

# Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002

Public Act 2002 No 32  
Date of assent 17 October 2002  
Commencement see section 2

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

**1 Title**

This Act is the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002.

**2 Commencement**

This Act comes into force on the date on which it receives the Royal assent.

**Part 1**

**Amendments to Income Tax Act 1994**

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**3 Income Tax Act 1994**

*[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**4 Exempt income—interest**

*[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**5 New section CB 3A inserted**

*[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**6 Exempt income—dividends**

*[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

- 7 New section CD 3A inserted**  
*[Repealed]*  
Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).
- 8 Exclusions from term dividends**  
*[Repealed]*  
Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).
- 9 New section CF 7A inserted**  
*[Repealed]*  
Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).
- 10 Calculation and attribution of controlled foreign company repatriation**  
*[Repealed]*  
Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).
- 11 Branch equivalent income calculation**  
*[Repealed]*  
Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).
- 12 Use of alternative methods**  
*[Repealed]*  
Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).
- 13 Section CJ 6 replaced**  
*[Repealed]*  
Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).
- 14 Section CJ 7 replaced**  
*[Repealed]*  
Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**15 Exception for withdrawal when member ceases employment***[Repealed]*

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**16 Certain deductions not allowed—superannuation contributions, bonuses, retiring allowances, etc***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**17 Pensions payable to former employees***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**18 Retiring allowances payable to employees***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**19 New sections DF 8A and DF 8B inserted***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**20 New sections DF 10 and DF 11 inserted***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**21 New section DJ 22 inserted***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).



**22 Section DM 6 replaced***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**23 Accounting for goods and services tax***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**24 New section EE 2A inserted***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**25 Cost of trading stock other than excepted financial arrangements***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**26 Requirement to value closing stock consistently***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**27 Accrual expenditure***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**28 New section EF 1A inserted***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**29 Forgiveness of debt***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**30 Base price adjustment—exceptions***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**31 Forgiveness of debt***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**32 Valuation of bloodstock***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**33 Pensions***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**34 Rules for calculating New Zealand group debt percentage***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**35 Rules for calculating worldwide group debt percentage***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**36 Rules for determining consolidated foreign attributed  
income group debt percentage***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**37 Treatment of various settlements***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**38 Definitions of guardian, minor and relative***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**39 Trustee income***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**40 Agent to make returns and be assessed as principal***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**41 Liability of principal not affected***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**42 Rents, royalties, or interest derived by Maori trustee and not distributed***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**43 Rebate in certain cases for housekeeper***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**44 Rebate for gifts of money***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**45 Determination of net income***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**46 Calculation of family tax credit***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**47 Credits in respect of tax paid in a country or territory outside New Zealand***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**48 New section LC 14A inserted***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**49 Dividends from grey list companies***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**50 Election to be a provisional taxpayer***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**51 Refund of overpaid provisional tax***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**52 Section heading to section MC 1 replaced***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**53 Refund of excess tax***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**54 Limits on refunds of tax***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**55 New section MD 2A inserted***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**56 Credits arising to imputation credit account***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**57 Special debits arising to imputation credit account of unit trust or group investment fund***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**58 New subpart MJ inserted***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**59 Employer's liability for fringe benefit tax***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**60 Election to pay fringe benefit tax per quarter***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**61 Multi-rate calculation for attributed fringe benefits***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**62 Refunds of deductions***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**63 Non-resident withholding tax deducted in error***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**64 Liability to make deduction in respect of foreign withholding payment dividend***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**65 Reduction in liability under conduit tax relief***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**66 Definitions***[Repealed]*

Subsection (30) was amended, as from 17 October 2002, by section 171 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “section 13(3)” for the expression “section 10(3)”. .

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**67 Modifications to measurement of voting and market value interests in case of continuity provisions***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**68 New section OD 5B inserted***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**69 Further definitions of associated persons***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**70 Section OE 6 repealed***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**71 References to particular regimes in former Act, etc***[Repealed]*

Part 1 (sections 3 to 71) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

## Part 2 Amendments to Tax Administration Act 1994

**72 Tax Administration Act 1994**

This Part amends the Tax Administration Act 1994.

**73 Interpretation**

- (1) This section amends section 3(1).
- (2) In the definition of **abusive tax position**, “and section 177C” is inserted after “Part IX”.
- (3) After the definition of **family certificate of entitlement**, the following is inserted:  
“**family trust** is defined in section 173M(5) for the purpose of that section.”
- (4) After the definition of **original return date**, the following is inserted:  
“**outstanding tax**, in sections 139BA, 176, 177, 177A, 177B and 177C, means tax that is payable before or after a due date.”
- (5) After the definition of **reject**, the following is inserted:  
“**relative** is defined in section 173M(5) for the purpose of that section.”
- (6) The definition of **separated person** is repealed.

- (7) In the definition of **tax**—
- (a) after paragraph (c), the following is inserted:
- “(ca) for the purpose of Part XB, includes—
- “(i) financial support, as defined in section 2(1) of the Child Support Act 1991; and
- “(ii) a repayment obligation, as defined in section 2 of the Student Loan Scheme Act 1992; and
- “(iii) a rebate referred to in section 41A.”
- (b) in paragraph (d), “and 177” is replaced by “, 177, and 177A to 177D”.
- (8) Subsections (2), (4) and (7)(b) apply on and after 1 December 2002.
- (9) Subsections (3), (5) and (7)(a) apply to the 2002-03 and subsequent income years.
- (10) Subsection (6) applies on 1 December 2002.

Subsections (8) and (10) were amended, as from 17 October 2002, by section 172 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “1 December 2002” for the expression “1 July 2002”.

#### **74 Resident withholding tax deduction certificates**

- (1) In section 25(1), “in such form as the Commissioner may approve and containing” is replaced by “that contains”.
- (2) Section 25(6) is replaced by:
- (6) A resident withholding tax deduction certificate must include the following:
- “(a) a statement as to whether the resident withholding income is interest or specified dividends:
- “(b) the date on which the deduction was made, or if there is more than one deduction, the year in which the deductions were made:
- “(c) the amounts of resident withholding tax income and resident withholding tax deductions:
- “(d) the resident withholding tax rate applied to the resident withholding tax income.”
- (3) In section 25(7)(a) and 25(7)(b), “\$20” is replaced by “\$50”.
- (4) In section 25(10)(d), “business.” is replaced by “business; or” and the following is added:



- “(e) is sent electronically to the recipient or to a person authorised to act on behalf of the recipient and the recipient or the authorised person agree to receiving the certificate this way.”
- (5) Subsections (1), (2) and (4) apply to resident withholding certificates provided on or after 1 April 2002 that relate to interest or specified dividends paid in the 2001-02 and subsequent income years.
- (6) Subsection (3) applies to the 2002-03 and subsequent income years.

#### **75 Annual returns of income not required**

- (1) In section 33A(1)(a), the words before subparagraph (i) are replaced by:
- “(a) had gross income that was derived only from—.”
- (2) At the end of section 33A(1)(a)(iii), “and” is replaced by “or” and the following is inserted:
- “(iv) a source or sources other than those listed in subparagraphs (i) to (iii) and the total amount derived is \$200 or less; and.”
- (3) Section 33A(2)(d) is replaced by:
- “(d) received a withholding payment, not being an amount or proportion of a withholding payment in respect of which the Commissioner has made a determination under regulation 7 of the Income Tax (Withholding Payments) Regulations 1979; or.”
- (4) Section 33A(2)(l) is repealed.
- (5) Subsection (1) applies on and after the date this Act receives the Royal assent.
- (6) Subsection (2) applies to the 2002-03 and subsequent income years.
- (7) Subsection (3) applies to returns of income for the 2001-02 and subsequent income years.
- (8) Subsection (4) applies on the first day of the 2002-03 income year.

#### **76 Returns by person claiming housekeeper or charitable rebates**

- (1) After section 41A(5), the following is inserted:

- (6) A taxpayer with a standard balance date or an early balance date may apply for a refund for an income year after 1 April next following the end of the taxpayer's income year. Late balance date taxpayers may apply for a refund for an income year on or after the first day of the taxpayer's next accounting year.
- (2) In section 41A(6AA), "The" is replaced by "Despite subsection (6), the".
- (3) Subsections (1) and (2) apply to the 2001-02 and subsequent income years.

**77 Income tax returns and assessments by executors or administrators**

- (1) Section 43(4) is replaced by:
- (4) The executor or administrator of a deceased taxpayer must request the Commissioner to issue an income statement if the taxpayer would have been a person to whom section 33A(5) refers if the taxpayer had remained alive and the Commissioner has not issued an income statement.
- (5) The executor or administrator of a deceased taxpayer may request the Commissioner to issue an income statement if the taxpayer would have been a person to whom section 33A(1) applied if the taxpayer had remained alive.
- (2) Subsection (1) applies to the 2002-03 and subsequent income years.

**78 Resident withholding tax deduction reconciliation statements**

- (1) Section 51(2) is replaced by:
- "(2) The Commissioner may require the following information in relation to a deduction of resident withholding tax:
  - "(a) the full name, address and tax file number of the person (the **payer**); and
  - "(b) the full name and last known address of the recipient unless, after making reasonable inquiries, the payer is unable to obtain those details; and
  - "(c) the tax file number of the recipient, if known to the payer; and

- “(d) whether the resident withholding income is interest or specified dividends; and
  - “(e) the date on which the deduction was made or, if there is more than one deduction, the year in which the deductions were made; and
  - “(f) the amounts of resident withholding tax income and resident withholding tax deductions; and
  - “(g) the resident withholding tax rate applied to the resident withholding tax income; and
  - “(h) further information that the Commissioner considers relevant.
- “(2A) If the person has paid interest or specified dividends to another person (the recipient) and has not deducted resident withholding tax because the recipient holds a valid certificate of exemption, the Commissioner may require the following information:
- “(a) the full name and last known address of the recipient; and
  - “(b) the total interest or specified dividends paid to the recipient; and
  - “(c) the recipient’s tax file number, except if the recipient is, at the time of payment, a person to whom any of paragraphs (a) to (d) of section NF 9(1) of the Income Tax Act 1994 applies; and
  - “(d) further information that the Commissioner considers relevant.
- “(2B) Information that may be required under subsection (2) or subsection (2A) must be provided in a form approved by the Commissioner.”
- (2) In section 51(3), “or subsection (2A)” is inserted after “subsection (2)”.
  - (3) Subsections (1) and (2) apply to resident withholding certificates provided on or after 1 April 2002 that relate to interest or specified dividends paid in the 2001-02 and subsequent income years.

## **79 Disclosure of trust particulars**

- (1) Section 59(3) is replaced by:

- (3) The trustee of every trust must in every case make a return of all income derived by the trustee as trustee of the trust, and each return is treated as being separate and distinct from any return made by the trustee in respect of another trust or in the trustee's own right.
- (2) Subsection (1) applies to the 1997-98 and subsequent income years.

### **80 Disclosure of interest in foreign investment fund**

- (1) In section 61, in the section heading, "foreign company or" is inserted after "in".
- (2) Subsection (1) applies on and after the date this Act receives the Royal assent.

### **81 Annual imputation return**

- (1) After section 69(1)(f), the following is inserted:  
“(fa) where the company is a qualifying unit trust or a group investment fund that derives category A income—  
“(i) the opening and closing balances of the trust's or fund's supplementary available subscribed capital account for the imputation year:  
“(ii) the amount and source of all credits and debits that have arisen in the trust's or fund's supplementary available subscribed capital account in accordance with sections MJ 5 and MJ 6 of the Income Tax Act 1994:.”
- (2) Subsection (1) applies to the 2002-03 and subsequent income years.

### **82 Content and notification of a public ruling**

- (1) Section 91DA(1)(e) is replaced by:  
“(e) either—  
“(i) the period or income year for which the ruling applies;  
or  
“(ii) in the case of a ruling issued for an indefinite period, the date or income year from which the ruling applies.”
- (2) Subsection (1) applies on and after the date this Act receives the Royal assent.

**83 Application of a public ruling**

- (1) Section 91DC(1)(b) and 91DC(1)(c) is replaced by:
- “(b) for an arrangement that is specified in the ruling; and
  - “(c) for an arrangement that is entered into either—
    - “(i) during the period or income year for which the ruling applies; or
    - “(ii) in the case of a ruling issued for an indefinite period, on or after the date, or on or after the first day of the income year, from which the ruling applies; and
  - “(d) either—
    - “(i) for the period or income year specified in the ruling; or
    - “(ii) in the case of a ruling issued for an indefinite period, for an indefinite period.”
- (2) Subsection (1) applies on and after the date this Act receives the Royal assent.

**84 Withdrawal of a public ruling**

- (1) Section 91DE(4) is replaced by:
- (4) If the Commissioner withdraws a public ruling, the ruling does not apply to an arrangement entered into after the date of withdrawal.
- (4A) If the Commissioner withdraws a public ruling, the ruling continues to apply—
- “(a) to an arrangement to which it previously applied that was entered into before the date of withdrawal; and
  - “(b) either—
    - “(i) for the remainder of the period or income year specified in the ruling; or
    - “(ii) in the case of a ruling issued for an indefinite period, for 3 years after the date stated in the notice of withdrawal.”
- (2) Section 91DE(5)(c) is replaced by:
- “(c) either—
    - “(i) the original period or income year for which the ruling applied; or
    - “(ii) in the case of a ruling issued for an indefinite period, the original date or income year from which the ruling applied; and.”

- (3) Subsections (1) and (2) apply on and after the date this Act receives the Royal assent.

**85 Instalments of and due dates for provisional tax**

- (1) In section 120K(4)(b), “\$30,000” is replaced by “\$35,000”.
- (2) Subsection (1) applies to the 2003-04 and subsequent income years.

**86 Certain rights of objection not conferred**

- (1) In section 125(j)(iii)—

(a)

“‘IB 1,’ is omitted:”

(b)

“‘92A’ is inserted after ‘89,’.”

- (2) In section 125(j)(iv), “177A to 177D,” is inserted after “176, 177,”.
- (3) Subsection (1) applies on and after the date this Act receives the Royal assent.
- (4) Subsection (2) applies on and after 1 December 2002.

Subsection (4) was amended, as from 17 October 2002, by section 173 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “1 December 2002” for the expression “1 July 2002”.

**87 Certain rights of challenge not conferred**

- (1) In section 138E(1)(e)(iii)—

(a)

“‘IB 1,’ is omitted:”

(b)

“‘92A,’ is inserted after ‘89,’.”

- (2) In section 138E(1)(e)(iv), “177A to 177D,” is inserted after “176, 177,”.
- (3) Subsection (1) applies on and after the date this Act receives the Royal assent.
- (4) Subsection (2) applies on and after 1 December 2002.

Subsection (4) was amended, as from 17 October 2002, by section 174 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “1 December 2002” for the expression “1 July 2002”.

**88 Late payment penalty**

- (1) In section 139B(2B), “, or section (2) as it was before the enactment of section 51(1) of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001” is inserted after “this subsection”.
- (2) In section 139B(3B)(a), “and complies with all of their obligations under the instalment arrangement” is omitted.
- (3) In section 139B(3B)(b), “and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers” is inserted after “subsection (2A)(a)”.
- (4) Section 139B(3B) is replaced by:  
“(3B) The part of an initial late payment penalty imposed under subsection (2A)(b) is not to be added if the Commissioner has exercised powers available under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law before the end of the 6th day after the day on which an initial late payment penalty is imposed under subsection (2A)(a) and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers.”
- (5) In section 139B(5A)(b), “and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers” is inserted after “tax law”.
- (6) Section 139B(5A) is replaced by:  
“(5A) An incremental late payment penalty is not to be added if, for a month during which the tax to pay remains unpaid, the Commissioner has exercised powers available under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law and has received the tax deducted in accordance with the requirements for the month of a notice issued as a result of the Commissioner exercising those powers.”
- (7) In section 139B(6), “and section 139BA” is inserted after “this section”.
- (8) Subsections (1) and (3) apply to late payment penalties imposed on and after 1 April 2002.

- (9) Subsections (2) and (5) apply to instalment arrangements entered into on and after 1 April 2002.
- (10) Subsections (4), (6) and (7) apply on and after 1 December 2002.

Subsection (10) was amended, as from 17 October 2002, by section 175 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression "1 December 2002" for the expression "1 July 2002".

### **89 New section 139BA inserted**

- (1) After section 139B, the following is inserted:

#### **"139BA Imposition of late payment penalties when financial relief sought"**

- (1) If a taxpayer has outstanding tax and contacts the Commissioner seeking financial relief before the due date, the Commissioner must impose the late payment penalty under section 139B(2A)(a) on unpaid tax but must not impose the late payment penalty under section 139B(2A)(b).
- (2) If a taxpayer has outstanding tax and contacts the Commissioner seeking financial relief on or after the due date, the Commissioner must not impose an incremental late payment penalty on unpaid tax on and after the date of the request.
- (3) Subsections (1) and (2) apply until the earlier of—
  - "(a) the date that the Commissioner makes a decision not to give financial relief; and
  - "(b) the last day of the response period allowed by section 177(3) if the taxpayer does not provide the information sought or respond to a counter offer."
- (4) If an instalment arrangement is entered into, an incremental late payment penalty is not to be added if, for a month during which the tax to pay remains unpaid, the taxpayer complies with all of their obligations under the arrangement.
- (5) If an instalment arrangement is cancelled on the basis of false or misleading information provided by the taxpayer, the Commissioner must impose those late payment penalties not imposed as if the instalment arrangement had not been entered into.



- (6) If financial relief is not given, the Commissioner must impose those late payment penalties not imposed as if the request for financial relief had not been made.
- (2) Subsection (1) applies on and after 1 December 2002.

**90 Abusive tax position**

- (1) In section 141D(7), “and section 177C” is inserted after “this Part”.
- (2) Subsection (1) applies on and after 1 December 2002.

**91 New Part XB inserted**

- (1) After Part XA, the following is inserted:

**“Part XB  
“Transfers of excess tax**

**“173K Application**

- “(1) This Part applies if tax has been paid in excess of the amount properly payable—
  - “(a) to the extent that the tax paid in excess by or on behalf of a taxpayer is refundable and after the date the tax was paid, and before it is transferred under this Part, has not been applied to satisfy a tax liability or other amount due:
  - “(b) to allow the Commissioner to transfer all or part of the excess at the taxpayer’s request.
- “(2) For the purpose of the Inland Revenue Acts—
  - “(a) tax transferred by the transferor is treated as a refund to the transferor on the date of transfer; and
  - “(b) tax transferred to the transferee is treated as tax paid by the transferee on the date of transfer, except for the purpose of imposing a shortfall penalty under Part IX.

*“Transfer rules*

**“173L Transfer of excess tax within taxpayer’s accounts**

- “(1) A taxpayer or their agent may request that the Commissioner transfer all or part of the excess to another period or another tax type of the taxpayer.

- “(2) The taxpayer may choose the date on which all or part of the excess is transferred, being—
- “(a) in the case of a GST refund, a day after the end of the taxable period in which the refund arose:
  - “(b) in the case of tax deducted on the taxpayer’s behalf, a day after the end of the accounting year in which the deduction occurred:
  - “(c) in any other case, a date that occurs on or after the date the excess tax is paid.’ ”
- “(3) Despite subsection (2)(b), a taxpayer who has an early balance date may, in the case of tax deducted on the taxpayer’s behalf, only choose a day after the end of the year in which the deduction occurred.

**“173M Transfer of excess tax to another taxpayer**

- “(1) A taxpayer or their agent may request that the Commissioner transfer all or part of the excess to another taxpayer.
- “(2) A request may be made for a transfer between a taxpayer and—
- “(a) a company in the same group of companies; or
  - “(b) a shareholder employee of the taxpayer; or
  - “(c) a company in which the taxpayer is a shareholder employee; or
  - “(d) a partner in the same partnership; or
  - “(e) a relative; or
  - “(f) a trustee of a family trust of which the taxpayer is a beneficiary; or
  - “(g) another taxpayer not listed in paragraphs (a) to (f).
- “(3) A taxpayer, being a trustee of a family trust, may request a transfer to a beneficiary of the trust.
- “(4) The taxpayer may choose the date on which all or part of the excess is transferred, being—
- “(a) if subsection (2)(a) to (2)(f) or subsection (3) applies, a date allowed by section 173L:
  - “(b) if subsection (2)(g) applies, the later of the following dates:
    - “(i) a date that occurs on or after the date of the request; and

- “(ii) a date that occurs after the date that the relevant return is filed for the period in which the excess arose.
- “(5) In this section—
- “**family trust** means a trust that is established primarily to benefit—
- “(a) a natural person for whom the settlor has natural love and affection; or
- “(b) an organisation or a trust whose income is exempt under section CB 4(1)(c) or CB 4(1)(e) of the Income Tax Act 1994; or
- “(c) a natural person that satisfies paragraph (a) and an organisation or a trust that satisfies paragraph (b)
- “**relative means**, in relation to a person, another person connected with the person by blood relationship, marriage or adoption.
- “(6) For the purpose of the **relative** definition—
- “(a) persons are connected by blood relationship if one is the child of the other:
- “(b) persons are connected by marriage if one person is married to the other or the persons are in a de facto relationship:
- “(c) persons are connected by adoption if one has been adopted as the child of the other.
- “(7) For the purpose of subsection (6)(b), **de facto relationship** has the meaning set out in section 2D of the Property (Relationships) Act 1976 as if the reference to ‘this Act’ in section 2D(1) and 2D(4) of that Act were a reference to ‘the Tax Administration Act 1994’.
- “**173N Transfer of excess tax—rebates**
- Despite sections 173L and 173M, if a taxpayer makes a request to transfer a refund arising from a rebate referred to in section 41A, the taxpayer may choose only the later of the following dates:
- “(a) a date that occurs on or after the date of the request; and
- “(b) a date that occurs after the date on which the taxpayer applies for a refund under section 41A.

**“173O Transfer of excess tax if no date specified by taxpayer**

- “(1) If a taxpayer or their agent requests a transfer under this Part but does not choose the date on which the excess is transferred, the Commissioner may transfer the excess on a date on which the Commissioner considers appropriate.
- “(2) Even if the Commissioner transfers the excess on a date on which the Commissioner considers appropriate, the taxpayer or their agent may subsequently choose a date allowed by sections 173L and 173M, and request that the Commissioner transfer the excess on that date.

*“Application of transfer rules to excess  
provisional tax***“173P Transfer of excess provisional tax if provisional tax paid is more than taxpayer’s provisional tax liability, determined before assessment**

- “(1) This section applies in respect of excess provisional tax if—
- “(a) a taxpayer or their agent requests a transfer allowed by section 173L, section 173M(2)(a) to 173M(2)(f), or section 173M(3); and
- “(b) on the date that the Commissioner actions the request, the taxpayer has paid more provisional tax for an income year than the provisional tax payable by that date; and
- “(c) the request is actioned before an assessment is made under Part VI.
- “(2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:
- $$\text{provisional tax paid} - \text{refunds} - \text{provisional tax liability}$$
- where—
- provisional tax paid is the provisional tax paid for an income year on or before date A, including:
- (a) voluntary payments made under section MB 6 of the Income Tax Act 1994; and
- (b) tax transferred to the taxpayer:
- refunds are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers

by the taxpayer or offsets by the Commissioner against unpaid tax:  
 provisional tax liability is the provisional tax payable by date A.

- “(3) The Commissioner must not transfer an amount on date A if, as a result, the taxpayer would not satisfy their provisional tax liability in respect of the income year on a date (**date B**) that falls after date A, unless the taxpayer requests a transfer back to their account to satisfy their provisional tax liability on date B.

**“173Q Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment**

- “(1) This section applies in respect of excess provisional tax if—
- “(a) a taxpayer or their agent requests a transfer allowed by section 173L, section 173M(2)(a) to 173M(2)(f), or section 173M(3); and
  - “(b) on the date that the Commissioner actions the request, the taxpayer—
    - “(i) has paid provisional tax for an income year based on an estimate of their residual income tax and, as a result of a revised estimate for the year, the taxpayer has paid more provisional tax than the revised estimate for the year; or
    - “(ii) pays provisional tax for an income year in accordance with section MB 2(1)(a) or section MB 2(1)(b) of the Income Tax Act 1994 and, as a result of estimating their residual income tax for the year, the taxpayer has paid more provisional tax than the estimated residual income tax for the year; and
  - “(c) the request is actioned before an assessment is made under Part VI.’ ”
- “(2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:  
 provisional tax paid - refunds - estimated RIT

where—

provisional tax paid is the provisional tax paid for an income year on or before date A, including:

- (a) voluntary payments made under section MB 6 of the Income Tax Act 1994; and
- (b) tax transferred to the taxpayer:

refunds are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax:

estimated RIT is the taxpayer's estimated residual income tax or revised estimated residual income tax that would be due by date A for the purpose of calculating interest under Part VII, calculated as if the estimated residual income tax or revised estimated residual income tax were residual income tax and section 120K(4) did not apply.

“(3) The Commissioner must not transfer an amount on date A if, as a result,—

“(a) a taxpayer to whom subsection (1)(b)(i) applies would not have paid, on a date (**date B**) that falls after date A, the amount of their revised estimated residual income tax that would have been due on date B under Part VII, calculated as if the revised estimated residual income tax were residual income tax and section 120K(4) did not apply, unless the taxpayer requests a transfer back to their account on or before date B; or

“(b) a taxpayer to whom subsection (1)(b)(ii) applies would not have paid, on a date (**date B**) that falls after date A, the amount of their estimated residual income tax that would have been due on date B under Part VII, calculated as if the estimated residual income tax were residual income tax and section 120K(4) did not apply, unless the taxpayer requests a transfer back to their account on or before date B.

“(4) The amount that may be transferred under subsection (2) may not be more than—

“(a) if subsection (1)(b)(i) applies, the net provisional tax paid less the revised estimated residual income tax for the income year:

“(b) If subsection (1)(b)(ii) applies, the net provisional tax paid less the estimated residual income tax for the income year.

**“173R Transfer of excess tax if provisional tax is more than taxpayer’s residual income tax, determined after assessment**

- “(1) This section applies in respect of excess tax if—
- “(a) a taxpayer or their agent requests a transfer allowed by section 173L, section 173M(2)(a) to 173M(2)(f), or section 173M(3); and
- “(b) on the date that the Commissioner actions the request, the taxpayer has paid more provisional tax than the taxpayer’s residual income tax for an income year.
- “(2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:
- $$\text{provisional tax paid} - \text{refunds} - \text{residual income tax}$$
- where—
- provisional tax paid is the provisional tax paid for the income year on or before date A, including:
- (a) voluntary payments made under section MB 6 of the Income Tax Act 1994; and
- (b) tax transferred to the taxpayer:
- refunds are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax:
- residual income tax is the taxpayer’s residual income tax that would be due by date A for the purpose of calculating interest under Part VII, calculated as if section 120K(4) did not apply.
- “(3) The Commissioner must not transfer an amount on date A if, as a result, the taxpayer would be liable to pay interest on unpaid tax under Part VII or would have a late payment penalty imposed under Part IX in respect of their provisional tax payments for the income year on a date (**date B**) that falls after date A, unless the taxpayer requests a transfer back to their account so as to prevent interest or a late payment penalty being imposed on date B in respect of their provisional tax payments.

- “(4) The amount that may be transferred under subsection (2) may not be more than the net provisional tax paid for an income year less the residual income tax for the year.

*“Miscellaneous*

**“173S Transfers of interest on overpaid tax**

- “(1) If the Commissioner is liable to pay interest to a taxpayer under Part VII, a taxpayer or their agent may request the Commissioner to transfer all or part of the interest to another period, another tax type of the taxpayer or to another taxpayer.
- “(2) The Commissioner may only transfer the interest on the date that it would have been payable under Part VII, as if a transfer request had not been made.

**“173T Application of excess tax if taxpayer has unsatisfied tax liability**

If a taxpayer has excess tax and the Commissioner applies all or part of the excess in satisfaction of tax or another amount due, the taxpayer or their agent may request the Commissioner to apply all or part of the excess on a date allowed by section 173L.

**“173U Transfers of excess financial support**

Despite sections 173L and 173M, a taxpayer may not request a transfer under this Act of excess financial support, as defined in section 2(1) of the Child Support Act 1991.

- (2) Subsection (1) applies to—
- (a) tax paid in excess, being tax on income derived in the 2002-03 and subsequent income years:
  - (b) tax paid in excess, if—
    - (i) the excess arises from an assessment made on or after 1 April 2002 and before the date that this Act receives the Royal assent; and
    - (ii) the taxpayer notifies the Commissioner that Part XB of the Tax Administration Act 1994 should apply to the excess:



- (c) tax paid in excess, if the excess arises from an assessment made on or after the date that this Act receives the Royal assent:
- (d) tax deducted on behalf of another taxpayer and paid on or after 1 April 2002:
- (e) a dividend withholding payment paid on or after 1 April 2002:
- (f) an application for a refund made under section 41A of the Tax Administration Act 1994 on or after the date that this Act receives the Royal assent:
- (g) goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002:
- (h) gift duty, cheque duty, totalisator duty, lottery duty, gaming machine duty or casino duty paid in excess, being duty paid on or after 1 April 2002.

## **92 Sections 176 and 177 replaced**

- (1) Sections 176 and 177 are replaced by:

### **“176 Recovery of tax by Commissioner**

- “(1) The Commissioner must maximise the recovery of outstanding tax from a taxpayer.
- “(2) Despite subsection (1), the Commissioner may not recover outstanding tax to the extent that—
- “(a) recovery is an inefficient use of the Commissioner’s resources; or
  - “(b) recovery would place a taxpayer, being a natural person, in serious hardship.

### **“177 Taxpayer may apply for financial relief**

- “(1) A taxpayer, or a person on a taxpayer’s behalf, applies for financial relief by either—
- “(a) making a claim stating why recovery of outstanding tax would place the taxpayer in serious hardship; or
  - “(b) requesting to enter into an instalment arrangement with the Commissioner by telephone or in writing.
- “(2) The Commissioner may require a taxpayer, or a person on a taxpayer’s behalf, to apply for financial relief under subsection (1)(a) in writing.

- “(3) Upon receiving a request, the Commissioner may—
- “(a) accept the taxpayer’s request; or
  - “(b) seek further information from the taxpayer; or
  - “(c) make a counter offer; or
  - “(d) decline the taxpayer’s request.’ ”
- “(4) A taxpayer has 20 working days, or a longer period allowed by the Commissioner, to provide the information sought or to respond to a counter offer.
- “(5) If the Commissioner receives information or a response from a taxpayer outside the time period allowed under subsection (4), the receipt of the information or the response will be treated as a new request for financial relief.

“**177A Definition of serious hardship**

- “(1) In this section and sections 176, 177, 177B and 177C, **serious hardship**, in relation to a taxpayer, being a natural person,—
- “(a) includes significant financial difficulties that arise because of—
    - “(i) the taxpayer’s inability to meet minimum living expenses according to normal community standards; or
    - “(ii) the cost of medical treatment for an illness or injury of the taxpayer or the taxpayer’s dependant; or
    - “(iii) a serious illness suffered by the taxpayer or the taxpayer’s dependant; or
    - “(iv) the cost of education for the taxpayer’s dependant; and
  - “(b) does not include significant financial difficulties that arise because—
    - “(i) the taxpayer is obligated to pay tax; or
    - “(ii) the taxpayer may become bankrupt; or
    - “(iii) the taxpayer’s, or the taxpayer’s dependant’s, social activities and entertainment may be limited; or
    - “(iv) the taxpayer is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards.

- “(2) The Commissioner may take into account whether the recovery of outstanding tax would place—
- “(a) a shareholder who owns, or 2 shareholders who jointly own, 50% or more of the shares in a company in serious hardship; or
  - “(b) a shareholder-employee of a close company in serious hardship.
- “(3) For the purpose of subsection (2), **close company** means a company that satisfies paragraph (a) of the definition of **close company** in section OB 1 of the Income Tax Act 1994.

“**177B Instalment arrangements**

- “(1) The Commissioner must not enter into an instalment arrangement with a taxpayer to the extent that the arrangement would place the taxpayer in serious hardship.
- “(2) The Commissioner may decline to enter into an instalment arrangement if—
- “(a) to do so would not maximise the recovery of outstanding tax from the taxpayer; or
  - “(b) the Commissioner considers that the taxpayer is in a position to pay all of the outstanding tax immediately; or
  - “(c) the taxpayer is being frivolous or vexatious; or
  - “(d) the taxpayer has not met their obligations under a previous instalment arrangement.
- “(3) A taxpayer may renegotiate an instalment arrangement at any time.
- “(4) The Commissioner may renegotiate an instalment arrangement at any time after the end of 2 years from the date on which the instalment arrangement was entered.
- “(5) The renegotiation of an instalment arrangement is treated as if it were a new request for financial relief.
- “(6) The Commissioner may cancel an instalment arrangement if—
- “(a) it was entered into on the basis of false or misleading information provided by the taxpayer; or
  - “(b) the taxpayer is not meeting their obligations under the arrangement.

**“177C Write-off of tax by Commissioner**

- “(1) The Commissioner may write off outstanding tax that cannot be recovered.
- “(2) The Commissioner must write off outstanding tax that cannot be recovered in the following situations:
- “(a) bankruptcy:
  - “(b) liquidation:
  - “(c) a taxpayer’s estate has been distributed.
- “(3) Despite subsection (1), the Commissioner must not write off outstanding tax (inclusive of any shortfall penalties), if a taxpayer is liable to pay, in relation to the outstanding tax, a shortfall penalty for an abusive tax position or evasion or a similar act.
- “(4) Despite subsection (2), the Commissioner may reinstate all or part of the outstanding tax written off if the Commissioner receives, by operation of law, additional funds in respect of a taxpayer after the taxpayer becomes bankrupt, is liquidated or if additional funds due to the taxpayer’s estate are discovered after the taxpayer’s estate has been distributed.
- “(5) If the Commissioner writes off outstanding tax for a taxpayer who has a net loss, the Commissioner must extinguish all or part of the taxpayer’s net loss, by dividing the amount written off by 33% and reducing the net loss by that amount.
- “(6) For the purpose of subsection (5), a taxpayer’s net loss is measured according to the taxpayer’s return of income for the income year immediately before the income year in which the outstanding tax is written off.
- “(7) The Commissioner may reverse a write-off if—
- “(a) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off—
    - “(i) declares bankruptcy within a year of the outstanding tax being written off; or
    - “(ii) is subject to bankruptcy proceedings brought by a creditor within a year of the outstanding tax being written off; or

- “(b) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off is a company which, within a year of the outstanding tax being written off, is, or is in the course of being, liquidated; or
  - “(c) the outstanding tax was written off due to false or misleading information provided by the taxpayer.
- “(8) If the Commissioner enters into an instalment arrangement that provides for some outstanding tax to be written off, the Commissioner may not reverse the write-off even if, during the term of the instalment arrangement, the taxpayer does not meet the instalment arrangement’s terms.

**“177CA Proof of debt**

- “(1) This section applies if—
- “(a) a taxpayer has entered into an instalment arrangement with the Commissioner; and
  - “(b) the taxpayer is a person who has become bankrupt, or a company which is in the course of being liquidated.
- “(2) Any amount outstanding under the instalment arrangement must be included in the Department’s proof of debt.
- (2) Subsection (1) applies to tax that is outstanding on and after 1 December 2002.
- (3) Subsection (2) does not apply—
- (a) to tax that is outstanding on and after 1 December 2002 and subject to an instalment arrangement that is entered into before 1 December 2002; or
  - (b) if the Commissioner has advised the taxpayer, in writing before 1 December 2002, that the outstanding tax has been written off.
- (4) Subsection (3)(b) does not apply to outstanding tax that is written off before 1 December 2002 if the Commissioner reverses the write-off of the tax on or after 1 December 2002.

Subsection (4) was amended, as from 17 October 2002, by section 176 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “1 December 2002” for the expression “1 July 2002” in both places where it appears.

**93 New section 177D inserted**

- (1) After section 177CA (as inserted by section 92), the following is inserted:

**“177D Relief to taxpayers to whom new start grants payable**

- “(1) This section applies to a taxpayer to whom a new start grant is payable.

- “(2) The Commissioner must grant relief—

“(a) to the taxpayer, or to a person or an entity associated with the taxpayer, to the extent that the Commissioner thinks it appropriate having regard to the matters referred to in section EZ 9(3) of the Income Tax Act 1994; and

“(b) from the payment of unpaid tax that relates to an income tax liability that would have arisen if the taxpayer’s only gross income were derived from—

“(i) the farming business for which the new start grant was paid; or

“(ii) land used in carrying on the farming business; or

“(iii) the sale of the farm.

- “(3) If a new start grant is paid to a taxpayer in respect of an adverse event, the Commissioner must grant additional relief—

“(a) to the taxpayer; and

“(b) from the payment of unpaid tax deductions or amounts owing to the Commissioner under the PAYE rules if the unpaid tax deductions or amounts owing relate to source deduction payments made in respect of the farming business for which the new start grant was paid.”

- (2) Subsection (1) applies on and after 1 December 2002.

**94 New section 183AB inserted**

- (1) After section 183A, the following is inserted:

**“183AB Cancellation of late payment penalties imposed before 1 April 2002**

- “(1) The Commissioner must cancel a taxpayer’s liability to pay—

“(a) 60% of an initial late payment penalty; or

“(b) an incremental late payment penalty.

- “(2) The Commissioner must cancel a taxpayer’s liability under subsection (1) only if—

- “(a) the tax to pay in respect of which the taxpayer would otherwise have had the liability is—
    - “(i) tax payable in one or more payments under an arrangement with the Commissioner; or
    - “(ii) tax in respect of which deductions are to be made and paid to the Commissioner under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any other similar tax law; and
  - “(b) the taxpayer complies with the taxpayer’s obligations under the arrangement; and
  - “(c) the liability would otherwise have arisen after—
    - “(i) the arrangement was entered into; or
    - “(ii) the Commissioner exercised powers available to the Commissioner under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law.”
- (2) Subsection (1) applies to arrangements entered into before 1 April 2002.

### **Part 3**

#### **Amendments to other Inland Revenue Acts**

##### *Amendments to Goods and Services Tax Act 1985*

#### **95 Goods and Services Tax Act 1985**

Sections 96 to 106 amend the Goods and Services Tax Act 1985.

#### **96 Interpretation**

- (1) In section 2, after the definition of unincorporated body, the following is inserted:

“**warranty**, in respect of goods supplied, means an undertaking given under the supply agreement to remedy any defect in the goods that appears during a certain period of time after the goods are supplied or before a certain level of usage is reached.”

- (2) Subsection (1) applies on and after 1 August 2002.

**97 Meaning of input tax**

- (1) After section 3A(4), the following is inserted:
- “(4A) For the purpose of subsections (1) and (2), if a supply of goods and services acquired by a non-profit body is not acquired for the principal purpose of making exempt supplies, the supply is treated as being acquired for the principal purpose of making taxable supplies.”
- (2) Subsection (1) applies to supplies made on and after the date this Act receives the Royal assent.

**98 Meaning of term supply**

- (1) After section 5(19), the following is added:
- “(20) A supply of services to which section 11A(1)(ma) applies is treated as the only supply of services for the consideration provided by the warrantor.
- “(21) If goods and services are provided under warranty, the supply of the goods and services is treated as a supply of services for the purpose of section 11A(1)(ma).”
- (2) Subsection (1) applies on and after 1 August 2002.

**99 Value of supply of goods and services**

- (1) In section 10(12)(f), “section 5(8)(c)(iii)” is replaced by “section 5(8)(b)(iii)”.
- (2) In section 10(12)(g), “section 5(8)(c)(iv)” is replaced by “section 5(8)(b)(iv)”.
- (3) Subsections (1) and (2) apply on and after 15 December 1995.

**100 Zero-rating of services**

- (1) After section 11A(1)(m), the following is inserted:
- “(ma) the services relate to goods under warranty to the extent that the services are—
- “(i) provided under the warranty; and
- “(ii) supplied for consideration that is given by a warrantor who is not resident in New Zealand, not a registered person and who is outside New Zealand at the time the services are performed; and
- “(iii) in respect of goods that were subject to tax under section 12(1); or”.



- (2) In section 11A(3), “and (1)(l)” is replaced by “, (1)(l) and (1)(ma)”.
- (3) Subsections (1) and (2) apply on and after 1 August 2002.

#### **101 Exempt supplies**

- (1) Section 14(3) is replaced by:  
“(3) Penalty or default interest, or a charge in the nature of penalty or default interest, imposed under a contract for the supply of goods and services or an enactment (other than under section 132 of the Rating Powers Act 1988) is treated as being consideration for an exempt supply.”
- (2) Subsection (1) applies on and after 10 October 2000.

#### **102 Deductions from output tax for goods and services applied for making taxable supplies**

- (1) Section 21F(3) is repealed.
- (2) Subsection (1) applies on 10 October 2000.

#### **103 Timing of deduction under section 21F**

- (1) After section 21G(1), the following is inserted:  
“(1A) Despite subsection (1), if section 21F(1) applies to goods that are capital assets with a cost of less than \$18,000, the person or the partnership referred to in section 21F(1) may make a single deduction in the taxable period during which the goods are applied for a purpose of making taxable supplies.”
- (2) Subsection (1) applies on and after 10 October 2000.

#### **104 Application to make single deduction under section 21F**

- (1) In section 21H(3)(b), “21F(1)” is replaced by “21G(1)”.
- (2) In section 21H(3)(e)(i), “section 21G” is replaced by “this section”.
- (3) Subsections (1) and (2) apply on and after 10 October 2000.

#### **105 Payment of tax relating to fringe benefits**

- (1) In section 23A, the following is added as subsection (2):  
“(2) Payment of the tax on the taxable value of the fringe benefit is treated as a payment of fringe benefit tax for the purposes of

filing the fringe benefit return and Parts IVA, VI, VII, IX, X and XI of the Tax Administration Act 1994.”

- (2) Subsection (1) applies to tax paid on fringe benefits included in fringe benefit tax returns due—
  - (a) on and after 31 May 2002, for an employer who pays fringe benefit tax on a quarterly or an annual basis; and
  - (b) by the terminal tax date for the 2000-01 income year, for an employer who pays fringe benefit tax on an income year basis, and to subsequent fringe benefit tax returns required to be filed on an income year basis.

**106 Commissioner’s right to withhold payments**

- (1) In section 46(6), in the portion between paragraphs (b) and (c), “in accordance with that person’s, or their agent’s, request under section 173T of the Tax Administration Act 1994 or otherwise” is inserted after “set off”.
- (2) Subsection (1) applies to goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002.

*Amendment to Estate and Gift Duties Act 1968*

**107 Estate and Gift Duties Act 1968**

Section 108 amends the Estate and Gift Duties Act 1968.

**108 Exemption for certain dispositions of relationship property**

- (1) In section 75A(6), “95(5)” is replaced by “95”.
- (2) Subsection (1) applies on and after 1 August 2001.

*Amendment to Student Loan Scheme Act 1992*

**109 Student Loan Scheme Act 1992**

Section 110 amends the Student Loan Scheme Act 1992.

**110 PAYE rules of Income Tax Act 1994 to apply to repayment deductions**

- (1) Section 25(2) of the Student Loan Scheme Act 1992 is amended by—

- (a) omitting the expression “IC 1, IC 2, IC 3”, and substituting the expression “BC 2”;
  - (b) omitting the expression “NC 17, and OB 4”, and substituting the expression “and NC 17”.
- (2) Subsection (1) applies on and after the date this Act receives the Royal assent.

*Amendment to Taxation (Taxpayer Assessment  
and Miscellaneous Provisions) Act 2001*

**111 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001**

Section 112 amends the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001.

**112 Value of supply of goods and services**

- (1) In section 239(1), “before its replacement by section 90 of the Taxation (GST and Miscellaneous Provisions) Act 2000 and” is omitted.
- (2) Subsection (1) applies on and after 24 October 2001.

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**Legislative history**

3 December 2001	Introduction (Bill 179-1)
11 December 2001	First reading and referral to Finance and Expenditure Committee
27 May 2002	Reported from Finance and Expenditure Committee (Bill 179-2)
8 October 2002	Second reading, Committee of the whole House, third reading

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