

House of Representatives

Supplementary Order Paper

Tuesday, 14 August 2012

Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill

Proposed amendments

Hon Peter Dunne, in Committee, to move the following amendments:

Clause 2

New subclause (6B): after *subclause (6)* (page 9, after line 12), insert:

(6B) **Sections 137(1A) and 141(1A)** come into force on 1 January 2005.

Subclause (10): after “**(7)**,” (page 9, line 21) insert “**(7BA)**”.

Subclause (10B): replace “**Section 37B** comes” (page 9, line 24) with “**Sections 22C, 28D, and 37B** come”.

Subclause (12): replace “**67, 69, and 70**” (page 10, line 1) with “**18B(1), (3), (4), and (6), 18C(1), (3), (4), and (6), 19C, 22B, 22C, 22D(1), (2), (6), (7), and (8), 22E(1) to (6), 22F, 25BA, 28B, 28C, 28D, 33BA, 56B, 67, 69, 70, 81B, and 88(4B) and (19B)**”.

New subclause (17BA): after *subclause (17)* (page 10, after line 8), insert:

(17BA) **Sections 11B, 11C, 16B, 16C, 16D, 19D, 21CB, 21CC, 27B, 27C, 27D, 27E, 27F, 27G, and 32BA** come into force on 4 September 2010.

New subclause (17BB): after *subclause (17B)* (page 10, after line 10), insert:

(17BB) **Section 88(2BA), (2BAB), and (18D)** comes onto force on 1 October 2010.

Subclause (18B): replace “**Section 66B** comes” (page 10, line 22) with “**Sections 18B(2) and (7), 18C(2) and (7), 22D(3), (4), (5), and (9), 22E(7) and (8), 23B, 24B, 24C, 24D, 57B, 66B, and 70B** come”.

Subclause (19): replace “**42, 43, and 46**” (page 10, line 25) with “**42, 43, 46, 170B, 170C, 170D, and 170E**”.

New subclause (21B): after *subclause (21)* (page 10, after line 29), insert:

(21B) **Section 118A** comes into force on 7 March 2012.

New subclause (22BA): after *subclause (22)* (page 10, after line 33), insert:

(22BA) **Subsection 98(1)(cb)** comes into force on 31 May 2012.

Subclause (22B): after “**Sections**” (page 10, line 34), “**31B,**” is inserted.

Subclause (24): replace “**98**” (page 11, line 2) with “**98(1)(a) to (c) and (d) and (2)**”.

New subclause (26): after *subclause (25)* (page 11, after line 11), insert:

(26) **Subsection 98(1B) and (3)** come into force on 1 April 2014.

New clauses 11B and 11C

After *clause 11* (page 13, after line 27), insert:

11B Section CG 4 replaced

(1) Section CG 4 is replaced by the following:

“**CG 4 Receipts for expenditure or loss, from insurance, indemnity, or otherwise**

“*When this section applies*

“(1) This section applies when—

“(a) a person is allowed a deduction for expenditure or loss; and

“(b) the person derives an amount relating to the expenditure or loss, whether through insurance, indemnity, or otherwise; and

“(c) the amount, to the extent of the deduction, is not income of the person under any other provision of this Act.

“*Income*

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

“*Timing of income*

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

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

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

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

(2) **Subsection (1)** applies for—

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

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

11C Receipts from insurance, indemnity, or compensation for interruption or impairment of business activities

- (1) In section CG 5B(2), after “attributable to income”, “(the **replaced income**)” is inserted.
- (2) Section CG 5B(3), other than the heading, is replaced by the following:
 - “(3) The income is allocated to the later of—
 - “(a) the income year to which the replaced income relates:
 - “(b) the earlier of—
 - “(i) the income year in which the amount is received:
 - “(ii) the income year in which the amount is reasonably able to be estimated.”
- (3) **Subsections (1) and (2)** apply for—
 - (a) the 2011–12 and later income years, except as given by **paragraph (b)**; or
 - (b) the 2010–11 and later income years for a person who is granted an extension of time for filing a return of income for the 2010–11 income year under the Canterbury Earthquake (Inland Revenue Acts) Order 2011.

Clause 16C

Section CZ 25, heading (page 15, lines 1 to 3): replace with “**Land and buildings as revenue account property affected by Canterbury earthquakes and replaced—insurance or compensation, Government purchase**”.

Section CZ 25(1)(a) (page 15, lines 8 to 16): replace with:

- (a) in or before the current year, derives for buildings or land (the **affected property**), all of which is revenue account property,—
 - (i) insurance or compensation, if a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011 damages the land and damages each building, or the neighbourhood of the building, causing the building to be useless for the purpose of deriving income and consequently to be abolished or abandoned for later demolition:
 - (ii) an amount from a purchase by the Government from the person under section 53(1) of the Canterbury Earthquake Recovery Act 2011; and

Section CZ 25(4): after “building” (page 16, line 17), insert “or land”.

New clause 16D

After *clause 16C* (page 17, after line 26), insert:

16D New section CZ 26

After section CZ 25, the following is inserted:

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

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

“Defined in this Act: land”.

New clauses 18B and 18C

After clause 18 (page 19, after line 15), insert:

18B Ring-fenced cap on deduction

(1) Section DN 4(1) is replaced by:

“Amount of deduction: CFC not elective attributing CFC

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

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

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

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

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

“Amount of deduction: elective attributing CFC

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

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

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

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

“(iii) has the same election commencement year as the first CFC:

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

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

- “(ii) is an elective attributing FIF for the person in the income year; and
- “(iii) has the same election commencement year as the first CFC.”
- (2) In **section DN 4(1)(b)(ii)**, “branch equivalent method” is replaced by “attributable FIF income method”.
- (3) In section DN 4(2), “subsection (1)” is replaced by “**subsection (1) or (1B)**” in each place where it occurs.
- (4) Section DN 4(3), other than the heading, is replaced by:
 - “(3) Any excess not able to be deducted because of **subsection (1) or (1B)** is an attributed CFC net loss able to be used under sections IQ 2, IQ 4, and IQ 9 (which relate to the use of attributed CFC net losses).”
- (5) In section DN 4, in the list of defined terms, “election commencement year”, “elective attributing CFC”, and “elective attributing FIF” are inserted.
- (6) **Subsections (1), (3), and (4)** apply for income years beginning on or after 1 July 2009.
- (7) **Subsection (2)** applies for income years beginning on or after 1 July 2011.

18C Ring-fencing cap on deduction: attributable FIF income method

- (1) Section DN 8(1) is replaced by:
 - “*Amount of deduction: FIF not elective attributing FIF*”
 - “(1) The deduction that a person is allowed in an income year for a FIF loss from a FIF (the **first FIF**) that is not an elective attributing FIF for the person in the income year is no more than the total of—
 - “(a) total attributed CFC income of the person for the income year from CFCs, each of which is resident in the same country as the first FIF for the relevant accounting period:
 - “(b) total FIF income of the person for the income year from other FIFs,—
 - “(i) each of which is resident in the same country as the first FIF for the relevant accounting period; and
 - “(ii) for each of which the person uses the branch equivalent method.
- “*Amount of deduction: elective attributing FIF*”
- “(1B) The deduction that a person is allowed in an income year for a FIF loss from a FIF (the **first FIF**) that is an elective attributing FIF for the person in the income year is no more than the total of—

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

New clauses 19C and 19D

After *clause 19B* (page 20, after line 5), insert:

19C Section DZ 19 repealed

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

19D New section DZ 20 inserted

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

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

“When this section applies

- “(1) This section applies for a person and an income year (the **current year**) before the 2016–17 income year when—
- “(a) the person has an income-earning activity in greater Christchurch (as defined in section 4 of the Canterbury Earthquake Recovery Act 2011) immediately before a Canterbury earthquake (as defined in that section); and
 - “(b) the activity is interrupted for a period (the **period of interruption**) as a result of the Canterbury earthquake; and
 - “(c) in the current year, during the period of interruption, the person incurs expenditure or loss (the **interruption expenditure**) in meeting an obligation relating to the income-earning activity; and
 - “(d) the interruption expenditure does not meet the requirements of the general permission for the person and the income-earning activity but would do so but for the interruption; and
 - “(e) the person resumes the income-earning activity in an income year (the **resumption year**) before the 2016–17 income year.

“Deduction for interruption expenditure

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

“Timing of deduction

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

“Link with subpart DA

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

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

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

Clause 20

Subclause (1): section EC 1(1): after “on a business” (page 20, line 10), insert “, other than of selling livestock,”.

New clauses 21CB to 21CC

After *clause 21C* (page 22, after line 34), insert:

21CB Cases affecting pool

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

“Insurance or compensation for damage to item

- “(2B) If a person in an income year derives an amount of insurance, indemnity, or compensation (the **compensation amount**) for damage to an item included in a pool at the end of the income year and the compensation amount exceeds the expenditure or loss that the person incurs because of the damage, the excess is subtracted from the adjusted tax value of the pool.”
- (2) In section EE 22(3), “any consideration they derive from the disposal” is replaced by “and derives an amount of consideration from the disposal, or derives an amount of insurance, indemnity, or compensation to which **subsection (2B)** does not apply for damage to the item occurring before the disposal, any excess of the amount derived over the expenditure or loss incurred in deriving the amount”.
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2011–12 and later income years, except as given by **paragraph (b)**; or
 - (b) the 2010–11 and later income years for a person who is granted an extension of time for filing a return of income for the 2010–11 income year under the Canterbury Earthquake (Inland Revenue Acts) Order 2011.

21CC Consideration for purposes of section EE 44

- (1) In section EE 45(8), “amount of insurance, indemnity, or compensation” is replaced by “total of the amount of insurance, indemnity, or compensation, and the amount of proceeds from the disposal.”.
- (2) **Subsection (1)** applies for—
- (a) the 2011–12 and later income years, except as given by **paragraph (b)**; or
 - (b) the 2010–11 and later income years for a person who is granted an extension of time for filing a return of income for the 2010–11 income year under the Canterbury Earthquake (Inland Revenue Acts) Order 2011.

New clauses 22B to 22F

After *clause 22* (page 23, after line 16), insert:

22B Scheme for finding person’s attributed CFC income or loss

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

22C Attributable CFC amount

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

22D Net attributable CFC income or loss

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

attributable CFC – apportioned funding income
– apportioned funding costs – other deductions.
- (2) Section EX 20C(3) to (11) are replaced by:

“Definition of items in formula

 - “(3) In the formula in **subsection (2)**,—
 - “(a) **attributable CFC** is the CFC’s attributable CFC amount for the accounting period:
 - “(b) **apportioned funding income** is—
 - “(i) if the CFC is an entity carrying on a business of banking or insurance or is directly or indirectly controlled by such an entity, zero:
 - “(ii) if **subparagraph (i)** does not apply, the amount calculated using the formula—

funding income × funding fraction × (1 – asset fraction):
 - “(c) **apportioned funding costs** is the amount calculated using the formula—

funding costs × funding fraction × cost fraction:
 - “(d) **other deductions** is the amount of expenditure and loss incurred in the accounting period by the CFC to the extent to which the expenditure and loss meets the requirements of **subsection (13)**.
 - “(4) The items in the formulas in **subsection (3)(b)(ii) and (c)** are defined in **subsections (5), (6), (8), (10), and (11)**.
 - “(5) **Funding income** is the total of the amounts in the accounting period that are included in the item **attributable CFC** and relate to a financial arrangement—
 - “(a) that provides funds for the CFC; and
 - “(b) for which there is no reasonable expectation, when the CFC enters the financial arrangement or when the terms of the financial arrangement are changed, that the CFC will have from the financial arrangement amounts that would be income for the CFC exceeding in total the

amounts that would be deductions for the CFC, during—

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

“Funding fraction

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

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

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

“Definition of items in formula

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

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

“Asset fraction

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

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

“Definition of items in formula

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

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

for the purpose of deriving an amount that is not an attributable CFC amount:

- “(b) **group funding** is—
 - “(i) zero, if **subparagraph (ii)** does not apply; or
 - “(ii) the amount of the item **group funding** referred to in **subsection (7)(b)**, if **subsection (6)(c)** applies for the interest holder and the CFC:
- “(c) **total CFC’s assets** is the total value of the CFC’s assets.

“Funding costs

- “(10) **Funding costs** is the total of amounts in the accounting period, each of which—
 - “(a) would be a deduction of the CFC relating to a financial arrangement to which the CFC is a party and which provides funds for the CFC:
 - “(b) is a distribution relating to fixed-rate foreign equity or a deductible foreign equity distribution of the CFC and is paid by the CFC to a company resident in New Zealand or to a CFC.

“Cost fraction

- “(11) **Cost fraction** is,—
 - “(a) if the CFC is not excessively debt funded under section EX 20D, the amount of the item **asset fraction** referred to in **subsection (8)**; or
 - “(b) if the CFC is excessively debt funded under section EX 20D, the lesser of—
 - “(i) the amount of the item **asset fraction** referred to in **subsection (8)**:
 - “(ii) the amount calculated under section EX 20D.”

- (3) In **section EX 20C(7)(a)(ii)**, “resident or CFC” is replaced by “resident, a CFC, or a FIF for which the interest holder uses the attributable FIF income method”.
- (4) In **section EX 20C(7)(b)(i)**, “companies” is replaced by “companies) or to a FIF for which the interest holder uses the attributable FIF income method and that is associated with the CFC under section YB 2”.
- (5) In **section EX 20C(10)(b)**, “New Zealand or to a CFC” is replaced by “New Zealand, to another CFC, or to a FIF for which the interest holder uses the attributable FIF income method”.
- (6) In section EX 20C(12), “subsection (11)” is replaced by “**subsection (9)**”.
- (7) After section EX 20C(12), the following is added:

“Requirements for item other deductions

- “(13) Amounts of expenditure or loss contribute to the item **other deductions** to the extent to which—

- “(a) the amounts do not relate to a financial arrangement or share and—
 - “(i) are incurred for the purpose of deriving an attributable CFC amount; and
 - “(ii) are not incurred for the purpose of deriving an amount that is not an attributable CFC amount; and
 - “(iii) are deductions of the CFC:
 - “(b) the amounts relate to financial arrangements or shares referred to in the definition of item **funding** in **subsection (7)(a)** and exceed in total the amount given by multiplying the items **funding costs** and **funding fraction**, used in calculating the item **apportioned funding costs** under **subsection (3)(c)**:
 - “(c) the amounts—
 - “(i) do not relate to financial arrangements that provide funds for the CFC; and
 - “(ii) relate to financial arrangements referred to in section EX 20B(4).”
- (8) **Subsections (1), (2), (6), and (7)** apply for income years beginning on or after 1 July 2009.
- (9) **Subsections (3), (4), and (5)** apply for income years beginning on or after 1 July 2011.

22E Adjustment of fraction for excessively debt funded CFC

- (1) In section EX 20D, in the heading, “**fraction**” is replaced by “**cost fraction**”.
 - (2) In section EX 20D(1), “section EX 20C(8)” is replaced by “the item (the CFC’s **cost fraction**) in section EX 20C(11)”.
 - (3) In section EX 20D(9), in the heading, “*Fraction*” is replaced by “*Cost fraction*”.
 - (4) In section EX 20D(9), “item **fraction**” is replaced by “item **cost fraction**”.
 - (5) In section EX 20D(10), in the heading, “*fraction*” is replaced by “*cost fraction*”.
 - (6) In section EX 20D(10), “CFC’s fraction” is replaced by “CFC’s cost fraction”.
 - (7) Section EX 20D(10), other than the heading is replaced by the following:
 - “(10) The formula for the CFC’s cost fraction is—

$$\frac{\text{attributable foreign company assets}}{\text{total foreign company assets}}$$
- (8) **Subsection (7)** applies for income years beginning on or after 1 July 2011.

22F Non-attributing active CFCs

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

New clause 23B

After *clause 23* (page 23, after line 21), insert:

23B Exemption for interest in FIF resident in Australia

- (1) Section EX 35(a) is replaced by the following:
 - “(a) at all times in the year, the item **income interest** calculated under section EX 50(4) for the person and the FIF is 10% or more; and”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

New clauses 24B, 24C, and 24D

After *clause 24* (page 23, after line 25), insert:

24B Attributable FIF income method

- (1) Section EX 50(7B)(a)(i) is repealed.
- (2) Section EX 50(7B)(b) is replaced by the following:
 - “(b) the FIF would meet the test for a non-attributing active CFC under section EX 21B(2)(b) if the items **added passive** and **reported revenue** under section EX 21E(5), (8), and (10) for the FIF included the amounts given by **subsection (7C)(a)**—
 - “(i) relating to the FIF’s interests in each member of a grouping of one or more foreign companies including the foreign company; and
 - “(ii) reported in the accounts of the FIF, or in the consolidated accounts of the FIF’s test group under section EX 21E.”
- (3) Section EX 50(7B)(c) is repealed.
- (4) After section EX 50(7B), the following is inserted:

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

- “(7C) In determining whether a FIF would meet the requirements of **subsection (7B)(b)** for an accounting period,—
- “(a) the amounts required to be included in the items are—
- “(i) amounts recognised in profit and loss under the equity method under whichever is appropriate of NZIAS 28, NZIAS 31, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America:
- “(ii) amounts recognised in profit or loss under proportionate consolidation under whichever is appropriate of NZIAS 31, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America:
- “(iii) dividends and net fair value changes recognised in profit or loss in relation to investments accounted for under whichever is appropriate of NZIAS 39, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America; and
- “(b) an interest holder must not use the result of the test applied to the FIF and a foreign company as a member of a grouping of foreign companies if the interest holder uses for the period a result of the test applied to the FIF and a different grouping of foreign companies.”
- (5) **Subsections (1) to (4)** apply for income years beginning on or after 1 July 2011.

24C Additional FIF income or loss if CFC owns FIF

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

24D Limits on changes of method

- (1) In section EX 62(2)(b), “section EX 46(3)(a) or (b) prevents” is replaced by “section EX 46(3)(a) and (b) prevent”.

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

New clause 25BA

After *clause 25* (page 24, after line 5), insert:

25BA New heading and new section EX 73

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

“Election relating to CFC or FIF

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

“Election to have elective attributing CFC

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

“Exception

- “(2) The interest holder must not make an election under **subsection (1)** for a CFC or FIF that is—
- “(a) an entity carrying on a business of banking or insurance or is directly or indirectly controlled by such an entity;
- “(b) a non-attributing Australian CFC.

“Period of election

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

“Timing of retrospective election

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

“Currency of election

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

“Revoking election

- “(6) The interest holder may revoke an election under **subsection (1)** if—
- “(a) the interest holder gives notice of the revocation to the Commissioner before the beginning of the interest holder’s first income year for which the notice is given; and
 - “(b) the interest holder satisfies the Commissioner that—
 - “(i) expenditure or loss of a CFC included, while the election is effective, in net attributable CFC income or loss for the interest holder is extremely unlikely to result after the revocation in an amount that would otherwise have been an attributable CFC amount for the CFC; and
 - “(ii) the revocation is not made for a purpose or effect of reducing a tax liability; and
 - “(c) the Commissioner agrees to the revocation.

“Expiry of election

- “(7) An election by the interest holder under **subsection (1)** ceases to be effective in an income year if the election is for—
- “(a) a CFC that in the income year ceases to be a CFC in which the interest holder has an income interest of 10% or more, except if the CFC becomes at that time a FIF for which the interest holder uses the attributable FIF income method, in which case the election becomes effective as if made for the FIF;
 - “(b) a FIF that in the income year ceases to be a FIF for which the interest holder uses the attributable FIF income method, except if the FIF becomes at that time a CFC meeting the requirements of **subsection (8)**, in

which case the election becomes effective as if made for the CFC:

- “(c) a CFC or FIF that in the income year becomes an entity carrying on a business of banking or insurance or becomes directly or indirectly controlled by such an entity:
- “(d) a CFC that becomes a non-attributing Australian CFC in the income year.

“Requirements for CFC to be affected by FIF election

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

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

“Effect of expiry or revocation of election

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

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

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

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

“Further election

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

“(a) the interest holder gives notice of the election to the Commissioner before the beginning of the interest

holder's first income year for which the notice is given;
and

- “(b) the interest holder satisfies the Commissioner that—
- “(i) the expiry of the earlier election was due to an oversight on the part of the interest holder or the CFC or FIF; and
- “(ii) the interest holder gave notice of the further election within a reasonable time after the expiry; and
- “(iii) the further election has no purpose or effect of allowing the attribution of deductions without the attribution of corresponding income; and
- “(c) the Commissioner agrees to the election.

“Further election for entity by associate of original interest holder

- “(11) An interest holder may not make an election under **subsection (1)** for a CFC or FIF for which an earlier election by a person associated with the interest holder has ceased to be effective, unless—
- “(a) the interest holder gives notice of the proposed election to the Commissioner before the beginning of the interest holder's first income year for which the election is made; and
- “(b) the interest holder satisfies the Commissioner that the proposed election has no purpose or effect of allowing the attribution of deductions without the attribution of corresponding income; and
- “(c) the Commissioner agrees to the proposed election.

“Form and means of notice to Commissioner

- “(12) A notice to the Commissioner under this section must be given in the form and by the means prescribed by the Commissioner.

“Defined in this Act: attributable FIF income method, attributed CFC loss, CFC, Commissioner, elective attributing CFC, elective attributing FIF, FIF, income interest, income year, net attributable FIF loss, non-attributing active CFC, non-attributing active FIF, non-attributing Australian CFC, notice”.

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

New clauses 27B to 27G

After *clause 27* (page 26, after line 3), insert:

27B Property acquired after depreciable property affected by Canterbury earthquakes

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

4 of the Canterbury Earthquake Recovery Act 2011, is affected by—

- “(i) damage meeting the requirements of section EE 47(4) (Events for purposes of section EE 44); or
- “(ii) a disposal and reacquisition under **section EZ 23C.**”

- (2) In section EZ 23B(2)(b), “subsection (7)” is replaced by “subsection (8)”.
- (3) **Subsection (1)** applies for the 2010–11 to the 2015–16 income years.

27C New section EZ 23C

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

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

“When this section applies

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

“Deemed sale and repurchase of item

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

“Relationship with section EE 52

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

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

27D New section EZ 23D

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

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

“When this section applies

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

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

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

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

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

“Limit on depreciation recovery income under section EE 52

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

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

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

“Relationship with section EE 52

“(3) This section overrides sections EE 52.

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

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

27E New section EZ 23E inserted

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

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

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

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

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

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

27F New section EZ 23F inserted

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

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

“When this section applies

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

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

“(b) the damage,—

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

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

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

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

“Attribution of income from insurance and disposal

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

“(a) the 2015–16 income year:

“(b) the first income year in which—

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

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

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

“Attribution of deductions

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

“(a) the 2015–16 income year:

“(b) the first income year in which—

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

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

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

“Relationship with other sections

“(4) This section overrides sections EE 1, EE 22, and EE 48 (which state when depreciation loss and depreciation recovery income arise) in relation to the timing of the person’s—

“(a) income from the insurance receipt and consideration from the disposal of the item:

“(b) deductions for the disposal cost and depreciation loss.

“Defined in this Act: amount, building, deduction, grandparented structure, income, income year”.

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

27G New section EZ 23G inserted

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

“EZ 23G Insurance for repairs of Canterbury earthquake damage: optional timing rule for income, deductions

“When this section applies

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

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

“(b) the damage,—

“(i) does not result in the item being subject to a disposal and reacquisition under **section EZ 23C**; and

- “(ii) does not meet the requirements of section EE 47(4) (Events for purposes of section EE 44); and
 - “(c) the person is entitled to an amount of insurance or compensation for the damage to the item; and
 - “(d) the person chooses to apply this section for all items of depreciable property meeting the requirements of **paragraphs (a) to (c)**.
- “*Attribution of income from insurance*
- “(2) If the amount of insurance or compensation for the damage (the **insurance receipt**) is derived or able to be reasonably estimated before the end of the 2015–16 income year, the person’s income from the insurance receipt is attributed to the earlier of—
- “(a) the 2015–16 income year:
 - “(b) the first income year in which—
 - “(i) the amount of expenditure for total repair of the damage (the **repair cost**) is or has been incurred or able to be reasonably estimated; and
 - “(ii) the insurance receipt is or has been derived or able to be reasonably estimated.
- “*Attribution of deductions for repairs*
- “(3) If the repair cost is incurred or able to be reasonably estimated before the end of the 2015–16 income year, the person’s deductions for the repair cost are attributed to the earlier of—
- “(a) the 2015–16 income year:
 - “(b) the first income year in which—
 - “(i) the repair cost is or has been incurred or able to be reasonably estimated; and
 - “(ii) the insurance receipt is or has been derived or able to be reasonably estimated.
- “*Relationship with other sections*
- “(4) This section overrides sections **CG 4**, EE 22, and EE 52 (which provide for receipts of insurance or indemnity payments) in relation to the timing of the person’s—
- “(a) income from the insurance receipt:
 - “(b) deductions for the repair cost.
- “Defined in this Act: amount, deduction, income, income year”.
- (2) **Subsection (1)** applies for the 2010–11 to the 2015–16 income years.

New clauses 28B to 28D

After *clause 28* (page 26, after line 5), insert:

28B Section EZ 32C repealed

- (1) Section EZ 32C is repealed.

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

28C New section EZ 32D

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

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

“When this section applies

- “(1) This section applies when a CFC is excessively debt funded under section EX 20D (Adjustment of cost fraction for excessively debt funded CFC) and entered before 21 June 2012 a financial arrangement (an **old funding arrangement**) that provides funds for the CFC.

- “(2) The amount of the item **apportioned funding income** for the CFC is the sum of—

“(a) an amount calculated using the formula in **section EX 20C(3)(b)(ii)** (Net attributable CFC income or loss) with—

“(i) a value for the item **funding income** that is the amount of funding income relating to the old funding arrangements of the CFC; and

“(ii) a value for the item **asset fraction** that is the amount of the item **cost fraction** calculated under **section EX 20D(10)**;

“(b) an amount calculated using the formula in **section EX 20C(3)(b)(ii)** with a value for the item **funding income** that is the amount of funding income relating to financial arrangements of the CFC that are not old funding arrangements.

“Relationship with section EX 20C

- “(3) This section overrides **section EX 20C(3)(b)(ii)**.

“Defined in this Act: CFC, financial arrangement”.

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

28D New section EZ 32E

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

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

“When section applies

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

- “(a) for an income year beginning on or after 1 July 2009; and
- “(b) relating to a return of income provided to the Commissioner before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act **2011** (the **amending Act**) receives the Royal assent; and
- “(c) that the person would not have but for the replacement by the amending Act of **section EX 20B(3)(f)** (Attributable CFC amount) coming into force on 1 July 2009.

“No liability for interest for period

- “(2) The person is not liable to pay interest under Part 7 of the Tax Administration Act 1994 in relation to the resulting liability for the period beginning with 1 July 2009 and ending on the later of—
 - “(a) 30 June 2012;
 - “(b) a date fixed by the Commissioner for the payment of the resulting liability.

“Relationship with Tax Administration Act 1994

- “(3) This section overrides Part 7 of the Tax Administration Act 1994.
“Defined in this Act: Commissioner, income year, return of income, tax position, terminal tax”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

New clause 31B

After *clause 31* (page 26, after line 25), insert:

31B Some general rules for treatment of consolidated groups

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

Clause 32

Subclause (2): replace “23 August 2011” (page 27, lines 3 and 4) with “14 September 2011”.

New clause 32BA

After *clause 32* (page 27, after line 4), insert:

32BA New heading and section FZ 7

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

“Earthquake-affected group property

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

“When this section applies

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

“Optional treatment of insurance

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

“Corresponding treatment for worldwide group

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

“Notice to Commissioner

- “(4) A person choosing to apply **subsection (2)** for an income year must give to the Commissioner—
- “(a) notice that the person has applied this section for the income year; and
 - “(b) the amount of income that would arise under section CH 9 (Interest apportionment: excess debt entity) for the income year in the absence of this section; and
 - “(c) the amount of income that arises under section CH 9 for the income year after the application of this section; and
 - “(d) further information required by the Commissioner.

“Form and timing of notice

- “(5) The information required by **subsection (4)** must be given—

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

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

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

New clause 33BA

After *clause 33* (page 27, after line 28), insert:

33BA No CFC income interests or FIF direct income interests of 10% or more

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

Clause 38

Subclause (1): replace “other than as beneficiary income” (page 30, lines 30 and 31) with “as trustee income”.

Clause 39(1D)

Definition of secured amounts, paragraph (b): replace “the total number of the total number of” (page 32, line 30) with “the total number of”.

Clause 40B

Subclause (1) (page 33, lines 19 and 20): replace with:

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

Subclause (2): section HM 3(2): replace “1954” (page 33, line 25) with “1953”.

New clause 56B

After *clause 56* (page 44, after line 7), insert:

56B Ring-fencing cap on attributed CFC net losses

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

“*Amount subtracted: losses not from elective attributing CFCs or elective attributing FIFs*”

- “(1) The total amount of attributed CFC net loss and FIF net loss, relating to a CFC or FIF (the **loss entity**) resident in the jurisdiction when the loss arises and not an elective attributing CFC or elective attributing FIF, that is subtracted from the person’s net income for the tax year is the lesser of—

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

is resident in the jurisdiction for the accounting period corresponding to the tax year:

- “(b) the total amount of attributed CFC net loss and FIF net loss—
 - “(i) relating to the loss entity and the jurisdiction; and
 - “(ii) carried forward to the tax year or made available in the tax year to the person by another company in the same group; and
 - “(iii) available to the person under subsection (1B), (1C), or section IQ 3.

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

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

- “(a) the total amount of attributed CFC income, and FIF income calculated under the attributable FIF income method or branch equivalent method, that the person derives in the tax year in relation to an elective attributing CFC or elective attributing FIF—
 - “(i) with the same election commencement date as the loss entity; and
 - “(ii) resident in the jurisdiction for the accounting period corresponding to the tax year:

- “(b) the total amount of attributed CFC net loss and FIF net loss—
 - “(i) relating to the loss entity and the jurisdiction; and
 - “(ii) carried forward to the tax year or made available in the tax year to the person by another company in the same group; and
 - “(iii) available to the person under subsection (1B), (1C), or section IQ 3.”

- (2) In section IQ 2, in the list of defined terms, “elective attributing CFC” and “elective attributing FIF” are inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

New clause 57B

After *clause 57* (page 44, after line 12), insert:

57B Credits for persons who are non-resident or who receive exempt income

- (1) In section LF 8(1)(b), “CW 9 to CW 11” is replaced by “CW 9 and CW 10”.

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

New clause 58C

After *clause 58B* (page 45, after line 16), insert:

58C Section LZ 1 repealed

Section LZ 1 is repealed.

New clause 70B

After *clause 70* (page 49, after line 4), insert:

70B Table O4: FDP debits

- (1) Table O4, row 8 is omitted.
(2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

New clause 81B

After *clause 81* (page 52, after line 33), insert:

81B Resident passive income

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

Clause 83

Subclause (3) (page 53, lines 23 to 25): delete.

Subclause (5) (page 53, lines 35 to page 54, line 4): delete.

Clause 88

New subclauses (2BA) and (2BAB): after *subclause (2)* (page 55, after line 31), insert:

- (2BA) In the definition of **capital contribution**, paragraph (a)(i), “that is not a contract of insurance” is omitted.
(2BAB) In the definition of **capital contribution**, paragraph (a)(iv), “recipient:” is replaced by “recipient; and” and the following is inserted:
 “(v) if the agreement is a contract of insurance, indemnity, or compensation, is paid in relation to an interruption or impairment of business activities:”.

New subclause (4B): after *subclause (4)* (page 56, after line 11), insert:

- (4B) The following are inserted in the appropriate alphabetical order:
 “**election commencement year**, for an interest holder and an elective attributing CFC, or elective attributing FIF, of the interest holder for an accounting period, means the first year for which the election under **section EX 73** (Election that CFC

not non-attributing active CFC or FIF not non-attributing active FIF) for the accounting period was effective

“**elective attributing CFC**, for an interest holder and an accounting period, means a CFC for which the interest holder has made an election under **section EX 73** (Election that CFC not non-attributing active CFC or FIF not non-attributing active FIF) that is effective for the accounting period

“**elective attributing FIF** for an interest holder and an accounting period, means a FIF for which the interest holder uses the attributable FIF income method and has made an election under **section EX 73** (Election that CFC not non-attributing active CFC or FIF not non-attributing active FIF) that is effective for the accounting period”.

New subclause (7BA): after *subclause (7)* (page 56, after line 22), insert:

(7BA) In the definition of **FDP rules**, paragraph (d) is replaced by the following:

“(d) YA 2(5) to (7) (Meaning of income tax varied)”.

New subclause (18D): after *subclause (18C)* (page 60, after line 27), insert:

(18D) **Subsections (2BA) and (2BAB)** apply for the 2011–12 and later tax years, except for a tax position that is—

- (a) inconsistent with **subsections (2BA) and (2BAB)**; and
- (b) taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill is first considered by a committee of the whole House.

New subclause (19B): after *subclause (19)* (page 60, after line 29), insert:

(19B) **Subsection (4B)** applies for income years beginning on or after 1 July 2009.

New clause 95C

After *clause 95B* (page 64, after line 6), insert:

95C Schedule 26 repealed

Schedule 26 is repealed.

Clause 98

After *subclause (1)(c)* (page 65, after line 10), insert:

- (cb) after the entry for “Plan New Zealand”, an entry for “Queen Elizabeth II Diamond Jubilee Trust” is inserted:

New subclause (1B): After *subclause (1)* (page 65, after line 13), insert:

(1B) In schedule 32, repeal the entry for “Queen Elizabeth II Diamond Jubilee Trust”.

Subclause (2): replace “**Subsection (1)**” (page 65, line 14) with “**Subsection (1)(a) to (c) and (d)**”.

New subclause (3): after *subclause (2)* (page 65, after line 15), insert:

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

Clause 103

New subclause (1)(aa): In *subclause 1*, before *paragraph (a)* (page 66, before line 25), insert:

- (aa) in the words before the paragraphs, “subsections (2B)” is replaced by “subsections **(2BA)**, (2B)”:

New clause 118A

Before *clause 118* (page 78, before line 23), insert:

118A Determination on insurer as non-attributing active CFC

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

Clause 137

New subclause (1A): before *subclause (1)* (page 83, before line 10), insert:

- (1A) In section 5(13), in paragraph (b) of the proviso, “Accident Compensation Act 2001).” is replaced by “Accident Compensation Act 2001); or”, and the following is inserted:
- “(c) the supply of the contract of insurance is a supply that is chargeable with tax only because sections 5B and 8(4B) apply to it.”

Subclause (1): section 5(25), before paragraphs: replace “nature of a penalty” (page 83, line 20) with “nature of penalty”.

Subclause (1): section 5(25)(a): replace “supply of services” (page 83, line 22) with “supply of goods and services”.

Subclause (2): after “GST” (page 83, line 34), insert “on an amount charged”.

Clause 141

New subclause (1A): before *subclause (1)* (page 85, before line 2), insert:

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

“(vi) does not apply to the supply of a contract of insurance when the supplier is not required to account for output tax on the supply; and”.

Clause 146

Replace the clause (page 86, line 33 to page 87, line 8) with:

146 Concurrent uses of land

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

Clause 153B

Replace the words before the definition (page 90, lines 22 and 23) with “In section 4, the following is inserted in the appropriate alphabetical order:”.

Clause 162

Subclause (1): replace “**Expenditure on account of an employee**” (page 94, lines 8 to 9 and 9 to 10) with “Expenditure on account of an employee” in both places where it appears.

Clause 165

Subclause (1): section EC 1(1): after “on a business” (page 95, line 31), insert “, other than of selling livestock,”.

New heading and clauses 170B to 170E

After *clause 170* (page 97, after line 31), insert:

*Amendments to Taxation (Tax Administration and
Remedial Matters) Act 2011*

**170B Taxation (Tax Administration and Remedial Matters)
Act 2011**

Sections 170C to 170E amend the Taxation (Tax Administration and Remedial Matters) Act 2011.

170C New section DZ 19

Section 21(2) is repealed.

170D Net attributable CFC income or loss

Section 37(2) and (4) are repealed.

170E New section EZ 32C

Section 44(2) is repealed.

Explanatory note

Canterbury earthquakes

This Supplementary Order Paper inserts provisions amending the *Income Tax Act 2007* so as to make remedial changes relating to technical issues arising from the Canterbury earthquakes. The issues are:

- the timing of income from insurance receipts relating to deductions for expenditure or loss
- the timing of income from insurance receipts relating to a loss of business income
- the treatment of an item of depreciable property purchased with proceeds of insurance for interruption of business
- the treatment of insurance receipts for land damaged by a Canterbury earthquake and intended to be replaced by a purchase of land in greater Christchurch
- the treatment of a purchase of land or buildings by the Government under the Canterbury Earthquake Recovery Act 2011
- the treatment of depreciable property to which access is affected by a restriction imposed as a result of a Canterbury earthquake
- the deductibility of expenditure and loss incurred in relation to an income-earning activity that is interrupted as a result of a Canterbury earthquake.
- optional timing rules for income from insurance receipts relating to depreciable property damaged by a Canterbury earthquake and for deductions for expenditure in repairing the damage
- optional timing rules for income from insurance receipts, and disposal proceeds, relating to depreciable property damaged irreparably by a Canterbury earthquake and for deductions for expenditure in disposing of the property and depreciation loss
- the treatment of depreciable property, damaged by a Canterbury earthquake, that is repairable but uneconomic to repair
- the treatment of depreciable property damaged by a Canterbury earthquake, and insurance receipts for the damage, in the valuation of the assets of a person's New Zealand group and worldwide group.

New clause 11B replaces *section CG 4*. The current section provides that if an amount of insurance or compensation relates to expenditure or loss allowed as a deduction of the recipient, the amount is income and is allocated to the income year in which the amount is derived. The new section provides that the income is allocated to the later of the income year in which the amount is derived and the income year in which the expenditure or loss is incurred. The amendment applies for the 2011–12 and later income years. An exception is provided for the 2010–11 income year for a person who has an extension of time for filing a return for that year, under the *Canterbury Earthquake (Inland Revenue Acts) Order 2011*.

New clause 11C amends *section CG 5B* by replacing *subsection (3)*. Currently, the income from an insurance payment for loss of business income in an income

year is allocated to the earlier of the income year in which the payment is made and the income year in which the payment can be reasonably estimated. As a consequence, an insurance payment that is made, or can be reasonably estimated, soon after an insured event may be allocated to an income year preceding the year of the income that is being replaced. The new subsection prevents an early allocation in such a situation by allocating the replacement income to the year of the replaced income. The amendment applies for the 2011–12 and later income years. An exception is provided for the 2010–11 income year for a person who has an extension of time for filing a return for that year, under the *Canterbury Earthquake (Inland Revenue Acts) Order 2011*.

Clause 16C inserts *section CZ 25*, under which a person who owns an affected building on revenue account that is demolished or abandoned for demolition and who intends to replace the building in greater Canterbury is not taxed immediately on any insurance or compensation in excess of the person's deductions for the building. If the person acquires replacement property in or before the 2015–16 income year, the expenditure on that acquisition is taken into account in determining the excess amount that is taxed. This Supplementary Order Paper proposes to replace *subsection (1)(a)*, extending the treatment described above to: (a) insurance or compensation for land, as well as buildings, owned by a person on revenue account and affected by Canterbury earthquakes; and (b) amounts paid by the Government under *section 53(1) of the Canterbury Earthquake Recovery Act 2011* in purchasing affected land or buildings owned by a person on revenue account.

New clause 16D, inserts *new section CZ 26*. The new section overrides the effect of *sections CB 9 to CB 12*, relating to the resale of land and buildings within 10 years of acquisition, on the owner of land or buildings purchased by the Government under *section 53(1) of the Canterbury Earthquake Recovery Act 2011*. The effect of the change is that the land or buildings are not deemed by those sections to be owned on revenue account.

New clause 19D inserts *new section DZ 20*. Currently, expenditure or loss incurred in the absence of an income-earning activity is not deductible. The new section provides for expenditure or loss incurred by a person during the period for which an income-earning activity in the greater Canterbury area is interrupted because of a Canterbury earthquake. The expenditure or loss is to be deductible in the income year in which the person resumes the income-earning activity, provided that the resumption is before the 2016–17 income year. The amendment applies for the 2010–11 to the 2015–16 income years.

New clause 21CB amends *section EE 22* to provide for the treatment of insurance, indemnity, or compensation for damage to an item of depreciable property being depreciated as part of a pool. The clause inserts *new subsection (2B)*, which provides that if the damaged item is retained, the adjusted tax value of the pool is reduced by any excess of the amount received over the expenditure incurred. The clause also amends *subsection (3)* to provide that if the damaged item is disposed of, the adjusted tax value of the pool is reduced by any excess, of the total of the amount and other consideration received, over the expenditure or loss incurred. The amendment applies for the 2011–12 and later income

years. An exception is provided for the 2010–11 income year for a person who has an extension of time for filing a return for that year, under the *Canterbury Earthquake (Inland Revenue Acts) Order 2011*.

New clause 21CC amends *section EE 45(8)* so that proceeds such as the scrap value, from the disposal of an item of depreciable property that is irreparably damaged or is a building rendered useless, are included in the amount derived by the owner of the item. The amendment applies for the 2011–12 and later income years. An exception is provided for the 2010–11 income year for a person who has an extension of time for filing a return for that year, under the *Canterbury Earthquake (Inland Revenue Acts) Order 2011*.

New clause 27B amends *section EZ 23B*, which currently applies to depreciable property that is irreparably damaged, or a building rendered useless, by the Canterbury earthquakes. Under the amendment, the section also applies to depreciable property that is assessed to be uneconomic to repair. The amendment applies for the 2010–11 to the 2015–16 income years.

New clause 27C inserts *new section EZ 23C*, which provides for the owner of an item of depreciable property damaged by the Canterbury earthquakes who receives an amount of insurance for the damage when the item is not irreparably damaged, or a building rendered useless, but is assessed as uneconomic to repair. The owner is treated as disposing of the item for consideration equal to the insurance proceeds and then repurchasing the item for zero consideration. The amendment applies for the 2010–11 to the 2015–16 income years.

New clause 27D inserts *new section EZ 23D*, which limits the amount of depreciation recovery income derived by the owner of an item of depreciable property damaged by the Canterbury earthquakes who receives an amount of insurance for the damage when the item is not irreparably damaged, or a building rendered useless but is not covered by *new section EZ 23C*. The income is limited to the amount of depreciation loss on the item that has been a deduction for the owner.

New clause 27E inserts *new section EZ 23E*. For an item of property to be depreciated, the item must be used in a business or available for use. The new section provides that an item of property which a person cannot use in the 2015–16 or earlier income year, because of restrictions on access imposed as a result of a Canterbury earthquake, is to be treated as being available for use in the income year. The amendment applies for the 2010–11 to the 2015–16 income years.

New clause 27F inserts *new section EZ 23F*, which provides an optional timing rule applicable to an item of depreciable property that is damaged by a Canterbury earthquake and is irreparable, or a building rendered useless, or assessed as uneconomic to repair. Under the rule, insurance proceeds for the item, proceeds from disposing of the item, and costs of the disposal, may be allocated to the earlier of the 2015–16 income year and the first income year in which all the amounts are or have been incurred, derived, or able to be reasonably estimated. The amendment applies for the 2010–11 to the 2015–16 income years.

New clause 27G inserts *new section EZ 23G*, which provides an optional timing rule applicable to an item of depreciable property that has been damaged by a Canterbury earthquake but is usable after repair. Under the rule, insurance pro-

ceeds for the item and costs of repairing the item may be allocated to the earlier of the 2015–16 income year and the first income year in which the amounts are or have been incurred, derived, or able to be reasonably estimated. The amendment applies for the 2010–11 to the 2015–16 income years.

New clause 32BA inserts a new heading and new section FZ 7, which provides for an optional treatment of depreciable property damaged by a Canterbury earthquake, and insurance proceeds for the damage, for the purposes of valuing the assets of a person’s New Zealand group and worldwide group. The amendment applies for income years ending after 4 September 2010 and before the 2016–17 income year.

New clause 88(2BA), (2BAB), and (18D) amend section YA 1, the definition of *capital contribution*, as it relates to depreciable property. Currently, a business interruption insurance payment used to purchase replacement property is not included in the purchaser’s capital contribution for the replacement property. The amendments provide that an insurance payment for interruption or impairment of business that is used to purchase replacement property in the 2011–12 or later income year is included in the capital contribution for the replacement property. An exception is provided for a person who uses a different treatment in a tax return filed before the Bill is first considered by a committee of the whole House.

FIF and CFC rules

This Supplementary Order Paper changes the rules in the *Income Tax Act 2007* governing the attribution to a resident of income and deductions from a foreign company, referred to as a foreign investment fund (a *FIF*), in which the resident has an interest. If residents control the foreign company, it is referred to as a controlled foreign company (a *CFC*). The changes improve the matching of the attributed income of a *CFC* with the attributed deductions that are allowed for related expenditure or loss. The effect is that taxpayers are more likely to pay tax on the profit from their business operations, rather than on the gross income. The changes apply to income years beginning on or after 1 July 2009. They:

- tax the gains of a *CFC* from its liabilities, such as the exchange rate gains on a foreign-currency loan, only to the extent that the loss or expenditure relating to the liability would be deductible; these changes are in replacement of *current section EZ 32C*, which was a temporary solution to the same problem
- allow a resident to elect not to apply the active business test for a *CFC*; an electing resident incurs tax on all passive income in order to claim the related deductions

Provisions are also inserted to make technical corrections and improvements to the *FIF* and *CFC* rules. They include:

- including in the income potentially attributed to a resident from a *CFC* all income from a business of insurance or being an insurer
- limiting the exemption, from being attributed to a resident, for a *CFC*’s income from some listed Australian companies

- limiting the application of a test to determine whether a FIF's income from a foreign company is attributed to a resident

New clause 18B amends *section DN 4*, to limit the use of losses arising when taxpayers have elected not to apply the active business test for a CFC.

New clause 18C amends *section DN 8*, to limit the use of losses arising when taxpayers have elected not to apply the active business test for a FIF.

New clause 19C repeals *section DZ 19*, because the policy measure it implements is being superseded by the changes to *section EX 20C*.

New clause 22B amends *section EX 18A*, allowing taxpayers to elect not to apply the active business test for a CFC.

New clause 22C amends *section EX 20B* so that all, rather than part, of the income of a CFC from a business of insurance, or from being an insurer, is included in the income potentially attributed to a resident with an interest in the CFC. The change is retrospective to income years beginning on or after *1 July 2009*.

New clause 22D amends *section EX 20C*, to tax gains on liabilities in a similar way to losses or expenditure relating to those liabilities.

New clause 22E amends *section EX 20D* to make changes consequential on amendments to *section EX 20C*.

New clause 22F amends *section EX 21B* to provide for the effect of an election under *new section EX 73*.

An amendment in *new clause 23B* to *section EX 35* relates to income of a CFC from a listed Australian company of a type to which the attributing rules do not apply if the resident's interest in the Australian company is more than 10%. Currently, if a CFC holds an interest of more than 10% in such a company, none of the CFC's income from the Australian company is attributed to a New Zealander with an interest in the CFC. That exemption should not apply except when the New Zealander's indirect interest in the Australian company, typically found by multiplying the New Zealander's direct interest in the CFC by the CFC's direct interest in the Australian company, is 10%. The change is retrospective to income years beginning on or after *1 July 2011*.

An amendment in *new clause 24B* relates to the application of a test to determine whether a FIF's income from a foreign company is attributed to a resident with an interest in the FIF. The amendment to *section EX 50* provides that the resident cannot apply the test for a period to the FIF and a foreign company if the resident applies the test separately to the FIF and a different foreign company. The change is retrospective to income years beginning on or after *1 July 2011*.

New clause 25BA inserts a new heading and *new section EX 73*, which regulates the making of elections not to apply the active business test for a CFC. It prescribes the process for making or revoking an election.

New clause 28B repeals *section EZ 32C*, because the policy measure it implements is being superseded by the changes to *section EX 20C*.

New clause 28C inserts *new section EZ 32D*, which is a transitional provision for the introduction of the changes to *section EX 20C*.

New clause 28D inserts *new section EZ 32E*, which provides that a person who is liable to pay terminal tax for a past income year because of the retrospective nature of the change in *clause 22C* is not liable to pay interest on the liability for the period ending on the later of *30 June 2012* and a new due date fixed by the Commissioner.

New clause 56B replaces *section IQ 2(1)* with *new section IQ 2(1) and (1BA)*. The new subsections provide for the treatment of attributed CFC net loss and FIF net loss from CFCs and FIFs affected by an election under *section EX 73*.

New clause 88(4B) inserts in *section YA 1* new definitions relating to elections under *section EX 73*.

New clauses 170C to 170E repeal provisions of the *Taxation (Tax Administration and Remedial Matters) Act 2011* which would otherwise repeal, in 2013, provisions of the *Income Tax Act 2007*. The removed provisions are superseded by provisions in the Supplementary Order Paper.

GST on premiums and receipts under insurance contract

This Supplementary Order Paper also inserts provisions amending the *Goods and Services Tax Act 1985* (the *GST Act*), remedying an asymmetry in the goods and services tax (*GST*) treatment of premiums for and receipts under a contract of insurance. The asymmetry has arisen as a result of the application of the reverse charge rules in the *GST Act* when an insurer is a non-resident. The amendment is backdated to the commencement of the reverse charge rules.

New clause 137(1A) amends *section 5(13)* to prevent a payment received from a non-resident insurer from being a payment for a taxable supply under the *GST Act*.

New clause 141(1A) amends *section 20(3)(d)* to prevent a payment of a premium to a non-resident insurer from being included in the calculation of a deduction under the *GST Act*.

Clause 146 is replaced, returning the amendment of *section 21E(1)* to the form in the clause as introduced.

Miscellaneous amendments

In *clause 98*, *new subclause (1)(cb)* inserts the *Queen Elizabeth II Diamond Jubilee Trust* into the list of organisations in *schedule 32 of the Income Tax Act 2007*. *New subclause (1B)* repeals the entry on *1 April 2014*.

Amendments to *clauses 20(1)*, *32(2)*, *38(1)*, *83(3)* and *(5)*, and *165(1)* make minor technical improvements, including by clarifying drafting, extending the application of a saving provision, and removing unnecessary changes.

New clauses 24C, 24D, 31B, 33BA, 39(1D), 40B, 57B, 58C, 70B, 81B, 88(7BA), 95C, 103(1)(aa), 118A, 137(1), 153B, and 162 make minor technical amendments, including making amendments consequential on earlier amending Acts, correcting punctuation and cross-references, removing superfluous words, correcting word order, and correcting fonts.
