

Taxation (Limited Partnerships) Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Limited Partnerships Bill as reported from the Commerce Committee. The committee of the whole House has further amended the bill and has divided it into the following bills:

- Limited Partnerships Bill comprising clauses 1, 2, Parts 1 to 4 and the Schedule
 - This bill comprising Parts 5 and 6
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Taxation (Limited Partnerships) Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

text deleted

Hon Lianne Dalziel

Taxation (Limited Partnerships) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Limited Partnerships) Act **2008**.

2 Commencement

This Act comes into force on 1 April 2008.

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Part 5

Amendments to Income Tax Act 2007

105 Income Tax Act 2007

This Part amends the Income Tax Act 2007.

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106 New section CB 27B

(1) After section CB 27, the following is inserted:

“CB 27B Entering partners’ livestock income

“When this section applies

“(1) This section applies when **section HG 10** (Disposal of livestock) applies, and— 5

“(a) an entering partner acquires partner’s interests in livestock; and

“(b) the relevant exiting partner has a net loss from the amount of consideration paid or payable by the entering partner for the livestock, ignoring other transactions. 10

“Income: default position

“(2) For the income year in which the entering partner acquires the livestock, the entering partner has income equal to the amount of loss described in **subsection (4)**, unless they choose to apply **subsection (3)** in the return of income for the income year. 15

“Income: election to spread

“(3) If the entering partner chooses, for the income year in which the entering partner acquires the livestock, and in each of the following 4 years, the entering partner has income calculated using the following formula: 20

$$\frac{\text{loss}}{5}.$$

“Definition of item in formula

“(4) In the formula, **loss** is the net loss that the exiting partner has from the disposal of their partner’s interests in livestock, ignoring other transactions. 25

“Defined in this Act: amount, entering partner, income, income year, net loss, partner, partner’s interests”.

(2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 30

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008.

107 New heading and section CB 35 added

(1) After section CB 34, the following is added:

*“Partners and partnerships***“CB 35 Amounts of income for partners**

A person who is a partner has an amount of income to the extent to which an amount of income results from the application of **subpart HG** (Joint venturers, partners, and partnerships) to them and their partnership. 5

“Defined in this Act: amount, income, partner, partnership”.

(2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 10

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 15

108 Meaning of asset for sections CU 3 to CU 10

(1) Section CU 11(2) is repealed.

(2) **Subsection (1)** applies for income years starting on and after 1 April 2008.

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 20

109 Amount treated as repayment for purposes of section CU 17: net income 25

(1) Section CU 19(6)(c) is repealed.

(2) **Subsection (1)** applies for income years starting on and after 1 April 2008.

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 30

110 New heading and section CW 55B added

(1) After section CW 55, the following is added:

*“Partners and partnerships***“CW 55B Amounts of exempt income for partners**

A person who is a partner has an amount of exempt income to the extent to which an amount of exempt income results from the application of **subpart HG** (Joint venturers, partners, and partnerships) to them and their partnership. 5

“Defined in this Act: amount, exempt income, partner, partnership”.

(2) **Subsection (1)** applies for income years starting on and after 1 April 2008.

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 10

111 New heading and section CX 62 added

(1) After section CX 61, the following is added: 15

*“Partners and partnerships***“CX 62 Amounts of excluded income for partners**

A person who is a partner has an amount of excluded income to the extent to which an amount of excluded income results from the application of **subpart HG** (Joint venturers, partners, and partnerships) to them and their partnership. 20

“Defined in this Act: amount, excluded income, partner, partnership”.

(2) **Subsection (1)** applies for income years starting on and after 1 April 2008.

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 25

112 New heading and section DV 20 added

(1) After section DV 19, the following is added: 30

*“Partners and partnerships***“DV 20 Partners**

A person who is a partner is allowed a deduction for expenditure or loss to the extent to which the deduction results from

the application of **subpart HG** (Joint venturers, partners, and partnerships) to them and their partnership.

“Defined in this Act: amount, deduction, partner, partnership”.

- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 5
- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008.
- 113 New section DO 11B inserted** 10
- (1) After section DO 11, the following is inserted:
- “DO 11B Entering partners’ livestock deduction**
- “When this section applies*
- “(1) This section applies when **section HG 10** (Disposal of livestock) applies, and— 15
- “(a) an entering partner acquires partner’s interests in livestock; and
- “(b) the relevant exiting partner has net income from the amount of consideration paid or payable by the entering partner for the livestock, ignoring other transactions; 20
and
- “(c) the amount paid or payable is not exempt or excluded income of the exiting partner.
- “Deduction: default position*
- “(2) For the income year in which the entering partner acquires the livestock, the entering partner has a deduction equal to the amount of income described in **subsection (4)**, unless they choose to apply **subsection (3)** in the return of income for the income year. 25
- “Deduction: election to spread* 30
- “(3) If the entering partner chooses, for the income year in which the entering partner acquires the livestock, and in each of the following 4 years, the entering partner is allowed a deduction calculated using the following formula:

income

5.

“Definition of item in formula

- “(4) In the formula, **income** is the net income that the exiting partner has from the disposal of their partner’s interests in live-stock, ignoring other transactions.

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“Defined in this Act: amount, deduction, entering partner, excluded income, exempt income, income year, net income, partner, partner’s interests”.

- (2) **Subsection (1)** applies for income years starting on and after ~~1 April 2008~~.

- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 10

114 Meaning of asset for sections DU 1 to DU 7

- (1) Section DU 8(2) is repealed.

- (2) **Subsection (1)** applies for income years starting on and after ~~1 April 2008~~. 15

- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 20

115 Financial arrangements, income, and expenditure relevant to criteria

- (1) Section EW 58(2) is repealed.

- (2) **Subsection (1)** applies for income years starting on and after ~~1 April 2008~~. 25

- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008.

116 Section EX 13 repealed 30

- (1) Section EX 13 is repealed.

- (2) **Subsection (4)** applies for income years starting on and after 1 April 2008.
- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 5
- 117 Cash basis holder**
- (1) Section EZ 37(10) is repealed.
- (2) **Subsection (4)** applies for income years starting on and after 1 April 2008. 10
- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008.
- 118 Attribution rule: calculation** 15
- (1) In section GB 29(2)(b), “section HR 1” is replaced by “**section HG 2**”.
- (2) **Subsection (4)** applies for income years starting on and after 1 April 2008.
- 118 Attribution rule: calculation** 20
- (1) In section GB 29(2)(b), “section HR 1 (Partnerships and joint ventures)” is replaced by “**section HG 2** (Partnerships are transparent)”.
- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 25
- 119 New heading and section GB 50 added**
- (1) After section GB 49, the following is added: 30
- “Arrangements involving partners*
- “GB 50 Arrangements involving partners**
- “When this section applies*
- “(1) This section applies when—

- “(a) a partner of a partnership enters into an arrangement;
and
- “(b) the arrangement involves an amount of consideration (the **arrangement amount of consideration**) that is not a market value amount of consideration; and 5
- “(c) the arrangement has a purpose or effect of defeating the intent and application of **subpart HG** (Joint venturers, partners, and partnerships).
- “Market value amount substituted*
- “(2) A market value amount of consideration is substituted for the arrangement amount of consideration. 10
- “Defined in this Act: amount, arrangement, partner, partnership”.
- ~~(2)~~ **Subsection (1) applies for income years starting on and after 1 April 2008.**
- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1) applies for income years starting on and after 1 April 2008.** 15
- 120 Section HD 20 replaced**
- (1) Section HD 20 is replaced by the following: 20
- “HD 20 Persons carrying on business for absentees**
- A person is treated as an agent if they carry on in New Zealand a business for an absentee, whether or not the income is received by the agent.
- “Defined in this Act: absentee, agent, business, income, New Zealand 25
- “HD 20B General partners and partners carrying on with or managing business involving absentees**
- “(1) This section applies to a person who—
- “(a) in New Zealand carries on a business in a partnership that is not a limited partnership: 30
- “(b) is a general partner of a limited partnership that carries on a business in New Zealand ignoring **section HG 2** (Partnerships are transparent).
- “(2) If the person carries on the business with an absentee or, as a general partner, is responsible for the management of a limited partnership in which a limited partner is an absentee, the per- 35

son is treated as the agent of the relevant absentee in relation to the absentee's partnership share of the partnership's income under **section HG 2**.

"Defined in this Act: absentee, agent, business, general partner, income, limited partner, limited partnership, New Zealand, partnership, partnership share".

(2) **Subsection (1) applies for income years starting on and after 1 April 2008.**

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1) applies for income years starting on and after 1 April 2008.**

121 New subpart HG

(1) After subpart HF, the following is inserted:

"Subpart HG—Joint venturers, partners, and
partnerships

Joint venturers

"HG 1 Joint venturers

"When this section applies

"(1) This section applies when 2 or more people derive income jointly or have deductions jointly, and they are not partners in the same partnership.

"Separate shares

"(2) Each person must calculate their net income for a tax year taking into account their share of the joint income and deductions.

"Exclusion

"(3) This section does not apply to the income derived by and the deductions of an airport operator from activities that are activities undertaken as an airport operator.

"Defined in this Act: airport operator, deduction, income, net income, partner, partnership, tax year

*“Partners and partnerships***“HG 2 Partnerships are transparent***“Look-through in accordance with share*

“(1) For the purposes of a partner’s liabilities and obligations under this Act in their capacity of partner of a partnership, unless the context requires otherwise,— 5

“(a) the partner is treated as carrying on an activity carried on by the partnership, and having a status, intention and purpose of the partnership, and the partnership is treated as not carrying on the activity or having the status, intention, or purpose: 10

“(b) the partner is treated as holding property that a partnership holds, in proportion to the partner’s partnership share, and the partnership is treated as not holding the property: 15

“(c) the partner is treated as being party to an arrangement to which the partnership is a party, in proportion to the partner’s partnership share, and the partnership is treated as not being a party to the arrangement: 20

“(d) the partner is treated as doing a thing and being entitled to a thing that the partnership does or is entitled to, in proportion to the partner’s partnership share, and the partnership is treated as not doing the thing or being entitled to the thing. 25

“No streaming 25

“(2) Despite **subsection (1)**, for a partner in their capacity of partner of a partnership, the amount of income, tax credit, rebate, gain, expenditure, or loss that they have from a particular source, or of a particular nature, is calculated by multiplying the total income, tax credit, rebate, gain, expenditure, or loss of the partners of the partnership from the particular source or of the particular nature by the partner’s partnership share in the partnership’s income. 30

“Expenditure or loss previously incurred

“(3) A partner of a partnership may be treated as incurring an expenditure or loss which the partnership incurs ignoring this section, despite the partner not being a partner at the time the 35

expenditure or loss is incurred. This subsection does not allow 2 deductions for 1 expenditure or loss.

“Excluded amounts

- “(4) **Subsection (2)** does not apply to the following amounts:
- “(a) expenditure or loss that relates to a person entering a partnership by acquiring partner’s interests disposed of by another partner, to the extent to which **sections HG 5 to HG 10** do not apply to the partner’s interests: 5
 - “(b) ~~supplementary dividends, to the extent to which subpart LP applies:~~ 10
 - “(c) ~~CTR additional dividends, to the extent to which subpart LQ applies:~~
 - “(d) ~~imputation credits, to the extent to which section LE 6 applies:~~
 - “(e) ~~FDP credits, to the extent to which section LF 4 applies:~~ 15
 - “(b) supplementary dividends, to the extent to which subpart LP (Tax credits for supplementary dividends) applies:
 - “(c) CTR additional dividends, to the extent to which subpart LQ (Tax credits of conduit tax relief companies) applies: 20
 - “(d) imputation credits, to the extent to which section LE 6 (Partners in partnerships) applies:
 - “(e) FDP credits, to the extent to which section LF 4 (Partners in partnerships) applies.

“Defined in this Act: arrangement, CTR additional dividend, FDP credit, imputation credit, income, partner, partnership, partnership share, rebate, supplementary dividend, tax credit 25

“HG 3 General provisions relating to disposals

“Relationship between disposal upon dissolution and disposal safe harbours 30

- “(1) **Section HG 4** overrides **sections HG 5 to HG 10**.
- “Election out of disposal safe harbours for small partnerships*
- “(2) **Sections HG 5 to HG 9** do not apply for the partners of a small partnership if they choose that those sections do not apply by the small partnership furnishing a joint return of income that ignores the sections. 35

“Election out for livestock disposals

- “(3) **Section HG 10** does not apply for the partners of a partnership if they choose that it does not apply, by the partnership furnishing a joint return of income that ignores the section.

“HG 4 Disposal upon final dissolution

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“When this section applies

- “(1) This section applies immediately before a partnership is finally dissolved by agreement of the partners, court order, or otherwise, and the partnership’s business ignoring **section HG 2** will not continue to be carried on in partnership.

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“Disposal

- “(2) Each partner of the partnership is treated as disposing of all of their partner’s interests in the partnership to a single third party for a payment equal to the interests’ market value.

“Receipts upon dissolution

15

- “(3) Anything received by a partner in relation to the dissolution of the partnership described in **subsection (1)** is ignored.

“Relationship with subject matter

- “(4) This section overrides **sections HG 4 to HG 10**.

“Defined in this Act: dispose, entering partner, excluded income, partner, partner’s interests, partnership

20

“HG 5 Disposal of partner’s interests*“When this section applies*

- “(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests (the **current interests**) in a partnership, if the amount calculated using the following formula is less than zero:

25

$$\text{disposal payment} + \text{previous payments} - (\text{gross tax value} - \text{liabilities}) - \$50,000.$$
“Definition of items in formula

- “(2) In the formula,—

“(a) **disposal payment** is the total amount of consideration paid or payable to the exiting partner for the current interests:

30

- “(b) **previous payments** is the total amount of consideration paid or payable to the exiting partner for other disposals of some or all of their partner’s interests (the **other interests**) that have occurred in the year before the disposal of the current interests: 5
- “(c) **gross tax value** is the value for the purposes of this Act of the current interest and other interests at the time the relevant interest is disposed of, treating any interest that has no value for the purposes of this Act as having a value equal to its accounting book value at the time it is disposed of: 10
- “(d) **liabilities** is the amount of liabilities under generally accepted accounting practice at the time the relevant interest is disposed of, calculated by reference to the exiting partner’s partnership share for the relevant interest. 15
- “Exiting partner: excluded payment*
- “(3) The disposal payment described in **subsection (2)(a)** is excluded income of the exiting partner.
- “Exiting partner: no deduction*
- “(4) The exiting partner is denied any deduction in relation to the current interests for the income year in which the disposal of the interests occurs and later income years to the extent to which the entering partner is allowed a deduction because of **subsection (6)**. 20
- “Entering partner: no deduction* 25
- “(5) An entering partner is denied any deduction for the disposal payment described in **subsection (2)(a)**.
- “Entering partner: stepping in*
- “(6) For the purposes of calculating the income and deductions of an entering partner for the part of the income year after the disposal of the interests occurs and later income years (the **post-disposal periods**), the entering partner is treated for the post-disposal periods as if they had originally acquired and held the current interests, not the exiting partner. However, this subsection does not apply to a deduction carried forward under **section HG 12**. 30
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“Exclusion by election

- “(7) This section does not apply for the partners of a small partnership if they choose that it does not apply, by the small partnership furnishing a joint return of income that ignores **sections HG 5 to HG 9**.

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“Relationship with section HG 4

- “(8) **Section HG 4** overrides this section.

“Defined in this Act: deduction, dispose, entering partner, excluded income, income tax liability, partner, partner’s interests, partnership, partnership share, return of income, year

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“HG 6 Disposal of trading stock*“When this section applies*

- “(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests in a partnership, to the extent to which those interests include trading stock that is not livestock, and, for the income year of disposal, the total turnover of the partnership, ignoring **section HG 2**, is \$3,000,000 or less.

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“Exiting partner: excluded payment

- “(2) The amount of consideration paid or payable to the exiting partner for the trading stock is excluded income of the exiting partner.

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“Exiting partner: no deduction

- “(3) The exiting partner is denied any deduction in relation to the trading stock for the income year in which the disposal of the trading stock occurs and later income years, to the extent to which the entering partner is allowed a deduction because of **subsection (5)**.

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“Entering partner: no deduction

- “(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the trading stock.

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“Entering partner: stepping in

- “(5) For the purposes of calculating the income tax liability of an entering partner, the entering partner is treated as if they had acquired and held the trading stock, not the exiting partner.

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“Exclusion by election

- “(6) This section does not apply for the partners of a small partnership if they choose that it does not apply, by the small partnership furnishing a joint return of income that ignores **sections HG 5 to HG 9**.

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“Relationship with section HG 4

- “(7) **Section HG 4** overrides this section.

“Defined in this Act: deduction, dispose, entering partner, excluded income, income tax liability, partner, partner’s interests, partnership, small partnership, trading stock, turnover

10

“HG 7 Disposal of depreciable property*“When this section applies*

- “(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests in a partnership, to the extent to which those interests include an item of depreciable property that is not depreciable intangible property, and the total cost of the item when it was first acquired by the partners of the partnership is \$200,000 or less.

15

“Exiting partner: excluded payment

- “(2) The amount of consideration paid or payable to the exiting partner for the depreciable property is excluded income of the exiting partner.

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“Exiting partner: no deduction

- “(3) The exiting partner is denied any deduction in relation to the depreciable property for the income year in which the disposal of the depreciable property occurs and later income years, to the extent to which the entering partner is allowed a deduction because of **subsection (5)**.

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“Entering partner: no deduction

- “(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the depreciable property.

30

“Entering partner: stepping in

- “(5) For the purposes of calculating the income tax liability of an entering partner for the part of the income year after the disposal of the depreciable property occurs and later income years

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(the **post-disposal periods**), the entering partner is treated for the post-disposal periods as if they had originally acquired and held the depreciable property, not the exiting partner.

“Exclusion by election

- “(6) This section does not apply for the partners of a small partnership if they choose that it does not apply, by the small partnership furnishing a joint return of income that ignores **sections HG 5 to HG 9**. 5

“Relationship with section HG 4

- “(7) **Section HG 4** overrides this section. 10
- “Defined in this Act: deduction, depreciable intangible property, depreciable property, dispose, entering partner, excluded income, income tax liability, partner, partner’s interests, partnership, small partnership

“HG 8 Disposal of financial arrangements and certain excepted financial arrangements 15

“When this section applies

- “(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests in a partnership, to the extent to which those interests include a financial arrangement or an excepted financial arrangement described in section EW 5(10) (What is an excepted financial arrangement?) and, ignoring **section HG 2**— 20
- “(a) the purpose for which the financial arrangement or excepted financial arrangement was entered into was necessary and incidental to the business of the partnership; 25
- and
- “(b) the partnership does not derive income from a business of holding financial arrangements.

“Exiting partner: excluded payment

- “(2) The amount of consideration paid or payable to the exiting partner for the relevant financial arrangement or excepted financial arrangement is excluded income of the exiting partner. The exiting partner is, for the relevant financial arrangement, a party that is not required to calculate a base price adjustment, despite section EW 29 (When calculation of base price adjustment required). 30 35

“Exiting partner: no deduction

- “(3) The exiting partner is denied any deduction in relation to the relevant financial arrangement or excepted financial arrangement for the income year in which the disposal of the financial arrangement or excepted financial arrangement occurs and later income years. 5

“Entering partner: no deduction

- “(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the relevant financial arrangement or excepted financial arrangement. 10

“Entering partner: stepping in

- “(5) For the purposes of calculating the income tax liability of an entering partner for the part of the income year after the disposal of the relevant financial arrangement or excepted financial arrangement occurs and later income years (the **post-disposal periods**), the entering partner is treated for the post-disposal periods as if they had acquired and held the financial arrangement or excepted financial arrangement, not the exiting partner. 15 20

“Exclusion by election

- “(6) This section does not apply for the partners of a small partnership if they choose that it does not apply, by the small partnership furnishing a joint return of income that ignores **sections HG 5 to HG 9**. 25

“Relationship with section HG 4

- “(7) **Section HG 4** overrides this section.

“Defined in this Act: deduction, disposal, entering partner, excepted financial arrangement, excluded income, financial arrangement, income tax liability, partner, partner’s interests, partnership, small partnership 30

“HG 9 Disposal of short-term agreements for the sale and purchase of property or services*“When this section applies*

- “(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests in a partner- 35

ship, to the extent to which those interests include a short-term agreement for the sale and purchase of property or services.

“Exiting partner: excluded payment

- “(2) The amount of consideration paid or payable to the exiting partner for the short-term agreement for the sale and purchase of property or services is excluded income of the exiting partner. 5

“Exiting partner: no deduction

- “(3) The exiting partner is denied any deduction in relation to the short-term agreement for the sale and purchase of property or services, to the extent to which the entering partner is allowed a deduction because of **subsection (5)**. 10

“Entering partner: no deduction

- “(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the short-term agreement for the sale and purchase of property or services. 15

“Entering partner: stepping in

- “(5) For the purposes of calculating the income tax liability of an entering partner for the part of the income year after the disposal of the short-term agreement for the sale and purchase of property or services occurs and later income years (the **post-disposal periods**), the entering partner is treated for the post-disposal periods as if they had originally acquired and held the short-term agreement for the sale and purchase of property or services, not the exiting partner. 20 25

“Exclusion by election

- “(6) This section does not apply for the partners of a small partnership if they choose that it does not apply, by the small partnership furnishing a joint return of income that ignores **sections HG 5 to HG 9**. 30

“Relationship with section HG 4

- “(7) **Section HG 4** overrides this section.

“Defined in this Act: deduction, disposal, entering partner, excluded income, income tax liability, partner, partner’s interests, partnership, short-term agreement for the sale and purchase of property or services, small partnership 35

“HG 10 Disposal of livestock*“When this section applies*

“(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests in a partnership, to the extent to which those interests include livestock that is not valued using— 5

“(a) the herd scheme:

“(b) 1 of the cost price, replacement price, or market value methods described in section EC 25 (Cost price, replacement price, or market value). 10

“Entering partner: stepping in

“(2) For the purposes of calculating the income tax liability of an entering partner for the income year in which the disposal of the relevant non-specified or specified livestock occurs and later income years, the entering partner is treated as if they had originally acquired and held the non-specified or specified livestock, not the exiting partner. 15

“Exclusion

“(3) This section does not apply for the partners of a partnership if they choose that it does not apply, by the partnership furnishing a joint return of income that ignores this section. 20

“Relationship with section HG 4

“(4) **Section HG 4** overrides this section.

“Defined in this Act: cost price, disposal, entering partner, herd scheme, income tax liability, partner, partner’s interests, partnership 25

“HG 11 Limitation on deductions by partners in limited partnerships*“When this section applies*

“(1) This section applies for a limited partnership and an income year when, but for this section, a deduction by virtue of **section HG 2 or HG 12** is allowed to— 30

“(a) a limited partner of the limited partnership:

“(b) a general partner of the partnership who—

“(i) was a limited partner of the limited partnership within 60 days of the last day of the income year; 35
and

“(ii) is or will be a limited partner of the limited partnership within 60 days after the last day of the income year.

“*No deduction*

“(2) The partner is denied the deduction for an income year to the extent to which their limited partnership net deduction for the income year is greater than the amount (the **partner’s basis**) calculated using the formula in **subsection (3)** on the last day of the income year. 5

“*Partner’s basis*

“(3) For the purposes of **subsection (2)**, the amount that is the partner’s basis is calculated using the following formula: 10

investments – distributions + income – deductions – disallowed amount.

“*Definition of items in formula*

“(4) The items in the formula are defined in **subsections (5) to (9)**. 15

“*Investments*

“(5) **Investments** is the total of—

“(a) the market value of capital contributions made by the partner to the limited partnership at the time the relevant contribution is contributed or agreed to be contributed by them: 20

“(b) the amount paid by the partner for the assignment of capital contributions to them:

“(c) the secured amounts.

“*Distributions*

“(6) **Distributions** is the total of— 25

“(a) the market value of distributions to the partner from the limited partnership:

“(b) the amount paid to the partner for the assignment of capital contributions by them. 30

“*Income*

“(7) **Income** is the total of—

“(a) income that the partner has by virtue of **section HG 2** in the income year and previous income years, excluding dividends paid by a FIF for which the partner has FIF 35

income to the extent to which those dividends are equal to or less than the partner's FIF income for the relevant income year:

- “(b) capital gain amounts under section CD 44(7)(a) (Available capital distribution amount) that the partner would have by virtue of **section HG 2** in the income year and previous income years, if the partner were treated as a company for the purposes of section CD 44(7)(a), unless the gain is accounted for under **paragraph (a)**: 5
- “(c) assessable income that the partner has in previous income years from goods and services they contributed to the limited partnership, if the income is not accounted for under **subsection (5)** or **paragraph (a) or (b) of this subsection**. 10

“*Deductions* 15

“(8) **Deductions** is the total of—

- “(a) expenditure or loss in the income year and previous income years, to the extent to which the expenditure or loss is incurred by virtue of **section HG 2** in the partner deriving income by virtue of **section HG 2**, excluding any deductions denied in those previous years under this section: 20
- “(b) capital loss amounts under section CD 44(9) that the partner would have by virtue of **section HG 2** in the income year and previous income years under **section HG 2**, if the partner is treated as a company for the purposes of section CD 44(9), unless the loss is not accounted for under **paragraph (a)**: 25
- “(c) deductions that the partner is allowed in previous income year in relation to assessable income described in **subsection (7)(c)**, if the deduction is not accounted for under **subsection (6)** or **paragraphs (a) or (b)** of this section. 30

“*Disallowed amounts*

“(9) **Disallowed amount** is the amount of investments, as defined in **section (5)**, made by the partner within 60 days of the last day of the income year, if those investments are or will be 35

distributed or reduced within 60 days after the last day of the income year.

“Exclusion

- “(10) This section does not deny a partner (the **exiting partner**) a deduction that is equal to or less than the amount of net income that the exiting partner has for the amount paid or payable to the exiting partner for the disposal of their partner’s interests, ignoring other transactions. 5

“Relationship with subject matter

- “(11) This section is modified by **sections HZ 3 and HZ 4** (which relate to transitions to limited partnerships). 10

“Some definitions

- “(12) In this section,—

“**capital contribution** includes a capital contribution for the purposes of the Limited Partnerships Act **2007** 15

“**secured amounts** means, for the partner, the lesser of—

- “(a) the amount of the limited partnership’s debt ignoring **section HG 2** (the **debt**) that the partner or the partner’s associate secures by a guarantee or indemnity;
- “(b) the amount that results from dividing the amount described in **paragraph (a)** by the number of partners who are jointly and severally liable for the debt: 20
- “(c) the amount that is the market value of property against which the guarantee or indemnity may be enforced, treating the partner’s interests as having a market value of zero: 25
- “(d) the proportion of the amount described in **paragraph (c)** that is attributable to the partner in the case of the partners being jointly and severally liable for the debt

“**limited partnership net deduction** means, for the partner and the income year, the amount of any net loss that would arise deductions that the partner would be allowed if the partner is treated as having no income or deductions other than those that arise by virtue of **sections HG 2 and HG 12** 30

“**partner’s associate** means, for a partner, a person who is not a partner of the relevant limited partnership, and who is— 35

- “(a) a relative of the partner:

“(b) a company in the same wholly-owned group as the partner.

“Defined in this Act: amount, capital contribution, deduction, dividends, entering partner, FIF, FIF income, income, income year, ~~limited partnership net deduction~~ limited partnership deduction, net income, net loss, partner, partner’s associate, partnership 5

“HG 12 Limitation on deductions by partners in limited partnerships: carry-forward

“When this section applies

“(1) This section applies when, for an income year, a partner is denied a deduction under **section HG 11**. 10

“Carry-forward

“(2) The partner is allowed a deduction, for an amount for which the partner is denied a deduction under **section HG 11**, for the income year after the one for which it is denied under **section HG 11**. 15

“Relationship with subject matter

“(3) The deduction allowed under this section is subject to **section HG 11**, to the extent to which that section applies to the deduction and the relevant partner. 20

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

~~(2) **Subsection (1)** applies for income years starting on and after 1 April 2008.~~

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 25

122 Section HR 1 repealed

(1) Section HR 1 is repealed.

~~(2) **Subsection (1)** applies for income years starting on and after 1 April 2008.~~ 30

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 35

123 New sections HZ 3 and HZ 4

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

“HZ 3 Special partnerships: transition into limited partnerships and limited partnerships deduction rules

“When this section applies

5

“(1) This section applies when a special partnership under Part 2 of the Partnership Act 1908—

“(a) is in existence on 1 April 2008; and

“(b) is terminated and a limited partnership registered under the Limited Partnerships Act **2007** (the new **limited partnership**) succeeds to that special partnership.

10

“No disposal: same partnership

“(2) No partners’ interests are disposed of merely because of the termination and succession described in **subsection (1)(b)**. The partners of the special partnership are treated as the same partners of the new limited partnership.

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“Initial basis

“(3) For the purposes of applying **sections HG 11 and HG 12** (which relate to limited partnerships deduction rules) to the partners of the new limited partnership, all of the partners must choose one of the 2 following methods for calculating their partner’s basis under **section HG 11(3)**:

20

“(a) they may choose to use the market value or the accounting book value of the amounts described in **section HG 11(3)**, as at the day the calculation is first performed, namely the last day of the first income year in which they are subject to **sections HG 11 and HG 12**; or

25

“(b) they may chose to apply **section HG 11(3)** as if the special partnership had always been a limited partnership and all relevant rules relating to limited partnerships had always existed (applying those rules with any necessary modifications).

30

“Initial basis not less than zero

“(4) If the application of **sections HG 11 and HG 12**, as modified by this section, calculates a partner’s basis as less than zero, then the partner’s basis is treated as being zero.

35

“Defined in this Act: disposal, limited partnership, partner, partner’s interests, partnership

“HZ 4 Overseas limited partnerships: transition into limited partnerships deduction rules

“When this section applies

- “(1) This section applies when a limited partnership described in **paragraphs (a) and (b)** of the definition of **limited partnership** (the **overseas limited partnership**) existed before 1 April 2008, and a partner of that partnership (a **relevant partner**) is a member of the partnership on 1 April 2008 and is subject to **sections HG 11 and HG 12** (which relate to limited partnerships deduction rules) on or after 1 April 2008. 5 10

“Initial basis

- “(2) For the purposes of applying **sections HG 11 and HG 12** to the relevant partners of the overseas limited partnership, all relevant partners must choose one of the 2 following methods for calculating their partner’s basis under **section HG 11**: 15
- “(a) they may choose to use the market value or the accounting book value of the amounts described in **section HG 11**, as at the day the calculation is first performed, namely the last day of the first income year in which they are subject to **sections HG 11 and HG 12**; or 20
- “(b) they may ~~choose~~ choose to apply **section HG 11** as if the overseas limited partnership had always been a limited partnership and all relevant rules relating to limited partnerships had always existed (applying those rules with any necessary modifications). 25

“Initial basis not less than zero

- “(3) If the application of **sections HG 11 and HG 12**, as modified by this section, calculates a partner’s basis as less than zero, then the partner’s basis is treated as being zero. 30

“Defined in this Act: limited partnership, partner, partnership ”.

- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008.

- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 35

124 When unincorporated bodies hold certificates

- (1) In section RE 30, the definition of **partnership** and **partner** is omitted.
- (2) For a person who is not a limited partner in a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 5

125 Definitions

- (1) This section amends section YA 1.
- (2) After the definition of **cancellation**, the following is inserted: 10
“capital contribution is defined in **section HG 11(7)(12)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.
- (3) In the definition of **company**, after paragraph (a), the following is inserted: 15
“(ab) does not include a partnership:
“(ac) includes a listed limited partnership:
“(ad) includes a foreign corporate limited partnership.”.
- (4) In the definition of **dispose**, in paragraph (g), “subpart” is replaced by “subpart:”, and the following is added: 20
“(h) for a partner,—
“(i) includes surrendering or extinguishing some or all of their partner’s interests:
“(ii) does not include when their partner’s interests may be treated as disposed of by operation of law 25
because another partner disposes of that partner’s interests, unless **section HG 4** (Disposal upon final dissolution) applies”.
- (5) After the definition of **engaged in full-time work**, the following is inserted: 30
“entering partner—
“(a) means a person who acquires a partner’s interests in a partnership:
“(b) includes a person who is already a partner in the partnership when they acquire another partner’s interests”. 35
- (6) After the definition of **foreign company**, the following is inserted:

- “**foreign corporate limited partnership** means an entity or group of persons that—
- “(a) meets the definition of **overseas limited partnership** in **section 86** of the Limited Partnerships Act **2007**; and
- “(b) is treated as a separate legal entity under the laws (other than taxation laws) of the country, territory, or jurisdiction where it is established”.
- (7) After the definition of **general limitation**, the following is inserted:
- “**general partner**—
- “(a) means a general partner of a limited partnership
- “(b) includes a general partner of an **overseas limited partnership** as defined in **section 86** of the Limited Partnerships Act **2007**”.
- (8) After the definition of **limited attribution company**, the following is inserted:
- “**limited partner** means a limited partner of a limited partnership or an **overseas limited partnership** as defined in **section 86** of the Limited Partnerships Act **2007**
- “**limited partnership**—
- “(a) means a limited partnership registered under the Limited Partnerships Act **2007**; and
- “(b) includes an **overseas limited partnership** as defined in **section 86** of that Act; and
- “(c) despite **paragraph (a) or (b)**, does not include a listed limited partnership or a foreign corporate limited partnership
- “**limited partnership net deduction** is defined in **section HG 11(12)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.
- (9) After the definition of **listed horticultural plant**, the following is inserted:
- “**listed limited partnership** means an entity or group of persons that is listed on a recognised exchange, and that entity or group of persons—
- “(a) is a limited partnership registered under the Limited Partnerships Act **2007**; or

- “(b) meets the definition of **overseas limited partnership** in **section 86** of that Act”.
- (10) After the definition of **New Zealand-new asset**, the following is inserted:
- “**New Zealand partnership** means a partnership that— 5
- “(a) is a limited partnership registered under the Limited Partnerships Act **2007**; or
- “(b) has 50% or more of its partners’ interests in capital, by value, held by New Zealand residents; or
- “(c) has its centre of management in New Zealand ignoring **section HG 2**”. 10
- (11) The definitions of **partner** and **partnership** are replaced by the following:
- “**partner**, in relation to a partnership,—
- “(a) means a person who is a member of the partnership: 15
- “(b) includes—
- “(i) a limited partner of a limited partnership;
- “(ii) a general partner of a limited partnership;
- “(iii) a joint venturer or a co-owner, if they make the relevant choice to be treated as partnership: 20
- “**partner’s associate** is defined in **section HG 11(12)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section
- “**partner’s interests** means the relevant interests in rights and obligations and other property, status, and things that a partner 25 has as a result of applying **section HG 2** (Partnerships are transparent)
- “**partnership** means—
- “(a) a group of 2 or more persons who have, between themselves, the relationship described in section 4(1) of the Partnership Act 1908: 30
- “(b) a joint venture, if the joint venturers all choose to be treated as a partnership for the purposes of this Act and the Tax Administration Act 1994:
- “(c) co-owners of property, other than persons who are 35 co-owners only because they are shareholders of the same company, or settlors, trustees, or beneficiaries of the same trust, if the co-owners all choose to be treated

as a partnership for the purposes of this Act and the Tax Administration Act 1994:

“(d) a limited partnership

“**partnership share** means, for a particular right, obligation, or other property, status, or thing, the share that a partner has in respect of it”.

- (12) In the definition of **relative**, paragraph (a), “personal services),” is replaced by “personal services), **HG 11(12)** (Limitation on deductions by partners in limited partnerships),”.
- (13) After the definition of **small-business person**, the following is inserted:
 “**small partnership** means a partnership that is not a limited partnership and has 5 or less partners, none of whom are companies or partnerships”.
- (14) In the definition of **turnover**, “livestock))” is replaced by “livestock)) and **section HG 6** (Disposal of trading stock)”.
 “(d) is defined in **section HG 11(12)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.
- (15) **Subsections (2) to (14)** apply for income years starting on and after 1 April 2008.
- (15) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsections (2) to (14)** apply for income years starting on and after 1 April 2008.

126 Partnerships: partnership and partner

- (1) After section YB 16(1), the following is inserted:
 “*Exception: limited partners*”
- “(1B) Subsection (1) does not apply if the partner is a limited partner. Instead, a limited partnership and a limited partner are associated persons if the limited partner has a partnership share of 25% or more in a right, obligation, or other property, status, or thing of the limited partnership.”
- (2) In section YB 16, in the list of defined terms, “limited partner”, “limited partnership”, “partner”, “partnership”, and “partnership share” are inserted.

(3) **Subsections (1) and (2)** apply for income years starting on and after 1 April 2008.

(3) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsections (1) and (2)** apply for income years starting on and after 1 April 2008. 5

127 Partnerships: partnership and associate of partner

(1) After section YB 17(1), the following is inserted:

“Exception: limited partners

“(1B) Subsection (1) does not apply if the partner is a limited partner. Instead, a limited partnership and a person associated with a limited partner are associated persons if the limited partner has a partnership share of 25% or more in a right, obligation, or other property, status, or thing of the limited partnership.” 10

(2) In section YB 17(3)(c), “those provisions.” is replaced by “those provisions; and”, and the following is added: 15

“(d) for the purposes of the 1990 version provisions (which are certain provisions relating to petroleum mining and some other miscellaneous rules), the term **associated** has the meaning that it has for the purposes of those provisions.” 20

(3) In section YB 17, in the list of defined terms, “limited partner”, “limited partnership”, “partner”, “partnership”, and “partnership share” are inserted.

(4) **Subsections (1) to (3)** apply for income years starting on and after 1 April 2008. 25

(4) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsections (1) and (3)** apply for income years starting on and after 1 April 2008. 30

128 Classes of income treated as having New Zealand source

(1) After section YD 4(17), the following is inserted:

“Income from New Zealand partnerships

“(17B) Income has a source in New Zealand if, treating all of the partners of a New Zealand partnership as resident in New Zealand, the income is treated as having a source in New 35

Zealand under another provision of this section. The application of the other provisions of this section is unaffected if this subsection does not apply.”

- (2) In section YD 4, in the list of defined terms, “New Zealand partnership” and “partner” are inserted. 5
- (3) ~~Subsections (1) and (2) apply for income years starting on and after 1 April 2008.~~
- (3) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsections (1) and (2)** apply for income years starting on and after 1 April 2008. 10

Part 6

Amendments to **Tax Administration Act 1994** other revenue Acts

- 129 Tax Administration Act 1994** 15
This Part amends the Tax Administration Act 1994.

Tax Administration Act 1994

- 129 Tax Administration Act 1994**
Sections 130 and 131 amend the Tax Administration Act 1994. 20
- 130 Keeping of business records**
- (1) In section 22(4)(b), “liquidated.” is replaced by “liquidated:” and the following is added:
“(c) by a partner of a partnership, if the partnership retains the records that the partner would be required to retain but for this paragraph.” 25
- (2) ~~Subsection (1) applies for income years starting on and after 1 April 2008.~~
- (2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008. 30

131 Section 42 replaced

(1) Section 42 is replaced by the following:

“42 Returns by joint venturers, partners, and partnerships

“(1) This section applies when 2 or more people derive income jointly or have deductions jointly. 5

“(2) Despite **subsection (1)**, this section does not apply to the income derived by, and the deductions of, an airport operator from activities undertaken as an airport operator.

“(3) In the case of partners,—

“(a) if the partnership of the partner is a limited partnership registered under the Limited Partnerships Act **2007** or is a partnership that would carry on a business in New Zealand ignoring **section HG 2** of the Income Tax Act 2007, then the partners must make a joint return of income that includes— 10 15

“(i) the total amount of income derived by the partners as members of the partnership; and

“(ii) the partners’ partnership shares in the income; and

“(iii) a summary of the deductions of each partner: 20

“(b) there is no joint assessment, but each partner must make a separate return of income under section 33, including the income derived by the partner as a member of the partnership, and the partner’s deductions. Each partner is separately assessed. 25

“(4) In any other case, each person shall make a separate return taking into account that person’s share of the joint income and deductions. Each person is separately assessed.”

(2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 30

(2) For a person who is not a limited partner of a limited partnership registered under the **Limited Partnerships Act 2008**, **subsection (1)** applies for income years starting on and after 1 April 2008.

Taxation (Limited Partnerships) Bill

Goods and Services Tax Act 1985

132 Interpretation

In section 2(1) of the Goods and Services Tax Act 1985, in the definition of **company**, “elsewhere” is replaced by “elsewhere, and any limited partnership registered under the **Limited Partnerships Act 2008**”. 5

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Legislative history

6 March 2008

Divided from Limited Partnerships Bill (Bill
140-2) by committee of the whole House as Bill
140-3A
