



# **Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012**

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Commencement see section 2

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

**1 Title**

This Act is the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012.

**2 Commencement**

- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.
- (2) Section 251(1) and (4) come into force on 1 February 1995.
- (3) Section 251(2) and (5) come into force on 1 April 1998.
- (4) Section 251(3) and (6) come into force on 1 October 2001.
- (5) Section 173 comes into force on 17 October 2002.
- (6) Section 209(2) and (3) come into force on 1 April 2003.
- (7) Sections 209(1) and 214(1) come into force on 1 January 2005.
- (8) Sections 170(2) and (5), 241, 242, 244, 245, 246, and 247 come into force on 1 April 2005.
- (9) Section 243 comes into force on 1 April 2006.
- (10) Section 248 comes into force on 1 October 2007.
- (11) Sections 11, 16, 21, 23, 30, 37, 38, 39, 69, 72, 82, 84, 85(1), (2), (3), (7), and (9), 86, 115, 117, 120, 122, 124, 125, 126(1), 127(2), 134, 136, 139, 140(1), (2), and (4), 141, 143, 144, 145, 153, 154(7), (11), (12), (17), and (43), 162(3), (4), and

- (7), 170(3) and (6), 171(1)(b) and (d), 186, 199, and 202 come into force on 1 April 2008.
- (12) Section 83 comes into force on 1 April 2009.
- (13) Section 154(30) comes into force on 9 June 2009.
- (14) Sections 24(1), (3), (4), and (6), 25(1), (3), (4), and (6), 28, 40, 41, 42(1), (2), (6), (7), and (8), 43(1) to (6), 44, 52, 63, 64, 65, 76, 114, 129, 131, 132, 146, and 154(8) and (44) come into force on 30 June 2009.
- (15) Sections 68 and 154(40) come into force on 1 July 2009.
- (16) Section 152 comes into force on 1 February 2010.
- (17) Sections 98 and 100 come into force on 1 April 2010.
- (18) Section 66 comes into force on 30 June 2010.
- (19) Sections 31, 32, 53, 54, and 55 come into force on 1 July 2010.
- (20) Section 45 comes into force on 1 August 2010.
- (21) Sections 12, 13, 18, 19, 20, 29, 35, 36, 56, 57, 58, 59, 60, 61, and 73 come into force on 4 September 2010.
- (22) Sections 27 and 33 come into force on 7 September 2010.
- (23) Section 154(3), (4), and (42) come into force on 1 October 2010.
- (24) Section 154(5) comes into force on 27 October 2010.
- (25) Sections 154(22) and 207(3) come into force on 1 November 2010.
- (26) Sections 154(28), 155, 156(a), and 158 come into force on 1 January 2011.
- (27) Sections 78, 79, 80, 81, 111, 112, 123, 126(2) and (3), 127(1) and (3), 154(6), (9), (10), (14), (19), (27), and (32), 162(1), (2), (5), (6), and (8), 207(2) and (4), 208(2) and (3), 210, 211, 212, 214, 215, 216, 217, 218, 221, 222, 223, 224, 225, and 226 come into force on 1 April 2011.
- (28) Sections 24(2) and (7), 25(2) and (7), 42(3), (4), (5), and (9), 43(7) and (8), 46, 48, 49, 50, 116, 128, and 133 come into force on 1 July 2011.
- (29) Sections 90, 91, 97, 252, 253, 254, and 255 come into force on 29 August 2011.
- (30) Section 208(1) comes into force on the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill.

- (31) Sections 47 and 51 come into force on 1 October 2011.
- (32) Section 194 comes into force on 7 March 2012.
- (33) Sections 70, 85(4), (5), (6), and (8), 89, 94, 140(3), 142, 154(20) and (33), and 163(2) come into force on 1 April 2012.
- (34) Section 168(1)(d) comes into force on 31 May 2012.
- (35) Sections 71, 228, 229, 230, 235, and 238 come into force on 1 July 2012.
- (36) Sections 6, 7, 8, 9, 10, 147, 148, 151, and 154(2), (31), (37), and (39) come into force on 1 October 2012.
- (37) Sections 88, 93(2), 99, 101, 103, 104(2), 107, 118, 150, 154(18) and (29), 163(3), 166, 168(1)(a) to (c) and (e) and (3), 231, and 234 come into force on 1 April 2013.
- (38) Sections 137, 154(25), 170(4), 171(3), 176, 177, 179, 180, 181, 183, 184, 185, 189, 190, 191, 192, 193, 197, 198, 200, 201, and 239 come into force on 1 April 2016 or on an earlier date set by Order in Council.
- (39) Section 168(2) and (4) come into force on 1 April 2014.

## **Part 1**

### **Annual rates of income tax**

#### **3 Annual rates of income tax for 2012–13 tax year**

Income tax imposed by section BB 1 of the Income Tax Act 2007 must, for the 2012–13 tax year, be paid at the basic rates specified in schedule 1 of that Act.

## **Part 2**

### **Amendments to Income Tax Act 2007**

#### **4 Income Tax Act 2007**

This Part amends the Income Tax Act 2007.

#### **5 Films**

Section CC 10(4) is repealed.

#### **6 Bonus issues in lieu of dividend**

In section CD 7(2), “, minus any resident withholding tax (RWT) payable in relation to the dividend” is omitted.

**7 New section CD 7B**

After section CD 7, the following is inserted:

**“CD 7B Shares issued under profit distribution plans**

*“Profit distribution plan shares*

- “(1) A share issued by a company under a profit distribution plan is a dividend.

*“Amount of dividend*

- “(2) The amount of the dividend is the amount offered by the company for the repurchase of the share.

*“Relationship with section CD 22*

- “(3) Section CD 22 does not apply in relation to a share issued under a profit distribution plan and repurchased by the company as part of the plan.

“Defined in this Act: amount, company, dividend, profit distribution plan, RWT, share”.

**8 Elections to make bonus issue into dividend**

- (1) In section CD 8(1), “A bonus issue that is not a bonus issue in lieu” is replaced by “A bonus issue that is not a bonus issue in lieu or a share issued under a profit distribution plan”.
- (2) In section CD 8, in the list of defined terms, “profit distribution plan” and “share” are inserted.

**9 New section CD 23B**

After section CD 23, the following is inserted:

**“CD 23B Returns of capital: shares repurchased under profit distribution plans**

*“When this section applies*

- “(1) This section applies when a company has issued a share to a shareholder under a profit distribution plan and the shareholder exercises the option to have the share repurchased by the company.

*“Amount paid*

- “(2) The amount paid by the company to repurchase the share is not a dividend.

“Defined in this Act: amount, company, dividend, pay, profit distribution plan, share, shareholder”.

**10 Available subscribed capital (ASC) amount**

- (1) In section CD 43(2)(c), “section CD 22 or CD 24” is replaced by “section CD 22, CD 23B, or CD 24”.
- (2) After section CD 43(6)(a), the following is inserted:  
“(ab) in the case of a share issued under a profit distribution plan, the amount offered by the company for the repurchase of the share; and”.
- (3) In section CD 43(6)(b), “that is not a bonus issue in lieu” is replaced by “that is not a bonus issue in lieu or a share issued under a profit distribution plan”.
- (4) In section CD 43(7)(a), “neither subsection (6)(a) nor (b)” is replaced by “none of subsection (6)(a), (ab), or (b)”.
- (5) In section CD 43, in the list of defined terms, “profit distribution plan” is inserted.

**11 Meaning of expenditure on account of an employee**

- (1) Section CE 5(1), other than the heading, is replaced by the following:  
“(1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee or to be incurred by an employee.”
- (2) Subsection (1) applies for the 2008–09 and later income years.

**12 Section CG 4 replaced**

- (1) Section CG 4 is replaced by the following:  
“**CG 4 Receipts for expenditure or loss from insurance, indemnity, or otherwise**  
*“When this section applies*  
“(1) This section applies when—  
“(a) a person is allowed a deduction for expenditure or loss; and  
“(b) the person derives an amount relating to the expenditure or loss, whether through insurance, indemnity, or otherwise; and  
“(c) the amount, to the extent of the deduction, is not income of the person under any other provision of this Act.”

*“Income*

“(2) The amount derived is, to the extent of the deduction, income of the person.

*“Timing of income*

“(3) The income is allocated to the later of—

“(a) the income year in which the expenditure or loss is incurred:

“(b) the income year in which the amount is derived.

“Defined in this Act: amount, deduction, income year, loss”.

(2) Subsection (1) applies for—

(a) the 2011–12 and later income years, except as given by paragraph (b); or

(b) the 2010–11 and later income years for a person who is granted an extension of time for filing a return of income for the 2010–11 income year under the Canterbury Earthquake (Inland Revenue Acts) Order 2011.

**13 Receipts from insurance, indemnity, or compensation for interruption or impairment of business activities**

(1) In section CG 5B(2), after “attributable to income”, “(the **replaced income**)” is inserted.

(2) Section CG 5B(3), other than the heading, is replaced by the following:

“(3) The income is allocated to the later of—

“(a) the income year to which the replaced income relates:

“(b) the earlier of—

“(i) the income year in which the amount is received:

“(ii) the income year in which the amount is reasonably able to be estimated.”

(3) Subsections (1) and (2) apply for—

(a) the 2011–12 and later income years, except as given by paragraph (b); or

(b) the 2010–11 and later income years for a person who is granted an extension of time for filing a return of income for the 2010–11 income year under the Canterbury Earthquake (Inland Revenue Acts) Order 2011.



**14 Section CV 17 repealed**

Section CV 17 is repealed.

**15 Dividends paid by qualifying companies**

In section CW 15, in the list of defined terms, “bonus issue” is omitted.

**16 Expenditure on account, and reimbursement, of employees**

- (1) In section CW 17(1), “Expenditure on account of an employee” is replaced by “Expenditure on account of an employee, being a payment to which section CE 5 (Meaning of expenditure on account of an employee) applies, that is”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

**17 Proceeds from disposal of investment shares**

- (1) Section CX 55(4), other than the heading, is replaced by the following:
  - “(4) This section does not apply to—
    - “(a) a fixed-rate share, within the meaning of paragraphs (a) to (d) of the definition of that term; or
    - “(b) a share for which the amount payable on cancellation is no more than the available subscribed capital per share calculated under the slice rule.”
- (2) In section CX 55, in the list of defined terms,—
  - (a) “non-participating redeemable share” is omitted;
  - (b) “available subscribed capital”, “fixed-rate share”, “pay”, and “slice rule” are inserted.

**18 Section CZ 23 repealed**

Section CZ 23, as inserted by section 11 of the Taxation (Tax Administration and Remedial Matters) Act 2011, is repealed.

**19 New section CZ 25**

After section CZ 24, the following is inserted:

**“CZ25 Land and buildings as revenue account  
property affected by Canterbury earthquakes**

**and replaced—insurance or compensation, Government purchase**

*“When this section applies*

“(1) This section applies for a person and an income year (the **current year**) before the 2016–17 income year when the person,—

“(a) in or before the current year, derives for buildings or land (the **affected property**), all of which is revenue account property,—

“(i) insurance or compensation, if a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011 damages the land and damages each building, or the neighbourhood of the building, causing the building to be useless for the purpose of deriving income and consequently to be abolished or abandoned for later demolition:

“(ii) an amount from a purchase by the Government from the person under section 53(1) of the Canterbury Earthquake Recovery Act 2011; and

“(b) in the absence of this section, would have in or before the current year a total amount of income under section CG 6 (Receipts from insurance, indemnity, or compensation for trading stock) from the insurance or compensation for the affected property that exceeds the total amount of deductions under section DB 23 (Cost of revenue account property) for the affected property; and

“(c) plans in the current year to acquire property (the **replacement property**) replacing affected property and meeting the requirements of subsection (4); and

“(d) gives written notice to the Commissioner under subsection (6) in relation to the affected property.

*“Suspended recovery income*

“(2) The amount of the excess (the **excess recovery**) referred to in subsection (1)(a) is not income of the person except to the extent of the amount (the **suspended recovery income**) remaining after adjustment under subsection (3) that is attributed to an income year by subsection (5).

*“Effect of purchase of replacement property*

- “(3) If the person incurs expenditure (the **replacement cost**) to acquire replacement property,—
- “(a) for the purposes of determining the value of the replacement property for section EA 2 (Other revenue account property), the amount of the person’s expenditure on the replacement property, to the extent that it is less than or equal to the total amount of the income under section CG 6 for the affected property, is treated as being reduced by an amount calculated by multiplying the replacement cost by the excess recovery and dividing the result by the total amount of deductions under section DB 23 for the affected property; and
- “(b) the amount of the suspended recovery income immediately before the expenditure is reduced by an amount equal to the reduction of expenditure under paragraph (a) for the purposes of section EA 2.

*“Requirements for replacement property*

- “(4) For an item of affected property, replacement property must be a building or land that is revenue account property—
- “(a) acquired in or before the person’s 2015–16 income year; and
- “(b) located in greater Christchurch as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011.

*“Amount remaining at end of 2015–16 income year or when person changes intentions, is liquidated, or becomes bankrupt*

- “(5) The person has an amount of income for the affected property in the current year equal to the amount of suspended recovery income when—
- “(a) the current year ends, if the current year is the 2015–16 income year:
- “(b) in the current year, the person decides not to replace the affected property:
- “(c) in the current year, the person goes into liquidation or becomes bankrupt.

*“Notice of election for affected property*

- “(6) A person choosing to rely on this section to suspend in a current year the recognition of suspended recovery income from the insurance for affected property must give written notice to the Commissioner—
- “(a) by the later of 31 January 2012 and the date on which the return of income is filed for the earliest income year (the **estimate year**) in which the amount of the insurance for the affected property can be reasonably estimated; and
  - “(b) if the current year is after the estimate year,—
    - “(i) for each income year between the estimate year and the current year, by the date on which the return of income is filed for that income year; and
    - “(ii) for the current year, by the date on which the return of income is filed for the current year.

*“Contents of notice of election*

- “(7) A notice under subsection (6) must—
- “(a) describe the affected property; and
  - “(b) give details of replacement property acquired in the current year to replace, in full or in part, the affected property; and
  - “(c) give the cost of the replacement property and the reduction under subsection (3) of that cost for the purposes of section EA 2; and
  - “(d) give the amount, for the affected property, of the income from insurance or compensation remaining suspended under this section at the end of the current year.

*“Relationship to section CG 6*

- “(8) This section overrides section CG 6.
- “Defined in this Act: amount, deduction, income, income year, notice, return of income”.

**20 New section CZ 26**

After section CZ 25, the following is inserted:

**“CZ26 Land and buildings affected by Canterbury earthquakes—sections CB 9 to CB 12 overridden for Government purchase**

Sections CB 9 to CB 12 (which relate to disposals within 10 years of acquisition) do not apply to a person and land or buildings purchased by the Government from the person under section 53(1) of the Canterbury Earthquake Recovery Act 2011.

“Defined in this Act: land”.

**21 New heading and section DB 40B inserted**

(1) After section DB 40, the following is inserted:

***“Unsuccessful software development***

**“DB 40B Expenditure in unsuccessful development of software**

*“When this section applies*

“(1) This section applies when a person incurs expenditure in the development of software for use in the person’s business if—

“(a) the development of the software is abandoned when the software is not depreciable property of the person; and

“(b) the software would have been depreciable property of the person if the development had been completed.

*“Deduction*

“(2) The person is allowed a deduction for expenditure incurred in the development of the software to the extent to which no deduction has been allowed for the expenditure under another provision of this Act or under another Act.

*“Timing of deduction*

“(3) The deduction is allocated to the income year in which the development of the software is abandoned.

*“Link with subpart DA*

“(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

“Defined in this Act: capital limitation, deduction, general limitation, general permission, income year”.

(2) Subsection (1) applies for the 2008–09 and later income years.

**22 Expenditure incurred by foreign investment PIEs**

- (1) Section DB 54B(1), other than the heading, is replaced by the following:
- “(1) This section applies when a foreign investment PIE incurs expenditure or loss in deriving income attributable to—
- “(a) a notified foreign investor in the PIE:
  - “(b) a transitional resident who has chosen under section HM 55D(9) (Requirements for investors in foreign investment PIEs) to use the specified prescribed investor rate.”
- (2) In section DB 54B, in the list of defined terms, insert “prescribed investor rate” and “transitional resident”.

**23 Some definitions**

- (1) In section DC 15(1), in the definition of **employee**, paragraph (a) is replaced by the following:
- “(a) means a person that—
- “(i) is employed by a company:
  - “(ii) is not a corporation sole, a body corporate, or an unincorporated body.”
- (2) In section DC 15(1), in the definition of **employee**,—
- (a) in paragraph (b)(ii), “the company; or” is replaced by “the company”:
  - (b) paragraph (b)(iii) is repealed.
- (3) Subsections (1) and (2) apply for the 2008–09 and later income years.

**24 Ring-fenced cap on deduction**

- (1) Section DN 4(1) is replaced by:
- “*Amount of deduction: CFC not elective attributing CFC*
- “(1) The deduction that a person is allowed in an income year for an attributed CFC loss from a CFC (the **first CFC**) that is not an elective attributing CFC for the person in the income year is no more than the total of—
- “(a) total attributed CFC income of the person for the income year from other CFCs, each of which is resident in the same country as the first CFC for the relevant accounting period:

- “(b) total FIF income of the person for the income year from FIFs,—
  - “(i) each of which is resident in the same country as the first CFC for the relevant accounting period; and
  - “(ii) for each of which the person uses the branch equivalent method.

*“Amount of deduction: elective attributing CFC*

- “(1B) The deduction that a person is allowed in an income year for an attributed CFC loss from a CFC (the **first CFC**) that is an elective attributing CFC for the person in the income year is no more than the total of—
  - “(a) total attributed CFC income of the person for the income year from other CFCs, each of which—
    - “(i) is resident in the same country as the first CFC for the relevant accounting period; and
    - “(ii) is an elective attributing CFC for the person in the income year; and
    - “(iii) has the same election commencement year as the first CFC;
  - “(b) total FIF income of the person for the income year from FIFs, each of which—
    - “(i) is resident in the same country as the first CFC for the relevant accounting period; and
    - “(ii) is an elective attributing FIF for the person in the income year; and
    - “(iii) has the same election commencement year as the first CFC.”
- (2) In section DN 4(1)(b)(ii), “branch equivalent method” is replaced by “attributable FIF income method”.
- (3) In section DN 4(2), “subsection (1)” is replaced by “subsection (1) or (1B)” in each place where it occurs.
- (4) Section DN 4(3), other than the heading, is replaced by:
  - “(3) Any excess not able to be deducted because of subsection (1) or (1B) is an attributed CFC net loss able to be used under sections IQ 2, IQ 4, and IQ 9 (which relate to the use of attributed CFC net losses).”

- (5) In section DN 4, in the list of defined terms, “election commencement year”, “elective attributing CFC”, and “elective attributing FIF” are inserted.
- (6) Subsections (1), (3), and (4) apply for income years beginning on or after 1 July 2009.
- (7) Subsection (2) applies for income years beginning on or after 1 July 2011.

## 25 Ring-fencing cap on deduction: attributable FIF income method

- (1) Section DN 8(1) is replaced by:

*“Amount of deduction: FIF not elective attributing FIF*

- “(1) The deduction that a person is allowed in an income year for a FIF loss from a FIF (the **first FIF**) that is not an elective attributing FIF for the person in the income year is no more than the total of—

- “(a) total attributed CFC income of the person for the income year from CFCs, each of which is resident in the same country as the first FIF for the relevant accounting period:

- “(b) total FIF income of the person for the income year from other FIFs,—

- “(i) each of which is resident in the same country as the first FIF for the relevant accounting period; and

- “(ii) for each of which the person uses the branch equivalent method.

*“Amount of deduction: elective attributing FIF*

- “(1B) The deduction that a person is allowed in an income year for a FIF loss from a FIF (the **first FIF**) that is an elective attributing FIF for the person in the income year is no more than the total of—

- “(a) total attributed CFC income of the person for the income year from CFCs, each of which—

- “(i) is resident in the same country as the first FIF for the relevant accounting period; and

- “(ii) is an elective attributing CFC for the person in the income year; and



- “(iii) has the same election commencement year as the first FIF:
- “(b) total FIF income of the person for the income year from other FIFs, each of which—
- “(i) is resident in the same country as the first FIF for the relevant accounting period; and
- “(ii) is an elective attributing FIF for the person in the income year; and
- “(iii) has the same election commencement year as the first FIF.”
- (2) In section DN 8(1)(b)(ii), “branch equivalent method” is replaced by “attributable FIF income method”.
- (3) In section DN 8(2), “subsection (1)” is replaced by “subsection (1) or (1B)” in each place where it occurs.
- (4) Section DN 8(3), other than the heading, is replaced by:
- “(3) Any excess not able to be deducted because of subsection (1) or (1B) is a FIF net loss able to be used under section IQ 3 (Ring-fencing cap on FIF net losses).”
- (5) In section DN 8, in the list of defined terms, “election commencement year”, “elective attributing CFC”, and “elective attributing FIF” are inserted.
- (6) Subsections (1), (3), and (4) apply for income years beginning on or after 1 July 2009.
- (7) Subsection (2) applies for income years beginning on or after 1 July 2011.

## **26 Non-resident general insurers, shippers, and film renters**

- (1) In section DW 3, the section heading is replaced by “**Non-resident general insurers and shippers**”.
- (2) In section DW 3(2)(b), “New Zealand:” is replaced by “New Zealand.”.
- (3) Section DW 3(2)(c) is repealed.

## **27 Deduction for general insurance outstanding claims reserve**

- (1) In section DW 4(6), “The general limitations still apply” is replaced by “The general limitations still apply, except that the

capital limitation does not apply for general insurance contracts after they are transferred to an insurer”.

- (2) In section DW 4, in the list of defined terms, “capital limitation” is inserted.
- (3) Subsections (1) and (2) apply to a transfer of general insurance contracts—
  - (a) on and after 1 October 2012, unless paragraph (b) applies:
  - (b) on and after 7 September 2010, if the transferor chooses to apply subsection (1) and the transfer is made—
    - (i) to a transferee who is a non-resident and does not carry on a business in New Zealand through a fixed establishment; and
    - (ii) for the purposes of complying with the Insurance (Prudential Supervision) Act 2010.

## 28 Section DZ 19 repealed

- (1) Section DZ 19 is repealed.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2009.

## 29 New section DZ 20 inserted

- (1) Before Part E, the following is inserted:
 

**“DZ 20 Expenditure incurred while income-earning activity interrupted by Canterbury earthquake**

*“When this section applies*

“(1) This section applies for a person and an income year (the **current year**) before the 2016–17 income year when—

  - “(a) the person has an income-earning activity in greater Christchurch (as defined in section 4 of the Canterbury Earthquake Recovery Act 2011) immediately before a Canterbury earthquake (as defined in that section); and
  - “(b) the activity is interrupted for a period (the **period of interruption**) as a result of the Canterbury earthquake; and
  - “(c) in the current year, during the period of interruption, the person incurs expenditure or loss (the **interruption**

**expenditure**) in meeting an obligation relating to the income-earning activity; and

“(d) the interruption expenditure does not meet the requirements of the general permission for the person and the income-earning activity but would do so but for the interruption; and

“(e) the person resumes the income-earning activity in an income year (the **resumption year**) before the 2016–17 income year.

*“Deduction for interruption expenditure*

“(2) The person is allowed a deduction for the interruption expenditure.

*“Timing of deduction*

“(3) The deduction is allocated to the resumption year.

*“Link with subpart DA*

“(4) This section supplements the general permission; the general limitations still apply.

“Defined in this Act: deduction, general limitation, general permission, income, income year, loss”.

(2) Subsection (1) applies for the 2010–11 to the 2015–16 income years.

### **30 Application of subpart**

(1) Section EC 1(1) is replaced by the following:

*“When this subpart applies*

“(1) This subpart applies to the valuation of property when a person who owns or carries on a business, other than of selling livestock, holds livestock for the purposes of sale or exchange in the ordinary course of carrying on the business.”

(2) Subsection (1) applies for the 2008–09 and later income years. However, subsection (1) does not apply to a person in relation to a tax position taken by the person—

- (a) in the period from 1 April 2008 to 31 May 2011; and
- (b) relating to the valuation of livestock; and
- (c) relying on the provisions of subpart EC as they were before the amendment made by subsection (1).

**31 Valuation of excepted financial arrangements**

In section ED 1(7B)(a), “section 64, or” is omitted.

**32 Valuation of emissions units issued for zero price**

(1) Section ED 1B(1)(a)(i) and (ii) are replaced by the following:

“(i) under sections 80 to 86F of the Climate Change Response Act 2002:

“(ii) under section 64 of the Climate Change Response Act 2002 for a removal activity listed in Schedule 4, Part 2 of that Act:

“(iii) by a public authority under a supplementary agreement to a negotiated greenhouse agreement:

“(iv) by a public authority as a rebate, under a negotiated greenhouse agreement, for an indirect emissions charge; and”.

(2) Section ED 1B(1)(d), (e), and (f) are repealed.

(3) Section ED 1B(7)(a)(iii) is replaced by the following:

“(iii) allocation entitlement under section 64 of the Climate Change Response Act 2002 for a removal activity listed in Schedule 4, Part 2 of that Act:

“(iv) emissions units corresponding to the actual emissions amount under a supplementary agreement to a negotiated greenhouse agreement:

“(v) emissions units corresponding to a rebate, under a negotiated greenhouse agreement, for an indirect emissions charge.”.

**33 New section ED 3**

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

**“ED 3 Part-year tax calculations for transfers: general insurance OCR**

*“When this section applies*

“(1) This section applies when an insurer to whom sections CR 4 and DW 4 (which relate to outstanding claims reserves) apply (the **transferor**) transfers general insurance contracts to another person (the **transferee**) in an income year.

*“Part-year calculations for transfers*

- “(2) The transferor does a part-year calculation immediately before the transfer, as described in subsection (3), for the transferred general insurance contracts, but only for their part-year ending on the day the transfer occurs. The transferee also does a part-year calculation for the transferred contracts, as described in subsection (3), but only for their part-year starting on the day the transfer occurs. The transferee’s relevant opening outstanding claims reserve amounts equal the transferor’s relevant closing outstanding claims reserve amounts immediately before the transfer, but if the reinsurance associated with transferred policies is not assigned by the transferor to the transferee, the transferee’s reserve amounts are calculated without subtracting relevant reinsurance amounts.

*“Part-year calculations for transfers: description*

- “(3) For calculating their income tax liability for the tax year that corresponds to the income year, the transferor and transferee treat references, in sections CR 4 and DW 4 and in the new life insurance rules, to an income year or a tax year as if they are references to 2 separate tax years and corresponding income years (the **part-years**) within that tax year.

*“Part-year calculations for transfers: effect*

- “(4) Transferor’s and transferee’s part-year calculations may give rise to income and deductions for the income year, but they do not create any part-year tax return obligations.

“Defined in this Act: amount, deduction, general insurance, IFRS 4, income, income tax liability, income year, insurer, outstanding claims reserve, pay, tax year”.

- (2) Subsection (1) applies to a transfer of general insurance contracts—
- (a) on and after 1 October 2012, unless paragraph (b) applies:
  - (b) on and after 7 September 2010, if the transferor chooses to apply subsection (1) and the transfer is made—
    - (i) to a transferee who is a non-resident and does not carry on a business in New Zealand through a fixed establishment; and
    - (ii) for the purposes of complying with the Insurance (Prudential Supervision) Act 2010.

**34 What this subpart does**

In section EE 1(3)(c), “section EE 38” is replaced by “section EE 47”.

**35 Cases affecting pool**

(1) After section EE 22(2), the following is inserted:

*“Insurance or compensation for damage to item*

“(2B) If a person in an income year derives an amount of insurance, indemnity, or compensation (the **compensation amount**) for damage to an item included in a pool at the end of the income year and the compensation amount exceeds the expenditure or loss that the person incurs because of the damage, the excess is subtracted from the adjusted tax value of the pool.”

(2) In section EE 22(3), “any consideration they derive from the disposal” is replaced by “and derives an amount of consideration from the disposal, or derives an amount of insurance, indemnity, or compensation to which subsection (2B) does not apply for damage to the item occurring before the disposal, any excess of the amount derived over the expenditure or loss incurred in deriving the amount”.

(3) Subsections (1) and (2) apply for—

- (a) the 2011–12 and later income years, except as given by paragraph (b); or
- (b) the 2010–11 and later income years for a person who is granted an extension of time for filing a return of income for the 2010–11 income year under the Canterbury Earthquake (Inland Revenue Acts) Order 2011.

**36 Consideration for purposes of section EE 44**

(1) In section EE 45(8), “amount of insurance, indemnity, or compensation” is replaced by “total of the amount of insurance, indemnity, or compensation, and the amount of proceeds from the disposal,”.

(2) Subsection (1) applies for—

- (a) the 2011–12 and later income years, except as given by paragraph (b); or
- (b) the 2010–11 and later income years for a person who is granted an extension of time for filing a return of in-

come for the 2010–11 income year under the Canterbury Earthquake (Inland Revenue Acts) Order 2011.

**37 Total deductions in section EE 56**

In section EE 60(5)(a)(ii), “section EE 55(4)” is replaced by “section EE 6(4)”.

**38 Use of money interest payable by person**

In section EF 5(2), “income tax liability” is replaced by “assessed liability”.

**39 Spreading forward of deductions for repairs to fishing boats**

- (1) In section EJ 2(1), “Part 10 of the Maritime Transport Act 1994” is replaced by “Part 21 of the Maritime Rules made under the Maritime Transport Act 1994”.
- (2) In section EJ 2(6), in the definition of **fishing boat**, “a fishing boat under Part 4 of the Fisheries Act 1983” is replaced by “a fishing vessel under section 103 of the Fisheries Act 1996”.
- (3) Subsections (1) and (2) apply for the 2008–09 and later income years.

**40 Scheme for finding person’s attributed CFC income or loss**

- (1) In section EX 18A(2)(b)(i), “subsection (3):” is replaced by “subsection (3), for which the interest holder is not affected by an election under section EX 73:”.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2009.

**41 Attributable CFC amount**

- (1) Section EX 20B(3)(f) is replaced by the following:  
“(f) income from a business of insurance or from being an insurer:”.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2009.

**42 Net attributable CFC income or loss**

(1) In section EX 20C(2), the formula is replaced by:

attributable CFC – apportioned funding income  
– apportioned funding costs – other deductions.

(2) Section EX 20C(3) to (11) are replaced by:

*“Definition of items in formula*

“(3) In the formula in subsection (2),—

“(a) **attributable CFC** is the CFC’s attributable CFC amount for the accounting period:

“(b) **apportioned funding income** is,—

“(i) if the CFC is an entity carrying on a business of banking or insurance or is directly or indirectly controlled by such an entity, zero:

“(ii) if subparagraph (i) does not apply, the amount calculated using the formula—

funding income × funding fraction × (1 – asset fraction):

“(c) **apportioned funding costs** is the amount calculated using the formula—

funding costs × funding fraction × cost fraction:

“(d) **other deductions** is the amount of expenditure and loss incurred in the accounting period by the CFC to the extent to which the expenditure and loss meets the requirements of subsection (13).

*“Definition of items in formula*

“(4) The items in the formulas in subsection (3)(b)(ii) and (c) are defined in subsections (5), (6), (8), (10), and (11).

*“Funding income*

“(5) **Funding income** is the total of the amounts in the accounting period that are included in the item **attributable CFC** and relate to a financial arrangement—

“(a) that provides funds for the CFC; and

“(b) for which there is no reasonable expectation, when the CFC enters the financial arrangement or when the terms of the financial arrangement are changed, that the CFC will have from the financial arrangement amounts that would be income for the CFC exceeding in total the



amounts that would be deductions for the CFC, during—

- “(i) the period that the CFC is a party to the financial arrangement:
- “(ii) a period predictable in advance during which the CFC is a party to the financial arrangement.

*“Funding fraction*

“(6) **Funding fraction** is equal to,—

- “(a) if the item **funding** in subsection (7)(a) is zero, 1; or
- “(b) if the item is being used to calculate the item **apportioned funding costs** and the interest holder chooses to rely on this paragraph, 1; or
- “(c) if neither of paragraphs (a) and (b) apply, the amount calculated using the formula—

$$\frac{\text{funding} - \text{group funding}}{\text{funding}}.$$

*“Definition of items in formula*

“(7) In the formula in subsection (6),—

- “(a) **funding** is the total of amounts, each of which is the outstanding balance for—
  - “(i) a financial arrangement to which the CFC is a party and which provides funds for the CFC:
  - “(ii) a fixed rate foreign equity, or share giving a right to a deductible foreign equity distribution, issued by the CFC and held by a company that is a New Zealand resident or CFC:
- “(b) **group funding** is the lesser of the item **funding** and the total of amounts, each of which is the outstanding balance for a financial arrangement—
  - “(i) under which the CFC provides funds to another CFC associated with the CFC under section YB 2 (Two companies); and
  - “(ii) that produces for the CFC an amount included in the item **arrangement** under section EX 20B(4).

*“Asset fraction*

“(8) **Asset fraction** is the amount calculated using the formula—

$$\frac{\text{attributable CFC's assets} - \text{group funding}}{\text{total CFC's assets} - \text{group funding}}$$

*“Definition of items in formula*

“(9) In the formula in subsection (8),—

“(a) **attributable CFC’s assets** is the total of amounts for the CFC’s assets, each of which is the value of an asset to the extent to which the asset is used for the purpose of deriving an attributable CFC amount and not used for the purpose of deriving an amount that is not an attributable CFC amount:

“(b) **group funding** is—

“(i) zero, if subparagraph (ii) does not apply; or

“(ii) the amount of the item **group funding** referred to in subsection (7)(b), if subsection (6)(c) applies for the interest holder and the CFC:

“(c) **total CFC’s assets** is the total value of the CFC’s assets.

*“Funding costs*

“(10) **Funding costs** is the total of amounts in the accounting period, each of which—

“(a) would be a deduction of the CFC relating to a financial arrangement to which the CFC is a party and which provides funds for the CFC:

“(b) is a distribution relating to fixed-rate foreign equity or a deductible foreign equity distribution of the CFC and is paid by the CFC to a company resident in New Zealand or to a CFC.

*“Cost fraction*

“(11) **Cost fraction** is,—

“(a) if the CFC is not excessively debt funded under section EX 20D, the amount of the item **asset fraction** referred to in subsection (8); or

“(b) if the CFC is excessively debt funded under section EX 20D, the lesser of—

“(i) the amount of the item **asset fraction** referred to in subsection (8):

“(ii) the amount calculated under section EX 20D.”

- (3) In section EX 20C(7)(a)(ii), “resident or CFC” is replaced by “resident, a CFC, or a FIF for which the interest holder uses the attributable FIF income method”.
- (4) In section EX 20C(7)(b)(i), “companies” is replaced by “companies) or to a FIF for which the interest holder uses the attributable FIF income method and that is associated with the CFC under section YB 2”.
- (5) In section EX 20C(10)(b), “New Zealand or to a CFC” is replaced by “New Zealand, to another CFC, or to a FIF for which the interest holder uses the attributable FIF income method”.
- (6) In section EX 20C(12), “subsection (11)” is replaced by “subsection (9)”.
- (7) After section EX 20C(12), the following is added:  
*“Requirements for item other deductions*  
 “(13) Amounts of expenditure or loss contribute to the item **other deductions** to the extent to which—  
 “(a) the amounts do not relate to a financial arrangement or share and—  
     “(i) are incurred for the purpose of deriving an attributable CFC amount; and  
     “(ii) are not incurred for the purpose of deriving an amount that is not an attributable CFC amount; and  
     “(iii) are deductions of the CFC:  
 “(b) the amounts relate to financial arrangements or shares referred to in the definition of the item **funding** in subsection (7)(a) and exceed in total the amount given by multiplying the items **funding costs** and **funding fraction**, used in calculating the item **apportioned funding costs** under subsection (3)(c):  
 “(c) the amounts—  
     “(i) do not relate to financial arrangements that provide funds for the CFC; and  
     “(ii) relate to financial arrangements referred to in section EX 20B(4).”
- (8) Subsections (1), (2), (6), and (7) apply for income years beginning on or after 1 July 2009.

- (9) Subsections (3), (4), and (5) apply for income years beginning on or after 1 July 2011.

#### **43 Adjustment of fraction for excessively debt funded CFC**

- (1) In section EX 20D, in the heading, “**fraction**” is replaced by “**cost fraction**”.
- (2) In section EX 20D(1), “section EX 20C(8)” is replaced by “the item (the CFC’s **cost fraction**) in section EX 20C(11)”.
- (3) In section EX 20D(9), in the heading, “*Fraction*” is replaced by “*Cost fraction*”.
- (4) In section EX 20D(9), “item **fraction**” is replaced by “item **cost fraction**”.
- (5) In section EX 20D(10), in the heading, “*fraction*” is replaced by “*cost fraction*”.
- (6) In section EX 20D(10), “CFC’s fraction” is replaced by “CFC’s cost fraction”.
- (7) Section EX 20D(10), other than the heading, is replaced by the following:
- “(10) The formula for the CFC’s cost fraction is—
- $$\frac{\text{attributable foreign company assets}}{\text{total foreign company assets}}$$
- (8) Subsection (7) applies for income years beginning on or after 1 July 2011.

#### **44 Non-attributing active CFCs**

- (1) Section EX 21B(1), other than the heading, is replaced by—
- “(1) **Non-attributing active CFC**, for an accounting period and a person (the **interest holder**), means a CFC—
- “(a) for which the interest holder is not affected by an election under section EX 73 for the accounting period; and
- “(b) that meets the requirements of subsection (2) or (3), alone or as part of a test group of companies under section EX 21D or EX 21E.”
- (2) In section EX 21B, in the list of defined terms, “group of companies” is inserted.
- (3) Subsection (1) applies for income years beginning on or after 1 July 2009.

**45 Exemption for ASX-listed Australian companies**

In section EX 31(2)(c), in the words before the paragraphs, “ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust),” is replaced by “ASX Operating Rules”.

**46 Exemption for interest in FIF resident in Australia**

(1) Section EX 35(a) is replaced by the following:

“(a) at all times in the year, the item **income interest** calculated under section EX 50(4) for the person and the FIF is 10% or more; and”.

(2) Subsection (1) applies for income years beginning on or after 1 July 2011.

**47 Section EX 39 repealed**

(1) Section EX 39 is repealed.

(2) Subsection (1) applies for the 2012–13 and later income years.

**48 Attributable FIF income method**

(1) Section EX 50(7B)(a)(i) is repealed.

(2) Section EX 50(7B)(b) is replaced by the following:

“(b) the FIF would meet the test for a non-attributing active CFC under section EX 21B(2)(b) if the items **added passive and reported revenue** under section EX 21E(5), (8), and (10) for the FIF included the amounts given by subsection (7C)(a)—

“(i) relating to the FIF’s interests in each member of a grouping of one or more foreign companies including the foreign company; and

“(ii) reported in the accounts of the FIF, or in the consolidated accounts of the FIF’s test group under section EX 21E.”

(3) Section EX 50(7B)(c) is repealed.

(4) After section EX 50(7B), the following is inserted:

*“Requirements for test under subsection (7B)(b)*

“(7C) In determining whether a FIF would meet the requirements of subsection (7B)(b) for an accounting period,—

“(a) the amounts required to be included in the items are—

- “(i) amounts recognised in profit and loss under the equity method under whichever is appropriate of NZIAS 28, NZIAS 31, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America:
  - “(ii) amounts recognised in profit or loss under proportionate consolidation under whichever is appropriate of NZIAS 31, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America:
  - “(iii) dividends and net fair value changes recognised in profit or loss in relation to investments accounted for under whichever is appropriate of NZIAS 39, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America; and
  - “(b) an interest holder must not use the result of the test applied to the FIF and a foreign company as a member of a grouping of foreign companies if the interest holder uses for the period a result of the test applied to the FIF and a different grouping of foreign companies.”
- (5) Subsections (1) to (4) apply for income years beginning on or after 1 July 2011.

**49 Additional FIF income or loss if CFC owns FIF**

- (1) Section EX 58(5), other than the heading, is replaced by the following:
- “(5) Despite subsection (4), the CFC’s FIF income or loss does not include an amount actuarially determined to be attributable to policyholders in the CFC or another company as a result of applying section EX 21(25) and (26) to the CFC.”
- (2) Subsection (1) applies for income years beginning on or after 1 July 2011.

**50 Limits on changes of method**

- (1) In section EX 62(2)(b), “section EX 46(3)(a) or (b) prevents” is replaced by “section EX 46(3)(a) and (b) prevent”.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2011.

**51 Measurement of cost**

- (1) After section EX 68(11), the following is added:  
*“Optional transitional rule: interests excluded by section EX 39 until 2012–13 income year*
- “(12) For interests that were acquired by the person before 1 January 2005 and excluded by section EX 39 from being attributing interests until the beginning of the 2012–13 income year, the person may choose to treat the cost of every interest as being the market value of the interest at the beginning of the 2012–13 income year, for the purposes of the \$50,000 threshold in sections CQ 5(1)(d) or (e) and DN 6(1)(d) or (e).”
- (2) Subsection (1) applies for the 2012–13 and later income years.

**52 New heading and new section EX 73**

- (1) After section EX 72, the following is inserted:

*“Election relating to CFC or FIF*

**“EX 73 Election that CFC not non-attributing active CFC or FIF not non-attributing active FIF**

*“Election to have elective attributing CFC*

- “(1) A person (the **interest holder**) may elect by notice to the Commissioner for each accounting period of the election, that—
  - “(a) a CFC of the interest holder, in which the interest holder has an income interest of 10% or more, not be a non-attributing active CFC for the interest holder:
  - “(b) a FIF of the interest holder, for which the interest holder uses the attributable FIF income method, not be a non-attributing active FIF for the interest holder.

*“Exception*

- “(2) The interest holder must not make an election under subsection (1) for a CFC or FIF that is—

- “(a) an entity carrying on a business of banking or insurance or is directly or indirectly controlled by such an entity:
- “(b) a non-attributing Australian CFC.

“*Period of election*

- “(3) An election under subsection (1) is made for all accounting periods—
  - “(a) for a CFC, ending in the interest holder’s income years beginning on or after 1 July 2009, if the notice—
    - “(i) specifies that the election is made under this paragraph or for that period; and
    - “(ii) meets the requirements of subsection (4); or
  - “(b) for a FIF, ending in the interest holder’s income years beginning on or after 1 July 2011, if the notice—
    - “(i) specifies that the election is made under this paragraph or for that period; and
    - “(ii) meets the requirements of subsection (4); or
  - “(c) beginning in the interest holder’s income years beginning after—
    - “(i) the date on which the notice is given to the Commissioner; or
    - “(ii) another date agreed by the Commissioner.

“*Timing of retrospective election*

- “(4) A notice of election for a period given by subsection (3)(a) or (b) is not effective unless given to the Commissioner by the later of—
  - “(a) the end of the interest holder’s income year in which this subsection receives the Royal assent:
  - “(b) a date allowed by the Commissioner.

“*Currency of election*

- “(5) An election under subsection (1) remains effective until the beginning of the earliest income year—
  - “(a) for which the election is revoked under subsection (6):
  - “(b) in which the election ceases to be effective under subsection (7).

“*Revoking election*

- “(6) The interest holder may revoke an election under subsection (1) if—



- “(a) the interest holder gives notice of the revocation to the Commissioner before the beginning of the interest holder’s first income year for which the notice is given; and
- “(b) the interest holder satisfies the Commissioner that—
  - “(i) expenditure or loss of a CFC included, while the election is effective, in net attributable CFC income or loss for the interest holder is extremely unlikely to result after the revocation in an amount that would otherwise have been an attributable CFC amount for the CFC; and
  - “(ii) the revocation is not made for a purpose or effect of reducing a tax liability; and
- “(c) the Commissioner agrees to the revocation.

*“Expiry of election*

- “(7) An election by the interest holder under subsection (1) ceases to be effective in an income year if the election is for—
  - “(a) a CFC that in the income year ceases to be a CFC in which the interest holder has an income interest of 10% or more, except if the CFC becomes at that time a FIF for which the interest holder uses the attributable FIF income method, in which case the election becomes effective as if made for the FIF:
  - “(b) a FIF that in the income year ceases to be a FIF for which the interest holder uses the attributable FIF income method, except if the FIF becomes at that time a CFC meeting the requirements of subsection (8), in which case the election becomes effective as if made for the CFC:
  - “(c) a CFC or FIF that in the income year becomes an entity carrying on a business of banking or insurance or becomes directly or indirectly controlled by such an entity:
  - “(d) a CFC that becomes a non-attributing Australian CFC in the income year.

*“Requirements for CFC to be affected by FIF election*

- “(8) For a CFC to be affected under subsection (7)(b) by an election,—

- “(a) the interest holder must have an income interest of 10% or more in the CFC; and
- “(b) the CFC must not be a non-attributing Australian CFC.

*“Effect of expiry or revocation of election*

“(9) If an election under subsection (1) ceases to be effective for a CFC or FIF,—

“(a) becoming effective for a FIF under subsection (7)(a) because the CFC becomes a FIF for which the interest holder uses the attributable FIF income method, the interest holder may carry forward under section IQ 1B (Losses carried forward to tax year) attributed CFC losses of the CFC to a later tax year as if they were FIF net losses that were attributed from the FIF when the CFC losses were attributed from the CFC:

“(b) becoming effective for a CFC under subsection (7)(b) because the FIF becomes a CFC of the interest holder in which the interest holder has an income interest of 10% or more, the interest holder may carry forward under section IQ 1B the FIF net losses of the FIF as if they were attributed CFC losses that were attributed from the CFC when the FIF losses were attributed from the FIF:

“(c) other than under paragraphs (a) and (b), the interest holder must not carry forward under section IQ 1B an attributed CFC loss from an elective attributing CFC, or a FIF net loss from an elective attributing FIF, to an income year for which the election for the CFC or FIF has ceased to be effective.

*“Further election*

“(10) The interest holder may make a further election under subsection (1) for a period given by subsection (3)(c) after an earlier election ceases to be effective, if—

“(a) the interest holder gives notice of the election to the Commissioner before the beginning of the interest holder’s first income year for which the notice is given; and

“(b) the interest holder satisfies the Commissioner that—

- “(i) the expiry of the earlier election was due to an oversight on the part of the interest holder or the CFC or FIF; and
  - “(ii) the interest holder gave notice of the further election within a reasonable time after the expiry; and
  - “(iii) the further election has no purpose or effect of allowing the attribution of deductions without the attribution of corresponding income; and
  - “(c) the Commissioner agrees to the election.
- “Further election for entity by associate of original interest holder*
- “(11) An interest holder may not make an election under subsection (1) for a CFC or FIF for which an earlier election by a person associated with the interest holder has ceased to be effective, unless—
- “(a) the interest holder gives notice of the proposed election to the Commissioner before the beginning of the interest holder’s first income year for which the election is made; and
  - “(b) the interest holder satisfies the Commissioner that the proposed election has no purpose or effect of allowing the attribution of deductions without the attribution of corresponding income; and
  - “(c) the Commissioner agrees to the proposed election.
- “Form and means of notice to Commissioner*
- “(12) A notice to the Commissioner under this section must be given in the form and by the means prescribed by the Commissioner.
- “Defined in this Act: attributable FIF income method, attributed CFC loss, CFC, Commissioner, elective attributing CFC, elective attributing FIF, FIF, income interest, income year, net attributable FIF loss, non-attributing active CFC, non-attributing active FIF, non-attributing Australian CFC, notice”.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2009.

### 53 Part-year tax calculations

In section EY 5(4),—

- (a) “part-year calculation, as described” is replaced by “part-year calculation immediately before the transfer, as described”:

- (b) “reserve amounts, and” is replaced by “reserve amounts immediately before the transfer, and”.

**54 Shareholder base other profit: profit participation policies that are existing business**

- (1) In section EY 28(8), in the definition of **existing business**,—
  - (a) in paragraph (a), “2009; or” is replaced by “2009:”;
  - (b) in paragraph (b)(ii), “2009.” is replaced by “2009:”.
- (2) In section EY 28(8), in the definition of **existing business**, the following is added:
  - “(c) the replacement of another policy (the **replaced policy**) caused by a life insurer being sold, or selling or transferring its rights and obligations under the replaced policy, and—
    - “(i) the replaced policy was existing business under this subsection; and
    - “(ii) the replaced policy and the policy have the same substantial and material terms, conditions, and bonus entitlements ignoring any annual increase in life insurance cover that is less than 10% or is less than the annual percentage change in the consumer price index.”
- (3) Subsections (1) and (2) apply—
  - (a) on and after 1 July 2010, except if 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.

**55 Transitional adjustments: life risk**

- (1) Section EY 30(1)(a) is replaced by the following:
  - “(a) reinstating the old policy after either a lapse in premium payments or cancellation by the insured, if the new policy comes into force within 90 days of the lapse or cancellation, and the life insurer treats the new policy and old policy the same; or”.

- (2) In section EY 30(1)(b), “selling” is replaced by “selling or transferring”.
- (3) In section EY 30(3),—
  - (a) in the words before the paragraphs “the individual lives covered, if the policy is issued” is replaced by “either the individual lives covered or a relevant underlying life insurance policy, if the multiple life policy (the **policy**) is issued”:
  - (b) in paragraph (b), “individual lives covered” is replaced by “individual lives covered or relevant underlying life insurance policy”.
- (4) Section EY 30(3)(c) is replaced by the following:
  - “(c) to the extent to which, looking through to and in relation to the individual lives covered or relevant underlying policy,—
    - “(i) the cover was first in place before the grandparenting start day:
    - “(ii) the multiple life policy is a life reinsurance policy that was first in place before the grandparenting start day; and”.
- (5) Subsections (1) to (4) apply—
  - (a) on and after 1 July 2010, except if 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.

**56 Property acquired after depreciable property affected by Canterbury earthquakes**

- (1) Section EZ 23B(1)(a) is replaced by the following:
  - “(a) in or before the current year, receives insurance or compensation for items of depreciable property (the **affected property**) each of which, as a result of a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011, is affected by—

- “(i) damage meeting the requirements of section EE 47(4) (Events for purposes of section EE 44); or
  - “(ii) a disposal and reacquisition under section EZ 23C.”
- (2) In section EZ 23B(2)(b), “subsection (7)” is replaced by “subsection (8)”.
- (3) Subsection (1) applies for the 2010–11 to the 2015–16 income years.

#### **57 New section EZ 23C**

- (1) After section EZ 23B, the following is inserted:

#### **“EZ 23C Insurance for Canterbury earthquake damage of property: deemed sale and purchase**

*“When this section applies*

- “(1) This section applies for a person and an item of depreciable property and an income year (the **current year**) before the 2016–17 income year when—
- “(a) the item is damaged by a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
  - “(b) the person is entitled to an amount of insurance or compensation for the damage to the item; and
  - “(c) the item is assessed by the payer of the insurance or compensation (the **insurer**) as uneconomic to repair; and
  - “(d) the damage does not meet the requirements of section EE 47(4) (Events for purposes of section EE 44).

*“Deemed sale and repurchase of item*

- “(2) The person is treated as, on the date of the Canterbury earthquake,—
- “(a) disposing of the item for the amount of insurance or compensation; and
  - “(b) reacquiring the item for zero consideration.

*“Relationship with section EE 52*

- “(3) This section overrides section EE 52 (Amount of depreciation recovery income when compensation received).  
“Defined in this Act: amount, depreciable property, income year”.

- (2) Subsection (1) applies for the 2010–11 to the 2015–16 income years.

**58 New section EZ 23D**

- (1) After section EZ 23C, the following is inserted:

**“EZ 23D Insurance for Canterbury earthquake damage of property: limit on depreciation recovery income**

*“When this section applies*

- “(1) This section applies for a person and an item of depreciable property and an income year (the **current year**) before the 2016–17 income year when—

“(a) the item is damaged by a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and

“(b) the person is entitled to an amount of insurance or compensation for the damage to the item; and

“(c) the damage does not meet the requirements of section EE 47(4) (Events for purposes of section EE 44); and

“(d) section EZ 23C does not apply for the item.

*“Limit on depreciation recovery income under section EE 52*

- “(2) If the person would derive depreciation recovery income under section EE 52 (Amount of depreciation recovery income when compensation received) in an income year for the item in the absence of this section, the person derives in the income year an amount of depreciation recovery income equal to the lesser of—

“(a) the amount of depreciation recovery income under section EE 52 that the person would derive in the income year for the item in the absence of this section:

“(b) the total of the amounts of depreciation loss for which the person has been allowed deductions for the item.

*“Relationship with section EE 52*

- “(3) This section overrides section EE 52.

“Defined in this Act: amount, deduction, depreciable property, depreciation loss, depreciation recovery income, income year”.

- (2) Subsection (1) applies for the 2010–11 to the 2015–16 income years.

**59 New section EZ 23E inserted**

(1) After section EZ 23D, the following is inserted:

**“EZ 23E Item treated as available for use if access restricted due to Canterbury earthquake**

An item of depreciable property is treated for an income year as being available for use while access to the item is affected by a restriction imposed due to the effects of a Canterbury earthquake (as defined in section 4 of the Canterbury Earthquake Recovery Act 2011), if—

- “(a) the item was used or available for use immediately before the restriction was imposed; and
- “(b) the item would be used or available for use in the absence of the restriction; and
- “(c) the income year is the 2015–16 or an earlier income year.

“Defined in this Act: depreciable property, income year”.

(2) Subsection (1) applies for the 2010–11 to the 2015–16 income years.

**60 New section EZ 23F inserted**

(1) After section EZ 23E, the following is inserted:

**“EZ 23F Insurance for Canterbury earthquake damage causing disposal: optional timing rule for income, deductions**

*“When this section applies*

“(1) This section applies for a person and an item of depreciable property when—

“(a) the item is damaged by a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and

“(b) the damage—

“(i) results in the item being affected by a disposal and reacquisition under section EZ 23C; or

“(ii) meets the requirements of section EE 47(4) (Events for purposes of section EE 44); and

“(c) the person is entitled to an amount of insurance or compensation for the damage to the item; and



“(d) the person chooses to apply this section for all items of depreciable property meeting the requirements of paragraphs (a) to (c).

*“Attribution of income from insurance and disposal*

“(2) If the amount of insurance or compensation for the damage (the **insurance receipt**) is derived or able to be reasonably estimated before the end of the 2015–16 income year, the person’s income from the insurance receipt and the consideration derived from the disposal of the item is attributed to the earlier of—

“(a) the 2015–16 income year:

“(b) the first income year in which—

“(i) the amount of the cost of disposing of the item (the **disposal cost**) is or has been incurred or able to be reasonably estimated; and

“(ii) the insurance receipt is or has been derived or able to be reasonably estimated; and

“(iii) the consideration from the disposal of the item is or has been derived or able to be reasonably estimated.

*“Attribution of deductions*

“(3) If the disposal cost is incurred or able to be reasonably estimated before the end of the 2015–16 income year, the person’s deductions for the disposal cost and for depreciation loss under section EE 48 (Effect of disposal or event) are attributed to the earlier of—

“(a) the 2015–16 income year:

“(b) the first income year in which—

“(i) the disposal cost is or has been incurred or able to be reasonably estimated; and

“(ii) the insurance receipt is or has been derived or able to be reasonably estimated; and

“(iii) the consideration from the disposal of the item is or has been derived or able to be reasonably estimated.

*“Relationship with other sections*

- “(4) This section overrides sections EE 1, EE 22, and EE 48 (which state when depreciation loss and depreciation recovery income arise) in relation to the timing of the person’s—
- “(a) income from the insurance receipt and consideration from the disposal of the item:
- “(b) deductions for the disposal cost and depreciation loss.
- “Defined in this Act: amount, building, deduction, grandparented structure, income, income year”.
- (2) Subsection (1) applies for the 2010–11 to the 2015–16 income years.

**61 New section EZ 23G inserted**

- (1) After section EZ 23F, the following is inserted:

**“EZ 23G Insurance for repairs of Canterbury earthquake damage: optional timing rule for income, deductions***“When this section applies*

- “(1) This section applies for a person and an item of depreciable property when—
- “(a) the item is damaged by a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
- “(b) the damage—
- “(i) does not result in the item being subject to a disposal and reacquisition under section EZ 23C; and
- “(ii) does not meet the requirements of section EE 47(4) (Events for purposes of section EE 44); and
- “(c) the person is entitled to an amount of insurance or compensation for the damage to the item; and
- “(d) the person chooses to apply this section for all items of depreciable property meeting the requirements of paragraphs (a) to (c).

*“Attribution of income from insurance*

- “(2) If the amount of insurance or compensation for the damage (the **insurance receipt**) is derived or able to be reasonably estimated before the end of the 2015–16 income year, the per-

son's income from the insurance receipt is attributed to the earlier of—

- “(a) the 2015–16 income year:
- “(b) the first income year in which—
  - “(i) the amount of expenditure for total repair of the damage (the **repair cost**) is or has been incurred or able to be reasonably estimated; and
  - “(ii) the insurance receipt is or has been derived or able to be reasonably estimated.

*“Attribution of deductions for repairs*

- “(3) If the repair cost is incurred or able to be reasonably estimated before the end of the 2015–16 income year, the person's deductions for the repair cost are attributed to the earlier of—
  - “(a) the 2015–16 income year:
  - “(b) the first income year in which—
    - “(i) the repair cost is or has been incurred or able to be reasonably estimated; and
    - “(ii) the insurance receipt is or has been derived or able to be reasonably estimated.

*“Relationship with other sections*

- “(4) This section overrides sections CG 4, EE 22, and EE 52 (which provide for receipts of insurance or indemnity payments) in relation to the timing of the person's—
    - “(a) income from the insurance receipt:
    - “(b) deductions for the repair cost.
- “Defined in this Act: amount, deduction, income, income year”.

- (2) Subsection (1) applies for the 2010–11 to the 2015–16 income years.

## **62 Section EZ 32 repealed**

Section EZ 32 is repealed.

## **63 Section EZ 32C repealed**

- (1) Section EZ 32C is repealed.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2009.

**64 New section EZ 32D**

- (1) Before the heading before section EZ 33, the following is inserted:

**“EZ 32D Value of asset fraction: CFC with excessive debt funding and loan entered before 21 June 2012**

*“When this section applies*

- “(1) This section applies when a CFC is excessively debt funded under section EX 20D (Adjustment of cost fraction for excessively debt funded CFC) and entered before 21 June 2012 a financial arrangement (an **old funding arrangement**) that provides funds for the CFC.
- “(2) The amount of the item **apportioned funding income** for the CFC is the sum of—
- “(a) an amount calculated using the formula in section EX 20C(3)(b)(ii) (Net attributable CFC income or loss) with—
- “(i) a value for the item **funding income** that is the amount of funding income relating to the old funding arrangements of the CFC; and
- “(ii) a value for the item **asset fraction** that is the amount of the item **cost fraction** calculated under section EX 20D(10);
- “(b) an amount calculated using the formula in section EX 20C(3)(b)(ii) with a value for the item **funding income** that is the amount of funding income relating to financial arrangements of the CFC that are not old funding arrangements.

*“Relationship with section EX 20C*

- “(3) This section overrides section EX 20C(3)(b)(ii).  
“Defined in this Act: CFC, financial arrangement”.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2009.

**65 New section EZ 32E**

- (1) After section EZ 32D, the following is inserted:

**“EZ 32E Change in section EX 20B for income of CFC insurer:  
interest on terminal tax**

*“When section applies*

“(1) This section applies when a person has a liability for terminal tax (the **resulting liability**)—

“(a) for an income year beginning on or after 1 July 2009; and

“(b) relating to a return of income provided to the Commissioner before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (the **amending Act**) receives the Royal assent; and

“(c) that the person would not have but for the replacement by the amending Act of section EX 20B(3)(f) (Attributable CFC amount) coming into force on 1 July 2009.

*“No liability for interest for period*

“(2) The person is not liable to pay interest under Part 7 of the Tax Administration Act 1994 in relation to the resulting liability for the period beginning with 1 July 2009 and ending on the later of—

“(a) 30 June 2012;

“(b) a date fixed by the Commissioner for the payment of the resulting liability.

*“Relationship with Tax Administration Act 1994*

“(3) This section overrides Part 7 of the Tax Administration Act 1994.

“Defined in this Act: Commissioner, income year, return of income, tax position, terminal tax”.

(2) Subsection (1) applies for income years beginning on or after 1 July 2009.

**66 Disposal and acquisition upon entry**

In section EZ 63, in the list of defined terms, “portfolio-listed company” is omitted.

**67 Transfer at market value**

In section FC 2(3), “subsection” is replaced by “section”.

**68 Alternative apportionment of interest by some excess debt entities**

In section FE 6B(3)(a), “is the deductions” is replaced by “**net interest** is the deductions”.

**69 Measurement dates**

- (1) In section FE 8(4), “the first measurement date for the new reporting bank is the day” is replaced by “the first measurement period for the new reporting bank begins on the day”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

**70 Banking group’s equity threshold**

- (1) In section FE 19(1), the formula is replaced by the following:  
 $0.06 \times (\text{risk-weighted exposures} - \text{deductions from equity value})$ .
- (2) Subsection (1) applies for measurement dates under section FE 8(3) of the Income Tax Act 2007 for periods beginning on or after 1 April 2012.

**71 Some general rules for treatment of consolidated groups**

- (1) In section FM 6(3)(c), “GB 40,” is omitted.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2012.

**72 Transactions between group companies: income**

- (1) In section FM 8(3)(b)(ii), “if the parties were not group companies” is replaced by “if the parties were not consolidated group companies”.
- (2) Subsection (1) applies for the 2008–09 and later income years, except for a tax position that is inconsistent with subsection (1) and is taken in a tax return filed before 14 September 2011.

**73 New heading and section FZ 7**

- (1) After section FZ 6, the following is added:

*“Earthquake-affected group property*

**“FZ 7 Valuation of group assets: insurance proceeds from  
Canterbury earthquake**

*“When this section applies*

- “(1) This section applies for the purposes of sections FE 16 and FE 18 (which relate to the valuation of the assets of a person’s New Zealand group and worldwide group) and a person if—
- “(a) an asset of the person’s New Zealand group is damaged as a result of a Canterbury earthquake, as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
  - “(b) the asset is impaired, or derecognised, under generally accepted accounting practice as a result of the damage; and
  - “(c) insurance for the damage is recognised at a later date under generally accepted accounting practice.

*“Optional treatment of insurance*

- “(2) The person may choose to include an amount of the insurance, corresponding to the amount of the impairment or the derecognised value of the asset, in the value of the total group assets of the person’s New Zealand group during the period—
- “(a) beginning with the impairment or derecognition of the asset; and
  - “(b) ending before the earlier of—
    - “(i) the recognition of the amount of insurance;
    - “(ii) the beginning of the 2016–17 income year.

*“Corresponding treatment for worldwide group*

- “(3) If a person includes an amount under subsection (2) in the value of the total group assets of the person’s New Zealand group for a period, the person must include the amount in the value of the total group assets of the person’s worldwide group for the period.

*“Notice to Commissioner*

- “(4) A person choosing to apply subsection (2) for an income year must give to the Commissioner—
- “(a) notice that the person has applied this section for the income year; and

- “(b) the amount of income that would arise under section CH 9 (Interest apportionment: excess debt entity) for the income year in the absence of this section; and
- “(c) the amount of income that arises under section CH 9 for the income year after the application of this section; and
- “(d) further information required by the Commissioner.

*“Form and timing of notice*

- “(5) The information required by subsection (4) must be given—
  - “(a) in the form and by the means prescribed by the Commissioner; and
  - “(b) no later than the later of 30 November 2012 and the day by which the person is required to make a return of income for the corresponding tax year.

“Defined in this Act: Commissioner, generally accepted accounting practice, income year, return of income, total group assets”.

- (2) Subsection (1) applies for income years ending after 4 September 2010 and before the 2016–17 income year.

#### **74 Benefits provided to employee’s associates**

- (1) In section GB 32(1)(d), “exemption in subsection (2) does” is replaced by “exemptions in subsections (2) and (2B) do”.
- (2) After section GB 32(2), the following is inserted:

*“Exemption for LTCs and partnerships*

- “(2B) Subsection (3) does not apply when—
  - “(a) the benefit is provided by an employer that is—
    - “(i) an LTC;
    - “(ii) a partnership or limited partnership; and
  - “(b) the person associated with the employee, described in subsection (1)(a), is—
    - “(i) an owner of the relevant LTC;
    - “(ii) a partner of the relevant partnership or limited partnership.”
- (3) In section GB 32, in the list of defined terms, “limited partnership”, “LTC”, “partner”, and “partnership” are inserted.

#### **75 Grandparenting requirement**

- (1) In section HA 7B “1 April 2011” is replaced by “1 April 2011 and must not have amalgamated, on or after the date on which



the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 receives the Royal assent, with another company that is not a qualifying company”.

- (2) In section HA 7B, in the list of defined terms “amalgamation” is inserted.

**76 No CFC income interests or FIF direct income interests of 10% or more**

In section HA 8B, in the list of defined terms, “attributing interest” is omitted.

**77 Measuring effective interests**

In section HA 44(1), in the words before the paragraphs, “control and ownership” is replaced by “ownership”.

**78 Look-through companies are transparent**

After section HB 1(5), the following is added:

*“Elections and methods*

- “(6) Inland Revenue Act elections and methods relating to an LTC are chosen by the company ignoring subsection (4), and then subsection (4) applies so that the elections and methods are those of an owner of an effective look-through interest for the look-through company.”

**79 Disposal of financial arrangements and certain excepted financial arrangements**

In section HB 8(1)(b), “owners do not derive income from” is replaced by “look-through company does not have”.

**80 Limitation on deductions by persons with interests in look-through companies**

- (1) In section HB 11(5)(c), “paragraph (b)” is replaced by “paragraph (b) by the person or another person”.
- (2) Section HB 11(7)(a) is replaced by the following:
- “(a) income that the person has by virtue of section HB 1 in the income year and previous income years:
  - “(ab) if the person has FIF income or a FIF loss, an amount under subsection (7B):”.

(3) After section HB 11(7), the following is inserted:

*“Formula*

“(7B) The amount described in subsection (7)(ab) is given by the following formula, but if the calculation returns a negative number, the amount is zero:

dividend – FIF amount.

*“Definition of items in formula*

“(7C) In the formula,—

“(a) **dividend** is the amount that would, under section HB 1, be the person’s proportion of the dividend paid by a FIF to the LTC, if section CD 36(1) were ignored:

“(b) **FIF amount** is—

“(i) zero, if subparagraph (ii) does not apply:

“(ii) the amount that is the person’s FIF income, for the relevant income year and FIF, if the person has such an amount.”

(4) Section HB 11(12) is replaced by the following:

*“Some definitions*

“(12) In this section,—

**“guarantor** means—

“(a) a person (**person A**) who has an effective look-through interest for the LTC, if—

“(i) person A, ignoring section HB 1, secures the relevant debt by guarantee or indemnity:

“(ii) an owner’s associate of person A secures the relevant debt by guarantee or indemnity:

“(b) a person who is not described in paragraph (a)(i) and (ii) but who secures the relevant debt by guarantee or indemnity, if person A or an owner’s associate also secures the relevant debt as described in paragraph (a)(i) or (ii)

**“look-through company deduction** means, for the person and the income year, the amount of the deductions that the person would be allowed if they were treated as having only income and deductions arising from the application of this subpart

“**owner’s associate** means a person who does not have an effective look-through interest for the LTC and who is—

“(a) a relative of a person who has an effective look-through interest for the LTC:

“(b) a trustee who is associated in their capacity of trustee, with a person who has an effective look-through interest for the LTC

“**recourse property** means property to which a creditor has recourse, to enforce a guarantee or indemnity for the relevant debt, if the guarantee or indemnity expressly provides recourse to only that property

“**secured amounts** means, for the person, the lesser of the following applicable amounts:

“(a) the amount of the look-through company’s debt ignoring section HB 1 (the **secured debt**) for which the person is a guarantor, divided by the total number of guarantors for the secured debt:

“(b) the market value of the recourse property for the secured debt to the extent of the interest that the person and their owner’s associates have in it, net of higher-ranking calls whether actual, future or contingent, divided by the total number of guarantors described in paragraph (a) of the definition of **guarantor** who have an interest in the recourse property or have an owner’s associate with an interest in the recourse property.”

- (5) In section HB 11, in the list of defined terms, “FIF loss”, “guarantor”, “owner’s associate”, and “recourse property” are inserted.

### **81 LTC elections**

In section HB 13(5), “subsections (1)(b) and (2)” is replaced by “subsection (1)(a) and (d)”.

### **82 Taxable distributions from foreign trusts**

- (1) In section HC 18, “section CV 13(b)” is replaced by “section CV 13(c)”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

**83 Trustees' obligations**

- (1) Section HC 24(2) is replaced by the following:

*“No tax credits*

- “(2) In determining the income tax liability, the trustee is not entitled to have a tax credit under subparts LC and LD (which relate to tax credits for natural persons and for certain gifts).”
- (2) Subsection (1) applies for the 2009–10 and later income years.

**84 Foreign-sourced amounts: non-resident trustees**

- (1) In section HC 25(1), “when a non-resident trustee derives” is replaced by “when a non-resident trustee derives, as trustee income,”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

**85 Limitation on deductions by partners in limited partnerships**

- (1) Section HG 11(7)(a) is replaced by the following:

“(a) income that the partner has by virtue of section HG 2 in the income year and previous income years:

“(ab) if the partner has FIF income or a FIF loss, an amount under subsection (7B):”.

- (2) After section HG 11(7), the following is inserted:

*“Formula*

- “(7B) The amount described in subsection (7)(ab) is given by the following formula, but if the calculation returns a negative number, the amount is zero:

dividend – FIF amount.

*“Definition of items in formula*

- “(7C) In the formula,—

“(a) **dividend** is the amount that would be the partner’s share of the dividend paid by a FIF to the limited partnership, if section CD 36(1) (Foreign investment fund income) were ignored:

“(b) **FIF amount** is—

“(i) zero, if subparagraph (ii) does not apply:

- “(ii) the amount that is the person’s FIF income, for the relevant income year and FIF, if the person has such an amount.”
- (3) In section HG 11(12), the definition of **capital contribution** is replaced by the following:  
“**capital contribution** includes—  
“(a) a capital contribution for the purposes of the Limited Partnerships Act 2008:  
“(b) amounts that the limited partnership is debtor for in relation to the partner, including a loan to the limited partnership and a credit balance in a current account”.
- (4) In section HG 11(12), after the definition of **capital contribution**, the following is inserted:  
“**guarantor** means—  
“(a) a partner, if—  
“(i) the partner secures the relevant debt by guarantee or indemnity:  
“(ii) the partner’s associate secures the relevant debt by guarantee or indemnity:  
“(b) a person who is not described in paragraph (a)(i) and (ii) but who secures the relevant debt by guarantee or indemnity, if the partner or a partner’s associate also secures the relevant debt as described in paragraph (a)(i) or (ii)”.
- (5) In section HG 11(12), in the definition of **partner’s associate**, paragraph (a), “partner” is replaced by “partner, but excluding a person under section YA 1 (Definitions), definition of **relative**, paragraph (v)”.
- (6) In section HG 11(12), the definition of **secured amounts** is replaced by the following:  
“**recourse property** means property to which a creditor has recourse, to enforce a guarantee or indemnity for the relevant debt, if the guarantee or indemnity expressly provides recourse to only that property  
“**secured amounts** means, for the partner, the lesser of the following applicable amounts—  
“(a) the amount of the limited partnership’s debt ignoring section HG 2 (the **secured debt**) for which the partner

is a guarantor, divided by the total number of guarantors for the secured debt:

“(b) the market value of the recourse property for the secured debt to the extent of the interest that the partner and the partner’s associates have in it, net of higher-ranking calls whether actual, future, or contingent, divided by the total number of guarantors described in the definition of **guarantor**, paragraph (a), who have an interest in the recourse property or have a partner’s associate with an interest in the recourse property.”

- (7) In section HG 11, in the list of defined terms, “FIF loss” is inserted.
- (8) In section HG 11, in the list of defined terms, “guarantor”, “recourse property”, and “secured amounts” are inserted.
- (9) In section HG 11, in the list of defined terms, “loan” is inserted.

#### **86 Portfolio entity tax liability and tax credits of portfolio tax rate entity for period**

- (1) After section HL 21(9), the following is inserted:  
*“Amounts excluded from determination of prescribed investor rate*  
“(9B) For the purposes of subsection (9) and the determination of a person’s prescribed investor rate, the person’s taxable income does not include an amount that—
  - “(a) arises because their portfolio investor rate is lower than their prescribed investor rate; and
  - “(b) is treated as taxable income because section CX 56 (Attributed income of certain investors in multi-rate PIEs) does not apply.”
- (2) Section HL 21(13) is repealed.
- (3) Subsection (1) applies for the 2008–09 and later income years.

#### **87 Foreign PIE equivalents**

- (1) After the heading for section HM 3, “*General definition*” is inserted as a subsection heading.
- (2) After section HM 3(e), the following is inserted as subsection (2):

*“Australian managed investment trusts*

- “(2) A trust that is, for Australian tax purposes, a managed investment trust under the Taxation Administration Act 1953 (Australia) is a foreign PIE equivalent if it meets the requirement in subsection (1)(a).”

**88 What is an investor class?**

- (1) After section HM 5(4), the following is inserted:

*“Supplementary dividends*

- “(5) For the purposes of this section, the payment of a supplementary dividend that is attributed to a notified foreign investor, or would be attributed to them in the absence of section HM 44B(2), is disregarded.”
- (2) In section HM 5, in the list of defined terms, “supplementary dividend” is inserted.
- (3) Subsections (1) and (2) apply for the 2013–14 and later income years.

**89 Section HM 6B replaced**

- (1) Section HM 6B is replaced by the following:

**“HM 6B Optional look-through rules for certain PIEs***“When this section applies*

- “(1) This section applies when a PIE (a **retail PIE**) is a zero-rated investor in another PIE (a **wholesale PIE**).

*“Look-through treatment*

- “(2) The retail PIE may choose to apply a look-through approach in relation to its investor interest, treating the attributed PIE income or attributed PIE loss as consisting of—
- “(a) the proportion of the assessable income derived by the wholesale PIE that corresponds to the investor interest; and
- “(b) the proportion of the expenditure or loss incurred by the wholesale PIE that corresponds to the investor interest.

*“Sufficient information held by PIE*

- “(3) In choosing to apply this section, the retail PIE must have sufficient information to enable it to account for the income, ex-

penditure, or loss, and to discharge its tax obligations in relation to those amounts.

*“Inter-PIE transactions*

- “(4) In the application of subsections (1) to (3), any transaction or attribution between the wholesale PIE and retail PIE relating to the income or expenditure is ignored.

*“Foreign investment PIEs*

- “(5) When a retail PIE that is a foreign investment variable-rate PIE derives an amount allowable under section HM 55G through having an investor interest in a wholesale PIE that meets the requirements of section HM 19B(1), the retail PIE may treat the amount as a foreign-sourced amount.

“Defined in this Act: amount, assessable income, attributed PIE income, attributed PIE loss, foreign investment variable-rate PIE, foreign-sourced amount, investor interest, PIE”.

- (2) Subsection (1) applies for the 2012–13 and later income years.

**90 Investment types**

- (1) Section HM 11(2) is repealed.  
(2) In section HM 11(3), “subsection (1)(a)” is replaced by “subsection (1)(a) and modifies subsection (1)(d)”.

**91 Income sources**

In section HM 12(2), “section HM 19B(2)” is replaced by “section HM 19B(1)”.

**92 Minimum number of investors**

In section HM 14(1), replace “a company listed on a recognised exchange in New Zealand” with “a listed PIE”.

**93 Same rights to all investment proceeds**

- (1) Section HM 17(3) is replaced by the following:

*“Exclusions*

- “(3) This section does not apply if—  
“(a) the proceeds are category B income:  
“(b) for a single investor class, the only income that the class derives is income under section CC 3 (Financial arrangements).”



- (2) After section HM 17(3), the following is added:  
*“Supplementary dividends*
- “(4) For the purposes of this section, the payment of a supplementary dividend that is attributed to a notified foreign investor, or would be attributed to them in the absence of section HM 44B(2), is disregarded.”
- (3) In section HM 17, in the list of defined terms, “income”, “investor class”, “notified foreign investor”, and “supplementary dividend” are inserted.
- (4) Subsection (2) applies for the 2013–14 and later income years.

**94 Modified rules for foreign investment variable-rate PIEs**

- (1) In section HM 19C(1), “section HM 11(a)” is replaced by “section HM 11(1)(a)”.
- (2) In section HM 19C(2), “section HM 12(a) and (b)(v)” is replaced by “section HM 12(1)(a) and (b)(iv) and (v)”.
- (3) Subsections (1) and (2) apply for the 2012–13 and later income years.

**95 Ending of New Zealand residence**

Section HM 24 is replaced by the following:

**“HM 24 Immediate loss of PIE status**

An entity loses PIE status immediately if it does not meet—

- “(a) the residence requirements of section HM 8:  
 “(b) the requirements of section HM 9 about the nature of the entity:  
 “(c) the requirements of section HM 17 concerning rights to investment proceeds.

“Defined in this Act: PIE”.

**96 When foreign PIE equivalent no longer meets requirements**

- (1) Section HM 30(1), other than the heading, is replaced by the following:
- “(1) A foreign PIE equivalent loses its status immediately if—  
 “(a) it becomes resident in New Zealand:  
 “(b) it is treated under a double tax agreement as resident in New Zealand.”

- (2) In section HM 30, in the list of defined terms, “double tax agreement” is inserted.

**97 Rules for and treatment of investors in multi-rate PIEs**

Section HM 32(3), other than the heading, is replaced by the following:

- “(3) An investor in a foreign investment PIE who notifies the PIE under section HM 55D(2) of their wish to become a notified foreign investor is treated as having notified the PIE of a tax rate under subsection (1).”

**98 Attribution periods**

- (1) In section HM 34, in the words before paragraph (a), “a tax year” is replaced by “a tax year or an income year, as applicable.”
- (2) In section HM 34(b), “the tax year” is replaced by “the income year”.
- (3) In section HM 34, in the list of defined terms, “income year” is inserted.
- (4) Subsections (1) and (2) apply for the 2010–11 and later income years.

**99 Determining net amounts and taxable amounts**

- (1) In section HM 35(3)(a), “received for the income:” is replaced by “received for the income but not including the amount of any supplementary dividends:”.
- (2) Subsection (1) applies for the 2013–14 and later income years.

**100 Treatment of certain provisions made by multi-rate PIEs**

In section HM 35B(1)(b)(i), “portfolio” is omitted.

**101 Determining amounts for notified foreign investors**

- (1) After section HM 35C(4), the following is added:  
“*Treatment of certain transitional residents*”
- “(5) For the purposes of this section, a transitional resident who has chosen under section HM 55D(9) to use the specified prescribed investor rate is treated as if they were a notified foreign investor.

*“When subsection (7) applies*

- “(6) Subsection (7) applies for the purposes of section HM 35 for a notified foreign investor (a **qualifying investor**) in a foreign investment PIE who meets the requirements of section LP 2(1)(a) (Tax credits for supplementary dividends). It overrides subsections (2) and (3), and for the purposes of the calculation of amounts attributed to them, the qualifying investors are treated as a separate class.

*“Assessable income and supplementary dividends*

- “(7) For the purposes of section HM 35(3)(a), the assessable income of the PIE is the total amount of the PIE’s assessable income attributed to the class of qualifying investors for the attribution period, including any supplementary dividends to which the qualifying investors are entitled.”
- (2) In section HM 35C, in the list of defined terms, “prescribed investor rate” and “transitional resident” are inserted.
- (3) Subsection (1) applies for the 2013–14 and later income years.

## **102 Quarterly calculation option**

- (1) In section HM 43(3), “as a zero-rated investor” is replaced by “as zero-rated”.
- (2) In section HM 43, in the list of defined terms, “zero-rated investor” is omitted.

## **103 NRWT calculation option**

- (1) After section HM 44B(1), the following is inserted:
- “When this section also applies: supplementary dividends*
- “(1B) This section also applies when—
- “(a) a foreign investment PIE—
- “(i) derives a dividend with imputation credits attached from a company resident in New Zealand together with a related supplementary dividend; and
- “(ii) has, as an investor, a notified foreign investor who meets the requirements of section LP 2(1)(a) (Tax credits for supplementary dividends); and
- “(iii) pays the investor an amount that represents the total amount of the dividend and supplementary

- dividend that would be attributed to the investor in the absence of subsection (2); and
- “(iv) pays the amount by the date on which the PIE is required to pay its income tax liability under section HM 42 or HM 43, as applicable; and
- “(b) the PIE chooses to calculate and pay the tax liability in relation to the amount under subpart RF.”
- (2) In section HM 44B(2), “the amount represents an unimputed portion of the dividend” is replaced by “the amount represents either an unimputed portion of the dividend, or a dividend together with a related supplementary dividend, as applicable”.
- (3) In section HM 44B(3), “represents an unimputed portion of the dividend” is replaced by “represents either an unimputed portion of the dividend, or a dividend together with a related supplementary dividend, as applicable”.
- (4) After section HM 44B(4), the following is added:  
*“Relationship with section HM 35(8)”*
- “(5) When a foreign investment PIE derives a dividend and related supplementary dividend as described in subsection (1B), the allocation rule set out in section HM 35(8) does not apply. The dividend and related supplementary dividend are treated as having been allocated on the date on which ownership of the shares determines a legal entitlement to the dividend.”
- (5) In section HM 44B, in the list of defined terms, “supplementary dividend” is inserted.
- (6) Subsections (1) to (4) apply for the 2013–14 and later income years.

#### **104 Attributing credits to investors**

- (1) Section HM 50(1), other than the heading, is replaced by the following:
- “(1) This section applies when a multi-rate PIE has a tax credit other than a tax credit under subpart LS (Tax credits for multi-rate PIEs and investors).”
- (2) After section HM 50(4), the following is added:  
*“Supplementary dividends and foreign investment PIEs”*
- “(5) For the purposes of this section and for a payment of a dividend and related supplementary dividend to a foreign investment

PIE, the dividend is treated as if it were divided into separate dividends as follows:

“(a) a dividend of an amount that represents the part to which the notified foreign investors in the PIE who meet the requirements of section LP 2(1)(a) (Tax credits for supplementary dividends) are entitled; and

“(b) a dividend of an amount that represents the remaining part to which all investors other than those referred to in paragraph (a) are entitled.

*“Imputation credits: first part*

“(6) The imputation credits for the dividend referred to in subsection (5)(a) are treated as attached to that part as if it were a separate dividend.

*“Imputation credits: second part*

“(7) The imputation credits for the dividend referred to in subsection (5)(b) are treated as attached to that part as if it were a separate dividend not payable to a non-resident.”

(3) In section HM 50, in the list of defined terms, insert “foreign investment PIE”, “notified foreign investor”, and “ supplementary dividend”.

(4) Subsection (2) applies for the 2013–14 and later income years.

### **105 Use of foreign tax credits by PIEs**

(1) In section HM 51(1)(c), “foreign investment PIE.” is replaced by “foreign investment PIE:” and the following is added:

“(d) a transitional resident who chooses under section HM 55D(8) to use a prescribed investor rate set out in schedule 6, table 1, row 10 (Prescribed rates: PIE investments and retirement scheme contributions).”

(2) In section HM 51, in the list of defined terms, “prescribed investor rate” and “transitional resident” are inserted.

(3) Subsection (1) applies for the 2013–14 and later income years.

### **106 Use of tax credits other than foreign tax credits by PIEs**

(1) In section HM 53(1)(b)(iii), “an imputation credit.” is replaced by “an imputation credit:” and the following is added:

- “(iv) a transitional resident who chooses under section HM 55D(8) to use a prescribed investor rate set out in schedule 6, table 1, row 10 (Prescribed rates: PIE investments and retirement scheme contributions).”
- (2) In section HM 53, in the list of defined terms, “prescribed investor rate” and “transitional resident” are inserted.
- (3) Subsection (1) applies for the 2013–14 and later income years.

#### **107 New section HM 55FB inserted**

- (1) After section HM 55F, the following is inserted:

##### **“HM 55FB Notified foreign investors and tax credits for supplementary dividends**

*“When this section applies*

- “(1) This section applies when—
- “(a) a foreign investment PIE has an investment consisting of shares in a company resident in New Zealand; and
- “(b) a notified foreign investor in the PIE is a non-resident who meets the requirements of section LP 2(1)(a) (Tax credits for supplementary dividends); and
- “(c) the company has declared a dividend to be paid on a later date.

*“Notification by PIE*

- “(2) The PIE must notify the company of the investors referred to in subsection (1)(b) who have an investor interest in the PIE on the date on which ownership of the shares determines a legal entitlement to the dividend. The PIE must provide the information before the date of payment of the dividend.

*“Sufficient information*

- “(3) The information provided by the PIE about the investor must be sufficient to enable the calculation and payment of a supplementary dividend to the PIE in relation to the investor.

*“Calculation and payment of supplementary dividend*

- “(4) The company must use the information provided by the PIE in calculating and paying the supplementary dividend.

“Defined in this Act: company, dividend, foreign investment PIE, investor interest, non-resident, notified foreign investor, pay, resident in New Zealand, share, supplementary dividend”.

- (2) Subsection (1) applies for the 2013–14 and later income years.

**108 Prescribed investor rates for certain investors: 0%**

Section HM 57(d) is repealed.

**109 Use of investor classes' losses**

- (1) In section HM 64(3), “other than a zero-rated investor” is replaced by “other than a zero-rated investor or an investor treated under section HM 61 as zero-rated”.
- (2) Section HM 64(4), other than the heading, is replaced by the following:
- “(4) For a notified foreign investor in a foreign investment PIE, the amount is disregarded.”

**110 Use of land losses of investor classes**

Section HM 65(5), other than the heading, is replaced by the following:

- “(5) For a notified foreign investor in a foreign investment PIE, the amount of land loss is disregarded.”

**111 Qualifying companies: transition into partnership**

- (1) In section HZ 4B(5), in the words before the paragraphs, “subsection (2)” is replaced by “subsection (2) for the transitional income year and later years”.
- (2) Section HZ 4B(5)(a) is replaced by the following:
- “(a) for calculating amounts under section HG 11(5)(a) for shares that were held at the end of the income year (the **last year**) before the transitional income year, they may choose to use the market value or the accounting book value of those shares as at the end of the last year. Calculations under section HG 11(7)(b) and (8)(b) are changed to account for the valuation under this paragraph; or”.

**112 Qualifying companies: transition into look-through companies**

- (1) In section HZ 4C(2), in the words before the paragraphs, “the look-through company” is replaced by “the look-through company for the transitional income year and later years”.
- (2) Section HZ 4C(2)(a) is replaced by the following:
  - “(a) for calculating amounts under section HB 11(5)(a) for shares that were held at the end of the income year (the **last year**) before the transitional income year, they may choose to use the market value or the accounting book value of those shares as at the end of the last year. Calculations under section HB 11(7)(b) and (8)(b) are changed to account for the valuation under this paragraph; or”.

**113 Restrictions relating to schedular income**

Section IA 8(1)(d) is repealed.

**114 Ring-fencing cap on attributed CFC net losses**

- (1) Section IQ 2(1) is replaced by:

*“Amount subtracted: losses not from elective attributing CFCs or elective attributing FIFs”*
- “(1) The total amount of attributed CFC net loss and FIF net loss, relating to a CFC or FIF (the **loss entity**) resident in the jurisdiction when the loss arises and not an elective attributing CFC or elective attributing FIF, that is subtracted from the person’s net income for the tax year is the lesser of—
  - “(a) the total amount of attributed CFC income, and FIF income calculated under the attributable FIF income method or branch equivalent method, that the person derives in the tax year in relation to a CFC or FIF that is resident in the jurisdiction for the accounting period corresponding to the tax year:
  - “(b) the total amount of attributed CFC net loss and FIF net loss—
    - “(i) relating to the loss entity and the jurisdiction; and
    - “(ii) carried forward to the tax year or made available in the tax year to the person by another company in the same group; and



“(iii) available to the person under subsection (1B), (1C), or section IQ 3.

*“Amount subtracted: losses from elective attributing CFCs or elective attributing FIFs*

“(1BA) The total amount of attributed CFC net loss and FIF net loss, relating to an elective attributing CFC or elective attributing FIF (the **loss entity**) resident in the jurisdiction when the loss arises, that is subtracted from the person’s net income for the tax year is the lesser of—

“(a) the total amount of attributed CFC income, and FIF income calculated under the attributable FIF income method or branch equivalent method, that the person derives in the tax year in relation to an elective attributing CFC or elective attributing FIF—

“(i) with the same election commencement date as the loss entity; and

“(ii) resident in the jurisdiction for the accounting period corresponding to the tax year:

“(b) the total amount of attributed CFC net loss and FIF net loss—

“(i) relating to the loss entity and the jurisdiction; and

“(ii) carried forward to the tax year or made available in the tax year to the person by another company in the same group; and

“(iii) available to the person under subsection (1B), (1C), or section IQ 3.”

(2) In section IQ 2, in the list of defined terms, “elective attributing CFC” and “elective attributing FIF” are inserted.

(3) Subsection (1) applies for income years beginning on or after 1 July 2009.

#### **115 Meaning of charitable or other public benefit gift**

In section LD 3, in the list of defined terms,—

(a) “charitable or other public benefit” and “gift” are omitted:

(b) “charitable or other public benefit gift” is inserted.

**116 Credits for persons who are non-resident or who receive exempt income**

- (1) In section LF 8(1)(b), “CW 9 to CW 11” is replaced by “CW 9 and CW 10”.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2009.

**117 Repaid foreign tax: effect on income tax liability**

- (1) In section LJ 7(3)(b), “the foreign income” is replaced by “the foreign-sourced income”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

**118 Tax credits for supplementary dividends**

- (1) After section LP 2(1)(a), the following is added:
  - “(c) a foreign investment PIE if—
    - “(i) a notified foreign investor (a **qualifying investor**) in the PIE meets the requirements of paragraph (a); and
    - “(ii) an amount representing the dividend and the related supplementary dividend is attributed to the qualifying investor, or would be attributed to them in the absence of section HM 44B(2) (NRWT calculation option); and
    - “(iii) the PIE notifies the company under section HM 55FB (Notified foreign investors and tax credits for supplementary dividends), providing the relevant information on those qualifying investors who have an entitlement to the dividend and related supplementary dividend.”
- (2) After section LP 2(3), the following is inserted:

“*When dividends derived by foreign investment PIEs*

  - “(3B) For the purposes of subsection (1)(c) and the calculation of the amount of the credit, the following apply in relation to a qualifying investor in a foreign investment PIE:
    - “(a) the item **attached imputation credit** in the formula is the imputation credit that would, in the absence of this subpart, be attached to the portion of the dividend attributed to the investor:

- “(b) the relevant amount of the dividend and related supplementary dividend is treated as if it were paid by the company directly to the investor:
  - “(c) the investor’s voting interest in the company is treated as if it were a direct voting interest.”
- (3) Subsections (1) and (2) apply for the 2013–14 and later income years.

**119 Section LZ 1 repealed**  
Section LZ 1 is repealed.

**120 Meaning of full-time earner for family scheme**

- (1) In section MA 7(2)(c), “leave.” is replaced by “leave:”, and the following is added:
- “(d) a person who receives or will receive weekly compensation from the Accident Compensation Corporation as a surviving spouse or partner of a deceased claimant is treated as being employed, during the week to which that compensation relates, for the number of hours that the deceased claimant would have been employed for in a week before dying, but for their incapacity. The number of hours under this paragraph are in addition to the person’s own hours.”
- (2) In section MA 7(3), “subsection (2)(b)” is replaced by “subsection (2)(b) and (d)”.

**121 Adjustments for calculation of family scheme income**

In section MB 1, in the list of defined terms, “income statement” is omitted.

**122 Treatment of distributions from superannuation schemes**

- (1) Section MB 5(2), other than the heading, is replaced by the following:
- “(2) This section does not apply to a person who receives a distribution from a superannuation scheme—
- “(a) as a result of and on or after the person’s retirement from employment with an employer who was a contributor to the scheme:

“(b) if the superannuation scheme is a KiwiSaver scheme or a complying superannuation fund.”

- (2) In section MB 5, in the list of defined terms, “complying superannuation fund” and “KiwiSaver scheme” are inserted.

### 123 Family scheme income from other payments

After section MB 13(2)(k), the following is inserted:

“(kb) a payment of a foster care allowance under section 363 of the Children, Young Persons, and Their Families Act 1989:”.

### 124 Third requirement: residence

Section MC 5(2)(a) is replaced by the following:

“(a) has been—

“(i) both a New Zealand resident and present in New Zealand for a continuous period of 12 months at any time; and

“(ii) resident in New Zealand under section YD 1 (Residence of natural persons) on the days for which a tax credit arises under section MD 1 (Abating WFF tax credit) or ME 1 (Minimum family tax credit); and”.

### 125 Third requirement: residence

- (1) Section MD 7(2)(a) is replaced by the following:

“(a) has been—

“(i) both a New Zealand resident and present in New Zealand for a continuous period of 12 months at any time; and

“(ii) resident in New Zealand under section YD 1 (Residence of natural persons) on the days for which a tax credit arises under section MD 1; and”.

- (2) In section MD 7, in the list of defined terms, “resident” is omitted.

**126 Fifth requirement: full-time earner**

- (1) In section MD 9(1), “receiving income from a work activity” is omitted.
- (2) Section MD 9(1) is replaced by the following:  
*“Normally full-time earner*  
“(1) The fifth requirement for an entitlement to an in-work tax credit is that either or both the person referred to in section MD 4 and their spouse, civil union partner, or de facto partner, is normally a full-time earner (the **earner**). Also, the earner must—
  - “(a) derive income as set out in subsections (2) and (3) as a full-time earner or derive an amount of compensation described in subsection (4); or
  - “(b) if they are a full-time earner in relation to a close company, be a major shareholder in the close company, and the company must derive gross income in the income year.”
- (3) In section MD 9, in the list of defined terms, “close company”, “income year”, and “major shareholder” are inserted.

**127 Calculation of in-work tax credit**

- (1) In section MD 10(3)(d)(i), “refers” is replaced by “refers or is a full-time earner described in section MD 9(1)(b)”.
- (2) In section MD 10(3)(d)(ii), “paragraph” is replaced by “sub-paragraph”.
- (3) In section MD 10(3)(d)(ii), “refers” is replaced by “refers or is a full-time earner described in section MD 9(1)(b)”.

**128 General rules for companies with imputation credit accounts**

- (1) In section OB 1(2)(a)(iv), “to CW 11” is replaced by “and CW 10”.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2011.

**129 ICA payment of tax**

- (1) After section OB 4(3)(g), the following is inserted:

“(gb) further income tax applied under section OC 34 (Further income tax paid satisfying liability for income tax) to pay income tax; or”.

- (2) Subsection (1) applies for income years beginning on or after 1 July 2009.

**130 ICA payment of schedular income tax**

In section OB 29(1), “section CR 3, CV 16, or CV 17 (which relate to non-resident insurers, shippers, and film renters)” is replaced by “section CR 3 (Income of non-resident general insurer) or CV 16 (Non-resident shippers)”.

**131 Payment of further income tax for closing debit balance**

- (1) After section OC 30(2), the following is added:

*“FDP credit for payment under subsection (1)”*

- “(4) An FDPA company has an FDP credit for an amount of further income tax paid under subsection (1).”

- (2) In section OC 30, in the list of defined terms, “FDP credit” is inserted.

- (3) Subsection (1) applies for income years beginning on or after 1 July 2009.

**132 Payment of further income tax when company no longer New Zealand resident**

- (1) After section OC 31(3), the following is added:

*“FDP credit for payment under subsection (1)”*

- “(5) A company that stops being an FDPA company has an FDP credit for an amount of further income tax paid under this section.”

- (2) In section OC 31, in the list of defined terms, “FDP credit” is inserted.

- (3) Subsection (1) applies for income years beginning on or after 1 July 2009.

**133 Table O4: FDP debits**

- (1) Table O4, row 8 is omitted.

- (2) Subsection (1) applies for income years beginning on or after 1 July 2011.

**134 BETA payment of income tax**

- (1) In section OE 7(6), “the total income tax liability for the attributed CFC income referred to in subsection (3)” is replaced by “the income tax liability for the income year of the company having the attributed CFC income”.
- (2) Section OE 7(7)(b) is replaced by the following:  
“(b) **tax liability** is the income tax liability for the income year of the company having the attributed CFC income.”.
- (3) Section OE 7(8) is repealed.

**135 Consolidated ICA payment of schedular income tax**

In section OP 27(1), “section CR 3, CV 16, or CV 17 (which relate to non-resident insurers, shippers, and film renters)” is replaced by “section CR 3 (Income of non-resident general insurer) or CV 16 (Non-resident shippers)”.

**136 Consolidated BETA payment of income tax**

- (1) In section OP 101(4B), “the total income tax liability for the attributed CFC income referred to in subsection (1)” is replaced by “the income tax liability for the income year of the company or the consolidated BETA group having the attributed CFC income”.
- (2) Section OP 101(4C)(b) is replaced by the following:  
“(b) **tax liability** is the income tax liability for the income year of the company or the consolidated BETA group having the attributed CFC income.”.

**137 Who is required to pay provisional tax?**

In section RC 3(2)(b), “referred to in section 33A(1)” is replaced by “who meets the requirements of section 33AA(1)”.

**138 Alternate rate option**

In section RD 59(4), “pay of each employee” is replaced by “FBT payable for each employee”.

**139 ESCT rules and their application**

- (1) In section RD 64(2), “employer who makes an employer’s superannuation contribution” is replaced by “employer or a person who makes an employer’s superannuation cash contribution”.
- (2) In section RD 64, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (3) Subsections (1) and (2) do not apply for a tax position that is inconsistent with subsections (1) and (2) and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced.

**140 Employer’s superannuation cash contributions**

- (1) Section RD 65(1) is replaced by the following:  
*“Contribution in money for benefit of employees or past employees*  
“(1) An **employer’s superannuation cash contribution** means a superannuation contribution paid in money either to a superannuation fund or under the KiwiSaver Act 2006 to the Commissioner for later payment to a superannuation fund, if the contribution is—  
“(a) an employer’s superannuation contribution:  
“(b) made by a person for the benefit of 1 or more of their past employees.”
- (2) In section RD 65(3), “An employer who makes an employer’s superannuation cash contribution on behalf of an employee” is replaced by “An employer or person who makes an employer’s superannuation cash contribution on behalf of an employee or past employee”.
- (3) In section RD 65(3), “Subsection (4) overrides this subsection.” is omitted.
- (4) Subsections (1) and (2) do not apply for a tax position that is inconsistent with subsections (1) and (2) and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced.



**141 Calculating amounts of tax for employer's superannuation cash contributions**

- (1) In section RD 67(a), "if the employer" is replaced by "if, for a contribution that is an employer's superannuation contribution, the employer".
- (2) In section RD 67, in the list of defined terms, "employer's superannuation contribution" is inserted.
- (3) Subsections (1) and (2) do not apply for a tax position that is inconsistent with subsections (1) and (2) and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced.

**142 Section RD 67 replaced**

Section RD 67 is replaced by the following:

**"RD 67 Calculating amounts of tax for employer's superannuation cash contributions**

The amount of tax for an employer's superannuation cash contribution is—

- "(a) the amount determined under schedule 1, part D, clause 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits), unless paragraph (b) applies; or
- "(b) 33% of the employer's superannuation cash contribution, if—
  - "(i) the contribution is made by a person for the benefit of 1 or more of their past employees:
  - "(ii) an employer chooses 33% and the contribution is to a defined benefit fund.

"Defined in this Act: amount, amount of tax, defined benefit fund, employer, employer's superannuation cash contribution".

**143 Choosing different rates for employer's superannuation cash contributions**

- (1) In section RD 69(1), "on behalf of an employee" is replaced by "that is an employer's superannuation contribution".
- (2) In section RD 69, in the list of defined terms, "employer's superannuation contribution" is inserted.

- (3) Subsections (1) and (2) do not apply for a tax position that is inconsistent with subsections (1) and (2) and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced.

**144 Calculating amounts of tax on failure to withhold**

- (1) In section RD 70(1), “an employer” is replaced by “an employer, person,”.
- (2) Subsection (1) does not apply for a tax position that is inconsistent with subsection (1) and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced.

**145 Amounts of tax treated as paid to and received by superannuation funds**

- (1) In section RD 71,—
- (a) in the words before the paragraphs, “an employer” is replaced by “an employer or a person”;
- (b) in paragraph (a), “the employer” is replaced by “the employer, the person,”.
- (2) Subsection (1) does not apply for a tax position that is inconsistent with subsection (1) and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced.

**146 Resident passive income**

- (1) Section RE 2(5)(c) is repealed.
- (2) Subsection (1) applies for income years beginning on or after 1 July 2009.

**147 Non-cash dividends other than bonus issues in lieu**

- (1) In section RE 14, the section heading is replaced by “**Non-cash dividends other than certain share issues**”.
- (2) Section RE 14(1), other than the heading, is replaced by the following:

- “(1) This section applies when a person makes a payment of resident passive income that consists of a non-cash dividend other than—
- “(a) a bonus issue in lieu:
  - “(b) a share issued under a profit distribution plan.”
- (3) In section RE 14, in the list of defined terms, “profit distribution plan” is inserted.

#### **148 Bonus issues in lieu**

- (1) In section RE 15, the section heading is replaced by “**Bonus issues in lieu and shares issued under profit distribution plans**”.
- (2) Section RE 15(1), other than the heading, is replaced by the following:
- “(1) This section applies when a person makes a payment of resident passive income that consists of a dividend that is—
- “(a) a bonus issue in lieu:
  - “(b) a share issued under a profit distribution plan.”
- (3) Section RE 15(3)(b) is replaced by the following:
- “(b) **alternative amount** is, as applicable,—
- “(i) the net amount of money offered as an alternative to the bonus issue before the amount of tax is determined; or
  - “(ii) for a share issued under a profit distribution plan, the net amount offered by the company for the repurchase of the share before the amount of tax is determined.”
- (4) In section RE 15, in the list of defined terms, “Commissioner”, “profit distribution plan”, and “RWT rules” are inserted.

#### **149 Non-resident passive income**

Section RF 2(2)(b) is repealed.

#### **150 Certain dividends**

- (1) After section RF 8(1)(e), the following is added:
- “(g) an amount paid by a foreign investment PIE to a notified foreign investor under section HM 44B (NRWT calculation option) to the extent to which the amount

represents the fully imputed portion of a dividend and the related supplementary dividend derived by the PIE.”

- (2) In section RF 8, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.
- (3) Subsections (1) and (2) apply for the 2013–14 and later income years.

### 151 Non-cash dividends

In section RF 10(5),—

- (a) in paragraph (b), “section CD 7(2) or CD 8(3)” is replaced by “section CD 7(2), CD 7B(2), or CD 8(3)”;
- (b) in paragraph (d), “section CD 7(2) or CD 8(3)” is replaced by “section CD 7(2), CD 7B(2), or CD 8(3)”.

### 152 Section RF 11B replaced

Section RF 11B is replaced by the following:

#### “RF 11B Dividends paid by companies in certain situations

The rate of NRWT payable on a payment of non-resident passive income in the form of a dividend paid by a company to a non-resident is—

- “(a) to the extent to which the payment is a fully-imputed dividend, 0% if—
  - “(i) the non-resident has a direct voting interest in the company of 10% or more:
  - “(ii) the non-resident does not have a direct voting interest in the company of 10% or more and, in the absence of this section, the post-treaty tax rate for the dividend would be less than 15% if no imputation credits were attached to the payment:
- “(b) to the extent to which the payment is not a fully-imputed dividend, the post-treaty tax rate for the dividend that, in the absence of this section, would apply if no imputation credits were attached to the payment.

“Defined in this Act: company, direct voting interest, dividend, fully-imputed dividend, imputation credits, non-resident, non-resident passive income, NRWT, pay, post-treaty tax rate”.

**153 Using refund to satisfy tax liability**

In section RM 10(4), “section LA 7” is replaced by “section LA 7(1)(a)”.

**154 Definitions**

- (1) This section amends section YA 1.
- (2) The definition of **bonus issue** is replaced by the following:  
“**bonus issue**,—  
“(a) means the issue of shares in a company, or the giving of credit for or forgiveness of an amount unpaid on any share in a company, if the company receives no consideration for the issue, crediting, or forgiveness other than the shareholder choosing not to receive an amount as an alternative to the issue:  
“(b) includes the issue of shares under a profit distribution plan”.
- (3) In the definition of **capital contribution**, paragraph (a)(i), “that is not a contract of insurance” is omitted.
- (4) In the definition of **capital contribution**, paragraph (a)(iv), “recipient:” is replaced by “recipient; and” and the following is inserted:  
“(v) if the agreement is a contract of insurance, indemnity, or compensation, is paid in relation to an interruption or impairment of business activities:”.
- (5) In the definition of **deductible foreign equity distribution**, paragraph (a) is replaced by the following:  
“(a) for which a deduction is allowed in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the foreign company or on the income of a company in the same group as the foreign company:”.
- (6) In the definition of **deductible output tax**, in paragraph (a)(iii), “of that Act; and” is replaced by “of that Act:” and the following is inserted:  
“(iv) section 21I(1) to (3) of that Act; and”.
- (7) In the definition of **dividend**, paragraph (b) is replaced by the following:

- “(b) in the RWT rules, does not include a dividend of the kind listed in section RE 2(5) (Resident passive income) and modified by section RE 2(6), as applicable.”
- (8) The following are inserted in the appropriate alphabetical order:
- “**election commencement year**, for an interest holder and an elective attributing CFC, or elective attributing FIF, of the interest holder for an accounting period, means the first year for which the election under section EX 73 (Election that CFC not non-attributing active CFC or FIF not non-attributing active FIF) for the accounting period was effective
- “**elective attributing CFC**, for an interest holder and an accounting period, means a CFC for which the interest holder has made an election under section EX 73 (Election that CFC not non-attributing active CFC or FIF not non-attributing active FIF) that is effective for the accounting period
- “**elective attributing FIF** for an interest holder and an accounting period, means a FIF for which the interest holder uses the attributable FIF income method and has made an election under section EX 73 (Election that CFC not non-attributing active CFC or FIF not non-attributing active FIF) that is effective for the accounting period”.
- (9) In the definition of **employee**, paragraph (c)(i), “(3)” is replaced by “(3), (3B)”.
- (10) In the definition of **employer**,—
- (a) in paragraph (b)(iib), “to the extent that paragraph (db) of the definition of **employee** does not apply” is omitted:
- (b) in paragraph (c)(i), “(3)” is replaced by “(3), (3B)”.
- (11) In the definition of **employment income**, “employment)” is replaced by “employment), and includes salary or wages or other income to which section RD 3(2) to (4) (PAYE income payments) applies”.
- (12) In the definition of **FDP rules**, paragraph (d) is replaced by the following:
- “(d) YA 2(5) to (7) (Meaning of income tax varied)”.
- (13) In the definition of **fixed-rate share**, paragraph (a), “share cancellations), GC 8” is replaced by “share cancellations),

- CX 55(4) (Proceeds from disposal of investment shares), GC 8”.
- (14) In the definition of **flat-owning company**, “and section HA 6 (Corporate requirements)” is replaced by “, section HA 6 (Corporate requirements), and the definition of **look-through company**”.
- (15) In the definition of **foreign investment variable-rate PIE**, “(Requirements for” is replaced by “(Modified rules for”.
- (16) In the definition of **foreign investment zero-rate PIE**, “(Requirements for foreign investment variable-rate PIEs)” is replaced by “(Modified rules for foreign investment zero-rate PIEs)”.
- (17) The definition of **forestry business** is replaced by the following:  
“**forestry business** includes forestry activities carried on by a person for the purpose of deriving income in relation to an emissions unit”.
- (18) In the definition of **fully imputed**, paragraph (a), “RF 8, and RF 10” is replaced by “RF 8, RF 10, and schedule 6, table 1B”.
- (19) The following is inserted in the appropriate alphabetical order:  
“**guarantor** is defined in section HB 11(12) (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section”.
- (20) The definition of **guarantor** is replaced by the following:  
“**guarantor** is defined in—  
“(a) section HB 11(12) (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section:  
“(b) section HG 11(12) (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.
- (21) The definition of **life insurance rules** is repealed.
- (22) In the definition of **local authority**, after paragraph (b)(ix), the following is added:  
“(x) the Auckland Council Independent Maori Statutory Board established by section 81 of the Local Government (Auckland Council) Act 2009”.

- (23) In the definition of **market value interest**, paragraph (a), “control and ownership interests” is replaced by “company ownership”.
- (24) In the definition of **new start grant**, paragraph (b) is replaced by the following:  
“(b) paid by the Government of New Zealand to a person”.
- (25) In the definition of **non-filing taxpayer**, paragraph (a), “to whom section 33A(1) of the Tax Administration Act 1994 applies” is replaced by “who meets the requirements of section 33AA(1) of the Tax Administration Act 1994”.
- (26) In the definition of **option**, “control and ownership interests” is replaced by “company ownership”.
- (27) The following is inserted in the appropriate alphabetical order:  
“**owner’s associate** is defined in section HB 11(12) (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section”.
- (28) In the definition of **ownership interest**, “and section YC 18B (Corporate reorganisations not affecting economic ownership)” is replaced by “, and in sections YC 18B and YC 19B (which relate to corporate reorganisations)”.
- (29) In the definition of **portfolio investment entity**, after paragraph (d), the following is added:  
“(e) a foreign investment PIE that is either a foreign investment zero-rate PIE or a foreign investment variable-rate PIE”.
- (30) In the definition of **pre-1990 forest land emissions unit**, paragraph (b) is replaced by the following:  
“(b) to another person (the **appointee**), as a person appointed under section 73 of that Act or as a person representing iwi that are claimants under a Treaty of Waitangi settlement, and—  
“(i) transferred by the appointee to the person, as a person (the **claimant**) who at the time of the transfer to the appointee is a claimant under a Treaty of Waitangi settlement involving the pre-1990 forest land or as an agent for the claimant; and



- “(ii) held continuously by the person, as the agent or the claimant, from the transfer by the appointee.”.
- (31) The following is inserted in the appropriate alphabetical order:  
“**profit distribution plan**—  
“(a) means a scheme comprising 1 or more steps undertaken by a company by which it—  
“(i) notifies some or all of its shareholders that shares are to be issued on a particular date; and  
“(ii) gives the notified shareholders an option to have some or all of the shares issued to them repurchased by the company:  
“(b) does not include an issue of shares under a share purchase agreement or a share purchase scheme”.
- (32) The following is inserted in the appropriate alphabetical order:  
“**recourse property** is defined in section HB 11(12) (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section”.
- (33) The definition of **recourse property** is replaced by the following:  
“**recourse property** is defined in—  
“(a) section HB 11(12) (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section:  
“(b) section HG 11(12) (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.
- (34) In the definition of **relative**, in paragraph (a), in the words before the subparagraphs, “rule),” is replaced by “rule) and the definition of **look-through company**,”.
- (35) In the definition of **relative**, after paragraph (b), the following is inserted:  
“(bb) in the definition of **look-through company**, means a person connected with another person by any of the means described in paragraph (a)(i) to (iv):”.
- (36) In the definition of **schedular income**, paragraph (h) is repealed.

- (37) In the definition of **share purchase agreement**, “and HC 27(3B) (Who is a settlor?) and section EX 38 (Exemption for employee share purchase scheme of grey list company)” is replaced by “, EX 38 (Exemption for employee share purchase scheme of grey list company), HC 27B(3B) (Who is a settlor?), and the definition of **profit distribution plan**”.
- (38) In the definition of **superannuation scheme**, paragraph (a)(iv), “Social Security Act 1964” is replaced by “New Zealand Superannuation and Retirement Income Act 2001”.
- (39) In the definition of **taxable bonus issue**, the following is added after paragraph (d):  
“(e) a bonus issue that is a share issued under a profit distribution plan”.
- (40) In the definition of **taxed CFC connection**, paragraph (a), “countries” is replaced by “companies”.
- (41) In the definition of **voting interest**, paragraph (a), “control and ownership interests” is replaced by “company ownership”.
- (42) Subsections (3) and (4) apply for the 2011–12 and later tax years, except for a tax position that is—  
(a) inconsistent with subsections (3) and (4); and  
(b) taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill is first considered by a committee of the whole House.
- (43) Subsections (7) and (11) apply for the 2008–09 and later income years.
- (44) Subsection (8) applies for income years beginning on or after 1 July 2009.
- (45) Subsections (34) and (35) apply for income years beginning on or after the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 receives the Royal assent.

**155 When sections YC 8 to YC 19 apply**

In section YC 7, in both the heading and the subsection, “YC 19” is replaced by “YC 19B”.

**156 Reverse takeovers**

In section YC 18(6),—

- (a) “this section” is replaced by “ this section and section YC 19B”:
- (b) “as determined under section” is replaced by “determined by applying section” in each place where it appears.

**157 Corporate reorganisations not affecting economic ownership**

In section YC 18B(2)(c), “the **initial percentage**” is replaced by “the **initial percentage**”.

**158 New section YC 19B**

After section YC 19, the following is inserted:

**“YC 19B Treatment when certain trusts terminated**

*“When this section applies*

“(1) This section applies when—

- “(a) a trust established for the sole benefit of the New Zealand government or an overseas government is terminated; and
- “(b) all the ownership interests held by the trustees of the trust in a company are transferred to the government beneficiary.

*“Date of acquisition of shares*

“(2) The government beneficiary is treated as acquiring the ownership interests transferred by the trustees on the date the trustees acquired the ownership interests.

*“Definition*

“(3) In this section, **ownership interest** has the meaning given in section YC 18(6).

“Defined in this Act: company, New Zealand, ownership interest, trustee”.

**159 Apportionment of income from sea transport**

In section YD 6(4), “section DW 3 (Non-resident general insurers, shippers, and film renters)” is replaced by “section DW 3 (Non-resident general insurers and shippers)”.

**160 Section YD 7 repealed**

Section YD 7 is repealed.

**161 Apportionment of premiums derived by non-resident general insurers**

In section YD 8(3)(a), “section DW 3 (Non-resident general insurers, shippers, and film renters)” is replaced by “section DW 3 (Non-resident general insurers and shippers)”.

**162 Schedule 1—Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits**

(1) In schedule 1, part A, clause 1, “clauses 2 to 9” is replaced by “clauses 2 to 8”.

(2) Schedule 1, part A, clause 9 is repealed.

(3) In schedule 1, part A, clause 1, “clauses 2 to 8” is replaced by “clauses 2 to 9”.

(4) In schedule 1, part A, the following is added after clause 8:

**“9 Investment income from portfolio investment entities**

The basic rate of income tax for a person who is an investor in a PIE on each dollar of income attributed by the PIE is the rate set out in schedule 6 as notified by the person to the PIE.”

(5) In schedule 1, part A, “clauses 2 to 9” is replaced by “clauses 2 to 10”.

(6) In schedule 1, part A, the following is added after clause 9:

**“10 Taxable income: New Zealand Superannuation Fund**

The basic rate of income tax on each dollar of taxable income derived by the Crown through the New Zealand Superannuation Fund is the rate applying to companies set out in clause 2.”

(7) Subsections (3) and (4) apply for the 2008–09 and later income years.

(8) Subsections (5) and (6) apply for the 2011–12 and later income years.

**163 Schedule 6—Prescribed rates: PIE investments and retirement scheme contributions**

(1) In schedule 6, table 1, row 8 is replaced by the following:

- 8 | For a person who is a zero-rated investor or an investor treated under section HM 61 as zero-rated. | 0.000
- (2) In schedule 6, table 1B, row 2, “rows 1, and 3 to 5,” is replaced by “rows 1, 3 to 5, and 7.”
- (3) Schedule 6, table 1B, is replaced by the following:

Row	Amounts	Pre-scribed rate
1	To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who does not reside in a country with which New Zealand has a double tax agreement.	0.3000
2	An amount other than an amount referred to in rows 1, 3 to 7, and 9 that has a source in New Zealand.	0.2800
3	To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who resides in a country with which New Zealand has a double tax agreement.	0.1500
4	A fully imputed dividend derived from a company resident in New Zealand in relation to which a supplementary dividend is paid.	0.1500
5	A supplementary dividend.	0.1500
6	Interest derived under a financial arrangement, being an amount referred to in the definition of interest, paragraph (a) or (b), that has a source in New Zealand and is of an amount calculated under subpart EW.	0.0144
7	A fully imputed dividend derived from a company resident in New Zealand, other than a dividend in relation to which a supplementary dividend is paid.	0.0000
8	A foreign-sourced amount.	0.0000
9	An amount derived under a financial arrangement that has a source in New Zealand other than an amount of interest referred to in row 4.	0.0000

- (4) Subsection (3) applies for the 2013–14 and later income years.

- 164 Schedule 19—Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant**  
In schedule 19, part B, clause 7, “, incurred in the cessation of a business,” is omitted.
- 165 Schedule 26 repealed**  
Schedule 26 is repealed.
- 166 Schedule 28—Requirements for complying fund rules**  
(1) In schedule 28, clause 7, “2%” is replaced by “3%”.  
(2) Subsection (1) applies for payments of salary or wages for pay periods beginning on or after 1 April 2013.
- 167 Schedule 29—Portfolio investment entities: listed investors**  
In schedule 29, part A, the following is added:
- 10 Quayside Holdings Limited.
- 168 Schedule 32—Recipients of charitable or other public benefit gifts**  
(1) In schedule 32,—  
(a) after the entry for “Alhay Buhay Foundation Trust”, an entry for “Aotearoa Development Cooperative” is inserted:  
(b) after the entry for “Cyclone Val Relief Fund”, an entry for “Deepavali Charitable Trust” is inserted:  
(c) after the entry for “Operation Vanuatu Charitable Trust”, an entry for “Orphans of Nepal” is inserted:  
(d) after the entry for “Plan New Zealand”, an entry for “Queen Elizabeth II Diamond Jubilee Trust” is inserted:  
(e) after the entry for “Save the Children New Zealand (and its branches)”, an entry for “School Aid: Global Partnerships Through Schools” is inserted.  
(2) In schedule 32, repeal the entry for “Queen Elizabeth II Diamond Jubilee Trust”.  
(3) Subsection (1)(a) to (c) and (e) apply for the 2013–14 and later income years.

- (4) Subsection (1)(d) applies to charitable or other public benefit gifts made on or after 31 May 2012 and before 1 April 2014.

### **Part 3**

#### **Amendments to Tax Administration Act 1994**

#### **169 Tax Administration Act 1994**

This Part amends the Tax Administration Act 1994.

#### **170 Interpretation**

- (1) This section amends section 3.
- (2) The definition of **petroleum permit** is replaced by the following:
- “**petroleum permit**, in section 91 of this Act, means—
- “(a) a petroleum permit under section OB 1 of the Income Tax Act 2004;
- “(b) a replacement permit under section OB 1 of that Act”.
- (3) In the definition of **petroleum permit**,—
- (a) in paragraph (a), “OB 1 of the Income Tax Act 2004” is replaced by “YA 1 of the Income Tax Act 2007”;
- (b) in paragraph (b), “OB 1” is replaced by “YA 1”.
- (4) In the definition of **tax position**, in paragraph (m), “section 33A(1)” is replaced by “section 33AA”.
- (5) Subsection (2) applies for the 2005–06 and later income years. However, subsection (2) does not apply to a person in relation to a tax position taken by the person—
- (a) in the period from 1 April 2005 to the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and
- (b) relating to the treatment of a petroleum permit or replacement permit; and
- (c) relying on the definition of **petroleum permit** as it was before the amendment made by subsection (2).
- (6) Subsection (3) applies for the 2008–09 and later income years.

#### **171 Keeping of business and other records**

- (1) In section 22(2),—

- (a) in the words before the paragraphs, “subsections (2B)” is replaced by “subsections (2BA), (2B)”:
  - (b) in paragraph (c), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”:
  - (c) in the words following paragraph (fb) and before paragraph (g), “in New Zealand sufficient records in the English language” is replaced by “sufficient records”:
  - (d) in paragraph (l), “employer’s superannuation contribution” is replaced in each place where it appears by “employer’s superannuation cash contribution”:
  - (e) in the words after paragraph (m), “in New Zealand” is omitted and the proviso is repealed.
- (2) After section 22(2), the following is inserted:
- “(2BA) A taxpayer required by subsection (2) to keep and retain a record must keep and retain the record—
- “(a) in English, or in a language in which the Commissioner authorises the taxpayer under subsection (8) to keep the record or the type of record; and
  - “(b) at a place in New Zealand, or at a place outside New Zealand where—
    - “(i) the Commissioner authorises the taxpayer under subsection (8) to keep the record or the type of record:
    - “(ii) the record is kept by a person authorised by the Commissioner under subsection (8) to keep records for taxpayers that include the taxpayer.”
- (3) In section 22(3), “to whom section 33A applies” is replaced by “who meets the requirements of section 33AA(1), or is issued an income statement or required to request or be issued an income statement.”
- (4) After section 22(7), the following is added:
- “(8) The Commissioner may, upon application in writing by the taxpayer or person, authorise for the purposes of subsection (2BA),—
- “(a) a taxpayer to keep and retain a record or type of record—
    - “(i) in a language other than English:
    - “(ii) at a place outside New Zealand:



- “(b) a person to hold, for taxpayers, records—
  - “(i) at places outside New Zealand; and
  - “(ii) in a form approved by the Commissioner; and
  - “(iii) accessible by the Commissioner in a way approved by the Commissioner.
- “(9) The Commissioner may, for an authorisation under subsection (8) of a person,—
  - “(a) impose reasonable conditions on the authorisation:
  - “(b) reasonably vary the conditions on the authorisation:
  - “(c) withdraw the authorisation, upon request by the person or after giving reasonable notice of the withdrawal:
  - “(d) give public notice of an action under subsection (8)(b) or this subsection, in a publication chosen by the Commissioner.”

#### **172 Keeping of returns where information transmitted electronically**

Section 23(1) is replaced by the following:

- “(1) Where information contained in a taxpayer’s return has been transmitted by electronic means in the prescribed electronic format in accordance with section 36, the taxpayer shall retain or cause to be retained—
  - “(a) the return in the form of—
    - “(i) a signed hard-copy transcript of the information transmitted:
    - “(ii) an electronic form meeting the requirements of section 25 of the Electronic Transactions Act 2002; and
  - “(b) for a period of—
    - “(i) 7 years after the end of the income year to which the return relates; or
    - “(ii) a greater period that the Commissioner requires under section 22 for other records of the taxpayer, if the Commissioner gives the taxpayer notice of a further retention period under section 22(5).”

#### **173 RWT withholding certificates**

- (1) Section 25(10)(e) is replaced by the following:

- “(e) is made available electronically to the recipient or to a person authorised to act on behalf of the recipient and the recipient or the authorised person agrees to having the certificate made available in this way.”
- (2) Subsection (1) applies to RWT 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.

**174 Shareholder dividend statement to be provided by company**

In section 29(2)(d), “business.” is replaced by “business; or” and the following is added:

- “(e) is made available electronically to the shareholder or to a person authorised to act on behalf of the shareholder and the shareholder or the authorised person agrees to having the shareholder dividend statement made available in this way.”

**175 Maori authority to give notice of amounts distributed**

- (1) In section 31(2)(b), “is” is omitted.
- (2) In section 31(2)(c), “is” is omitted.
- (3) Section 31(2)(d), is replaced by the following:
- “(d) sent by post to the authorised person at their last known place of abode or business; or
- “(e) made available electronically to the member or to a person authorised to act on behalf of the member and the member or the authorised person agrees to having the notice made available in this way.”

**176 Returns of income**

In section 33(1), “a taxpayer to whom section 33A applies” is replaced by “a person who meets the requirements of section 33AA(1), or is issued an income statement or required to request or be issued an income statement,”.

**177 New section 33AA inserted**

- (1) After section 33, the following is inserted:

**“33AA Exceptions to requirement for return of income**

- “(1) A natural person is not required to furnish a return of income for a tax year if, for the corresponding income year, the person—
- “(a) derives no assessable income other than—
    - “(i) income of a type referred to in subsection (2), including a total of \$200 or less of amounts referred to in subsection (3); and
    - “(ii) a total of \$200 or less of income of a type not referred to in subsection (2); and
  - “(b) derives no income from employment for which an amount of tax that is withheld or deducted is determined under a special tax code certificate issued under section 24F; and
  - “(c) has total income of \$200 or less or derives no scheduled payment other than an amount or proportion of an amount for which the Commissioner has made a determination under section RD 8(3) of the Income Tax Act 2007; and
  - “(d) has total income of \$200 or less or derives no beneficiary income; and
  - “(e) derives no income for providing personal services to a claimant under the Accident Compensation Act 2001 or meets the requirements of section 33C; and
  - “(f) is at all times—
    - “(i) a New Zealand resident;
    - “(ii) a non-resident deriving no income with a source in New Zealand other than non-resident passive income referred to in section RF 2(3) of the Income Tax Act 2007; and
  - “(g) is not a provisional taxpayer; and
  - “(h) is a cash basis person; and
  - “(i) has no tax loss balance or tax loss component, other than a tax loss component under section LE 2 of the Income Tax Act 2007; and
  - “(j) has no loss balance; and
  - “(k) has not carried forward to the tax year a tax credit under section LE 3 of the Income Tax Act 2007; and

- “(l) at no time holds an RWT exemption certificate under section 32E; and
  - “(m) is not required under section 44 to furnish a return of income; and
  - “(n) is not considered by the Commissioner to be a person who should furnish a return of income.
- “(2) The types of income relevant to subsections (1)(a)(i) and (ii) for a person and an income year are—
- “(a) income from employment that is subject to the PAYE rules:
  - “(b) interest or a dividend that is subject to the RWT rules:
  - “(c) interest or a dividend that does not have a New Zealand source:
  - “(d) a taxable Maori authority distribution:
  - “(e) a personal service rehabilitation payment for a claimant under the Accident Compensation Act 2001.
- “(3) The amounts relevant to subsection (1)(a)(i) for a person and an income year are—
- “(a) an amount of income for which the obligations under the PAYE rules, of the employer or PAYE intermediary making the payment, are not met:
  - “(b) an amount of income from which the combined tax and earner-related payment is not withheld correctly:
  - “(c) an amount of interest or a dividend that is resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 applies, other than interest for which an RWT withholding certificate was not required under section 25(7), and from which RWT is withheld at a rate other than—
    - “(i) 0.175, if the person’s annual gross income is more than \$14,000 and not more than \$48,000; or
    - “(ii) 0.300, if the person’s annual gross income is more than \$48,000 and not more than \$70,000; or
    - “(iii) 0.330, if the person’s annual gross income is more than \$70,000:
  - “(d) an amount of income from employment that is an extra pay from which tax is withheld at a rate other than—

- “(i) 0.175, if the person’s annual gross income is more than \$14,000 and not more than \$48,000;  
or
- “(ii) 0.300, if the person’s annual gross income is more than \$48,000 and not more than \$70,000;  
or
- “(iii) 0.330, if the person’s annual gross income is more than \$70,000:
- “(e) an amount of income from employment that is secondary employment earnings from which tax is withheld at a rate other than—
  - “(i) 0.175, if the person’s annual gross income is more than \$14,000 and not more than \$48,000;  
or
  - “(ii) 0.300, if the person’s annual gross income is more than \$48,000 and not more than \$70,000;  
or
  - “(iii) 0.330, if the person’s annual gross income is more than \$70,000:
- “(f) a taxable Maori authority distribution if the person’s annual gross income is more than \$48,000:
- “(g) an amount of interest, a dividend, or a taxable Maori authority distribution if the person is required to pay financial support in the tax year under the Child Support Act 1991:
- “(h) an amount of interest or a dividend that does not have a New Zealand source and is not resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 applies:
  - “(i) an amount of salary or wages from employment as an election day worker, if the worker has used the ‘EDW’ tax code:
  - “(j) an amount of salary or wages from employment as casual agricultural employee, if the worker has used the ‘CAE’ tax code.
- “(4) A person who is not required to furnish a return of income for a tax year may choose to furnish a return of income for the tax year if the person furnishes a return of income for each of the

- 5 tax years, immediately preceding the tax year in which the Commissioner receives the returns,—
- “(a) beginning on or after the earlier of 1 April 2016 and the first day of the first tax year to which this section applies; and
  - “(b) for which the person—
    - “(i) is not required to furnish a return of income, except under this subsection; and
    - “(ii) has not previously furnished a return of income.
- “(5) If a person is required by subsection (4) to make more than one return of income,—
- “(a) the person is treated as having, for the period of tax years to which the returns relate (the **return years**), an overall amount of unpaid tax payable by the person, or of overpaid tax owing to the person as a refund, determined by treating terminal tax for the tax year of a return as a liability of the person and overpaid tax for the tax year of a return as a credit of the person; and
  - “(b) an overall amount of unpaid tax for the return years is treated as tax payable by the person and due on the later of the following:
    - “(i) the day specified by the Commissioner in the notice to the person requiring the payment of the overall amount to the Commissioner:
    - “(ii) 60 days after the date of the notice.
- “(6) If a person makes a return of income under subsection (4) for a tax year, in relation to the period beginning with the due date for payment of tax for the tax year and ending with the latest date on which the Commissioner receives from the person a return required by subsection (4),—
- “(a) the person is not liable to pay interest under Part 7, or a late payment penalty under section 139B, in relation to tax for the tax year that the person would not be liable to pay in the absence of the return:
  - “(b) the Commissioner is not liable to pay interest under Part 7 in relation to tax for the tax year overpaid by the person.”
- (2) Subsection (1) applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.

**178 Annual returns of income not required**

Section 33A(1)(b)(via) is repealed.

**179 Section 33A repealed**

- (1) Section 33A is repealed.
- (2) Subsection (1) applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.

**180 Return not required for certain providers of personal services**

- (1) In section 33C(d), “the person is not required to furnish a return of income under section 33A(1)” is replaced by “the person meets the requirements of section 33AA(1)”.
- (2) Subsection (1) applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.

**181 New section 33D inserted**

- (1) After section 33C, the following is inserted:

**“33D Return not required for non-resident seasonal worker**

A person who is a non-resident seasonal worker in an income year corresponding to a tax year is not required to furnish a return of income for the tax year and will not receive an income statement from the Commissioner for the year.”

- (2) Subsection (1) applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.

**182 Commissioner may approve furnishing of return information by electronic means**

Section 36(3)(a) to (ba) are replaced by the following:

- “(a) the taxpayer or registered person shall retain or cause to be retained the information in—
  - “(i) a hard-copy transcript:
  - “(ii) an electronic form meeting the requirements of section 25 of the Electronic Transactions Act 2002; and
- “(b) if no electronic form under paragraph (a)(ii) of a return is retained, and the return is not an employer monthly schedule or annual reconciliation statement under sec-

tion 57B, the hard-copy transcript must be signed under section 40 and held by the taxpayer or registered person on behalf of the Commissioner; and”.

**183 Returns to annual balance date**

In section 38(1), “taxpayer to whom section 33A(1) or (5) applies” is replaced by “person who meets the requirements of section 33AA(1), or is issued an income statement or required to request or be issued an income statement.”.

**184 Annual returns by persons who receive family assistance credit**

- (1) Section 41(4) is replaced by the following:
  - “(4) Whether or not the person derived income in the tax year, the person must furnish to the Commissioner a return for the tax year, in the form prescribed by the Commissioner, providing—
    - “(a) details of each family assistance credit paid to the person in the tax year; and
    - “(b) the information relevant to the calculation of the person’s family scheme income for the tax year; and
    - “(c) other information required by the Commissioner.”
- (2) Section 41(5) is repealed.
- (3) Subsections (1) and (2) apply for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.

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

- (1) In section 43(4), “a person to whom section 33A(5) refers” is replaced by “required under section 80D(2) to apply for an income statement”.
- (2) In section 43(5), “been a person to whom section 33A(1) applied” is replaced by “met the requirements of section 33AA(1)”.

**186 ESCT statements provided by employers**

- (1) In the heading to section 47, “employers” is replaced by “employers and others”.



- (2) In section 47(1) “employer or PAYE intermediary withholds in a period an amount of ESCT from an employer’s superannuation contribution” is replaced by “employer, person, or PAYE intermediary withholds in a period an amount of ESCT from an employer’s superannuation cash contribution”.

**187 RWT withholding reconciliation statements**

In section 51(7), “dividend that to which section RE 3(c)” is replaced by “dividend to which section RE 3(1)(c)”.

**188 Return requirements for multi-rate PIEs**

After section 57B(5), the following is inserted:

- “(5B) Despite subsection (5), a foreign investment zero-rate PIE is not required to carry out the responsibilities in relation to exiting investors as described in subsection (5) for a tax year if the only exiting investors of the PIE in the tax year are notified foreign investors. Instead, the PIE must provide the required information in its return for the tax year.”

**189 Application**

- (1) Section 80A(1)(a) is replaced by the following:

“(a) is a person who—

“(i) is not exempted under section 33AA from the requirement to furnish an annual return of income; and

“(ii) meets the requirements of section 33AA(1)(k) to (n); or”.

- (2) In section 80A(1)—

(a) in paragraph (b), “section 33A” is replaced by “section 33AA”;

(b) in paragraph (c), “section 33A” is replaced by “section 33AA”.

**190 Notification required that taxpayer not subject to this Part**

In section 80B(1), “derived income other than from employment, interest or dividends, or who is a person to whom section 33A(2) applies” is replaced by “does not meet the requirements of section 33AA(1)”.

**191 Requests for income statements**

In section 80C, “to whom section 33A(1) applies” is replaced by “who meets the requirements of section 33AA(1)”.

**192 Commissioner must issue income statement**

- (1) In section 80D(1)(c)(ii), “to whom section 33A(1) does apply” is replaced by “who meets the requirements of section 33AA(1)”.
- (2) In section 80D(1)(c)(iii), “to whom section 33A(1) does apply” is replaced by “who meets the requirements of section 33AA(1)”.

**193 Taxpayer obligations and assessment on receipt of income statement**

- (1) Section 80F(6A)(b) is replaced by the following:

“(b) the taxpayer meets the requirements of section 33AA(1); and”.
- (2) Subsection (1) applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.

**194 Determination on insurer as non-attributing active CFC**

- (1) Section 91AAQ(2)(a)(i) and (ii) are replaced by the following:
  - “(i) has a business of insurance to which section 60(1) of the Insurance (Prudential Supervision) Act 2010 applies:
  - “(ii) is in the same group of companies as a company resident in New Zealand that has a business of insurance to which section 60(1) of that Act applies; and”.
- (2) In section 91AAQ(3)(b)(i), “registered and rated under the Insurance Companies (Ratings and Inspections) Act 1994” is replaced by “to which section 60(1) of the Insurance (Prudential Supervision) Act 2010 applies”.

**195 Commissioner to make private rulings on request**

After section 91E(3), the following is inserted:

- “(3B) Despite subsection (1), the Commissioner may decide to not make a private ruling, to the extent to which it would be a rul-

ing on how section GA 1 of the Income Tax Act 2007 applies or would apply.”

#### **196 Disclosure requirements**

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

- “(1B) In the case of an application for a private ruling that relates to how either sections GC 6 to GC 14 or YD 5 of the Income Tax Act 2007 applies, or would apply, the applicant must state in a notice, signed by them and sent to the Commissioner at the same time as the application described in subsection (1), that—
- “(a) they have examined the application; and
  - “(b) to the best of their knowledge and belief, the information disclosed for the application is comprehensive.”

#### **197 Taxpayer assessment of income tax**

- (1) Section 92(5) is repealed.
- (2) Subsection (1) applies for the 2016–17 tax year, or earlier tax year given by Order in Council, and later tax years.

#### **198 Section 92AA repealed**

- (1) Section 92AA is repealed.
- (2) Subsection (1) applies for the 2016–17 tax year, or earlier tax year given by Order in Council, and later tax years.

#### **199 Assessment of ESCT**

In section 98(1),—

- (a) “employer” is replaced in each place where it appears by “employer or person”;
- (b) “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

#### **200 Persons excluded**

Before section 120B(a), the following is inserted:

- “(aa) a person making a return of tax under section 33AA(4), to the extent that the person is excused from liability under section 33AA(6):”.

**201 Late payment penalty**

In section 139B(1), in the words before the paragraphs, after “assessed,” “and the taxpayer is not excused from liability for a late payment penalty under section 33AA(6),” is inserted.

**202 Knowledge offences**

In section 143A(5)(c)(iii), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

**203 Taxpayer may apply for financial relief**

After section 177(1), the following is inserted:

“(1B) For the purposes of subsection (1)(a), when assessing whether recovery would place the taxpayer in serious hardship, the Commissioner must consider the taxpayer’s financial position at the date on which the application for financial relief is made.”

**204 Write-off of tax by Commissioner**

Section 177C(5) is replaced by the following:

“(5) If the Commissioner writes off outstanding tax for a taxpayer who has a tax loss, the Commissioner must extinguish all or part of the taxpayer’s tax loss, by—

- “(a) dividing the amount written off by 0.33 and reducing the tax loss by that amount, if the taxpayer is not a company; or
- “(b) dividing the amount written off by 0.28 and reducing the tax loss by that amount, if the taxpayer is a company.”

**205 Secure credit or debit card payment and fees**

In section 226C(3), “amount.” is replaced by “amount, plus any GST.”

## Part 4

### Amendments to Goods and Services Tax Act 1985

#### 206 Goods and Services Tax Act 1985

This Part amends the Goods and Services Tax Act 1985.

#### 207 Interpretation

- (1) This section amends section 2(1).
- (2) In the definition of **land**,—
  - (a) in the words before the paragraphs, “sections 5(24), 11(1)(mb), 60B(6), 75(3B), and 78F” is replaced by “the zero-rating of land rules”:
  - (b) paragraph (b)(iii) is omitted.
- (3) In the definition of **local authority**, in paragraph (b)(viii), “2004” is replaced by “2004:” and the following is added:
  - “(ix) the Auckland Council Independent Maori Statutory Board established by section 81 of the Local Government (Auckland Council) Act 2009”.
- (4) The following definition is inserted in the appropriate alphabetical order:

“**zero-rating of land rules** means sections 5(24), 11(1)(mb), 60B(6), 75(3B), and 78F”.

#### 208 Meaning of input tax

- (1) Section 3A(2)(b) is replaced by the following:
  - “(b) the supply is not—
    - “(i) a supply of goods previously supplied to a registered person who has entered them for home consumption under the Customs and Excise Act 1996, whether the person is registered at the time they enter the goods for home consumption or later; and
    - “(ii) a supply of goods made by a non-resident, whether or not they made the earlier supply referred to in subparagraph (i); and”.
- (2) In section 3A(3C), “to which section 21B applies” is replaced by “meeting the requirements of section 21B(1)(a)(i) and (b)”.

- (3) Section 3A(4) is repealed.

**209 Meaning of term supply**

- (1) In section 5(13), in paragraph (b) of the proviso, “Accident Compensation Act 2001).” is replaced by “Accident Compensation Act 2001); or”, and the following is inserted:

“(c) the supply of the contract of insurance is a supply that is chargeable with tax only because sections 5B and 8(4B) apply to it.”

- (2) After section 5(24), the following is added:

“(25) For the purposes of this Act, an amount charged for the late payment of an account is treated as being consideration for a supply of services in the course or furtherance of a taxable activity, whether the amount is described as a fee, penalty, or other charge. But this subsection does not apply to the extent to which the amount is penalty or default interest, or a charge in the nature of penalty or default interest, that is imposed under—

“(a) a contract for the supply of goods and services:

“(b) an enactment.

“(26) A supply under subsection (25) is treated for tax purposes in the same way as the supply to which the amount charged for the late payment relates.”

- (3) Subsection (2) applies for taxable periods ending on or after 1 April 2003. However, subsection (2) does not apply for a person and an amount charged by them on or before 31 December 2012 if the person has, before the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill, adopted a regular practice of not charging GST on an amount charged for the late payment of an account, relying on the provisions of the Goods and Services Tax Act 1985 as they were before the amendment made by subsection (2).

**210 Imposition of goods and services tax on supply**

In section 8(4B)(b)(ii), “90%” is replaced by “95%”.

**211 Time of supply**

In section 9(2)(h),—

- (a) “first day” is replaced by “last day”:
- (b) “90%” is replaced by “95%”.

## 212 Zero-rating of goods

After section 11(8C), the following is inserted:

- “(8D) For the purposes of the zero-rating of land rules,—
- “(a) a supply that is an assignment or surrender of an interest in land, is a supply chargeable with tax at 0%:
  - “(b) the supply of an interest in land is not a supply chargeable with tax at 0% if—
    - “(i) the supply is made periodically; and
    - “(ii) an amount is paid or payable under the agreement for the supply in advance of, or contemporaneously with, the supply being made, that—
      - “(A) totals 25% or less of the consideration specified in the agreement; and
      - “(B) relates to the longer of 1 year and the shortest possible fixed term of the agreement; and
      - “(C) is not itself a regular payment under the agreement.”

## 213 Accounting basis

- (1) After section 19(3), the following is inserted:

“(3B) Despite subsection (3), a liquidator, receiver, or administrator (as defined in section 239B of the Companies Act 1993) of a registered person who accounts for tax payable on a payments basis may not apply to change the registered person’s accounting basis to an invoice basis.”
- (2) Subsection (1) applies in relation to an application for a change to a registered person’s accounting basis received on or after the date of Royal assent of this Act.

## 214 Calculation of tax payable

- (1) In section 20(3)(d)(v), “Accident Compensation Act 2001); and” is replaced by “Accident Compensation Act 2001):” and the following is inserted:

- “(vi) does not apply to the supply of a contract of insurance when the supplier is not required to account for output tax on the supply; and”.
- (2) Section 20(3C) is replaced by the following:
- “(3C) For the purposes of subsection (3), and if subsection (3D) does not apply,—
- “(a) input tax as defined in section 3A(1)(a) or (c) may be deducted to the extent to which the goods or services are used for, or are available for use in, making taxable supplies:
- “(b) input tax as defined in section 3A(1)(b) may be deducted to the extent to which the goods are used for, or are available for use in, making taxable supplies other than—
- “(i) the delivery of the goods to a person in New Zealand:
- “(ii) arranging or making easier the delivery of the goods to a person in New Zealand.”
- (3) In section 20(3J)(a)(iii), “goods” is replaced by “goods or services”.

**215 Goods and services tax incurred relating to determination of liability to tax**

In section 20A(2), in the words after paragraph (d)(ii), “for the principal purpose of making taxable supplies” is replaced by “for making taxable supplies”.

**216 Adjustments for apportioned supplies**

After section 21(4), the following is added:

- “(5) In determining the extent of percentage actual use and percentage intended use of a motor vehicle, a registered person may refer to a logbook as provided for in sections DE 6 to DE 11 of the Income Tax Act 2007.”

**217 When adjustments required**

In section 21A(c), “section 21(2)(c)” is replaced by “section 21(2)(c) or (d)”.



**218 Adjustments when person becomes registered after acquiring goods and services**

- (1) Section 21B(1)(a) is replaced by the following:
- “(a) before becoming a registered person, a person acquires—
    - “(i) goods or services on which tax has been charged under section 8(1):
    - “(ii) goods entered by them for home consumption under the Customs and Excise Act 1996 on which tax has been levied under section 12(1):
    - “(iii) secondhand goods—
      - “(A) that are supplied to the person by way of sale; and
      - “(B) that have always been situated in New Zealand or have had tax levied on them as described in subparagraph (ii); and
      - “(C) the supply of which is not a taxable supply; and”.
- (2) In section 21B(3)(a)(ii), “section 24(3)” is replaced by “section 24(3) or (7), as applicable”.
- (3) Section 21B(4) is repealed.
- (4) After section 21B(3), the following is inserted:
- “(5) In relation to a supply of secondhand goods, the tax fraction applying to the supply is the tax fraction that applied at the time the goods were purchased by the person.”

**219 Concurrent uses of land**

In section 21E(1), “when a registered person uses all or part of an area of land during an adjustment period for making concurrent taxable and non-taxable supplies” is replaced by “when a registered person simultaneously uses the same area of land during an adjustment period for making concurrent taxable and non-taxable supplies”.

**220 Definitions and requirements for apportioned supplies and adjustment periods**

After section 21G(7), the following is inserted:

- “(7B) If a person disposes, or is treated as disposing, of an asset before the last required adjustment period under subsection (4), then for the purposes of subsection (2)(a)(ii) and (b)(ii), the current adjustment period is treated as—
- “(a) ending immediately before the date of the disposal; and
  - “(b) the final adjustment period.”

## **221 Transitional accounting rules**

- (1) Section 21H(1) is replaced by the following:

- “(1) This section applies in relation to goods or services acquired before 1 April 2011 when—

“(a) a registered person determines the extent to which goods or services are applied for the purposes of making supplies other than taxable supplies under sections 21 to 21H (the **old apportionment rules**) as they were before the enactment of the Taxation (GST and Remedial Matters) Act 2010:

“(b) no adjustment was made or was required to be made under the old apportionment rules before 1 April 2011 for goods or services other than those referred to in section 21HB.”

- (2) After section 21H(2), the following is inserted:

- “(2B) For goods or services that were acquired before 1 April 2011, for which no adjustment was made or required under the old apportionment rules before 1 April 2011, and that are not referred to in section 21HB(1), this section applies modified as follows:

“(a) if input tax was deducted under section 20(3) in relation to the goods or services, or if the goods or services were zero-rated at the time of purchase, the person must apply the old apportionment rules in relation to the supply:

“(b) if no input tax was deducted under section 20(3) in relation to the goods or services, the person must apply the new apportionment rules set out in sections 21 to 21G and subsection (2C).

- “(2C) For the purpose of subsection (2B)(b), the first adjustment period is treated as beginning on the date of acquisition of the goods or services and ending on the date that is the first balance date falling after the later of—

- “(a) the date on which the goods or services were first used for making taxable supplies:
  - “(b) the date on which the person becomes a registered person.”
- (3) Subsection (2) applies for supplies made on or after 1 April 2011. However, subsection (2) does not apply for a person in relation to a tax position taken by them—
- (a) in the period between 1 April 2011 and the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and
  - (b) relating to an adjustment made under either the old apportionment rules or the new apportionment rules; and
  - (c) relying on the provisions of the Goods and Services Tax Act 1985 as they were before the amendment made by subsection (2).

#### **222 Tax invoices**

In section 24(7B), “section 60B(3) to (5)” is replaced by “section 60B(3), (4), and (6)”.

#### **223 Group of companies**

- (1) In section 55(1)(a)(iii), “multi-rate PIE” is replaced by “multi-rate PIE or a look-through company”.
- (2) After section 55(7)(dc), the following is inserted:
  - “(dd) any statement or other information provided to a member of the group under section 78F shall be deemed to be provided to the representative member; and
  - “(de) any statement or other information provided by a member of the group under section 78F shall be deemed to be provided by the representative member; and”.

#### **224 Nominated recipients of supplies**

- (1) Section 60B(5) is repealed.
- (2) In section 60B(6), “subsections (2) to (5)” is replaced by “subsections (2) to (4)”.
- (3) Subsections (1) and (2) apply for supplies made on or after 1 April 2011. However, subsections (1) and (2) do not apply for a person in relation to a tax position taken by them—

- (a) in the period between 1 April 2011 and the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and
- (b) relating to an input tax deduction claimed by the person; and
- (c) relying on the provisions of the Goods and Services Tax Act 1985 as they were before the amendments made by subsections (1) and (2).

### **225 Keeping of records**

- (1) In section 75(3D), “name, address, and registration number” is replaced by “name, and address, and registration number or tax file number, as applicable”.
- (2) In section 75(3E), “name, address, and registration number” is replaced by “name, address, and, if the principal is a registered person or expects to be a registered person, the registration number”.

### **226 Liability in relation to supplies of land**

- (1) In section 78F(3), “provided by the recipient” is replaced by “provided as required by subsection (2)”.
- (2) Section 78F(5) is replaced by the following:
  - “(5) For the purposes of section 60B and a contract for a supply that wholly or partly consists of land, when the person who enters the contract (**person B**) nominates another person (**person C**) to receive the supply, the requirements of subsection (2) are met if—
    - “(a) person B provides the required information as it relates to their expectation of the circumstances of person C:
    - “(b) person C provides the required information.”
- (3) In section 78F(7), “the date of settlement.” is replaced by “the date of settlement. If the agent does not have a registration number, their tax file number may be provided in its place. On meeting the requirements of this subsection, the person is treated as having met the requirements of subsection (2B).”

## Part 5 Amendments to other Acts and regulations

### *Amendments to KiwiSaver Act 2006*

**227 KiwiSaver Act 2006**

Sections 228 to 238 amend the KiwiSaver Act 2006.

**228 Interpretation**

In section 4, the following is inserted in the appropriate alphabetical order:

“**non-deduction notice** means a notice described in section 112B”.

**229 Employees giving information to employers**

In section 22(1)(c)(ii), “ended.” is replaced by “ended; or”, and the following is added:

“(iii) give his or her employer a non-deduction notice.”

**230 When subpart does not apply**

After section 62(b), the following is inserted:

“(bb) for the period that the employee has a valid non-deduction notice that they have given to their employer under section 112B; or”.

**231 Contribution rate**

(1) In section 64(1)(a), in the words before the subparagraphs, “2%” is replaced by “3%”.

(2) After section 64(1)(a)(ii), the following is inserted:

“(iii) the employee is on a 2% contribution rate immediately before the first pay period that starts on or after 1 April 2013 because they chose 2% under subsection (2); or”.

(3) In section 64(2), “2%” is replaced by “3%”.

(4) Subsections (1) to (3) apply for payments of salary or wages for pay periods that start on or after 1 April 2013.

**232 Treatment of unremitted deductions in holding account**

In section 78, “section 73(1)” is replaced by “section 73(1)(a)”.

**233 How and when interest is paid on on-payments**

In section 88, “at the same time that the amount of contribution is on-paid to the provider” is replaced by “within 3 months of when the amount of contribution is on-paid to the provider”.

**234 Compulsory employer contribution amount: general rule**

(1) Section 101D(4)(b) is replaced by the following:

“(b) 2%, if the payment of gross salary or wages is made for a pay period that starts on or before 31 March 2013, excluding a pay period to the extent to which paragraph (a) applies to it:

“(c) 3%, if the payment of gross salary or wages is made for a pay period that is in a year starting on or after 1 April 2013, excluding a pay period that paragraph (b) applies to.”

(2) Subsection (1) applies for payments of salary or wages for pay periods that start on or after 1 April 2013.

**235 New section 112B inserted**

After section 112, the following is inserted:

**“112B Non-deduction notices**

“(1) A person who has passed the KiwiSaver end payment date described in Schedule 1, clause 4(2) may give to their employer a notice (a **non-deduction notice**) stating that the employer must stop making deductions of contributions from the person’s salary or wages under subpart 1.

“(2) The non-deduction notice is valid, for the purposes of section 62(bb), for the first payment of salary or wages after the non-deduction notice is given to the person’s employer. It is valid for subsequent payments of salary or wages, until the person revokes that non-deduction notice by giving to the employer another notice (a **revocation notice**), in accordance with subsection (3), stating that the employer must start mak-

ing deductions of contributions from the person's salary or wages under subpart 1.

- “(3) A person must not give a revocation notice to the employer within 3 months of giving a non-deduction notice to them, unless the employer agrees to receive the revocation notice within those 3 months.”

**236 Crown contribution**

In the heading to section 226, “**contribution**” is replaced by “**contribution: kick-start contributions**”.

**237 New section 238**

After section 237, the following is added:

**“238 Protection from non-compliance: Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012**

If an effect of the enactment of sections 166, 231, and 234 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (the **Act**) for an issuer of a security is their non-compliance with an enactment related to securities, that non-compliance is ignored, if it starts before the date (the **end date**) that is 2 months after the day (the **assent day**) on which the Act receives the Royal assent and does not continue on or after the end date, or if it relates to—

- “(a) a prospectus that is registered under the Securities Act 1978 on or before assent day;  
“(b) an investment statement under the Securities Act 1978 that is dated on or before assent day.”

**238 Schedule 1—KiwiSaver scheme rules**

- (1) In schedule 1, clause 3(2), “contributions holiday” is replaced by “contributions holiday or for the period that the employee has a valid non-deduction notice under section 112B that they have given to their employer”.
- (2) Schedule 1, clause 4(2)(b) is replaced by the following:  
“(b) the 5 year qualification date; or”.
- (3) After schedule 1, clause 4(5), the following is added:  
“(6) For the purposes of these rules, **5 year qualification date** means the earlier of—

- “(a) the date that is 5 years after the day on which the member first became a member of a KiwiSaver scheme; or
- “(b) the date that is 5 years after the day, under section 85, on which the Commissioner first received a contribution for a KiwiSaver scheme in relation to the member.”

*Amendment to Child Support Act 1991*

**239 Notification requirements of liable parent**

In section 81(1)(b) of the Child Support Act 1991, “to whom section 33A of the Tax Administration Act 1994 applies” is replaced by “who meets the requirements of section 33AA(1) of the Tax Administration Act 1994”.

*Amendments to Income Tax Act 2004*

**240 Income Tax Act 2004**

Sections 241 to 249 amend the Income Tax Act 2004.

**241 Meaning of expenditure on account of an employee**

- (1) Section CE 5(1), other than the heading, is replaced by the following:
  - “(1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee or to be incurred by an employee.”
- (2) Subsection (1) applies for the 2005–06 and later income years.

**242 Expenditure on account, and reimbursement, of employees**

- (1) In section CW 13(1), “Expenditure on account of an employee” is replaced by “Expenditure on account of an employee, being a payment to which section CE 5 (Meaning of expenditure on account of an employee) applies, that is”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

**243 New heading and section DB 31B inserted**

- (1) After section DB 31, the following is inserted:



*“Unsuccessful software development***“DB 31B Expenditure in unsuccessful development of software***“When this section applies*

- “(1) This section applies when a person incurs expenditure in the development of software for use in the person’s business if—
- “(a) the development of the software is abandoned before the software is fit to be used in the person’s business; and
  - “(b) the person would have been entitled to a deduction for an amount of depreciation loss for the software if the software had been made fit to be used in the person’s business.

*“Deduction*

- “(2) The person is allowed a deduction for the expenditure incurred in the development of the software to the extent to which no deduction has been allowed for the expenditure under another provision of this Act or under another Act.

*“Timing of deduction*

- “(3) The deduction is allocated to the income year in which the development of the software is abandoned.

*“Link with subpart DA*

- “(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

*“Defined in this Act: capital limitation, deduction, general limitation, general permission, income year”.*

- (2) Subsection (1) applies for the 2006–07 and later income years.

**244 Some definitions**

- (1) In section DC 14(1), in the definition of **employee**, paragraph (a) is replaced by the following:

- “(a) means a person that—
- “(i) is employed by a company:
  - “(ii) is not a corporation sole, a body corporate, or an unincorporated body:”.

- (2) In section DC 14(1), in the definition of **employee**,—

- (a) in paragraph (b)(ii), “the company; or” is replaced by “the company”;
  - (b) paragraph (b)(iii) is repealed.
- (3) Subsections (1) and (2) apply for the 2005–06 and later income years.

**245 Application of this subpart**

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

*“When this subpart applies*

- “(1) This subpart applies to the valuation of property when a person who owns or carries on a business, other than of selling livestock, holds livestock for the purposes of sale or exchange in the ordinary course of carrying on the business.”
- (2) Subsection (1) applies for the 2005–06 and later income years. However, subsection (1) does not apply to a person in relation to a tax position taken by the person—
- (a) in the period from 1 April 2005 to 31 May 2011; and
  - (b) relating to the valuation of livestock; and
  - (c) relying on the provisions of subpart EC as they were before the amendment made by subsection (1).

**246 Use of money interest payable by person**

In section EF 5(2), “income tax liability” is replaced by “assessed liability”.

**247 Spreading forward of deductions for repairs to fishing boats**

- (1) In section EJ 2(1), “Part 10 of the Maritime Transport Act 1994” is replaced by “Part 21 of the Maritime Rules made under the Maritime Transport Act 1994”.
- (2) In section EJ 2(6), in the definition of **fishing boat**, “a fishing boat under Part 4 of the Fisheries Act 1983” is replaced by “a fishing vessel under section 103 of the Fisheries Act 1996”.
- (3) Subsections (1) and (2) apply for the 2005–06 and later income years.

**248 Portfolio entity tax liability and rebates of portfolio tax rate entity for period**

- (1) After section HL 20(9), the following is inserted:  
“(9B) For the purposes of subsection (9) and the determination of a person’s prescribed investor rate, the person’s taxable income does not include an amount that—
  - “(a) arises because their portfolio investor rate is lower than their prescribed investor rate; and
  - “(b) is treated as taxable income because section CX 44D does not apply.”
- (2) Section HL 20(13) is repealed.

**249 Definitions**

- (1) This section amends section OB 1.
- (2) In the definition of **employee**, after paragraph (a), the following is inserted:  
“(ab) for the purposes of the FBT rules, includes a shareholder-employee.”.

*Amendments to Income Tax Act 1994***250 Income Tax Act 1994**

Section 251 amends the Income Tax Act 1994.

**251 Certain repairs to fishing boats**

- (1) In section DO 2(1), “Part 4 of the Shipping and Seamen Act 1952” is replaced by “Part 10 of the Maritime Transport Act 1994”.
- (2) In section DO 2(1), “Part 10 of the Maritime Transport Act 1994” is replaced by “Part 21 of the Maritime Rules made under the Maritime Transport Act 1994”.
- (3) In section DO 2(2), in the definition of **fishing boat**, “the Fisheries Act 1983;” is replaced by “the Fisheries Act 1983 or section 103 of the Fisheries Act 1996;”.
- (4) Subsection (1) applies for the 1995–96 to 1997–98 income years.
- (5) Subsection (2) applies for the 1998–99 and later income years.
- (6) Subsection (3) applies for the 2001–02 and later income years.

*Amendments to Taxation (Tax Administration  
and Remedial Matters) Act 2011*

**252 Taxation (Tax Administration and Remedial Matters)  
Act 2011**

Sections 253 to 255 amend the Taxation (Tax Administration and Remedial Matters) Act 2011.

**253 New section DZ 19**

Section 21(2) is repealed.

**254 Net attributable CFC income or loss**

Section 37(2) and (4) are repealed.

**255 New section EZ 32C**

Section 44(2) is repealed.

*Amendments to Income Tax (Depreciation  
Determinations) Regulations 1993*

**256 Income Tax (Depreciation Determinations) Regulations  
1993**

Sections 257 to 260 amend the Income Tax (Depreciation Determinations) Regulations 1993.

**257 Fees**

- (1) In regulation 9(1)(a), “\$50” is replaced by “\$150 plus any GST”.
- (2) In regulation 9(1)(b), “\$30” is replaced by “\$75 plus any GST”.
- (3) Regulation 9(1)(c) and (d) are replaced by the following:
  - “(c) a departmental consultation reimbursement fee equal to the amount of fees, less GST, paid by the Commissioner to consultants such as valuers, engineers, and architects in obtaining advice as to the estimated useful life or estimated residual value of the property to which the application relates (not being fees to which paragraph (d) applies), plus any GST:

- “(d) an additional consultation reimbursement fee, equal to the amount of fees, less GST, paid by the Commissioner to the relevant consultant, plus any GST, where the applicant—
  - “(i) requests, in writing to the Commissioner, that a consultant carry out further work on the application:
  - “(ii) requests a conference on the application and a consultant paid by the Commissioner attends the conference on the nomination of either the applicant or the Commissioner.”
- (4) After regulation 9(1), the following is inserted:
  - “(1B) An applicant for a determination of a provisional rate under section 91AAG of the Act is liable to pay for the application an additional consultation reimbursement fee equal to the amount of fees, less GST, paid by the Commissioner to the relevant consultant, plus any GST, if—
    - “(a) the Commissioner declines to issue a determination, or issues a determination that is unfavourable to the applicant; and
    - “(b) the applicant, after the Commissioner’s decision,—
      - “(i) requests, in writing to the Commissioner, that a consultant carry out further work on the application but the further work does not cause the Commissioner to issue a determination favourable to the applicant:
      - “(ii) requests a conference on the application and a consultant paid by the Commissioner attends the conference on the nomination of either the applicant or the Commissioner but the conference does not cause the Commissioner to issue a determination favourable to the applicant.”
- (5) In regulation 9(2), “subclause (1)(d)” is replaced by “subclause (1)(d) or (1B)”.

## **258 Payment of fees**

- (1) In regulation 10(1), “paragraphs (b) to (d) of regulation 9(1)” is replaced by “regulation 9(1)(b) to (d) or (1B)”.

- (2) In regulation 10(2), “paragraphs (b) to (d) of regulation 9(1)” is replaced by “regulation 9(1)(b) to (d) or (1B)”.

**259 Regulation 11 replaced**

Regulation 11 is replaced by the following:

**“11 Waiver of fees**

The Commissioner may waive all or part of a fee payable under these regulations if the Commissioner considers it is fair and reasonable in the circumstances to do so, having regard to the nature of the issue that is the subject of the application, the level of skill and experience required in the consideration of the application, the fees paid by the Commissioner to consultants in the application, and any other relevant factors.”

**260 Regulation 12 revoked**

Regulation 12 is revoked.

*Amendments to Income Tax (Determinations)  
Regulations 1987*

**261 Income Tax (Determinations) Regulations 1987**

Sections 262 and 263 amend the Income Tax (Determinations) Regulations 1987.

**262 Publication of determinations**

In regulation 10, “in the *Gazette*” is replaced by “, in a publication chosen by the Commissioner.”

**263 Regulation 13 replaced**

Regulation 13 is replaced by the following:

**“13 Waiver of fees**

The Commissioner may waive all or part of a fee payable under these regulations if the Commissioner considers it is fair and reasonable in the circumstances to do so, having regard to the nature of the issue that is the subject of the application, the level of skill and experience required in the consideration of the application, and any other relevant factors.”

*Amendments to Tax Administration (Binding  
Rulings) Regulations 1999*

- 264 Tax Administration (Binding Rulings) Regulations 1999**  
Sections 265 and 266 amend the Tax Administration (Binding Rulings) Regulations 1999.
- 265 Fees**  
In regulation 3(1),—
- (a) in paragraph (a), “\$310” is replaced by “\$280 plus any GST”; and
  - (b) in paragraph (b)(i), “\$155” is replaced by “\$140 plus any GST”; and
  - (c) paragraph (b)(ii) is revoked.
- 266 Regulation 7 revoked**  
Regulation 7 is revoked.

*Amendments to Tax Administration (Form of  
Warrant) Regulations 2003*

- 267 Tax Administration (Form of Warrant) Regulations 2003**  
Section 268 amends the Tax Administration (Form of Warrant) Regulations 2003.
- 268 Schedule 2—Form of warrant**
- (1) In schedule 2, clause 2, “books or documents” is replaced by “documents”.
  - (2) In schedule 2, clause 3, “documents and books” is replaced by “documents”.

*Income Tax (Refund of Excess Tax) Order 2003*

- 269 Income Tax (Refund of Excess Tax) Order 2003 revoked**  
The Income Tax (Refund of Excess Tax) Order 2003 is revoked.
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**Legislative history**

14 September 2011	Introduction (Bill 325–1)
27 September 2011	First reading and referral to Finance and Expenditure Committee
6 June 2012	Reported from Finance and Expenditure Committee (Bill 325–2)
2 August 2012	Second reading
28 August, 18, 26 September 2012	Committee of the whole House
16 October 2012	Reported from committee of the whole House (Bill 325–3)
25 October 2012	Third reading
2 November 2012	Royal assent

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This Act is administered by the Inland Revenue Department.

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