



Taxation (FBT, SSCWT and Remedial Matters) Act 2000

Public Act 2000 No 34
Date of assent 25 September 2000
Commencement see section 2

Contents

1	Title	19	New headings and sections CL 3 to CL 21 inserted
2	Commencement		
	Part 1		
	Amendments to Income Tax Act 1994		
3	Income Tax Act 1994		
4	Certain compensation, benefits, and other payments are gross income		
5	Meaning of term “dividends”		
6	Interpretation		
7	What constitutes an interest in a foreign investment fund		
8	Use of alternative methods		
9	Deemed rate of return method of calculation		
10	Treatment of circumstances of entry into or exit from foreign investment fund regime		
11	Meaning of “fringe benefit”		
12	Election whether fringe benefit or dividend		
13	Value of fringe benefit		
14	Taxable value of fringe benefit		
15	Exemption for minor unclassified benefits		
16	Adjustment on amalgamation to exemption for minor unclassified benefits		
17	Application of other provisions to fringe benefit tax		
18	Use of test period to establish private use of motor vehicle		
			<i>Income tax treatment of withdrawals of certain amounts from superannuation funds</i>
			CL 3 Application of section CL 4
			CL 4 Certain withdrawal amounts are gross income of superannuation fund
			<i>Exceptions</i>
			CL 5 Exception for withdrawal on grounds of hardship
			CL 6 Exception for withdrawal to settle divisions of matrimonial property
			CL 7 Exception for withdrawal paid as annuity or pension
			CL 8 Exception for withdrawal when member ceases employment
			CL 9 Exception for withdrawal when member ceases employment—lock in rule
			CL 10 Exception for withdrawal from defined benefit fund when member ceases employment
			CL 11 Meaning of ceases employment
			CL 12 Exception for withdrawal on partial retirement

	<i>Treatment of transfers to or from superannuation funds and superannuation schemes</i>	22	Credits and debits arising to branch equivalent tax account of person
	CL 13 Transfer is a withdrawal	23	Replacement of Part ND
	CL 14 Treatment of transfer by superannuation fund to another superannuation fund	ND 1	Employer's liability for fringe benefit tax
	CL 15 Treatment of amounts transferred from superannuation scheme to superannuation fund	ND 2	Election to pay fringe benefit tax per quarter
	CL 16 Treatment of amounts invested by superannuation fund in another superannuation fund	ND 3	Attributed fringe benefits
	<i>Treatment of amounts when superannuation fund becomes superannuation scheme or vice-versa</i>	ND 4	Attributed fringe benefits—exception for subsidised transport
	CL 17 Treatment of amounts when superannuation fund becomes superannuation scheme	ND 5	Multi-rate calculation for attributed fringe benefits
	CL 18 Treatment of amounts when superannuation fund becomes foreign superannuation scheme	ND 6	Calculation of fringe benefit tax on non-attributed fringe benefits
	CL 19 Treatment of amount when superannuation scheme becomes superannuation fund	ND 7	Definition of cash remuneration
	<i>Treatment of distributions when superannuation fund winds up</i>	ND 8	Special rule for employer who stops employing staff during income year
	CL 20 Treatment of distributions on winding up of superannuation fund	ND 9	Payment of fringe benefit tax—first 3 quarters of income year
	<i>Miscellaneous</i>	ND 10	Payment of fringe benefit tax—final quarter of income year
	CL 21 Calculation of amount in superannuation fund on balance date immediately before 1 April 2000	ND 11	Payment of fringe benefit tax—no fringe benefit provided during quarter
20	New sections EN 6 and EN 7 inserted	ND 12	Special filing rule for employer who stops employing staff during year
	EN 6 Gross income of superannuation funds from amounts withdrawn and subject to section CL 4	ND 13	Payment of fringe benefit tax on annual basis for employees who are not shareholder-employees
	EN 7 Gross income of superannuation funds from amounts withdrawn between 14 September 2000 and 30 September 2000 (both dates inclusive)—superannuation funds with late balance dates	ND 14	Payment of fringe benefit tax on income year basis for shareholder-employees
		ND 15	Change in period for which fringe benefit tax payable
		ND 16	Amendment to thresholds for fringe benefit categories by Order in Council
		24	Specified superannuation contribution withholding tax imposed
		25	New section NE 2AA inserted
			NE 2AA Employee election that specified superannuation contributions be subject to higher rate of specified superannuation contribution withholding tax
		26	Specified superannuation contribution withholding tax to be deducted
21	Value of motor vehicle acquired from associated person		

27	Tax deemed for certain purposes to have been received by superannuation fund	32B	Certification requirements for withdrawals subject to section CL 4 of Income Tax Act 1994
28	New subpart EA inserted Subpart EA—Tax on certain withdrawals from superannuation funds NEA 1 Recovery of tax paid by superannuation fund	32C	Certification requirements for transfers from superannuation funds
29	Definitions	36	Special returns by taxpayers affected by reduced deductions under Income Tax Act 1994
30	References to income years in particular provisions	37	Definitions
31	Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax	38	Amount in nature of interest to be added to fringe benefit tax paid on annual or income year basis
32	Schedule 2—Fringe benefit values	39	New section 165AA inserted 165AA Recovery of tax paid by superannuation fund
	Part 2	40	Obligation to pay tax on foreign investment fund income able to be suspended
	Tax Administration Act 1994		Part 3
33	Tax Administration Act 1994		Amendments to Goods and Services Tax Act 1985
34	Interpretation	41	Goods and Services Tax Act 1985
35	New sections 32A to 32C inserted 32A Records to be provided by employer who contributes to superannuation fund	42	Adjustments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (FBT, SSCWT and Remedial Matters) Act 2000.

2 Commencement

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

Part 1

Amendments to Income Tax Act 1994

3 Income Tax Act 1994

This Part amends the Income Tax Act 1994.

4 Certain compensation, benefits, and other payments are gross income

- (1) In section CC 1(1)(bb), “(as it read immediately before its repeal by section 7 of the Accident Insurance Amendment Act

2000)” is replaced by “section 188(1)(a) of the Accident Insurance Act 1998 (as it read immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000)”.

- (2) Subsection (1) applies on and after 1 July 2000.

5 Meaning of term “dividends”

- (1) In section CF 2(11)(b)(ii), “section ND 4” is replaced by “section ND 14”.
- (2) Subsection (1) applies on and after 1 April 2000.

6 Interpretation

- (1) After section CG 14(1)(c), the following is inserted:
- “(ca) if the property is an interest in an entity that becomes a foreign entity after the date on which the interest is acquired, the cost or expenditure incurred in acquiring the interest is the market value of the property at the end of the business day on which the entity became a foreign entity; and”.
- (2) Subsection (1) applies to the 1999–2000 and subsequent income years.

7 What constitutes an interest in a foreign investment fund

- (1) In section CG 15(2)(d)—
- (a) “natural person” is replaced by “natural person, other than in that person’s capacity as a trustee,”;
- (b) “\$20,000” is replaced by “\$50,000”.
- (2) Subsection (1) applies to the 1999–2000 and subsequent income years.

8 Use of alternative methods

- (1) In section CG 17(3)(b) and CG 17(9)(b)(iii)(A), “\$100,000” is replaced by “\$250,000”.
- (2) Subsection (1) applies to the 1999–2000 and subsequent income years.

9 Deemed rate of return method of calculation

- (1) In section CG 19(2) and CG 19(3), “\$100,000” is replaced by “\$250,000”.
- (2) Subsection (1) applies to the 1999–2000 and subsequent income years.

10 Treatment of circumstances of entry into or exit from foreign investment fund regime

- (1) After section CG 23(7), the following is inserted:
 - “(7A) If a person holds property that becomes an interest in a fund due to an entity becoming a foreign entity, the person is treated as having—
 - “(a) disposed of the property to an unrelated person immediately before the entity became a foreign entity; and
 - “(b) reacquired the property immediately after the entity became a foreign entity.
 - “(7B) The consideration for the disposition is the market value of the property at the end of the business day on which the entity became a foreign entity.
 - “(7C) The consideration for the reacquisition is treated as being the same amount as the consideration for the disposition.
 - “(7D) If subsection (7A) applies and the person uses the accounting profits method after the entity becomes a foreign entity, subsection (7) applies as if—
 - “(a) the property had become an interest in the fund as a result of any one of the paragraphs in section CG 15(2) ceasing to apply; and
 - “(b) section CG 12 did not apply.”
- (2) Subsection (1) applies to the 1999–2000 and subsequent income years.

11 Meaning of “fringe benefit”

- (1) In section CI 1, “section ND 4” is replaced by “section ND 14” in all places where it occurs.
- (2) Subsection (1) applies on and after 1 April 2000.

12 Election whether fringe benefit or dividend

- (1) In section CI 2A(4), “section ND 4” is replaced by “section ND 14”.

- (2) Subsection (1) applies on and after 1 April 2000.

13 Value of fringe benefit

- (1) In section CI 3(1)(a), in item 2, “Schedule 2” is replaced by “Schedule 2, Part A”.
- (2) In section CI 3(1)(b), “section ND 3” is replaced by “section ND 13”.
- (3) In section CI 3, “section ND 4” is replaced by “section ND 14” in all places where it occurs.
- (4) Subsections (1) to (3) apply on and after 1 April 2000.

14 Taxable value of fringe benefit

- (1) In section CI 4—
- (a) “section ND 3” is replaced by “section ND 13” in both places where it occurs:
- (b) “section ND 4” is replaced by “section ND 14” in all places where it occurs:
- (c) “Schedule 2” is replaced by “Schedule 2, Part A” in all places where it occurs.
- (2) Subsection (1) applies on and after 1 April 2000.

15 Exemption for minor unclassified benefits

- (1) In section CI 5(2)(b), “section ND 3” is replaced by “section ND 13”.
- (2) In section CI 5, “section ND 4” is replaced by “section ND 14” in all places where it occurs.
- (3) Subsections (1) and (2) apply on and after 1 April 2000.

16 Adjustment on amalgamation to exemption for minor unclassified benefits

- (1) In section CI 7(a) and CI 7(b), “section ND 2” is replaced by “sections ND 9 and ND 10”.
- (2) In section CI 7(c), “section ND 3” is replaced by “section ND 13”.
- (3) Subsections (1) and (2) apply on and after 1 April 2000.

17 Application of other provisions to fringe benefit tax

- (1) In section CI 8, “section ND 4” is replaced by “section ND 14”.

- (2) Subsection (1) applies on and after 1 April 2000.

18 Use of test period to establish private use of motor vehicle

- (1) In section CI 11(4), “section ND 2” and “section ND 3” are replaced by “sections ND 9 and ND 10” and “section ND 13” respectively.
- (2) In section CI 11(5), “section ND 4” is replaced by “section ND 14”.
- (3) Subsections (1) and (2) apply on and after 1 April 2000.

19 New headings and sections CL 3 to CL 21 inserted

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

*“Income tax treatment of withdrawals of certain amounts
from superannuation funds*

“CL 3 Application of section CL 4

- “(1) Section CL 4 does not apply to the following withdrawals in respect of a person’s membership in a superannuation fund:
- “(a) a withdrawal of an amount that exists in the superannuation fund at the close of business on 31 March 2000, or if section CL 21 applies, on the fund’s balance date that immediately precedes 1 April 2000:
- “(b) a withdrawal of earnings on the amount that exists in the superannuation fund at the close of business on 31 March 2000, or if section CL 21 applies, on the fund’s balance date that immediately precedes 1 April 2000:
- “(c) a withdrawal of member contributions to the superannuation fund:
- “(d) a withdrawal of employer contributions to superannuation savings if the level of specified superannuation contributions made by the employer on a member’s behalf on and after 1 April 2000 has not increased from the level of specified superannuation contributions made in the last pay period ending before 1 April 2000:
- “(e) a withdrawal for superannuation fund administration costs:
- “(f) a withdrawal for the payment of premiums for group life, health, sickness or accident insurance held by or on behalf of a member in the superannuation fund:

- “(g) a withdrawal for the payment of premiums for individual life, health, sickness or accident insurance held by or on behalf of a member in the superannuation fund:
 - “(h) a withdrawal to pay an amount claimed in respect of a member under insurance specified in paragraphs (f) or (g):
 - “(i) the direct transfer of an amount from a superannuation fund to another superannuation fund:
 - “(j) the direct transfer to another superannuation fund of an amount from a superannuation fund that is wound up.
- “(2) An amount that exists in a superannuation fund at the close of business on 31 March 2000, or if section CL 21 applies, on the fund’s balance date that immediately precedes 1 April 2000, is calculated according to market value.
- “(3) An amount in a superannuation fund at the close of business on 31 March 2000, or if section CL 21 applies, on the fund’s balance date that immediately precedes 1 April 2000 (the fund’s balance date), includes specified superannuation contributions received after 31 March or the fund’s balance date, if the contributions relate to a pay period ending on or before 31 March or the fund’s balance date.
- “(4) An employer is not treated as increasing the level of specified superannuation contributions to a superannuation fund if—
- “(a) the increase is required by a trust deed or a contract, or an amendment to a trust deed or a contract, and the increase is a requirement that existed before 1 April 2000; or
 - “(b) the level of specified superannuation contributions since the last pay period ending before 1 April 2000 has not changed as a percentage of salary.
- “(5) An employer is not treated as increasing the level of specified superannuation contributions made to a superannuation fund to the extent that the employer makes additional specified superannuation contributions on the member’s behalf to make up for underpaid specified superannuation contributions.
- “(6) In this section, **superannuation fund administration costs** means fees and expenses associated with the management and marketing of the superannuation fund.

“CL 4 Certain withdrawal amounts are gross income of superannuation fund

- “(1) This section applies to an amount withdrawn in respect of a person’s membership in a superannuation fund if the fund is—
- “(a) one to which the member’s employer has made specified superannuation contributions on the member’s behalf; or
- “(b) one that has received a transfer from another superannuation fund in respect of the member.
- “(2) Part of the amount withdrawn is gross income of the superannuation fund and the gross income is calculated using the formula:

$$\frac{0.05}{\text{tax rate}} \times \text{amount withdrawn}$$

“where

“tax rate is the basic rate of income tax stated in Schedule 1, Part A, clause 4.

- “(3) Subsection (4) applies if, in any of the 4 income years before the income year in which the withdrawal is made, the total of the member’s taxable income and their employer’s specified superannuation contributions to the fund on their behalf was less than \$60,000.
- “(4) A superannuation fund may reduce its gross income resulting from the withdrawal by 25% for each income year in which the criterion set out in subsection (3) is met.
- “(5) An amount withdrawn means money withdrawn or, if money is not withdrawn, the market value of the withdrawal on the date of the withdrawal.
- “(6) If part of an amount withdrawn is employer contributions to superannuation savings and the trustee of the superannuation fund can establish the amount of employer contributions to superannuation savings withdrawn, subsections (1) and (2) apply only to the employer contributions to superannuation savings withdrawn.

*“Exceptions***“CL 5 Exception for withdrawal on grounds of hardship**

- “(1) Section CL 4 does not apply to a withdrawal to the extent that the withdrawal is necessary to alleviate significant financial hardship.
- “(2) In this section, **significant financial hardship** includes significant financial difficulties that arise because of—
- “(a) a member’s inability to carry out his or her usual occupation because of temporary illness, injury or disability, or permanent illness, injury or disability;
 - “(b) a member’s inability to meet minimum living expenses;
 - “(c) a member’s inability to meet mortgage repayments on their principal family residence to such an extent that the mortgagee is seeking to foreclose;
 - “(d) the cost of modifying a residence to meet special needs arising from a disability of a member or a member’s dependant;
 - “(e) the cost of medical treatment for an illness or injury of a member or a member’s dependant;
 - “(f) the cost of palliative care for a member or a member’s dependant;
 - “(g) the cost of a funeral for a deceased member or a member’s dependant.

“CL 6 Exception for withdrawal to settle divisions of matrimonial property

Section CL 4 does not apply to a withdrawal to the extent that the withdrawal is necessary to settle the division of matrimonial property under the Matrimonial Property Act 1976 upon the separation of spouses or upon the dissolution of a marriage under the Family Proceedings Act 1980.

“CL 7 Exception for withdrawal paid as annuity or pension

Section CL 4 does not apply to a withdrawal if the amount withdrawn is—

- “(a) used to purchase an annuity that is payable for life or over 10 or more years; or
- “(b) payable as an annuity for life or over 10 or more years; or
- “(c) payable as a pension for life or over 10 or more years.

“CL 8 Exception for withdrawal when member ceases employment

- “(1) Section CL 4 does not apply to a withdrawal made on or after the date on which a member ceases employment with an employer if the member ceases employment because the member is injured or disabled, or dies.
- “(2) Subsection (3) applies if—
- “(a) a member is employed for 2 years or more; and
 - “(b) in either of the 2 income years ending on or before the date on which the member ceases employment, the specified superannuation contributions made in the income year on behalf of the member are not 150% or more of the specified superannuation contributions made in the previous income year; and
 - “(c) in the income year in which the member ceases employment, the annualised value of specified superannuation contributions made in the income year is not 150% or more of the specified superannuation contributions made in the previous income year.
- “(3) Section CL 4 does not apply to a withdrawal made—
- “(a) on or after the date on which a member ceases employment with an employer; or
 - “(b) shortly before the date on which the member ceases employment in anticipation of the member’s ceasing employment.
- “(4) An employer is not treated as making specified superannuation contributions to a superannuation fund that are 150% or more of the specified superannuation contributions made in the previous income year if—
- “(a) the increase occurs before 1 April 2000; or
 - “(b) the increase is required by a trust deed or a contract, or an amendment to a trust deed or a contract, and the increase is a requirement that existed before 1 April 2000; or
 - “(c) the employer starts making specified superannuation contributions on a member’s behalf in accordance with a contract, or an amendment to a contract, that was signed before 1 April 2000; or
 - “(d) the level of specified superannuation contributions since the last pay period ending before 1 April 2000 has not changed as a percentage of salary.

- “(5) An employer is not treated as making specified superannuation contributions to a superannuation fund that are 150% or more of the specified superannuation contributions made in the previous income year to the extent that the employer makes additional specified superannuation contributions on a member’s behalf to make up for underpaid specified superannuation contributions.
- “(6) If a withdrawal is made on or after the date on which a member ceases employment with an employer and neither subsection (1) nor (3) applies, section CL 4 applies only to the withdrawal of an amount equal to employer contributions to superannuation savings calculated for the period beginning on the first day of the income year that starts 2 income years before the date on which the member ceases employment and ending on the date of withdrawal.
- “(7) In subsections (1), (3) and (6), **withdrawal** means a withdrawal of amounts contributed to a superannuation fund during the time a member is employed by the employer with whom the member is ceasing employment, and any return on those amounts.

“CL 9 Exception for withdrawal when member ceases employment—lock in rule

- “(1) Subsection (2) applies if—
- “(a) a member ceases employment with an employer; and
 - “(b) the member defers for 2 years after the date on which the member ceases employment the receipt of an amount that, if withdrawn, would be subject to section CL 4.
- “(2) Section CL 4 does not apply to a withdrawal of the amount if it is made 2 years after the date on which the member ceases employment.

“CL 10 Exception for withdrawal from defined benefit fund when member ceases employment

- “(1) Section CL 4 does not apply to a withdrawal made from a defined benefit fund—
- “(a) on or after the date on which a member ceases employment with an employer irrespective of the member’s length of service; or

- “(b) shortly before the date on which the member ceases employment in anticipation of the member’s ceasing employment irrespective of the member’s length of service.
- “(2) In this section, **withdrawal** means a withdrawal of amounts contributed to a defined benefit fund during the time a member is employed by the employer with whom the member is ceasing employment, and any return on those amounts.

“CL 11 Meaning of ceases employment

- “(1) This section applies for the purpose of sections CL 8, CL 9 and CL 10.
- “(2) A member is not treated as ceasing employment with an employer if the member transfers from one employer (employer A) to a related employer.
- “(3) An employer (employer B) is a related employer if employer B is treated as a separate employer from employer A and is—
- “(a) a branch or division of employer A; or
- “(b) a person associated with employer A.

“CL 12 Exception for withdrawal on partial retirement

- “(1) Section CL 4 does not apply to a withdrawal made on or after the date on which a member partially retires, if, on the date the withdrawal is made—
- “(a) the member is employed for 30 hours per week or less; and
- “(b) the member has reduced their working hours because the member is nearing full retirement; and
- “(c) the member gives notice, in writing, to the trustees of the superannuation fund that the member does not intend to increase their hours in paid employment in the future; and
- “(d) the member stops contributing to a superannuation fund; and
- “(e) the member’s employer stops making specified superannuation contributions to a superannuation fund on the member’s behalf.
- “(2) A member’s notice to the trustees of the superannuation fund must—

- “(a) provide a statement that the member’s employer understands that the member’s hours in paid employment in the future will not increase; and
 - “(b) be signed by the member’s employer to indicate that this is the employer’s understanding.
- “(3) A member who makes a withdrawal after giving notice, in writing, to the trustees of the superannuation fund that the member does not intend to increase their hours in paid employment in the future is not required to give notice for each subsequent withdrawal if their intention has not changed.

“Treatment of transfers to or from superannuation funds and superannuation schemes

“CL 13 Transfer is a withdrawal

An amount that is transferred directly by a superannuation fund to another superannuation fund or to a superannuation scheme is a withdrawal.

“CL 14 Treatment of transfer by superannuation fund to another superannuation fund

- “(1) An amount transferred by a superannuation fund to another superannuation fund, not being a defined benefit fund, retains its nature in the transferee fund if the trustees of the transferor fund, or a member’s past or present employer, notify the transferee fund of the nature of the amount transferred.
- “(2) If the trustees of the transferor fund or a member’s past or present employer do not notify the transferee fund of the nature of the amount transferred, the amount transferred is treated as being employer contributions to superannuation savings in the transferee fund.
- “(3) Amounts to which section CL 3(1)(a), CL 3(1)(b) and CL 3(1)(c) apply that are transferred by a superannuation fund to a defined benefit fund retain their nature in the defined benefit fund if the trustees of the superannuation fund notify the defined benefit fund of these amounts.
- “(4) If the trustees of the superannuation fund do not notify the defined benefit fund of the amounts to which section CL 3(1)(a), CL 3(1)(b) and CL 3(1)(c) apply, section CL 4 applies to the amount transferred when withdrawn from the

defined benefit fund, unless any one of sections CL 5 to CL 12 applies.

“CL 15 Treatment of amounts transferred from superannuation scheme to superannuation fund

An amount transferred directly from a superannuation scheme to a superannuation fund is treated as being member contributions in the superannuation fund.

“CL 16 Treatment of amounts invested by superannuation fund in another superannuation fund

“(1) If a superannuation fund (superannuation fund A) is a member of another superannuation fund (superannuation fund B)—

“(a) superannuation fund A’s investment in superannuation fund B and a withdrawal of an amount in relation to superannuation fund A’s investment are not transfers; and

“(b) a withdrawal of an amount in relation to superannuation fund A’s investment in superannuation fund B is not a withdrawal to which section CL 4 applies.

“(2) If a superannuation fund is a member of a superannuation scheme, the fund’s investment in the scheme and any withdrawals by the fund in relation to that investment are not transfers.

“Treatment of amounts when superannuation fund becomes superannuation scheme or vice-versa

“CL 17 Treatment of amounts when superannuation fund becomes superannuation scheme

“(1) If a superannuation fund becomes a superannuation scheme, not being a foreign superannuation scheme—

“(a) amounts that exist in the fund at the time it becomes a superannuation scheme retain their nature; and

“(b) sections CL 3 to CL 21, EN 6, EN 7 and NEA 1 of this Act and sections 32A, 32B and 32C of the Tax Administration Act 1994 apply to a withdrawal from the superannuation scheme as if the scheme were a superannuation fund.

“(2) The amounts that exist in the superannuation fund at the time it becomes a superannuation scheme are calculated according to market value.

“CL 18 Treatment of amounts when superannuation fund becomes foreign superannuation scheme

If a superannuation fund becomes a foreign superannuation scheme, all amounts that exist in the superannuation fund are treated as being withdrawn immediately before the fund becomes a foreign superannuation scheme.

“CL 19 Treatment of amount when superannuation scheme becomes superannuation fund

If a superannuation scheme becomes a superannuation fund, all amounts that exist in the superannuation scheme at the time it becomes a superannuation fund are treated as being member contributions to the superannuation fund.

“Treatment of distributions when superannuation fund winds up

“CL 20 Treatment of distributions on winding up of superannuation fund

When a superannuation fund is wound up, a distribution in respect of a person’s membership is treated as being a withdrawal.

“Miscellaneous

“CL 21 Calculation of amount in superannuation fund on balance date immediately before 1 April 2000

For the purpose of section CL 3, a trustee of a superannuation fund may calculate the amount that exists in the fund on the fund’s balance date that immediately precedes 1 April 2000.”

(2) Subsection (1) applies to a withdrawal from a superannuation fund on or after 14 September 2000.

20 New sections EN 6 and EN 7 inserted

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

“EN 6 Gross income of superannuation funds from amounts withdrawn and subject to section CL 4

- “(1) The part of the amount withdrawn that is gross income of a superannuation fund under section CL 4 is derived in the income year following the income year in which the withdrawal is made.
- “(2) Subsection (1) does not apply when a superannuation fund winds up or becomes a foreign superannuation scheme.
- “(3) When a superannuation fund winds up or becomes a foreign superannuation scheme, the part of the amount withdrawn that is gross income of the superannuation fund under section CL 4 is derived in the income year in which the withdrawal is made.

“EN 7 Gross income of superannuation funds from amounts withdrawn between 14 September 2000 and 30 September 2000 (both dates inclusive) –superannuation funds with late balance dates

If a superannuation fund has a late balance date and derives gross income from a withdrawal to which section CL 4 applies during the period from 14 September 2000 to 30 September 2000 (both dates inclusive), the gross income is treated as being derived in the 2001–2002 income year.”

- (2) New section EN 6 applies to gross income derived in the 2000–2001 and subsequent income years.
- (3) New section EN 7 applies to a withdrawal from a superannuation fund on or after 14 September 2000.

21 Value of motor vehicle acquired from associated person

- (1) In section GC 16—
- (a) “Schedule 2” is replaced by “Schedule 2, Part A”;
- (b) “section ND 4” is replaced by “section ND 14”.
- (2) Subsection (1) applies on and after 1 April 2000.

22 Credits and debits arising to branch equivalent tax account of person

- (1) In section MF 13(2), “item d” is replaced by “item b”.
- (2) Subsection (1) applies on and after the date this Act receives the Royal assent.

23 Replacement of Part ND

(1) Part ND is replaced by:

“ND 1 Employer’s liability for fringe benefit tax

“(1) Subject to section CI 5, an employer who has provided or granted a fringe benefit to an employee is liable to pay a special tax by way of an income tax to be known as fringe benefit tax.

“(2) An employer must do one of the following—

“(a) elect to pay fringe benefit tax at the rate of either 49% or 64% of the taxable value of a fringe benefit for the first 3 quarters of an income year in accordance with section ND 2 and pay fringe benefit tax for the final quarter in accordance with both sections ND 5 and ND 6; or

“(b) pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit for the first 3 quarters of a year and either—

“(i) pay fringe benefit tax for the final quarter in accordance with both sections ND 5 and ND 6; or

“(ii) pay fringe benefit tax for the final quarter at the rate of 64% of the taxable value of a fringe benefit; or

“(c) if the employer pays fringe benefit tax on either an annual or an income year basis under section ND 13 or section ND 14 respectively, either—

“(i) apply sections ND 5 and ND 6 to a year, calculate and pay the resulting fringe benefit tax liability; or

“(ii) pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit.

“(3) An employer who applies subsection (2)(c)(i) must apply sections ND 5 and ND 6 as if references to the final quarter of the year were read as being to the year, or the income year, as the case may be.

“ND 2 Election to pay fringe benefit tax per quarter

“(1) An employer may elect to pay fringe benefit tax at the rate of 49% of the taxable value of a fringe benefit provided or granted to an employee for any one or all of the first 3 quarters of a year.

- “(2) An employer must pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit provided or granted to an employee for any of the first 3 quarters of the year for which the employer does not pay fringe benefit tax at the rate of 49%.
- “(3) An employer makes an election under this section by filing a return and paying fringe benefit tax at the rate elected.
- “(4) An election is irrevocable.
- “(5) Despite subsection (1), an employer must pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit provided or granted to an employee for the quarters beginning 1 April 2000 and 1 July 2000.

“ND 3 **Attributed fringe benefits**

- “(1) For each year or income year, as the case may be, an employer must attribute the following fringe benefits to the employee to whom the fringe benefit is provided or granted:
- “(a) a benefit to which any one of paragraphs (a), (b) or (c) of section CI 1 applies; and
 - “(b) a benefit with a taxable value of \$1,000 or more per category per year to which any one of paragraphs (d) to (g) (inclusive) of section CI 1 applies; and
 - “(c) a benefit with a taxable value of \$2,000 or more per year to which section CI 1(h) applies.
- “(2) If an employer provides or grants a fringe benefit to more than one employee and the fringe benefit is one that must be attributed under subsection (1), the employer must attribute the fringe benefit to the employee who principally uses, enjoys or receives the fringe benefit during a quarter or, if the employer is one to whom section ND 14 applies, during an income year or to the employee to whom the fringe benefit is principally available for private use or enjoyment during a quarter or, if the employer is one to whom section ND 14 applies, during an income year.
- “(3) An employer who cannot determine which employee principally uses, enjoys or receives a fringe benefit must pool the fringe benefit under section ND 6.
- “(4) Subsection (5) applies if an employer provides or grants a fringe benefit to an employee and the fringe benefit—

- “(a) has a taxable value of less than \$1,000 per category per year to which any one of paragraphs (d) to (g) (inclusive) of section CI 1 applies; or
 - “(b) has a taxable value of less than \$2,000 per category per year to which section CI 1(h) applies.
- “(5) An employer must either—
- “(a) attribute the fringe benefit as if it were a benefit to which subsection (1)(b) or, as the case may be, subsection (1)(c) applies; or
 - “(b) pool the fringe benefit in accordance with section ND 6.
- “(6) If an employer attributes a fringe benefit in the manner allowed by subsection (5)(a), the employer must attribute all fringe benefits that have an annual taxable value of less than \$1,000 or, as the case may be, \$2,000 that fall within that fringe benefit category.
- “(7) For the purpose of subsection (1), each of paragraphs (d) to (h) of section CI 1 is a fringe benefit category.

“ND 4 Attributed fringe benefits—exception for subsidised transport

Despite section ND 3(1), an employer may pool a fringe benefit with a taxable value of \$1,000 or more per year to which section CI 1(d) applies if—

- “(a) the employer is not a close company; and
- “(b) all of the employer’s employees have the same or similar entitlement to the fringe benefit.

“ND 5 Multi-rate calculation for attributed fringe benefits

- “(1) An employer who attributes a fringe benefit to an employee who is not a major shareholder must calculate the employee’s fringe benefit inclusive cash remuneration according to the formula:

“cash remuneration – tax on cash remuneration + taxable value of fringe benefit

“where

“cash remuneration is the cash remuneration determined under section ND 7:

“tax on cash remuneration is the tax calculated using the basic rates of tax for every \$1 of taxable income set out in Schedule 1, Part B, as if the cash

remuneration were taxable income, the only taxable income received by the employee and any rebate of tax allowed under section KC 1 were taken into account:

“taxable value of fringe benefit is the taxable value of all fringe benefits attributed to the employee in the income year.

“(2) An employer who attributes a fringe benefit to an employee who is a major shareholder must calculate the employee’s fringe benefit inclusive cash remuneration according to the formula:

“cash remuneration – tax on cash remuneration + taxable value of fringe benefit

“where

“cash remuneration is the cash remuneration determined under section ND 7:

“tax on cash remuneration is the tax calculated using the basic rates of tax for every \$1 of taxable income set out in Schedule 1, Part B, as if the cash remuneration were taxable income, the only taxable income received by the employee and any rebate of tax allowed under section KC 1 were taken into account:

“taxable value of fringe benefit is—

(a) the taxable value of all fringe benefits attributed to the employee in the income year; and

(b) the taxable value of all fringe benefits attributed to an associate of the employee in the income year if the fringe benefits are not received by the associate as an employee of the employer.

“(3) An employer must calculate the tax on each employee’s fringe benefit inclusive cash remuneration using the rates specified in Schedule 2, Part B.

“(4) An employer’s fringe benefit tax liability for each employee is the result of the formula:

“tax on fringe benefit inclusive cash remuneration – tax on cash remuneration

“where

“tax on fringe benefit inclusive cash remuneration is the result of subsection (3):

“tax on cash remuneration is the amount of tax calculated under either subsection (1) or (2), as the case may be.

“ND 6 Calculation of fringe benefit tax on non-attributed fringe benefits

“(1) An employer must pool non-attributed fringe benefits that—

“(a) have a taxable value of less than \$1,000 per category per year, being benefits to which any one of paragraphs (d) to (g) (inclusive) of section CI 1 applies, and have not been attributed to a particular employee; or

“(b) have a taxable value of less than \$2,000 per year, being benefits to which section CI 1(h) applies, and have not been attributed to a particular employee; or

“(c) fall within section ND 4, being benefits that have a taxable value of \$1,000 or more per year to which section CI 1(d) applies; or

“(d) cannot be attributed to a particular employee; or

“(e) were provided or granted to a former employee; or

“(f) are loans to which either section CI 2(8) or CI 2(9) applies (loans owing to life insurers).

“(2) For the final quarter of the year, an employer must—

“(a) create 2 pools and allocate fringe benefits to each pool according to whether a recipient of the pooled fringe benefit benefits is—

“(i) either

“(A) an employee who is a major shareholder; or

“(B) an associate of an employee who is a major shareholder if the associate does not receive the fringe benefit as an employee of the employer:

- “(ii) an employee to whom subparagraph (i) does not apply; and
- “(b) calculate fringe benefit tax on the annual taxable value of the pooled fringe benefits—
 - “(i) at the rate of 64% for pooled fringe benefits received or enjoyed by either—
 - “(A) an employee who is a major shareholder; or
 - “(B) an associate of an employee who is a major shareholder if the fringe benefit is not received by the associate as an employee of the employer;
 - “(ii) at the rate of 49% in all other cases.

“ND 7 Definition of cash remuneration

- “(1) For the purpose of section ND 5, if an employee is not a major shareholder, the employee’s cash remuneration for the year in which a fringe benefit is attributed is the remuneration paid to, credited to or applied on account of the employee by the employer (employer A) or a related employer during the year but does not include the taxable value of a fringe benefit provided or granted by the employer or a related employer.
- “(2) For the purpose of section ND 5, if an employee is a major shareholder, the employee’s cash remuneration for the income year in which a fringe benefit is attributed is the remuneration paid to, credited to or applied on account of the employee by the employer (employer A) or a related employer, plus dividends and interest.
- “(3) For the purpose of subsections (1) and (2), an employer (employer B) is a related employer if employer B is treated as a separate employer from employer A and is—
 - “(a) a branch or division of employer A; or
 - “(b) a person associated with employer A.
- “(4) In this section, **remuneration** means—
 - “(a) salary or wages; and
 - “(b) salary, wages or gross income to which section OB 2(2) applies; and
 - “(c) extra emoluments; and
 - “(d) withholding payments; and
 - “(e) a payment to a specified office holder.

“ND 8 Special rule for employer who stops employing staff during income year

- “(1) An employer who stops employing staff and does not intend to replace them during a year must apply sections ND 5, ND 6, ND 9 and ND 10 as if the final quarter of the year were the quarter in which the employer stops employing staff.
- “(2) This section does not apply to an employer who continues to provide or grant a fringe benefit to a former employee.

“ND 9 Payment of fringe benefit tax—first 3 quarters of income year

- “(1) This section and sections ND 10, ND 11 and ND 12 do not apply to an employer who pays fringe benefit tax—
- “(a) on an annual basis under section ND 13; or
 - “(b) on an income year basis under section ND 14.
- “(2) For each of the first 3 quarters of a year, an employer to whom section BE 1(4) applies must forward to the Commissioner a return, in a form prescribed by the Commissioner, setting out—
- “(a) for the fringe benefits received or enjoyed by each of the employer’s employees in a quarter, such details as are prescribed in the form; and
 - “(b) a calculation of the amount of fringe benefit tax payable on the taxable value of the fringe benefits.
- “(3) An employer must forward the return no later than 20 days after the end of the quarter, and is liable to pay to the Commissioner the amount calculated on or before the end of the 20th day.

“ND 10 Payment of fringe benefit tax—final quarter of income year

- “(1) If an employer elects to pay fringe benefit tax in accordance with sections ND 5 and ND 6, the employer’s fringe benefit tax liability for the final quarter of the year is the total of all amounts calculated under sections ND 5(4) and ND 6(2) less the amount of the fringe benefit tax assessed in the previous 3 quarters of the year.
- “(2) For the final quarter of a year, an employer to whom section BE 1(4) applies must forward a return to the Commissioner setting out—

- “(a) for the fringe benefits received or enjoyed by the employer’s employees, such details as are prescribed in the form; and
 - “(b) the amount of fringe benefit tax payable on the taxable value of the fringe benefits.
- “(3) An employer must forward the return no later than 31 May next following the end of the quarter.
- “(4) If an employer elects to pay fringe benefit tax in accordance with sections ND 5 and ND 6 and the amount calculated is—
- “(a) a negative amount, the employer is entitled to a refund of the excess tax:
 - “(b) a positive amount, the employer must pay the difference on or before 31 May next following the end of the quarter.
- “(5) If subsection (4) does not apply, an employer is liable to pay to the Commissioner the amount calculated on or before the 31 May next following the end of the quarter.
- “(6) Subsection (7) applies if an employer has elected to pay fringe benefit tax at the rate of 49% of the taxable value of a fringe benefit for the quarter beginning 1 October 2000 and the employer does not have the necessary records and systems to calculate and pay fringe benefit tax for the final quarter of the year in accordance with sections ND 5 and ND 6.
- “(7) For the final quarter of the year, the employer must furnish a return and pay fringe benefit tax in accordance with this section as if all the fringe benefits provided or granted during the year were pooled fringe benefits to which section ND 6(2)(b)(i) applies.

“ND 11 Payment of fringe benefit tax—no fringe benefit provided during quarter

- “(1) If a fringe benefit has not been provided or granted by an employer during a quarter, the employer must forward to the Commissioner a return for the quarter, in a form prescribed by the Commissioner, setting out such details as are prescribed in the form.
- “(2) An employer must forward the return—
- “(a) for any one of the first 3 quarters of a year, no later than 20 days after the end of the quarter:

“(b) for the final quarter of a year, no later than 31 May next following the end of the quarter.

- “(3) Despite subsection (1), the Commissioner may, for the purpose of meeting the special circumstances of a case or class of cases, and upon or subject to such terms as the Commissioner may require, relieve an employer in whole or in part from any obligation imposed by subsection (1).

“ND 12 **Special filing rule for employer who stops employing staff during year**

An employer to whom section ND 8 applies must apply section ND 10(4) and ND 10(5) and paragraph (d) of the definition of **date interest starts** in section 120C(1) of the Tax Administration Act 1994 as if the references to ‘31 May next following the end of the quarter’ and ‘31 May next following the end of the final quarter’ were to ‘the end of 2 months immediately following the end of the quarter in which the employer stops employing staff’.

“ND 13 **Payment of fringe benefit tax on annual basis for employees who are not shareholder-employees**

- “(1) An employer may elect to pay fringe benefit tax on an annual basis for fringe benefits provided or granted to employees who are not shareholder-employees if, in respect of any year beginning on 1 April—
- “(a) gross tax deductions and specified superannuation contribution withholding tax deductions payable by the employer in the preceding year were not more than \$100,000; or
 - “(b) the employer was not an employer in the preceding income year.
- “(2) An employer makes an election by giving notice, in writing, to the Commissioner stating the first year, being a year that begins on 1 April, to which the election applies.
- “(3) An employer must give the notice of election to the Commissioner no later than—
- “(a) 30 June in the year in which the election first applies, if the employer was an employer in the preceding year; or

- “(b) the last day of the quarter that first ends after the day on which the employer first becomes an employer, if the employer was not an employer in the preceding year.
- “(4) An employer who makes an election must—
- “(a) subject to section ND 15, pay fringe benefit tax on the taxable value of fringe benefits provided or granted to employees of the employer, other than shareholder-employees, in the year of election and in every subsequent year; and
- “(b) except as otherwise provided in the FBT rules, calculate the fringe benefit tax payable in the same manner as it would be calculated for fringe benefits provided or granted in the 4 consecutive quarters that comprise a year.
- “(5) For a year, an employer must forward to the Commissioner a return, in a form prescribed by the Commissioner, setting out the fringe benefit tax payable on the taxable value of fringe benefits received or enjoyed by each of the employer’s employees, other than shareholder-employees, in that year.
- “(6) An employer must forward the form no later than the 31 May that first follows the end of the year to which the form relates and is liable to pay to the Commissioner the amount calculated no later than that 31 May.
- “(7) For the purpose of subsection (1), if an employer ceases business and begins a new business, or operates 2 or more businesses simultaneously, the gross tax deductions and specified superannuation contribution withholding tax deductions relating to all business carried on by the employer must be aggregated.
- “(8) If an amalgamating company ceases to exist on an amalgamation, subsection (1)(a) applies on and after the date of amalgamation as if gross tax deductions and specified superannuation contribution withholding tax deductions payable by the amalgamating company in the year preceding the year in which the amalgamation takes place were payable by the amalgamated company.

**“ND 14 Payment of fringe benefit tax on income year basis
for shareholder-employees**

- “(1) An employer that is a close company may elect to pay fringe benefit tax on an income year basis for fringe benefits provided or granted to shareholder-employees if, in respect of an income year—
- “(a) gross tax deductions and specified superannuation contribution withholding tax deductions payable by the employer in the preceding year were not more than—
 - “(i) \$100,000; or
 - “(ii) if the employer has an early balance date, the proportion of \$100,000 that is equivalent to the proportion that the period beginning on 1 April in the preceding year and ending on the date by which the employer’s notice of election is required by subsection (3) to be furnished to the Commissioner bears to a full year; or
 - “(b) the employer was not an employer in the preceding income year.
- “(2) An employer makes an election by giving notice, in writing, to the Commissioner stating the first year to which the election applies.
- “(3) An employer must give the notice of election to the Commissioner no later than—
- “(a) the last day of the quarter that first ends after the beginning of the income year in which the election first applies, if the employer was an employer in the preceding year; or
 - “(b) the last day of the quarter that first ends after the day on which the employer first becomes an employer of employees, if the employer was not an employer in the preceding year.
- “(4) Subject to section ND 15, an employer who makes an election must pay fringe benefit tax on the taxable value of fringe benefits provided or granted to shareholder-employees in the income year of election and in every subsequent income year.
- “(5) For an income year, an employer must forward to the Commissioner a return, in a form prescribed by the Commissioner, setting out the fringe benefit tax payable on the taxable value

- of the fringe benefits received or enjoyed by each of the employer's shareholder-employees in that year.
- “(6) An employer must forward the form no later than the employer's terminal tax date for the year to which the form relates and is liable to pay to the Commissioner the amount calculated no later than that terminal tax date.
- “(7) For the purpose of subsection (1), if an employer ceases business and begins a new business, or operates 2 or more businesses simultaneously, the gross tax deductions and specified superannuation contribution withholding tax deductions relating to all business carried on by the employer must be aggregated.
- “(8) If an amalgamating company ceases to exist on an amalgamation, subsection (1)(a) applies on and after the date of amalgamation as if gross tax deductions and specified superannuation contribution withholding tax deductions payable by the amalgamating company in the year preceding the year in which the amalgamation takes place were payable by the amalgamated company.
- “(9) In this section, **preceding year** means in relation to an employer and an income year—
- “(a) for an employer with a standard balance date, the year ending on the 31 March that immediately precedes the income year:
 - “(b) for an employer with a late balance date, the year ending on the 31 March that last ends before the beginning of the employer's income year:
 - “(c) for an employer with an early balance date—
 - “(i) the year beginning on 1 April before the beginning of the employer's income year and ends on the 31 March that occurs within the employer's income year; or
 - “(ii) for the purpose of subsections (1)(a)(ii) and (3)(b) only, that part of the year referred to in paragraph (c)(i) that begins on 1 April and ends on the day before the beginning of the employer's income year.

“ND 15 Change in period for which fringe benefit tax payable

- “(1) If, for a year, an employer has elected under section ND 13 to pay fringe benefit tax on an annual basis and the employer does not meet the criteria specified in section ND 13(1) that are required for an election for that year, the employer must furnish returns and pay fringe benefit tax on a quarterly basis in accordance with sections ND 9 and ND 10 for fringe benefits provided or granted by the employer to employees on or after the first day of the year.
- “(2) If, for an income year, an employer has elected under section ND 14 to pay fringe benefit tax on an income year basis, and the employer does not meet the criteria specified in section ND 14(1) that are required for an election for that income year, the employer must furnish returns and pay fringe benefit tax on a quarterly basis in accordance with sections ND 9 and ND 10 for fringe benefits provided or granted by the employer to shareholder-employees on or after the first day of the employer’s income year.
- “(3) An employer who has elected to pay fringe benefit tax on an annual or an income year basis may at any time elect, by giving notice, in writing, to the Commissioner, to pay fringe benefit tax on a quarterly basis.
- “(4) An employer who elects must furnish returns and pay fringe benefit tax on a quarterly basis in accordance with sections ND 9 and ND 10 for fringe benefits provided or granted by the employer on or after—
- “(a) the 1 April that first follows the date of the employer’s election under subsection (3), if the employer had previously elected to pay fringe benefit tax on an annual basis; or
 - “(b) the first day of the income year of the employer that first follows the date of the employer’s election under subsection (3), if the employer had previously elected to pay fringe benefit tax on an income year basis; or
 - “(c) such other date agreed by both the employer and the Commissioner and notified by the Commissioner in writing to the employer.

- “(5) Subsection (6) applies if—
- “(a) an employer transfers from paying fringe benefit tax on an income year basis to paying fringe benefit tax on a quarterly basis; and
 - “(b) the day specified in subsections (2) or (4)(b) as the day on and after which fringe benefit tax is payable on a quarterly basis is not the same day as the first day of a quarter.
- “(6) The employer must furnish a return and pay fringe benefit tax in accordance with sections ND 9 and ND 10 as if the period beginning on the day specified and ending on the day before the first day of the quarter that begins after that specified day were a quarter.
- “(7) Subsection (8) applies if—
- “(a) an employer has made an election in accordance with section ND 14 to pay fringe benefit tax on an income year basis for an income year; and
 - “(b) the first day of the employer’s income year in which the election first applies is not the same day as the first day of a quarter.
- “(8) The employer must furnish a return and pay fringe benefit tax in accordance with sections ND 9 and ND 10 as if the period beginning on the first day of the quarter in which the first day of the first income year falls and ending on the day before the first day of the first income year were a quarter.

“ND 16 Amendment to thresholds for fringe benefit categories by Order in Council

- “(1) The Governor-General may, by Order in Council, determine monetary thresholds for benefits that are categorised under section ND 3 and referred to in section ND 6.
- “(2) An Order in Council made pursuant to this section must specify the income year from which a new monetary threshold applies.”
- (2) Subsection (1) applies to a fringe benefit provided or granted by an employer—
- (a) on or after 1 April 2000, for an employer who pays fringe benefit tax on a quarterly or an annual basis; and

- (b) during the 2000–2001 or a subsequent income year, for an employer who pays fringe benefit tax on an income year basis.

24 Specified superannuation contribution withholding tax imposed

- (1) In section NE 2(1), “clause 10, unless section NE 2A(2) applies” is replaced by “clause 10(b), unless either section NE 2AA(2) or NE 2A(2) applies”.
- (2) Subsection (1) applies on and after 1 October 2000.

25 New section NE 2AA inserted

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

“NE 2AA Employee election that specified superannuation contributions be subject to higher rate of specified superannuation contribution withholding tax

- “(1) With the agreement of their employer, an employee may elect, by giving notice to the employer, that all or part of a specified superannuation contribution made by an employer on behalf of the employee on or after 1 October 2000 be subject to specified superannuation contribution withholding tax at the rate specified in Schedule 1, Part A, clause 10(a).
- “(2) If an employee makes an election, the employer must pay specified superannuation contribution withholding tax at the rate specified in Schedule 1, Part A, clause 10(a).
- “(3) An employee’s election is valid until revoked in writing.”
- (2) Subsection (1) applies on and after 1 October 2000.

26 Specified superannuation contribution withholding tax to be deducted

- (1) In section NE 3, “section NE 2” is replaced by “either section NE 2 or NE 2AA”.
- (2) Subsection (1) applies on and after 1 October 2000.

27 Tax deemed for certain purposes to have been received by superannuation fund

- (1) In section NE 6, “SSCWT rules” is replaced by “SSCWT rules or the amount of any PAYE payable by an employer in respect of any specified superannuation contribution in accordance with the PAYE rules as a result of an employee’s election under section NE 2A”.
- (2) Subsection (1) applies on and after 26 November 1998.

28 New subpart EA inserted

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

**“Subpart EA—Tax on certain withdrawals from
superannuation funds**

“NEA 1 Recovery of tax paid by superannuation fund

- “(1) If section CL 4 applies to a withdrawal in respect of a person’s membership in a superannuation fund, the trustee of the fund may deduct from the withdrawal an amount according to the formula in subsection (2).

- “(2) The formula is:

“tax rate × gross income

“where

“tax rate is the basic rate of income tax stated in Schedule 1, Part A, clause 4;

“gross income is the superannuation fund’s gross income under section CL 4.”

- (2) Subsection (1) applies on and after 14 September 2000.

29 Definitions

- (1) This section amends section OB 1.
- (2) In the definition of **charitable organisation**, “section ND 4” is replaced by “section ND 14”.
- (3) After the definition of **deemed rate of return method**, the following is inserted:

“**defined benefit fund** means a superannuation scheme, registered under the Superannuation Schemes Act 1989, that must comply with section 15(1)(a) of that Act”.
- (4) After the definition of **employer**, the following is inserted:

“employer contributions to superannuation savings means—

- “(a) specified superannuation contributions made on or after 1 April 2000 other than—
 - “(i) those on which specified superannuation contribution withholding tax has been paid at the rate specified in Schedule 1, Part A, clause 10(a); or
 - “(ii) those that are treated as salary and wages under section NE 2A; and
- “(b) any return on those specified superannuation contributions; and
- “(c) either—
 - “(i) reserves that have been allocated to a member of a superannuation fund, not being those allocated to an account of the member’s contributions for smoothing investment returns, for a superannuation fund with 10 or more unassociated members; or
 - “(ii) reserves, for all other superannuation funds”.

- (5) In the definition of **foreign superannuation scheme**, “section HH 1” is replaced by “sections CL 17, CL 18, EN 6 and HH 1”.
- (6) In the definition of **member**, the following is inserted after paragraph (a):
 - “(ab) in Part CL, has the meaning set out in the Superannuation Schemes Act 1989:”
- (7) After the definition of **member**, the following is inserted:
 - “**member contributions**, in Part CL, means member contributions to a superannuation fund and any return on those contributions”.
- (8) In the definition of **preceding year**, “section ND 4(8)” is replaced by “section ND 14(9)”.
- (9) In the definition of **prescribed interest**, “section ND 4” is replaced by “section ND 14”.
- (10) After the definition of **removal or restoration operations**, the following is inserted:
 - “**remuneration** is defined in section ND 7(4) for the purpose of that section”.

- (11) After the definition of **replacement price option**, the following is inserted:
- “**reserves**, in the definition of **employer contributions to superannuation savings**, means specified superannuation contributions made on or after 1 April 2000 which do not vest in a member of the superannuation fund and any return on those specified superannuation contributions”.
- (12) After the definition of **superannuation fund**, the following is inserted:
- “**superannuation fund administration costs** is defined in section CL 3(6) for the purpose of that section”.
- (13) After the definition of **sick, accident, or death benefit fund**, the following is inserted:
- “**significant financial hardship** is defined in section CL 5 for the purpose of that section”.
- (14) In the definition of **subsidised transport**, “section ND 4” is replaced by “section ND 14” in both places where it occurs.
- (15) Subsections (2) to (14) apply on and after 1 April 2000.

30 References to income years in particular provisions

- (1) In section OF 2(2)(e), “section ND 4” is replaced by “section ND 14”.
- (2) Subsection (1) applies on and after 1 April 2000.

31 Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax

- (1) In Schedule 1, clause 10 is replaced by:
- “**10 Specified superannuation contribution withholding tax—**
On the amount of a specified superannuation contribution (being the gross amount of the contribution before deduction of specified superannuation contribution withholding tax) by an employer to a superannuation fund on behalf of an employee, the specified superannuation contribution withholding tax for every \$1 of the amount is—
- (a) 39 cents, if the employee has made an election under section NE 2AA; and
- (b) 33 cents, if an election has not been made.”
- (2) Subsection (1) applies on and after 1 October 2000.

32 Schedule 2—Fringe benefit values

- (1) In Schedule 2, in clauses 1 and 3, “section ND 4” is replaced by “section ND 14” in all places where it occurs.
- (2) In Schedule 2, “Part A” is inserted before the heading **Motor Vehicles**.
- (3) After Part A, the following is inserted:

“Part Bs ND 5 **“Rates for attributed fringe benefits**

The rate of tax for every \$1 of fringe benefit inclusive cash remuneration
Cents

“On so much of the fringe benefit inclusive cash remuneration as—

“is \$8,075 or less	17.65
“is more than \$8,075 and less than or equal to \$30,590	26.58
“is more than \$30,590 and less than or equal to \$45,330	49.25
“is more than \$45,330	63.93”.

- (4) Subsections (1) to (3) apply on and after 1 April 2000.

Part 2**Tax Administration Act 1994****33 Tax Administration Act 1994**

This Part amends the Tax Administration Act 1994.

34 Interpretation

- (1) In section 3(1), in the definition of **employer**, “sections 47, 120S of this Act” is replaced by “section 47”.
- (2) In section 3(4)(b), “Sections 93, 120S,” is replaced by “Sections 93”.
- (3) In section 3(4)(b), “section ND 4” is replaced by “section ND 14”.
- (4) Subsections (1) and (2) apply—
 - (a) on and after 1 April 2001, for an employer who pays fringe benefit tax on an annual basis; and
 - (b) to the 2001–2002 and subsequent income years, for an employer who pays fringe benefit tax on an income year basis.
- (5) Subsection (3) applies on and after 1 April 2000.

35 New sections 32A to 32C inserted

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

“32A Records to be provided by employer who contributes to superannuation fund

“(1) Upon the request of a member or a trustee of a superannuation fund acting on a member’s behalf, a member’s employer, or a member’s past employer, must provide the member or trustee with a record of all specified superannuation contributions made by the employer on the member’s behalf in each of the 4 income years before the income year in which a withdrawal, being one to which section CL 4 of the Income Tax Act 1994 applies, is made.

“(2) A request must be made in writing.

“(3) A person who receives a request must provide the information requested, to the extent it is held or can be accessed, no later than 20 working days after the date on which the request is made.

“(4) When calculating the superannuation fund’s gross income under section CL 4 of the Income Tax Act 1994, the member and the trustee are entitled to rely on information provided under this section as being correct, and the information provided is treated as being correct unless the member or the trustee has reasonable grounds for believing that the information provided is not correct.

“32B Certification requirements for withdrawals subject to section CL 4 of Income Tax Act 1994

“(1) The trustee of a superannuation fund may request the following information from a member or a member’s employer, or a member’s past employer, in respect of an income year or part of an income year:

“(a) the amount of specified superannuation contributions made by an employer:

“(b) the amount of specified superannuation contributions that have been subject to specified superannuation contribution withholding tax at the rate specified in Schedule 1, Part A, clause 10(a):

“(c) the amount of specified superannuation contributions that have been treated as salary or wages under section NE 2A:

- “(d) the taxable income that the member derived in the 4 income years before the income year in which a withdrawal is made:
 - “(e) evidence to support an application for a withdrawal that is necessary to alleviate significant financial hardship:
 - “(f) the date on which a member ceases employment:
 - “(g) whether a member was employed for less than 2 years:
 - “(h) whether a member is employed for 30 hours per week or less:
 - “(i) whether a member has reduced their working hours because the member is nearing full retirement:
 - “(j) whether a member has stopped contributing to a superannuation fund:
 - “(k) whether a member’s employer has stopped making specified superannuation contributions to a superannuation fund on the member’s behalf:
 - “(l) whether specified superannuation contributions made to a superannuation fund have increased in accordance with a trust deed or a contract, or an amendment to a trust deed or a contract, in existence before 1 April 2000, and if so, the extent of the increase:
 - “(m) any other information required to determine the superannuation fund’s gross income under section CL 4 of the Income Tax Act 1994.
- “(2) A request must be made in writing.
- “(3) A person who receives a request must provide the information requested, to the extent it is held or can be accessed, no later than 20 working days after the date on which the request is made.
- “(4) When calculating the superannuation fund’s gross income under section CL 4 of the Income Tax Act 1994, the trustee is entitled to rely on information provided under this section as being correct, and the information provided is treated as being correct unless the trustee has reasonable grounds for believing that the information provided is not correct.

**“32C Certification requirements for transfers from
superannuation funds**

- “(1) The trustee of a superannuation fund that receives an amount from another superannuation fund may request the following information from the trustee of the transferor fund in respect of an income year or part of an income year:
- “(a) amounts transferred that, if withdrawn, would be subject to any one of paragraphs (a) to (d) of section CL 3(1) of the Income Tax Act 1994:
 - “(b) amounts transferred that are employer contributions to superannuation savings:
 - “(c) any information previously supplied to the transferor fund by a superannuation fund from which a member has transferred:
 - “(d) any other information required to determine the transferee fund’s gross income under section CL 4 of the Income Tax Act 1994.
- “(2) A request must be made in writing.
- “(3) A trustee who receives a request must provide the information requested, to the extent it is held or can be accessed, no later than 40 working days after the date on which the request is made.
- “(4) When calculating the transferee superannuation fund’s gross income under section CL 4 of the Income Tax Act 1994, the trustee is entitled to rely on information provided under this section as being correct, and the information provided is treated as being correct unless the trustee has reasonable grounds for believing that the information provided is not correct.”
- (2) Subsection (1) applies on and after 14 September 2000.

**36 Special returns by taxpayers affected by reduced
deductions under Income Tax Act 1994**

- (1) In section 44A(1), “net income” is replaced by “taxable income”.
- (2) Subsection (1) applies on and after 17 November 1998.

37 Definitions

- (1) In section 120C(1), in paragraph (b) of the definition of **date interest starts**, the portion before subparagraph (i) is replaced by:
 - “(b) for overpaid tax, other than GST or fringe benefit tax for the final quarter of an income year, means the later of the following days—”.
- (2) In section 120C(1), at the end of paragraph (c)(iii) of the definition of **date interest starts**, “made:” is replaced by “made; and” and the following is inserted:
 - “(d) for overpaid tax, being fringe benefit tax for the final quarter of an income year, means the later of 31 May next following the end of the final quarter and the date on which the return for the final quarter is filed.”
- (3) Subsections (1) and (2) apply on and after 1 April 2000.

38 Amount in nature of interest to be added to fringe benefit tax paid on annual or income year basis

- (1) Section 120S is repealed.
- (2) Subsection (1) applies—
 - (a) on 1 April 2001, for an employer who pays fringe benefit tax on an annual basis; and
 - (b) to the 2001–2002 income year, for an employer who pays fringe benefit tax on an income year basis.

39 New section 165AA inserted

- (1) After section 165, the following is inserted:

“165AA Recovery of tax paid by superannuation fund

“(1) If a withdrawal is made in respect of a person’s membership in a superannuation fund and the withdrawal is one to which section CL 4 of the Income Tax Act 1994 applies, the trustee of the superannuation fund may recover from the member or the other person making the withdrawal an amount according to the formula in subsection (2).

“(2) The formula is:

“tax rate × gross income

“where

“tax rate is the basic rate of income tax stated in Schedule 1, Part A, clause 4 of the Income Tax Act 1994:

“gross income is the amount of gross income of the superannuation fund under section CL 4 of the Income Tax Act 1994.

- “(3) A trustee of a superannuation fund may recover an amount from the member or the other person making the withdrawal irrespective of the superannuation fund’s trust deed.
- “(4) For the purpose of section 165, a trustee is treated as paying tax on a withdrawal to which section CL 4 of the Income Tax Act 1994 applies on behalf of the member or the other person who made the withdrawal.”
- (2) Subsection (1) applies on and after 14 September 2000.

40 Obligation to pay tax on foreign investment fund income able to be suspended

- (1) In section 183(2), “120S” is replaced by “120T”.
- (2) Subsection (1) applies to tax obligations, liabilities and rights that are to be performed under or arise in respect of the 1997-98 and subsequent income years.

Part 3

Amendments to Goods and Services Tax Act 1985

41 Goods and Services Tax Act 1985

This Part amends the Goods and Services Tax Act 1985.

42 Adjustments

- (1) In section 21(4), “section ND 2 or section ND 3 or section ND 4” is replaced by “any one of sections ND 9, ND 10, ND 13 or ND 14”.
- (2) Subsection (1) applies on and after 1 April 2000.

Legislative history

27 March 2000	Introduction (Bill 11-1)
30 March 2000	First reading and referral to Finance and Expenditure Committee
31 July 2000	Reported from Finance and Expenditure Committee (Bill 11-2)
24 August 2000	Second reading
14, 19 September 2000	Committee of the whole House (Bill 11-3)
21 September 2000	Third reading
25 September 2000	Royal assent

This Act is administered in the Inland Revenue Department.
