

Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Bill

Government Bill

Explanatory note

This portion of the explanatory note provides a detailed analysis of the proposed amendments in the bill.

Some of the amendments in the bill have retrospective application, to ensure that the intended policy of the provisions, as amended, applies to all taxpayers intended to be subject to the policy.

Clauses with retrospective effect are identified in the explanatory notes.

Unless the contrary is indicated, the amendments come into force on the date that the bill receives the Royal assent.

Part 1

Amendments to Income Tax Act 1994

Taxation of the beneficiary income of a minor

The bill proposes a rule to ensure that distributions of beneficiary income to a child under the age of 16 years are taxed at a final tax rate of 33% (the minor beneficiary rule). The minor beneficiary rule will only apply if the beneficiary income is derived from property that was settled on a trust by a relative or a guardian of the minor or a person associated with a relative or guardian.

The purpose of this rule is to support the Government's objective of distributing the tax burden equitably through a progressive tax system. Normally a family's expenses will be met from parental income which has been taxed at the parents' marginal tax rates. However, by placing income-earning assets in a trust and distributing the income to the children as beneficiary income, families can meet their costs

from income taxed at their children's marginal tax rates. While this situation undermines the progressiveness of the taxation system, it will often not fall within existing anti-avoidance legislation.

The incentive to place income-earning assets in a trust has increased since the current trust taxation rules were introduced in 1988. The difference between the lowest marginal tax rate and the highest has increased, especially with the introduction of the 39% rate earlier this year.

The following exceptions ensure that the rule focuses on particular situations where a family can gain a tax advantage by having income distributed as beneficiary income to a child:

- beneficiary income derived from property if the settlor received that property as agent for the beneficiary from someone other than a relative, guardian or his or her associate;
- beneficiary income derived from property when the settlor has been ordered by a court to pay damages or compensation to the child;
- beneficiary income derived from property settled on the trust under the terms of a will, codicil, intestacy or any variation of these by a court, if the minor was alive within 12 months after the date of the settlor's death;
- beneficiary income from a group investment fund;
- beneficiary income distributed to a non-resident minor;
- beneficiary income distributed to a disabled minor for whom a child disability allowance is paid under the Social Security Act 1964; and
- beneficiary income distributed to minors from the Maori Trustee and Maori authorities.

If beneficiary income subject to the rule is \$200 or less in an income year, the minor beneficiary rule will not apply. If the income is over \$200, it will all be subject to the rule.

It is proposed that the tax on minor beneficiary income be a final tax rate of 33% and the beneficiary income not be included when calculating the minor's final tax liability. This means that beneficiary income will be taxed at the trust level on behalf of the beneficiary.

The minor beneficiary rule will apply in respect of income derived from 1 April 2001 or for the equivalent income year.

Services-related payments: restrictive covenants and exit inducements

Amendments are proposed to tax certain services-related payments which represent a risk to the tax base. These payments are referred to as “restrictive covenant” and “exit inducement” payments. A “restrictive covenant” payment is the consideration given for a restriction on a person’s ability to perform services. An “exit inducement” payment is the consideration given to a person to give up a particular status or position in the context of personal services.

These payments pose a risk to the personal services income tax base because they are non-taxable to the recipient and can be paid in substitution for taxable personal services income (including wages or salary), and in some cases they may be deductible to the payer. Such arrangements have been increasing in recent years and are likely to continue to increase as a result of the new top personal income tax rate of 39%.

In addition, there are a number of associated amendments. These include excluding restrictive covenant payments connected with the sale of a business from the charging provision, providing a deduction for expenditure on restrictive covenants and exit inducements, and including restrictive covenant and exit inducement payments made to employees within the PAYE rules.

In 1998, the Committee of Experts on Tax Compliance reviewed the treatment of restrictive covenant and exit inducement payments and recommended that the Government consider legislation to make them taxable.

On 30 June 2000, the Government released an issues paper containing proposals to address the revenue risk posed by these services-related payments by making them taxable. In line with the generic tax policy process, submissions were invited on these proposals.

After further consideration and in the light of submissions, two modifications have been made by the Government to the proposals contained in the issues paper. These modifications are an exclusion for restrictive covenant payments connected with the sale of a business and the restriction of the application of the PAYE rules to payments made to employees. With these exceptions, the design of the proposed amendments in the bill follows that set out in the issues paper.

The proposed amendments will apply to amounts derived on and after the date of enactment. This will include amounts derived in respect of arrangements made before the date of enactment.

Deduction rates of resident withholding tax for companies

The bill gives effect to the Budget announcement that the Government would legislate to remove the ability of companies to elect the 19.5% resident withholding tax (RWT) rate. This was on the basis that companies that choose the lower rate rather than the 33% corporate rate obtain a short-term timing advantage before the discrepancy is made good upon payment of provisional or terminal tax.

Companies receiving interest payments now are given a 2-month window after 1 April 2001 to notify their interest payers of their status and the interest payer is given a month to apply the new rates as a result of the notification. This transition is to reduce compliance costs. Companies that start receiving interest on or after 1 April 2001 must notify the interest payer on becoming entitled to receive interest. Interest payers must then apply that notification to payments made on or after receipt.

Distributions by Treaty of Waitangi Fisheries Commission

An amendment is proposed to treat the Treaty of Waitangi Fisheries Commission to be “in the course of termination” when the Commission allocates fisheries settlement assets to iwi. This ensures that distributions made from tax paid income will not be a distribution subject to resident withholding tax and so removes the potential for double taxation under the Maori authority rules.

The proposed amendment will apply from the date on which the bill is introduced.

Definition of “qualifying person” for family assistance

The bill addresses a potential problem that allows assistance to be provided to families who were once resident in New Zealand and who are now permanently overseas and have no connection to New Zealand. An amendment to the definition of qualifying person ensures that family assistance is only provided to families who have been in New Zealand for 12 months at any time and are resident here for tax purposes at the time family assistance is claimed.

The amendment will apply from the 1995–96 income year. A savings provision has been inserted to ensure that families who have claimed a credit prior to the date of the bill’s introduction are not disadvantaged.

Conduit tax relief

Two amendments are proposed in relation to the conduit tax rules introduced in October 1997. Firstly, amendments are made to the non-resident withholding tax (NRWT) provisions to correct the NRWT rate payable on non-cash dividends that carry “conduit tax relief credits”. Dividends with full tax credits are subject to a lower rate of NRWT than those without tax credits. Conduit tax reform introduced a new class of tax credit, a conduit tax relief credit, which could also be attached to dividends. While the rate of NRWT was adjusted for cash dividends with full conduit tax relief credits attached, non-cash dividends were overlooked. The proposed amendments remedy this.

Secondly, the conduit tax relief rules relieve a company from tax on certain foreign income to the extent that income is derived on behalf of non-resident shareholders. When the rules were introduced, New Zealand holding companies wholly owned by a non-resident were allowed to be treated as non-resident shareholders to allow the companies they invest in to receive conduit tax relief. It was also intended that relief apply when a non-resident owns a company through a chain of 100% owned companies. The legislation does not currently achieve this. The proposed amendments reflect the intended policy.

Non-resident withholding tax and approved issuer levy

Amendments are proposed to the NRWT provisions in conjunction with changes to the approved issuer levy regime in the Stamp and Cheque Duties Act 1971. Approved issuer levy is payable by a borrower on certain interest payments to non-residents. Currently if the levy is paid late or at the incorrect rate, NRWT at 10% or 15% is payable on the interest. The amendments reflect a policy change to apply the general compliance and penalty provisions to approved issuer levy that is paid late or at the incorrect rate, rather than imposing NRWT.

Exemption for overseas stake money

An amendment is proposed to exempt from income tax stake money won from a horse or greyhound competing in an overseas race. The amendment ensures that stake money won in an overseas race is treated in the same way as stake money won in a race held in New Zealand. The amendment applies from the 2001–02 income year.

Imputation credits attached to dividends received by non-resident partner

Amendments are proposed to the imputation provisions to correctly allocate imputation credits between resident and non-resident partners when shares are owned by a partnership.

Tax simplification for wage and salary earners

A number of minor remedial amendments are being made to the core provisions, Part L and definitions in section OB 1 to clarify the responsibilities of non-filing taxpayers and Inland Revenue's obligations to those taxpayers.

The amendments are intended to work in conjunction with the tax simplification reforms for wage and salary earners and will apply from when those reforms took effect, the 1999–2000 income year.

Donee organisation

The Leprosy Mission (New Zealand), which is currently listed in section KC 5(1) of the Income Tax Act 1994, has changed its name to The Leprosy Mission New Zealand Incorporated. This amendment reflects that change, and is effective from the 2000–01 income year.

Part 2

Amendments to Tax Administration Act 1994

Tax simplification for businesses

Less Taxing Tax, a government discussion document released last year, outlined a number of measures aimed at reducing compliance costs for businesses. This bill enacts 3 of those tax simplification measures. They are aimed at increasing voluntary compliance by preventing small omissions or failures from creating disproportionate compliance costs.

An amendment is being made to section 139B to provide relief from the initial late payment penalty for those who pay just a few days late. The initial late payment penalty is being staggered so that a 1% penalty applies on the failure to meet the due date, and a 4% penalty applies if the payment is not made within a week of the due date. The new structure supports the due date while providing a window to correct any omission without incurring further penalties. Currently, a failure to meet the due date incurs a 5% penalty.

Section 139B is also being amended to prevent incremental late payment penalties from applying while taxpayers meet the terms of their instalment arrangements. Currently, incremental penalties continue to accrue during the term of instalment arrangements and are only remitted on the successful completion of those arrangements. This means that a partial failure can result in the application of all the incremental penalties that would normally have accumulated during the term of the arrangement. The measure rewards compliance and gives taxpayers a clearer understanding of their liability.

The amendments will apply from the 2002–03 income year.

Tax simplification for wage and salary earners

A number of minor remedial amendments are being made to Parts IIA, III and IX to clarify the responsibilities of non-filing taxpayers and Inland Revenue's obligations to those taxpayers.

The amendments are intended to work in conjunction with the tax simplification reforms for wage and salary earners and will apply from when those reforms took effect, the 1999–2000 income year.

Use-of-money interest amendments

An amendment is proposed to allow Inland Revenue to offset use-of-money interest payable to a taxpayer against a taxpayer's unpaid tax liability from the date an assessment can be issued. This would reduce a taxpayer's exposure to penalties and interest. The amendment applies from the enactment of the use-of-money interest rules, 1 April 1998.

An amendment is also proposed to clarify the period for which taxpayers are eligible to receive a cancellation of use-of-money interest if they receive both a notice of assessment and a statement of account and pay the full amount due within a set grace period.

The proposed amendment ensures that taxpayers who pay this amount within overlapping grace periods will be eligible for cancellations of interest from the day after the date the notice of assessment is issued until the day payment is made. It is proposed that the amendment apply from the date of enactment.

Compliance and penalty provisions to apply to approved issuer levy

Amendments are proposed to the definition of “tax” so that the general compliance and penalty provisions will apply to approved issuer levy that is paid late or paid at the incorrect rate. These changes are made in conjunction with amendments to the NRWT provisions of the Income Tax Act 1994 and the approved issuer levy regime in the Stamp and Cheque Duties Act 1971.

Part 3

Amendments to Income Tax Act 1976

Definition of “qualifying person” for family assistance

Mirroring the amendment proposed in the Income Tax Act 1994, the definition of qualifying person in section 374A is amended to ensure that family assistance is only provided to families who have been in New Zealand for 12 months at any time and are resident here for tax purposes at the time of claiming family assistance.

The amendment will apply from the 1992–93 income year. A savings provision has been inserted to ensure that families who have claimed a credit prior to the date of the bill’s introduction are not disadvantaged.

Part 4

Amendments to Goods and Services Tax Act 1985

Tax simplification for businesses

The third proposal in this bill from the discussion document *Less Taxing Tax* moves the return of GST adjustments on the value of fringe benefits to FBT returns. The adjustment is currently required to be made as part of GST returns. Doing so involves referring to prior FBT returns and keeping extra records. Moving the return of this adjustment will make it easier to calculate as well as reduce the incidence of its omission. The enactment of the measure will mean

that some taxpayers will need to make a “catch up” adjustment as part of their first FBT return after 1 April 2002.

The amendments will apply from 1 April 2002.

Part 5

Amendments to Stamp and Cheque Duties Act 1971

Approved issuer levy

Three amendments are proposed to the approved issuer levy (AIL) provisions to improve the equity of the AIL rules and to ensure more consistent administration with other revenues. AIL is payable at the rate of 2% on certain payments of interest to non-resident lenders.

Firstly, it is proposed that the general compliance and penalty rules in the Tax Administration Act 1994 will apply to AIL that is paid late or at the incorrect rate, rather than requiring NRWT to be paid at 10% or 15% on the interest paid.

Secondly, it is proposed to clarify that if AIL is paid on behalf of an approved issuer, non-resident withholding tax will still be zero-rated.

The third amendment proposes to allow taxpayers with annual AIL liabilities of less than \$500 to make payments 6-monthly instead of monthly.

Clause by clause analysis

Part 1

Amendments to Income Tax Act 1994

Clause 4 inserts a new *section BB 2(1A)* to clarify that a non-filing taxpayer is not required to furnish a return. *Section BB 2(3)* is also amended to clarify the obligations of persons with withholding liabilities.

Clause 5 replaces *section BC 2* to distinguish the way filing and non-filing taxpayers' liabilities are calculated.

Clause 6 amends *section CB 9* to exempt from income tax stakes won for horse, trotting or dog races held outside New Zealand.

Clause 7 inserts a new subpart *CHA*. New *sections CHA 1* and *CHA 2* include restrictive covenant payments for services and exit inducement payments within gross income.

Clause 8 inserts new sections *DJ 20* and *DJ 21*. New section *DJ 20* allows a deduction for expenditure incurred in making restrictive covenant or exit inducement payments. New section *DJ 21* allows a deduction if a person receives gross income from a restrictive covenant but subsequently has to repay all or part of the income received due to a breach of the terms of the restrictive covenant.

Clause 9 inserts a new section *EO 6* to require a person making a deduction under new section *DJ 21* to allocate the amount to the income year in which the person repays the amount.

Clause 10 amends section *FF 1* to correctly refer to the defined term, *matrimonial agreement*.

Clause 11 amends section *GC 11* to correct a section reference.

Clause 12 inserts a new section *GC 14F* to allow the Commissioner to treat an amount under an arrangement as a restrictive covenant payment if the arrangement was entered into to avoid the application of the proposed new section *CHA 1*.

Clause 13 inserts new sections *HH 3A* and *HH 3B* to tax trust distributions of beneficiary income to minors at the 33% trustee rate.

Clause 14 inserts a new section *HI 1A* to treat distributions of assets by the Treaty of Waitangi Fisheries Commission as distributions made in the course of the termination of a Maori authority.

Clause 15 amends section *KC 5* to reflect the Leprosy Mission's change of name.

Clause 16 inserts a new section *LB 1(4A)* and *LB 1(4B)* to ensure that imputation credits are correctly allocated between resident and non-resident partners of a partnership.

Clause 17 amends section *LD 1* to exclude non-filing taxpayers from the section's application.

Clause 18 amends section *NC 6* to correctly refer to the defined term, *basic tax deductions*.

Clause 19 consequentially amends section *NF 2* to refer to the resident withholding tax deduction rates for companies, proposed by *clause 26*.

Clause 20 inserts new sections *NF 2B* to *NF 2D*. New section *NF 2B* requires companies, other than trustee companies, receiving resident withholding income on or after 1 April 2001 to notify their company status to interest payers. New section *NF 2C* requires companies,

other than trustee companies, with an entitlement on 31 March 2001 to receive resident withholding income to notify their company status to interest payers. If an interest payer receives notice from a company between 1 April 2001 and 31 May 2001, new *subsection (2)* requires the interest payer to apply the appropriate RWT rate to payments of resident withholding income made on and after the end of 1 month after the date on which notice is received from the company. New *section NF 2D* allows companies to elect to have the interest on their resident withholding income subject to resident withholding tax at the rates of 39% or 33%.

Clause 21 repeals *section NG 1(3)*, as a result of the repeal of *section 86I* of the Stamp and Cheque Duties Act 1971, proposed by *clause 45*.

Clause 22 amends *section NG 2* to correct a cross reference.

Clause 23 amends *section NG 9* to ensure that the 15% non-resident withholding tax rate is applied to non-cash dividends that have conduit tax relief credits attached.

Clause 24 amends *section OB 1*. The definition of *extra emolument* is replaced to include restrictive covenant and exit inducement payments. The definition of *fully conduit tax relief credited* is consequentially amended to refer to *section NG 9*. New definitions, *going concern* and *minor* are inserted as a consequence of proposed new *sections CHA 1* and *HH 3A*, respectively. The definition of *non-filing taxpayer* is amended to reflect the clarifications being made about the Commissioner's role to send income statements to taxpayers. The definition of *qualifying person* is amended to ensure that family assistance is only provided to those qualifying persons who are resident in New Zealand for tax purposes. This amendment applies from the 1995–96 income year, but not to persons who claimed credits before the date of the bill's introduction. The definition of *settlor* is amended to exclude a relative, guardian or an associated person who provides services to a trust from which beneficiary income subject to the minor beneficiary rule is derived. The definition of *taxable activity* is consequentially amended to refer to new *section CHA 1*.

Clause 25 amends *section OE 8* to allow conduit tax relief to be correctly applied to holding companies. The amendment applies from 1 October 1997, the date from which the conduit tax rules came into force.

Clause 26 inserts new *clauses 1A to 1C* in *Schedule 14* to provide the deduction rates of resident withholding tax for interest payers who make payments of resident withholding income to companies.

Part 2

Amendments to Tax Administration Act 1994

Clause 28 amends *section 3* to remove the approved issuer levy from the definition of *tax* and include the approved issuer levy within the compliance and penalties regime. Consequential amendments are also made to the definitions of *incremental late payment penalty* and *initial late payment penalty* as a result of the amendments to *section 139B*, proposed by *clause 33*.

Clause 29 amends *section 15B* to clarify that non-filing taxpayers are not required to determine their tax liability.

Clause 30 consequentially amends *section 25* to refer to the resident withholding tax deduction rates for companies in *Schedule 14, clause 1C*.

Clause 31 amends *section 33A* to improve its clarity.

Clause 32 amends *section 120F* to allow use-of-money interest payable to a taxpayer to be offset against unpaid tax on and after the date the taxpayer furnishes their return of income. The amendment applies from 1 April 1998, the date from which the use-of-money interest rules came into force.

Clause 33 amends *section 139B* to apply the initial late payment penalty incrementally, so that 1% is applied the day after the due date for unpaid tax, and 4% is applied 7 days after the due date. An amendment is also made to ensure that incremental late payment penalties are not imposed for the months that taxpayers comply with their instalment arrangements.

Clause 34 inserts a new *section 141JA* to ensure that an employee who is a non-filing taxpayer is not subject to penalties in Part IX if the employee has provided their employer with their correct tax file number and tax code, and has, if required to do so, responded to an income statement.

Clause 35 amends *section 183C* to clarify that when both a notice of assessment and a statement of account have been issued and the grace periods overlap, a taxpayer is eligible for the cancellation of debit interest for the period beginning the day after the date the

notice of assessment is issued and ending on the date of payment if the payment is made within the overlapping grace periods.

Clause 36 amends *section 184A* to remove the approved issuer levy from that section's definition of *tax*.

Part 3

Amendments to Income Tax Act 1976

Clause 38 amends the definition of *qualifying person* in *section 374A* to ensure that family assistance is only provided to those qualifying persons who are resident in New Zealand for tax purposes. The amendment applies to the 1992–93 and 1994–95 income years, but does not apply to persons who claimed family assistance before the date of the bill's introduction.

Part 4

Amendments to Goods and Services Tax Act 1985

Clause 40 amends *section 20* to exclude GST on the taxable value of a fringe benefit from the amount of output tax included in a registered person's calculation of tax payable.

Clause 41 amends *section 211* to treat a fringe benefit as being a supply of goods and services at the time it is provided or granted.

Clause 42 inserts a new *section 23A* to provide that a registered person must pay the goods and services tax on fringe benefits in their FBT return.

Part 5

Amendments to Stamp and Cheque Duties Act 1971

Clause 44 amends *section 86H* to allow an approved issuer to request that the Commissioner revoke the registration of a transaction or class of transactions.

Clause 45 amends *section 86I* to allow payment of the approved issuer levy by persons other than the approved issuer to still be zero-rated for non-resident withholding tax. The amendment applies on and after 1 August 1991, the date from which the approved issuer levy was introduced. *Clause 45* also repeals *section 86I* from the date the bill receives the Royal assent.

Clause 46 inserts a new *section 86IA* to provide for the liability of the approved issuer levy.

Clause 47 consequentially amends *section 86K* to refer to a person other than the approved issuer.

Clause 48 inserts a new *section 86KA* to introduce rules, similar to those for resident withholding tax and non-resident withholding tax, to allow the approved issuer levy to be paid 6-monthly.

Clause 49 repeals *section 86M* as a result of the approved issuer levy being included within the compliance and penalties regime of the Tax Administration Act 1994.

Hon Dr Michael Cullen

Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters)

Government Bill

Contents

1	Title		
2	Commencement		
	Part 1		
	Amendments to Income Tax Act 1994		
3	Income Tax Act 1994		
4	Principal obligations		
5	Section BC 2 replaced		
	BC 2 Non-filing and filing taxpayers		
6	Other exempt income		
7	New subpart CHA inserted		
	CHA 1 Restrictive covenants		
	CHA 2 Exit inducements		
8	New sections DJ 20 and DJ 21 inserted		
	DJ 20 Expenditure incurred on restrictive covenants or exit inducements		
	DJ 21 Deduction if restrictive covenant breached		
9	New section EO 6 inserted		
	EO 6 Timing of deduction for payment made when restrictive covenant breached		
10	Shares or options		
11	Films		
12	New section GC 14F inserted		
	GC 14F Arrangement to avoid application of restrictive covenant rule		
13	New sections HH 3A and HH 3B inserted		
	HH 3A Beneficiary income of minors		
	HH 3B Source of beneficiary income and particular distributions		
14	New section HI 1A inserted		
	HI 1A Distribution by Treaty of Waitangi Fisheries Commission		
15	Rebate for gifts of money		
16	Determination of amount of credit in certain cases		
17	Tax deductions to be credited against tax assessed		
18	Amounts of tax deductions		
19	Deduction of resident withholding tax		
20	New sections NF 2B to NF 2D inserted		
	NF 2B Companies to notify interest payer		
	NF 2C Transitional rule-notifications by companies between 1 April 2001 and 31 May 2001 (both dates inclusive)		
	NF 2D Election rates of deduction for companies		
21	Application of NRWT rules		
22	Non-resident withholding tax imposed		
23	Non-resident withholding tax on dividends not paid in money		
24	Definitions		
25	Residence of conduit tax relief company shareholders		
26	Schedule 14—Rate of resident withholding tax deductions		

**Taxation (Beneficiary Income of Minors,
Services-Related Payments
and Remedial Matters)**

cl 1

<p style="text-align: center;">Part 2 Amendments to Tax Administration Act 1994</p> <p>27 Tax Administration Act 1994</p> <p>28 Interpretation</p> <p>29 Taxpayer's tax obligations</p> <p>30 Resident withholding tax deduction certificates</p> <p>31 Annual income tax returns not required</p> <p>32 Interest priority and rights of Commissioner</p> <p>33 Late payment penalty</p> <p>34 New section 141JA inserted 141JA Application of Part IX to non-filing taxpayers</p> <p>35 Cancellation of interest</p> <p>36 Refund of tax paid in excess made by direct credit to bank account</p> <p style="text-align: center;">Part 3 Amendments to Income Tax Act 1976</p> <p>37 Income Tax Act 1976</p> <p>38 Interpretation</p>	<p style="text-align: center;">Part 4 Amendments to Goods and Services Tax Act 1985</p> <p>39 Goods and Services Tax Act 1985</p> <p>40 Calculation of tax payable</p> <p>41 Fringe benefits and entertainment expenses</p> <p>42 New section 23A inserted 23A Payment of tax relating to fringe benefits</p> <p style="text-align: center;">Part 5 Amendments to Stamp and Cheque Duties Act 1971</p> <p>43 Stamp and Cheque Duties Act 1971</p> <p>44 Registration of securities by Commissioner</p> <p>45 Application of approved issuer levy and zero-rating</p> <p>46 New section 86IA inserted 86IA Liability for payment of approved issuer levy</p> <p>47 Payment of approved issuer levy</p> <p>48 New section 86KA inserted 86KA Payment of approved issuer levy in instalments</p> <p>49 Relief in cases of serious hardship</p>
---	---

The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act **2000**.

2 Commencement 5
This Act comes into force on the date on which it receives the Royal assent.

Part 1
Amendments to Income Tax Act 1994

3 Income Tax Act 1994 10
This Part amends the Income Tax Act 1994¹.

¹ 1994, No 164

4 Principal obligations

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

“Non-filing taxpayer

“(1A) Despite **subsection (1)**, a person who is a non-filing taxpayer is not required to furnish a return.”

5

- (2) Section BB 2(3) is replaced by:

“Withholding liabilities

“(3) A person who has a withholding liability must satisfy that liability in accordance with subpart BE.”

- (3) In section BB 2, in the list of defined terms, “non-filing taxpayer” is inserted after “income tax liability”.

10

- (4) **Subsections (1) to (3)** apply to the 1999–2000 and subsequent income years.

5 Section BC 2 replaced

- (1) Section BC 2 is replaced by:

15

“BC 2 Non-filing and filing taxpayers

“Non-filing taxpayer

“(1) A non-filing taxpayer’s income tax liability for an income year is the total of the tax deductions required to be made from amounts of gross income included in the non-filing taxpayer’s annual gross income for the income year.

20

“Filing taxpayer

“(2) A filing taxpayer’s income tax liability for an income year is calculated under sections BC 4 to BC 8.

“Filing taxpayer with schedular gross income

25

“(3) A filing taxpayer’s income tax liability is modified by section BC 3 if the taxpayer has schedular gross income.

“Defined: amount, annual gross income, gross income, income tax liability, income year, non-filing taxpayer, schedular gross income, tax deduction, taxpayer”.

30

- (3) **Subsection (1)** applies to the 1999–2000 and subsequent income years.

6 Other exempt income

- (1) After section CB 9(c), the following is inserted:

**Taxation (Beneficiary Income of Minors,
Services-Related Payments
and Remedial Matters)**

Part 1 cl 6

“(ca) stakes, being prize money for a horse race, trotting race or dog race held outside New Zealand:”.

- (2) **Subsection (1)** applies to the 2001–02 and subsequent income years.

7 New subpart CHA inserted 5

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

“Subpart CHA—Restrictive covenant and exit
inducement payments

“CHA 1 Restrictive covenants

- “(1) If a person (person A) gives an undertaking, whether or not legally enforceable, that restricts, or is intended to restrict, the person’s ability to perform services as an employee, office holder or independent contractor and a person, whether or not person A, derives an amount in respect of the undertaking, the amount derived is gross income of person A. 10
15

- “(2) An amount is not gross income if—

- “(a) the amount is derived by person A as part of the consideration for the sale by person A to another person (person B) of a taxable activity as a going concern; and
“(b) the amount is consideration for an undertaking by person A not to provide goods or services in competition with the goods or services provided or to be provided by person B in respect of the taxable activity; and
“(c) the amount is paid by person B to person A; and
“(d) person A does not provide services to person B after the sale of the taxable activity, other than services that are incidental to the sale and are temporary in nature; and
“(e) persons A and B agree in writing that the transaction is a sale of a taxable activity as a going concern. 20
25

- “(3) For the purpose of **subsection (2)**, the sale of a taxable activity as a going concern includes— 30

- “(a) the sale of part of a taxable activity as a going concern; and
“(b) the sale of all of the shares in a company, if the company is carrying on a taxable activity as a going concern. 35

- “(4) If **subsection (3)(b)** applies, in **subsection (2)(b)** and **(2)(d)**, person B includes the company whose shares have been sold by person A.
- “(5) For the purpose of **subsection (3)(b)**, a company is carrying on a taxable activity as a going concern if— 5
- “(a) up to the time the company’s shares are transferred to person B, the company carries on, or is to carry on, the taxable activity; and
- “(b) at the time the company’s shares are transferred to person B, the company has all the goods and services 10 necessary to continue operating the taxable activity.
- “(6) In this section, except for **subsection (3)(b)**, **going concern** has the meaning set out in the Goods and Services Tax Act 1985 as if person A were the ‘supplier’ and person B were the ‘recipient’. 15

“CHA 2 **Exit inducements**

An amount derived by a person for a loss of a vocation or a position, for leaving a position, or for a loss of status is gross income of the person.”

- (2) **Subsection (1)** applies to amounts derived on and after the date 20 this Act receives the Royal assent.

8 New sections DJ 20 and DJ 21 inserted

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

“DJ 20 **Expenditure incurred on restrictive covenants or exit 25 inducements**

- “(1) Expenditure incurred by a taxpayer that is gross income under either **section CHA 1** or **section CHA 2** is not expenditure of a capital nature under section BD 2(2)(e).
- “(2) If services are performed for the taxpayer by an employee, office holder or independent contractor, **subsection (1)** does not 30 apply to the extent that any expenditure that would have been incurred for the services, but for a payment of an amount referred to in either **section CHA 1** or **section CHA 2**, would have been of a capital nature.

“DJ 21 Deduction if restrictive covenant breached

- “(1) A person (person A) who derives gross income under **section CHA 1** is allowed a deduction for the amount, as limited by **subsection (2)**, that person A is required to pay the person to whom person A gave an undertaking (person B) for person A’s breach of a term of the undertaking. 5
- “(2) The deduction is the lesser of the amount person A pays to person B and the gross income derived under **section CHA 1**.
- “(3) Person A is not allowed a deduction for a payment of interest, punitive or exemplary damages, or person B’s legal costs or other expenses.” 10
- (2) **Subsection (1)** applies to expenditure incurred on and after the date this Act receives the Royal assent.

9 New section EO 6 inserted

- (1) After section EO 5, the following is inserted: 15

“EO 6 Timing of deduction for payment made when restrictive covenant breached

A deduction allowed to person A under **section DJ 21** is allowed in the income year the amount is paid to person B.”

- (2) **Subsection (1)** applies to expenditure incurred on and after the date this Act receives the Royal assent. 20

10 Shares or options

- (1) In section FF 1(2), “matrimonial property agreement” is replaced by “matrimonial agreement”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent. 25

11 Films

- (1) In section GC 11(4), “this section” is replaced by “section EO 3”.
- (2) **Subsection (1)** applies to the 1995–96 and subsequent income years. 30

12 New section GC 14F inserted

- (1) After section GC 14E, the following is inserted:

- “GC 14F Arrangement to avoid application of restrictive covenant rule**
- “(1) If a person enters into an arrangement that has an effect of avoiding **section CHA 1(1)**, the Commissioner may, despite the arrangement, treat— 5
- “(a) an amount, or part of an amount, under the arrangement as an amount to which **section CHA 1(1)** applies; and
- “(b) a person affected by the arrangement as the person who gave the undertaking referred to in **section CHA 1(1)**.
- “(2) In this section, a collateral arrangement to dispose of property may be part of an arrangement.” 10
- (2) **Subsection (1)** applies to amounts derived on and after the date this Act receives the Royal assent.
- 13 New sections HH 3A and HH 3B inserted**
- (1) After section HH 3, the following is inserted: 15
- “HH 3A Beneficiary income of minors**
- “(1) If a minor derives beneficiary income—
- “(a) a trustee of the trust from which the beneficiary income is derived must pay income tax on the beneficiary income at the rate specified in Schedule 1, Part A, clause 4 as if the beneficiary income were trustee income: 20
- “(b) despite section HH 3(1), the beneficiary income is not gross income of the minor.
- “(2) **Subsection (1)** does not apply if the amount of beneficiary income derived by a minor in relation to an income year is \$200 or less. 25
- “(3) In this section and **section HH 3B**, **minor** means a person who is under 16 years of age on the balance date of the trust—
- “(a) from which the beneficiary income is derived; and 30
- “(b) for the income year to which the beneficiary income relates.
- “HH 3B Source of beneficiary income and particular distributions**
- “(1) **Section HH 3A(1)** applies to beneficiary income derived by a minor from property settled on a trust by— 35
- “(a) a relative or guardian of the minor; or

- “(b) a person associated with the relative or guardian.
- “(2) **Subsection (1)** does not apply if the beneficiary income is derived by a minor from property settled on the trust—
- “(a) by a relative, guardian or associated person as an agent of the minor if the settlor has received the property from someone other than a relative, guardian or associated person; or 5
- “(b) by a relative, guardian or associated person if the settlor is required by a court order to pay damages or compensation to the minor; or 10
- “(c) under the terms of a will, codicil, intestacy or a court variation of a will, codicil or intestacy if the minor is alive within 12 months of the date of the settlor’s death.
- “(3) **Section HH 3A(1)** does not apply to beneficiary income derived by a minor— 15
- “(a) who is a non-resident:
- “(b) for whom a child disability allowance is paid under the Social Security Act 1968:
- “(c) from a group investment fund:
- “(d) from the Maori trustee or a Maori authority.” 20
- (2) **Subsection (1)** applies to beneficiary income derived in relation to the 2001–02 and subsequent income years.
- 14 New section HI 1A inserted**
- (1) After section HI 1, the following is inserted:
- “**HI 1A Distribution by Treaty of Waitangi Fisheries Commission** 25
- For the purpose of section HI 1(2), the distribution of assets by the Treaty of Waitangi Fisheries Commission is treated as being a distribution made in the course of the termination of a Maori authority.” 30
- (2) **Subsection (1)** applies on and after 16 October 2000.
- 15 Rebate for gifts of money**
- (1) Section KC 5(1)(ag) is replaced by:
- “(ag) The Leprosy Mission New Zealand Incorporated:”.
- (2) **Subsection (1)** applies to the 2000–01 and subsequent income years. 35

16 Determination of amount of credit in certain cases

(1) In section LB 1(4), items b and c of the formula are replaced by:

“b is the gross income of the partner as a partner of the partnership for the income year excluding all imputation credits and dividend withholding payment credits attached to dividends derived by the partner during the year; and 5

“c is the gross income jointly derived by partners of the partnership for the income year excluding all imputation credits and dividend withholding payment credits attached to dividends derived by the partners during the year.” 10

(2) After section LB 1(4), the following is inserted:

“(4A) If a partnership has both resident and non-resident partners, **subsection (4)** applies as if— 15

“(a) supplementary dividends derived by non-resident partners were added to item a of the formula:

“(b) the gross income of a non-resident partner excluded supplementary dividends derived by the non-resident partner: 20

“(c) the gross income jointly derived by partners excluded supplementary dividends derived by non-resident partners.

“(4B) A non-resident partner must reduce the result obtained from applying **subsection (4A)** by the amount of supplementary dividends derived by the non-resident partner.” 25

(2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

17 Tax deductions to be credited against tax assessed 30

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

“(2AA) Subsection (2) does not apply to a non-filing taxpayer.”

(2) After section LD 1(6), the following is inserted:

“(7) Subsection (6) does not apply to a non-filing taxpayer who has provided the taxpayer’s correct tax file number and correct tax code for an income year.” 35

- (3) **Subsections (1) and (2)** apply to the 1999–2000 and subsequent income years.
- 18 Amounts of tax deductions**
- (1) In section NC 6(1A), “basic deductions” is replaced by “basic tax deductions”. 5
- (2) **Subsection (1)** applies on and after 1 April 1999.
- 19 Deduction of resident withholding tax**
- (1) In section NF 2(1)(a), in item a of the formula, “clause 1” is replaced by “either clause 1 or **clause 1C**”.
- (2) **Subsection (1)** applies on and after 1 April 2001. 10
- 20 New sections NF 2B to NF 2D inserted**
- (1) After section NF 2A, the following is inserted:
- “**NF 2B Companies to notify interest payer**
- “(1) A company, other than a company that is a trustee, that becomes entitled to receive a payment to which section NF 2(1) applies on or after 1 April 2001, must notify the interest payer that they are a company on becoming entitled to receive the payment. 15
- “(2) An interest payer who receives a notice from a company must deduct resident withholding tax at the appropriate rate specified in Schedule 14, **clause 1C** from payments made on and after the date on which the notice is received. 20
- “(3) An interest payer who does not receive a notice from a company must treat the company as a person to whom section NF 2A applies. 25
- “**NF 2C Transitional rule-notifications by companies between 1 April 2001 and 31 May 2001 (both dates inclusive)**
- “(1) A company, other than a company that is a trustee, that has an entitlement on 31 March 2001 to receive a payment to which section NF 2(1) applies, must notify the interest payer, between 1 April 2001 and 31 May 2001 (both dates inclusive), that they are a company to which this section applies. 30

- “(2) An interest payer who receives a notice from a company during the period 1 April 2001 to 31 May 2001 (both dates inclusive) must deduct resident withholding tax at the appropriate rate specified in Schedule 14, **clause 1C** from payments made on and after the end of 1 month after the date on which the notice is received. 5
- “(3) Despite the 1 month time period in **subsection (2)**, an interest payer may make deductions of resident withholding tax at the rates specified in either clause 1 or **1C** of Schedule 14 from payments made during the period starting on the date on which the notice is received and ending on the last day of the 1 month period. 10
- “NF 2D **Election rates of deduction for companies**
- “(1) A company entitled to receive a payment to which section NF 2(1) applies may elect, in the manner prescribed by the interest payer, to make the payment subject to the deduction of resident withholding tax at the rate specified in Schedule 14, **clause 1C(a)** or **1C(b)**. 15
- “(2) An election may be made for each source of payment that is subject to resident withholding tax on or after 1 April 2001. 20
- “(3) A notice of election applies to each deduction of resident withholding tax required to be made on or after the date on which notice is given to the interest payer.”
- (2) **Subsection (1)** applies on and after 1 April 2001.
- 21 Application of NRWT rules** 25
- (1) Section NG 1(3) is repealed.
- (2) **Subsection (1)** applies on the date this Act receives the Royal assent.
- 22 Non-resident withholding tax imposed**
- (1) In section NG 2(1)(c), “neither paragraph (a) nor paragraph (b) applies” is replaced by “neither paragraph (a), paragraph (ab), nor paragraph (b) applies”. 30
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

23 Non-resident withholding tax on dividends not paid in money

(1) In section NG 9(1)(a), item a of the formula is replaced by:

“(a) is—

“(i) in the case of conduit tax relief additional dividends paid as a result of Part LG or dividends to the extent fully conduit tax relief credited, the rate of non-resident withholding tax, expressed as a percentage, specified in section NG 2(1)(c); and 5

“(ii) in any other case, the rate of non-resident withholding tax, expressed as a percentage, specified in section NG 2(1)(a); and” 10

(2) Section NG 9(1)(b) is replaced by:

“(b) to the extent to which the payment consists of a taxable bonus issue, to an amount calculated according to the formula: 15

$$“(a \times e) + (c \times f) + \frac{c}{1-c} \times g”$$

“where—

“a is the rate of non-resident withholding tax, expressed as a percentage, specified in section NG 2(1)(a); and 20

“e is the amount of the dividends calculated under section CF 2(6)—

“(i) to the extent neither fully imputed nor fully dividend withholding payment credited (as described in section NG 2(3) and NG 2(4)); and 25

“(ii) before any deduction of non-resident withholding tax; and 30

“c is the rate of non-resident withholding tax, expressed as a percentage, specified in section NG 2(1)(c); and

“f is the amount of the dividends calculated under section CF 2(6) together with the amount of any dividend withholding payment credit attached to the dividends— 35

“(i) to the extent fully dividend withholding payment credited (as described in section NG 2(4)); and 40

“(ii) before any deduction of non-resident withholding tax; and

“g is the amount of the dividends, to the extent fully conduit tax relief credited, or conduit tax relief additional dividends paid as a result of Part LG.” 5

(3) After section NG 9(1), the following is inserted:

“(1A) For the purposes of **subsection (1)**, in determining the extent to which the dividend is fully conduit tax relief credited, and section MI 8, an amount that must be deducted from a non-cash dividend to the extent fully conduit tax relief credited is treated as being part of the non-cash dividend.” 10

(4) **Subsections (1) to (3)** apply on and after the date this Act receives the Royal assent.

24 Definitions

(1) This section amends section OB 1. 15

(2) The definition of **extra emolument** is replaced by:

“**extra emolument**, in relation to a person, excluding a payment of exempt income, means—

“(a) a payment in a lump sum, whether paid in one lump sum or in 2 or more instalments, made to the person in respect of or in relation to the person’s employment, whether for a period of time or not, being a payment that is not regularly included in salary or wages payable to the person for a pay period, but not being overtime pay, and includes a payment made— 20 25

“(i) by way of bonus, gratuity or share of profits:

“(ii) by way of a retrospective increase in salary or wages, to the extent that the payment accrues from the start of the increase until the beginning of the first pay period for which the increase is included in salary or wages, and to the extent that a week ends with a Saturday, the total of the increase for the week, the salary or wages for the week exclusive of the increase and any other salary or wages earned by the person for the week is more than \$4: 30 35

“(iii) by way of a redundancy payment:

**Taxation (Beneficiary Income of Minors,
Services-Related Payments
and Remedial Matters)**

Part 1 cl 24

- “(iv) on occasion of that person’s retirement from employment:
- “(b) gross income derived by the person under either **section CHA 1** or **section CHA 2** if there is, or was, immediately before the income was derived, or is about to be, an employment relationship between the person and the person who paid the gross income”.
- (3) In the definition of **fully conduit tax relief credited**, “and NG 2(1)” is replaced by “NG 2(1) and **NG 9**”.
- (4) After the definition of **gift**, the following is inserted:
“**going concern** is defined in **section CHA 1(6)** for the purpose of that section”.
- (5) After the definition of **Minister**, the following is inserted:
“**minor** is defined in **section HH 3A(3)** for the purpose of that section and **section HH 3B**”.
- (6) In the definition of **non-filing taxpayer**, paragraph (a) is replaced by:
“(a) is one to whom section 33A(1) of the Tax Administration Act 1994 applies and who does not receive, or who is one to whom the Commissioner is not required to send, or is prohibited from sending, an income statement for an income year; or”.
- (7) In the definition of **qualifying person**, paragraph (a)(iii)(A) is replaced by:
“(A) that person has been both resident and present in New Zealand for a continuous period of 12 months at any time, and is tax resident, being resident in New Zealand, on the date on which a credit of tax is claimed under either section KD 2 or KD 3; or”.
- (8) In the definition of **settlor**, the following is inserted before paragraph (b):
“(a) in **section HH 3B** has the meaning set out in paragraph (b) as if subparagraph (iii) were not there”.
- (9) In the definition of **taxable activity**, “and the NRWT rules,” is replaced by “the NRWT rules and **section CHA 1**”.

-
- (10) **Subsections (2) to (4) and (9)** apply on and after the date this Act receives the Royal assent.
- (11) **Subsections (5) and (8)** apply to the 2001–02 and subsequent income years.
- (12) **Subsection (6)** applies to the 1999–2000 and subsequent income years. 5
- (13) **Subsection (7)** applies to the 1995–96 and subsequent income years.
- (14) Despite **subsection (13)**, **subsection (7)** does not apply if a qualifying person has claimed a credit of tax under either section 10
KD 2 or KD 3 of the Income Tax Act 1994 on or before
16 October 2000.
- 25 Residence of conduit tax relief company shareholders**
- (1) In section OE 8(1), “and OE 7(3)(c)” is replaced by 15
“OE 7(1)(b) and OE 7(3)(c)”.
- (2) **Subsection (1)** applies on and after 1 October 1997.
- 26 Schedule 14—Rate of resident withholding tax deductions**
- (1) In Schedule 14, the following is inserted after clause 1:
- “1A **Clause 1C** and not clause 1 applies to a recipient that is a 20
company, other than a company that is a trustee.
- “1B Despite **clause 1A**, clause 1 may be applied to a recipient that
is a company in the period between 1 April 2001 and 30 June
2001 (both dates inclusive).
- “1C For section NF 2, the rate of resident withholding tax 25
deduction from payments of resident withholding income is—
“(a) 39 cents, if the payer of the interest has received an
election from the recipient of the interest to apply this
rate of resident withholding tax deduction and has been 30
supplied with the tax file number of—
“(i) the person to whom the interest is paid; or
“(ii) one of the persons to whom the interest is paid:

- “(b) 33 cents, if the payer of the interest has received an election from the recipient of the interest to apply this rate of resident withholding tax deduction and has been supplied with the tax file number of—
- “(i) the person to whom the interest is paid; or 5
“(ii) one of the persons to whom the interest is paid:
- “(c) 33 cents, if the payer of the interest has not received an election from the recipient of the interest to apply any one of the rates of resident withholding tax deduction set out in **paragraphs (a) or (b)** and has been supplied with the tax file number of— 10
- “(i) the person to whom the interest is paid; or
“(ii) one of the persons to whom the interest is paid:
- “(d) if none of **paragraphs (a), (b) or (c)** applies, a non-declaration rate of 39 cents.” 15
- (2) **Subsection (1)** applies to payments made on and after 1 April 2001.

Part 2

Amendments to Tax Administration Act 1994

- 27 Tax Administration Act 1994** 20
This Part amends the Tax Administration Act 1994².
² 1994, No 166
- 28 Interpretation**
- (1) This section amends section 3(1).
- (2) In the definition of **incremental late payment penalty**, “section 139B(2)(b)” is replaced by “**section 139B(2B)**”. 25
- (3) In the definition of **initial late payment penalty**, “section 139B(2)(a)” is replaced by “**section 139(2A)**”.
- (4) In the definition of **tax**— 30
- (a) paragraph (a)(viii) is repealed;
(b) paragraph (d)(vii) is repealed.
- (5) **Subsections (2) and (3)** apply in respect of late payment penalties imposed on and after 1 April 2002.
- (6) In **subsection (4)**— 35
- (a) paragraph (a) applies on the date this Act receives the Royal assent:

- (b) paragraph (b) applies on the first day of the 2001–02 income year.

29 Taxpayer’s tax obligations

- (1) In section 15B(a), “Correctly” is replaced by “unless the taxpayer is a non-filing taxpayer, correctly”. 5
- (2) **Subsection (1)** applies to the 1999–2000 and subsequent income years.

30 Resident withholding tax deduction certificates

- (1) Section 25(6)(g) is replaced by:
- “(g) in respect of interest, the amount that is subject to the deduction of resident withholding tax at the rate specified in— 10
- “(i) Schedule 14, clause 1(a), (b), (c), (d) or (e) of the Income Tax Act 1994, unless paragraph (h) applies; or 15
- “(ii) Schedule 14, **clause 1C(a), (b), (c) or (d)** of the Income Tax Act 1994.”.
- (2) **Subsection (1)** applies on and after 1 April 2001.

31 Annual income tax returns not required

- (1) In section 33A(4), “the Commissioner will not” is replaced by “the Commissioner may not”. 20
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

32 Interest priority and rights of Commissioner

- (1) Section 120F(2) is replaced by: 25
- “(2) The Commissioner may apply interest payable by the Commissioner to a taxpayer towards the payment of the taxpayer’s unpaid tax on or after the date the taxpayer furnishes their return of income.”
- (2) **Subsection (1)** applies on and after 1 April 1998. 30

33 Late payment penalty

- (1) Section 139B(2) is replaced by:

- “(2) The late payment penalty comprises an initial late payment penalty and an incremental late payment penalty.
- “(2A) The initial late payment penalty is—
- “(a) 1% of the unpaid tax; and
 - “(b) 4% of the amount of tax to pay at the end of 6 days after the day on which a penalty is imposed under **paragraph (a)**.
- “(2B) The incremental late payment penalty is 1% of the amount of tax to pay on each day that falls one month after the day on which a penalty is imposed under **subsection (2A)(a)** or this subsection.”
- (2) In section 139B(3), “imposed under **subsection (2A)(a)**” is inserted after “initial late payment penalty”.
- (3) After section 139B(3), the following is inserted:
- “(3A) An initial late payment penalty imposed under **subsection (2A)(b)** is to be added to the tax to pay to which it relates at the end of the 6th day after the day on which an initial late payment penalty is imposed under **subsection (2A)(a)**.”
- (4) After section 139B(5), the following is inserted:
- “(5A) An incremental late payment penalty is not to be added if, for the month during which the tax to pay remains unpaid, the taxpayer complies with all of their obligations under an instalment arrangement entered into with the Commissioner.”
- (5) **Subsections (1) to (3)** apply to late payment penalties imposed on and after 1 April 2002.
- (6) **Subsection (4)** applies to instalment arrangements entered into on and after 1 April 2002.

34 New section 141JA inserted

- (1) After section 141J, the following is inserted:
- “141JA **Application of Part IX to non-filing taxpayers**
- Part IX does not apply to a person who is a non-filing taxpayer for an income year if the person—
- “(a) is an employee to whom section NC 16 of the Income Tax Act 1994 applies in the year; and
 - “(b) receives an income statement that the person considers is incorrect and informs the Commissioner in the way required by section 80F.”

- (2) **Subsection (1)** applies to the 1999–2000 and subsequent income years.

35 Cancellation of interest

- (1) Section 183C(5) is replaced by:

“(5) If the Commissioner issues both a notice of assessment and a statement of account to a taxpayer and the 30th day referred to in subsection (3) occurs on or before the 15th day referred to in subsection (4), the Commissioner must cancel a taxpayer’s liability to pay interest under Part VII for the period starting on the day after the date on which the notice of assessment is issued and ending on the date on which payment is made if payment is made on or before the 30th day referred to in subsection (3).”

“(6) For the purpose of **subsection (5)**, a payment that is made is a payment of the tax assessed in the notice of assessment, together with any interest payable under Part VII for the period before the date of the notice.”

- (2) **Subsection (1)** applies to interest cancellations made on and after the date this Act receives the Royal assent.

36 Refund of tax paid in excess made by direct credit to bank account

- (1) Section 184A(5)(c) is repealed.

- (2) **Subsection (1)** applies on the date this Act receives the Royal assent.

Part 3

Amendments to Income Tax Act 1976

37 Income Tax Act 1976

This Part amends the Income Tax Act 1976³.

³ RS Vol 29–1, RS Vol 29–2

38 Interpretation

- (1) In section 374A, in the definition of **qualifying person**, paragraph (c)(i) is replaced by:

“(i) that person has been both resident and present in New Zealand for a continuous period of 12 months at any time, and is tax resident, being

resident in New Zealand, on the date on which a family support credit of tax is claimed under Part XIA; or”.

- (2) **Subsection (1)** applies to the 1992–93 and 1993–94 income years. 5
- (3) Despite **subsection (2)**, **subsection (1)** does not apply if a qualifying person has claimed a family support credit of tax under Part XIA of the Income Tax Act 1976 on or before 16 October 2000.

Part 4 10

Amendments to Goods and Services Tax Act 1985

39 Goods and Services Tax Act 1985

This Part amends the Goods and Services Tax Act 1985⁴.

⁴RS Vol 27

40 Calculation of tax payable 15

- (1) After section 20(3), the following is inserted:
 - “(3A) For the purpose of subsection (3), output tax does not include the tax on the taxable value of a fringe benefit provided or granted to another person under the FBT rules of the Income Tax Act 1994.” 20
- (2) **Subsection (1)** applies to fringe benefits provided or granted—
 - (a) on and after 1 January 2002, for an employer who pays fringe benefit tax on a quarterly basis; and
 - (b) on and after 1 April 2001, for an employer who pays fringe benefit tax on an annual basis; and 25
 - (c) during the 2000–01 and subsequent income years, for an employer who pays fringe benefit tax on an income year basis.
- (3) If a fringe benefit is provided or granted before the relevant time in **subsection (1)** and the tax payable for the taxable period 30 in which the fringe benefit is provided or granted has not yet been paid, a registered person must treat the fringe benefit as one to which **subsection (1)** applies.

41 Fringe benefits and entertainment expenses

- (1) Section 21I(3) is replaced by: 35

- “(3) Despite sections 9 and 21C, the supply of goods and services is treated as taking place at the time the fringe benefit is or is deemed to be provided or granted.”
- (2) **Subsection (1)** applies to fringe benefits provided or granted—
- (a) on and after 1 January 2002, for an employer who pays fringe benefit tax on a quarterly basis; and 5
 - (b) on and after 1 April 2001, for an employer who pays fringe benefit tax on an annual basis; and
 - (c) during the 2000–01 and subsequent income years, for an employer who pays fringe benefit tax on an income year basis. 10

42 New section 23A inserted

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

“23A Payment of tax relating to fringe benefits

A registered person who provides or grants a fringe benefit to another person under the Income Tax Act 1994 must pay the tax on the taxable value of the fringe benefit in the person’s fringe benefit tax return by the time specified in sections ND 9, ND 10, ND 13 and ND 14 of the Income Tax Act 1994 as is appropriate.” 15
20

- (2) **Subsection (1)** applies to fringe benefit tax returns due—
- (a) on and after 31 May 2002, for an employer who pays fringe benefit tax on a quarterly or an annual basis; and
 - (b) by the terminal tax date for the 2000–01 income year, for an employer who pays fringe benefit tax on an income year basis, and to subsequent fringe benefit tax returns required to be filed on an income year basis. 25

Part 5

Amendments to Stamp and Cheque Duties Act 1971

43 Stamp and Cheque Duties Act 1971 30

This Part amends the Stamp and Cheque Duties Act 1971⁵.

⁵ RS Vol 23

44 Registration of securities by Commissioner

- (1) After section 86H(2), the following is added:

- “(3) An approved issuer may request, in writing, that the Commissioner revoke the registration of a transaction or class of transactions made under subsection (1).
- “(4) The Commissioner must notify, in writing, the issuer of a revocation. 5
- “(5) A revocation takes effect on the date that the Commissioner receives a request from an approved issuer.”
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 45 Application of approved issuer levy and zero-rating 10**
- (1) In section 86I, “by the approved issuer” is replaced by “by or on behalf of the approved issuer”.
- (2) Section 86I is repealed.
- (3) **Subsection (1)** applies on and after 1 August 1991.
- (4) **Subsection (2)** applies on the date this Act receives the Royal assent. 15
- 46 New section 86IA inserted**
- (1) After section 86I, the following is inserted:
- “86IA Liability for payment of approved issuer levy**
- “(1) Approved issuer levy is payable by an approved issuer for a payment of interest derived by a person who is not an associated person of the approved issuer in respect of a registered security. 20
- “(2) A person may make payment of the approved issuer levy on behalf of an approved issuer.” 25
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 47 Payment of approved issuer levy**
- (1) In section 86K(1), “Any approved issuer” is replaced by “Any approved issuer or person on behalf of an approved issuer”. 30
- (2) **Subsection (1)** applies on and after 1 August 1991.
- 48 New section 86KA inserted**
- (1) After section 86K, the following is inserted:

“86KA Payment of approved issuer levy in instalments

- “(1) If, for an income year, a person estimates that they will not be required to make approved issuer levy payments that total \$500 or more, the person may pay the levy to the Commissioner in 2 instalments. 5
- “(2) The first instalment is—
- “(a) the total of all approved issuer levy payments required by or on behalf of an approved issuer during the period 1 April to 30 September (both dates inclusive); and
 - “(b) due and payable on 20 October of the year. 10
- “(3) The second instalment is—
- “(a) the total of all approved issuer levy payments required by or on behalf of an approved issuer during the period 1 October to 31 March (both dates inclusive); and
 - “(b) due and payable on 20 April of the following year. 15
- “(4) If the \$500 total is reached at any time during an income year, a person must—
- “(a) pay to the Commissioner all approved issuer levy payments owed by the person for the period from the beginning of the year until the end of the month in which the \$500 total is reached: 20
 - “(b) pay the amount required by **paragraph (a)** no later than the 20th of the month following the month in which the \$500 total is reached:
 - “(c) pay approved issuer levy payments for the rest of the year in accordance with section 86K(1)(b). 25
- “(5) If a person is no longer required to pay the approved issuer levy, the person must—
- “(a) pay to the Commissioner all approved issuer levy payments due and not paid: 30
 - “(b) pay the amount required by **paragraph (a)** no later than the 20th of the month following the month in which the person stops being required to pay the levy.
- “(6) Payments made in accordance with this section must be accompanied by a statement that meets the requirements of section 86K(2).” 35
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**Taxation (Beneficiary Income of Minors,
Services-Related Payments
and Remedial Matters)**

Part 5 cl 49

49 Relief in cases of serious hardship

- (1) Section 86M is repealed.
- (2) **Subsection (1)** applies on the date this Act receives the Royal assent.