) After section 139C(1D), insert:
- (1E) Despite subsection (1), for a person that section 120KBB applies to, the only amount of unpaid tax for a failed instalment that is the final instalment is the amount of unpaid tax that would be given by section 120KBB(3)(b) if that section applied to the final instalment. 5
- (3) **Subsections (1) and (2)** apply for the 2017–18 and later income years.
- 131 Section 173L amended (Transfer of excess tax within taxpayer’s accounts)** 10
- (1) In section 173L(2B)(a)(i), delete “after the date”.
- (2) In section 173L(2B)(c), delete “after the date”.
- (3) **Subsections (1) and (2)** apply for taxable periods ending on or after 1 April 2018.
- 132 Schedule 4 amended (Reporting of employment income information)** 15
- (1) In schedule 4, table 1, row 5, delete “amounts”.
- (2) In schedule 4, table 1, row 5, after item e, insert:
- f the amount of salary or wages, as defined in section 4(1) of the KiwiSaver Act 2006, if required under **section 63B** of that Act
- g the tax rate applied to the amount of employer KiwiSaver contributions, if required under section 93 of the KiwiSaver Act 2006
- 133 Schedule 5 amended (Certain tax codes and rates)**
- In schedule 5, part A, clause 4, rows 3, 4, 5, and 6 of the table, replace “total PAYE income payments” with “total PAYE income payments are” in each place. 20
- 134 Schedule 7 amended (Disclosure rules)**
- (1) In schedule 7, part A, replace the heading to clause 3 with “**Tax advisors, tax agents, and representatives**”.
- (2) In schedule 7, part A, after clause 3(2), insert: 25
- (3) Despite section 18, the Commissioner may supply information about a person to an association or group if—
- (a) the person is, or purports to be, a member of the association or group as a person who meets the requirements of section 124D(2); and
- (b) the members of the association or group are subject to— 30
- (i) a professional code of conduct; and
- (ii) a disciplinary process that enforces compliance with the code of conduct; and

- (c) the information—
 - (i) is relevant to a decision of the Commissioner disallowing the person’s approval as a representative or refusing to approve the person as a representative:
 - (ii) in the Commissioner’s opinion, is or would be relevant to a decision referred to in **subparagraph (i)**. 5

135 Schedule 8 amended (Reporting of income information by individuals and treatment of certain amounts)

In schedule 8, part B, clause 1(a), replace “individual, is” with “individual that is”. 10

Income Tax Act 2004

136 Income Tax Act 2004

Sections 137 to 139 amend the Income Tax Act 2004.

137 Section CW 45 amended (Non-resident aircraft operators)

(1) In section CW 45(1), replace “air transport from New Zealand is exempt income” with “air transport from New Zealand, or from air transport to New Zealand, is exempt income”. 15

(2) In section CW 45(3), definition of **air transport from New Zealand**, replace paragraph (b) with:

- (b) includes a flight by the aircraft between the airport in New Zealand where the emplaning or embarking occurred and another airport in New Zealand at which the aircraft calls before leaving New Zealand on the international flight for which the emplaning or embarking occurred 20

(3) In section CW 45(3), insert, in appropriate alphabetical order:

air transport to New Zealand— 25

- (a) means the carriage to an airport in New Zealand by an aircraft of cargo, mail, or passengers emplaned or embarked on the aircraft at an airport in a country or territory outside New Zealand; and
- (b) includes a flight by the aircraft to the airport in New Zealand for carriage to which the emplaning or embarking occurred from another airport in New Zealand at which the aircraft calls en route 30

(4) In section CW 45, list of defined terms, insert “air transport to New Zealand”.

(5) **Subsections (1), (2), and (3)** apply for the 2005–06 and later income years.

138 Section MD 1C amended (Treatment of certain refunds not paid within 4-year period: 2005–06, 2006–07, and 2007–08 income years) 35

In section MD 1C(1)(c), replace “section 108(1)” with “section 108(1) of the Tax Administration Act 1994”.

139 Section OB 1 amended (Definitions)

In section OB 1, insert, in appropriate alphabetical order:

air transport to New Zealand is defined in section CW 45(3) (Non-resident aircraft operators) for the purposes of that section

Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019 5

140 Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019

Sections 141 and 142 amend the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019. 10

141 Section 34 repealed (Section 36BB amended (Electronic format for details required for tax pooling intermediaries))

Repeal section 34.

142 Section 375 amended (Regulation 2 amended (Interpretation))

In section 375, delete “of the Tax Administration (Binding Rulings) Regulations 1991”. 15

Other enactments***Income Tax Act 1994*****143 Section CB 14 amended (Exemption from tax of certain aircraft operators)**

(1) In section CB 14(1) of the Income Tax Act 1994,— 20

(a) replace “air transport from New Zealand, the” with “air transport from New Zealand, or in air transport to New Zealand, the”:

(b) replace “air transport from New Zealand, if” with “air transport from New Zealand, or from that air transport to New Zealand, if”.

(2) In section CB 14(1) of the Income Tax Act 1994, replace “air transport from New Zealand, and derives from that air transport from New Zealand” with “air transport from New Zealand, or in air transport to New Zealand, and derives from that air transport from New Zealand, or from that air transport to New Zealand”. 25

(3) In section CB 14(2) of the Income Tax Act 1994, insert, in appropriate alphabetical order: 30

Air transport to New Zealand means the carriage to any airport in New Zealand by any aircraft of merchandise, goods, livestock, mails, or passengers emplaned or embarked on that aircraft at any airport in any country or territory outside New Zealand; and includes any flight by that aircraft to the airport in 35

New Zealand for carriage to which that emplaning or embarking occurred from any other airport in New Zealand at which that aircraft calls en route:

- (4) **Subsection (1)** applies for the 1995–96 and 1996–97 income years.
- (5) **Subsection (2)** applies for the 1997–98 and later income years.
- (6) **Subsection (3)** applies for the 1995–96 and later income years. 5

Income Tax Act 1976

144 Section 64A amended (Exemption from tax of certain aircraft operators)

- (1) In section 64A(1) of the Income Tax Act 1976, insert, in appropriate alphabetical order:

Air transport to New Zealand means the carriage to any airport in New Zealand by any aircraft of merchandise, goods, livestock, mails, or passengers emplaned or embarked on that aircraft at any airport in any country or territory outside New Zealand; and includes any flight by that aircraft to the airport in New Zealand for carriage to which that emplaning or embarking occurred from any other airport in New Zealand at which that aircraft calls en route: 10
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- (2) In section 64A(2) of the Income Tax Act 1976,—
 - (a) replace “air transport from New Zealand, the” with “air transport from New Zealand, or in air transport to New Zealand, the”:
 - (b) replace “air transport from New Zealand, if” with “air transport from New Zealand, or from that air transport to New Zealand, if”. 20
- (3) **Subsections (1) and (2)** apply for the income year commencing 1 April 1984 and later income years.

Taxation (Research and Development Tax Credits) Act 2019

145 Section 46 amended (Section 138E amended (Certain rights of challenge not conferred)) 25

Repeal section 46(2) of the Taxation (Research and Development Tax Credits) Act 2019.

Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018

146 Section 332 repealed (Section 78D amended (Evidential requirements for tax credits)) 30

Repeal section 332 of the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018.

*Accident Compensation Act 2001***147 Section 11 amended (Earnings as an employee: what it does not include)**

In section 11(1)(cb) of the Accident Compensation Act 2001, replace “share purchase agreement under section CE 2(2) or (4)” with “employee share scheme under section CE 2”.

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*Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest)
Regulations 1995***148 Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest)
Regulations 1995 revoked**

- (1) Revoke the Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995. 10
- (2) **Subsection (1)** applies for income years beginning after 18 March 2019.

Schedule
New Part 5 inserted into Schedule 6 of Student Loan Scheme Act 2011

s 57(4)

Part 5		5
Transitional provisions relating to Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2019		
<i>Provisions relating to tax year ending on 31 March 2013 and all earlier tax years</i>		
21	Outline of clauses 22 to 27	10
	Clauses 22 to 27 prevent the reopening of a borrower's repayment obligations for closed-off tax years except in limited circumstances.	
22	Interpretation for clauses 23 to 27	
(1)	In clauses 23 to 27 , unless the context otherwise requires,—	
	Act ,—	15
(a)	in relation to the tax year ending on 31 March 2012 and all earlier tax years, means the Student Loan Scheme Act 1992 and all relevant regulations made under that Act:	
(b)	in relation to the tax year ending on 31 March 2013, means this Act and all relevant regulations made under this Act	20
	closed-off tax year means the tax year ending on 31 March 2013 and all earlier tax years	
	interest —	
(a)	includes interest imposed under the Student Loan Scheme Act 1992 and loan interest imposed under this Act; but	25
(b)	excludes late payment interest imposed under this Act	
	reopen , in relation to a repayment obligation, means all or any of the following:	
(a)	the Commissioner taking steps to reflect the manner in which the Act should have been applied to a borrower (for example, if the Act was incorrectly applied to the borrower or in respect of a change in the borrower's circumstances):	30
(b)	the Commissioner making an assessment or amending an assessment in order to ensure that a correct assessment is made, whether or not a repayment obligation already assessed has been paid:	35

Schedule	Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill	
	(c) a borrower objecting, disputing, or challenging a decision of the Commissioner or another matter.	
(2)	In clauses 23 to 27 , a term or an expression used in relation to a tax year (but not defined in subclause (1)) has the same meaning as in the Act that applies in relation to that tax year.	5
23	General rules for closed-off tax years Neither the Commissioner nor a borrower may, after 1 April 2020, reopen any repayment obligation relating to a closed-off tax year except to the extent to which clauses 24 to 27 provide for the reopening.	
24	Residency errors: when repayment obligations should have been overseas-based repayment obligations	10
(1)	This clause applies to a borrower who—	
	(a) has been incorrectly treated as New Zealand-based for all or any part of a closed-off tax year; and	
	(b) after 1 April 2020, is established to have been overseas-based for all or any part of that closed-off tax year (the relevant period).	15
(2)	The borrower’s repayment obligations may be reopened as a result of the incorrect treatment by taking 1 or more of the following steps:	
	(a) steps to reflect that the borrower must be taken to be, and to always have been, liable to pay interest for the relevant period:	20
	(b) steps referred to in clauses 25 to 27 .	
25	Residency errors: when repayment obligations should have been New Zealand-based repayment obligations	
(1)	This clause applies to a borrower who—	
	(a) was incorrectly treated as overseas-based for all or any part of a closed-off tax year; and	25
	(b) after 1 April 2020, is established to have been New Zealand-based for all or any part of that closed-off tax year (the relevant period).	
(2)	The borrower’s obligations in respect of the relevant period may be reopened as a result of the incorrect treatment by taking 1 or more of the following steps:	30
	(a) steps to reflect that the borrower must be taken to be, and to always have been, not liable to pay interest for the relevant period:	
	(b) steps to reflect that the borrower should not have been assessed with an overseas-based repayment obligation for the relevant period:	
	(c) steps referred to in clauses 24 to 27 .	35
26	Evasion or similar offences	
(1)	This clause applies to a borrower for a closed-off tax year—	

<i>Evasion or similar act</i>	
(a) if all or any of the following apply to the borrower:	
(i) the borrower committed an offence under section 143B of the Tax Administration Act 1994, as applied by section 162:	
(ii) the borrower is or was liable to pay a student loan shortfall penalty imposed under section 159 relating to a penalty imposed under section 141E of the Tax Administration Act 1994:	5
(iii) the borrower committed an offence under section 79(1) of the Student Loan Scheme Act 1992:	
(iv) the borrower is or was chargeable with a penal repayment obligation under section 85 of the Student Loan Scheme Act 1992:	10
<i>Other failures</i>	
(b) if the Commissioner is satisfied that it is cost-effective for the Commissioner to reopen the borrower's repayment obligation and that the borrower has not provided information (including tax returns and tax forms) to the Commissioner or any other person when required to do so by a tax law.	15
(2) The Commissioner may reopen the borrower's repayment obligation relating to all or any part of a closed-off tax year by taking 1 or more of the following steps:	20
(a) steps to reflect the manner in which the Act should have been applied to the borrower, as if the end-of-year repayment obligation for the relevant tax year were calculated as follows:	
$10\% \times (a - b)$	
where—	25
a is the difference between the income of the borrower that should have been used to calculate the borrower's end-of-year repayment obligation and the income that was used (if a return was filed) or nil (if a return was not filed)	
b is the unused part of the borrower's repayment threshold:	30
(b) steps referred to in clauses 24 to 27 .	
27 Persons adversely affected	
(1) This clause applies if—	
(a) a borrower applies to the Commissioner for the reopening of any repayment obligation relating to all or any part of a closed-off tax year; and	35
(b) the borrower establishes, and the Commissioner considers, that the borrower would be adversely affected if reopening did not occur.	
(2) The Commissioner may reopen any repayment obligation for all or any part of a closed-off tax year.	

*Other application, savings, and transitional provisions***28 Loans resulting from identity theft, etc**

- (1) This clause applies to a loan balance that—
- (a) has been transferred to the Commissioner for collection under the Student Loan Scheme Act 1992 before 1 April 2000; and 5
 - (b) is in the name of a person—
 - (i) who did not enter into the loan contract under the student loan scheme from which the loan results; and
 - (ii) who did not receive the loan.
- (2) The Commissioner must reduce the consolidated loan balance to zero, with effect from the day on which the loan was transferred to the Commissioner for collection, if the Commissioner is satisfied that the person who did receive the loan cannot be identified or located. 10