

# **Taxation (Relief, Refunds and Miscellaneous Provisions) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

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

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**

##### **More time for business**

The bill contains a number of amendments aimed at simplifying the tax system for taxpayers. The amendments have arisen out of proposals in the Government discussion document on tax simplification, *More time for business*. The changes being proposed include:

##### ***Simplifying family assistance***

The bill introduces legislation to simplify the process for paying and calculating family assistance entitlements. One of the proposed amendments will ensure that the family tax credit is paid to the principal caregiver instead of both spouses in a two-parent family.

The other amendment will simplify the calculation of family assistance entitlements. The proposed amendments will apply from the 2003–04 income year to allow time to educate taxpayers about the changes.

### ***Removing ‘interim’ imputation return requirements***

An amendment is proposed to allow a company eligible for a refund of income tax, to the extent of the credit balance in its imputation credit account at the end of an imputation year, to have the amount refunded once an imputation return has been filed for that year. Currently, if an imputation return is filed before the end of the next imputation year, an ‘interim’ imputation return must also be filed before income tax can be refunded. The proposed amendment will apply from 1 April 2002 in respect of refunds of income tax paid on or after this date.

### ***Valuation not required for trading stock less than \$5,000***

An amendment is proposed to allow a taxpayer who reasonably estimates that they have less than \$5,000 worth of trading stock at the end of an income year not to value it or include any change in the value in their calculation of income. The amendment will apply to a taxpayer who has taxable supplies of less than \$1.3 million in an income year, and will be effective from the 2002–03 income year.

### **Petroleum mining**

Amendments are proposed to prevent petroleum miners from using the current rules relating to disposals of controlled petroleum mining entities (CPME) to obtain unintended tax benefits.

The current petroleum mining legislation taxes the net proceeds from the sale of ownership interests in a CPME.

However, contrary to the original policy intent, petroleum miners are using these rules to obtain deductions in excess of 100% of their capital invested in petroleum mining development and exploration expenditure.

The proposed amendments will repeal the offending rules and treat future disposals of ownership interests in a CPME as being on capital account. This will remove the ability for petroleum miners to claim unintended deductions, and will apply from the date of introduction of the bill.

### **Shareholder continuity rules on a spinout**

The proposed amendments relate to the ownership tracing rules that apply to determine whether tax losses and credits of a company can be used by the company. The existing shareholder continuity rules could treat a change in a holding company caused by a 'spinout' of subsidiary businesses as a loss of continuity. In particular, if a substantial amount of ownership was held by a holding company on behalf of small shareholders, the change in the holding company could cause a breach of the shareholder continuity rules for the purpose of carrying forward tax losses and credits.

The proposed amendments ensure that the tracing rules do not adversely affect taxpayers if there is no underlying change in economic ownership resulting from a spinout of subsidiary businesses. The proposed amendments would treat the new holding company of the spun out businesses as holding the ownership interests previously held by the old holding company on behalf of small shareholders, to the extent that there is a common interest in the old and new holding companies.

The proposed amendment will apply to a spinout on or after 1 March 2002.

### **Bribes**

Currently, bribes paid in the conduct of business are deductible for taxation purposes if the deductibility criteria are met. This is contrary to the OECD initiative that all other OECD member countries have implemented. New Zealand has an obligation as an OECD member country to make bribes paid in the conduct of business non-deductible for taxation purposes.

The proposed amendment makes bribes paid to foreign and domestic public officials in the conduct of business non-deductible. The amendment is closely aligned with the provisions of the Crimes Act 1961, including recent amendments that criminalised active bribery of foreign public officials.

The proposed amendment will apply from the date of Royal assent.

### **Bloodstock**

The bill introduces an amendment to increase the depreciation rate for broodmares. Under the amendment broodmares will be able to be fully depreciated by age 11. The proposed amendment will apply

to all broodmares first eligible for depreciation on or after 1 April 2001 and broodmares purchased on or after this date.

### **Unit trust negative dividends**

A new subpart MJ is proposed which will preserve available subscribed capital (ASC) previously lost to qualifying unit trusts or group investment funds that derive category A income. A new supplementary available subscribed capital account will record amounts of ASC contributed by unit holders but not returned to the unit holder on redemption of their units. The supplementary available subscribed capital account balance can then be converted to imputation credits and transferred to the qualifying unit trust's, or group investment fund's, imputation credit account at the end of an imputation year or when the qualifying unit trust or group investment fund ceases to operate an imputation credit account. Only a supplementary available subscribed capital account balance sufficient to meet the debit balance in the qualifying unit trust's or group investment fund's imputation credit account can be converted and transferred.

The proposed amendments will apply from the 2002–03 imputation year, which begins on 1 April 2002 and ends on 31 March 2003. The new supplementary available subscribed capital account may have an opening balance at 1 April 2002 that takes into account ASC lost before this date.

### **Unit trusts—excess imputation credits**

A new section CF 7A is proposed to ensure that when a unit trust manager redeems units with a unit trust in the ordinary course of its business, to the extent that the dividend constitutes a recovery of the purchase price, the manager (and any persons nominated by the manager) will not be able to utilise the imputation credits received.

This will ensure that the unit trust manager does not obtain excess imputation credits as a result of an unintended interpretation of current legislation. Excess imputation credits in this situation are inconsistent with the economic reality of the transaction and would provide an unintended windfall gain to the unit trust manager.

This amendment will apply retrospectively from 1 April 1996, the date that the current unit trust manager rules were put in place. The amendment will not apply to unit trust managers who have claimed a

credit of tax for the imputation credits in a return of income or by using the disputes procedures of the Tax Administration Act 1994.

### **Unit trusts—debits to imputation credit account**

An amendment is proposed to section ME 41 to prevent a unit trust manager from being double-taxed as a result of two debits for the same amount being debited to their imputation credit account in an income year. Currently, this could occur where there is a significant change to the shareholding of the unit trust in an imputation year, and when the unit trust manager redeems units with the unit trust in the ordinary course of its business.

This amendment will apply from 1 April 1996, the date from which section ME 41 applied.

### **Transfers of monetary remuneration**

The amendment ensures that on the sale of a business, the vendor is able to obtain a deduction for any wage-related provisions transferred, such as holiday pay, at the time the business is transferred.

When a business is sold, assets and liabilities can be transferred to the new owner. Liabilities can include provisions for holiday pay, long service leave, retiring allowances and redundancy payments. Under general principles, the provisions are on revenue account and should be deductible. The Income Tax Act 1994 defers the deduction until the time that the amounts are actually paid to employees.

However, following the Privy Council decision in *CIR v NZ Forest Research Institute Ltd*<sup>1</sup> it is clear that where a business and its employees are transferred, the purchaser does not currently obtain a deduction when the wage-related provisions are eventually paid out. In many cases the vendor is also unable to obtain a deduction. From a policy perspective this is an inappropriate outcome.

Therefore, a deduction will be allowed to the vendor at the time the business is sold, as long as both the purchaser and the vendor agree on the amount of the wage-related provisions to be transferred. Any shortfall or recovery of the provisions by the purchaser will be on revenue account. An associated person will be allowed to claim deductions for amounts which would have been deductible to the vendor if the business had not been sold.

<sup>1</sup> [2000] 3 NZLR 1.

The proposed amendments will apply from the date of Royal assent.

### **Pensions paid by partnerships**

An amendment is proposed to clarify that pensions paid by a partnership to a former partner are deductible. This ensures consistency with pensions paid by employers to former employees.

The amendment will apply from the 2000-01 income year.

### **Donee organisation**

Akha Rescue Ministry Charitable Trust is to be added to those organisations specifically listed in section KC 5(1) of the Income Tax Act 1994. From the 2002-03 income year, donations to this Fund will qualify, within prescribed limits, for the donations rebate if made by an individual taxpayer, or for a deduction if made by a company that is not a closely held company.

## **Part 2**

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

#### **Taxpayer financial relief**

In August 2001 the Government released a discussion document, *Taxpayer compliance, standards and penalties: a review*, which included a proposal to completely replace the current debt and hardship rules. The current rules were introduced during the Depression of the 1930s and are significantly deficient. They provide little guidance to either taxpayers or Inland Revenue on the appropriate treatment of a person in debt.

The current debt and hardship provisions will be clarified so that Inland Revenue's role is to maximise the recovery of outstanding tax but not if:

- recovery represents an inefficient use of Inland Revenue's resources; or
- a taxpayer is placed in serious hardship.

#### *Financial relief*

Taxpayers who cannot pay their tax on time may apply to Inland Revenue for financial relief. The financial relief may be in the form of an instalment arrangement and/or some or all of the outstanding tax may be written off.

If a taxpayer is granted financial relief late payment penalties will not be imposed from the date the taxpayer contacts Inland Revenue saying that they are having difficulties paying the tax. This measure is designed to encourage taxpayers to contact Inland Revenue as soon as they realise that they cannot pay the outstanding tax.

#### *Serious hardship*

The definition of "serious hardship" will be amended to list both circumstances that meet the test and circumstances that do not.

#### *Write-off*

The legislation will clearly provide that amounts that cannot be recovered will be written off permanently, including where a taxpayer is bankrupted, liquidated or the taxpayer's estate has been distributed. An amount written off may only be reinstated if:

- the outstanding tax was written off on the grounds of serious hardship and the taxpayer then declares bankruptcy within a year of the amount being written off, ensuring that Inland Revenue receives an appropriate share of the dividend;
- the outstanding tax was written off due to false or misleading information provided by the taxpayer.

If an amount is written off and the taxpayer has tax losses those tax losses will be reduced in whole or in part, at the rate of 33%, in proportion to the amount written off.

#### *Instalment arrangements*

The rules will be amended to provide that if Inland Revenue can collect more of the debt over time through an instalment arrangement than from bankruptcy or liquidation, then Inland Revenue would be required to enter the instalment arrangement and any amount not recovered will be written off as unrecoverable.

The legislation will clearly set out situations where the Commissioner will have the discretion to decline to enter an instalment arrangement.

#### *Application date*

The proposed amendments will apply to tax that is outstanding as at 1 July 2002 unless that tax is subject to an instalment arrangement

entered into before 1 July 2002, or the Commissioner has advised the taxpayer, in writing, that the outstanding tax has been written off.

### **Transfers of excess tax**

The bill introduces comprehensive new rules which will allow the Commissioner, at the request of a taxpayer, to transfer tax that is overpaid by the taxpayer. The tax may be transferred to another period or tax type of the taxpayer, or to another taxpayer. These proposals follow the discussion document *Taxpayer compliance, standards and penalties: a review* issued in August 2001. Currently, there is uncertainty about the rules relating to such transfers and the proposed new rules should address this, reducing uncertainty and the potential for dispute between taxpayers and the Commissioner.

The key issue in relation to such transfers is the effective date of the transfer. It is proposed that this will differ depending on the relationship between the taxpayer and the transferee. This is necessary because the date on which tax is transferred to offset an unpaid liability of the transferee may affect the transferee's accrued liability for use-of-money interest and late payment penalties on the underpaid tax.

Transfers to the taxpayer's own account, and transfers to certain close associates, can generally be made at the date the tax is overpaid. This effective date will enable transfers to be made at the earliest possible opportunity so as to minimise use-of-money interest and late payment penalties of the transferee. The close associates in this category either are, or consider themselves to be, one economic entity, or they share in an income stream and allocate the income between themselves after the end of the income year.

For transfers to all other taxpayers, the effective date can be any date chosen by the transferor, but no earlier than the later of the date of the transfer request and the date on which the relevant tax return is filed. These transfers will not affect a use-of-money interest liability and late payment penalties that have already accrued.

The amendments apply in relation to excess tax paid in the 2002–03 income year, and transfers of excess tax paid in earlier income years if there is an assessment after the date that the Bill receives the Royal assent.

## **More time for business**

### ***Extending non-filing***

Amendments are proposed to remove the requirement for a return to be filed and to allow an income statement to be requested on behalf of a deceased taxpayer. This amendment will apply if the taxpayer would not be required to file a return or would be entitled to request an income statement if they were alive. An amendment is also proposed to remove the requirement for taxpayers to return small amounts of income (\$200 or less) from which tax has not been withheld. The proposed amendments will apply from the 2002–03 income year.

### ***Reducing use-of-money interest risk for more provisional taxpayers***

An amendment is proposed to raise the threshold, under which provisional taxpayers are not subject to the use-of-money interest rules, from \$30,000 to \$35,000 of residual income tax. The proposed amendment will apply from the 2003–04 income year to allow time for operational implementation.

### ***Simplifying the communication of resident withholding tax information***

The bill contains amendments to allow greater flexibility to interest payers (banks and other financial institutions) in the way they communicate resident withholding tax information to interest earners. The proposed amendments will apply from 1 April 2002 in respect of resident withholding tax information relating to the 2001–02 and subsequent income years.

The threshold for communicating this information is being increased from \$20 to \$50 of gross withholding income. The amendment will apply from the 2002–03 income year.

## **Part 3**

### **Amendments to other Inland Revenue Acts**

#### **Amendments to Goods and Services Tax Act 1985**

##### **Deductions of input tax by non-profit bodies**

The definition of “input tax” is being amended to clarify that GST registered non-profit bodies are entitled to claim input tax credits in

relation to their activities except for the making of exempt supplies (such as the supply of donated goods and services). The amendment confirms that non-profit bodies are, for example, able to claim input tax credits in respect of the costs of collecting donations.

The amendment will provide certainty for charities and other non-profit bodies in relation to their GST obligations and will accordingly reduce compliance costs.

The amendment will apply from the date of Royal assent.

### **Treatment of warranties payments by offshore warrantors**

The range of services that are zero-rated will be extended to cover services supplied to a non-registered offshore warrantor in relation to the repair of goods sold in New Zealand. The amendment is in response to the Court of Appeal decision *Suzuki New Zealand Ltd v Commissioner of Inland Revenue*<sup>2</sup> which held that warranty costs are subject to GST. The amendment alleviates the potential double taxation of certain warranty services arising in situations where a final consumer pays GST on the purchase price for goods which directly or indirectly include an amount for the anticipated cost of warranted repairs. If the offshore warrantor who is liable for the warranty is not registered for GST, the GST cost is irrecoverable and double taxation can result.

The amendment will apply from the date of Royal assent.

## *Clause by clause analysis*

### **Part 1**

#### **Amendments to Income Tax Act 1994**

*Clause 4* amends *section CF 3(14)* to correct a reference to the acquiring company.

*Clause 5* inserts a new *section CF 7A* to provide that a unit trust manager cannot use an imputation credit attached to a dividend received from the redemption of a unit to the extent that the dividend recovers the purchase price of the unit. The amendment applies on and after 1 April 1996, except if a credit of tax for the imputation credit has been claimed before 6 November 2001.

*Clauses 6, 8, 23, 24, 30 to 32, 45, 55* amends *sections CG 8, CG 17, EE 5, EE 16, FG 4, FG 5, FH 4, LF 5* and *OB 1* to refer to generally

<sup>2</sup> (2001) 20 NZTC 17,096.

accepted accounting practice, a term defined in the Financial Reporting Act 1993, rather than generally accepted accounting principles.

*Clause 7* amends *section CG 11(21)* to update section references.

*Clause 9* inserts a new *section CH 4* to provide that a purchaser of a business has gross income to the extent that the purchaser actually pays less than the wage related provisions transferred.

*Clause 10* replaces *section CJ 6* to provide that consideration derived from disposing of ownership interests in a controlled petroleum mining entity is not gross income.

*Clause 11* replaces *section CJ 7* as a consequence of removing *section CJ 7(1)(a)* and *section CJ 7(2)*.

*Clause 12* amends *section CL 8(2)* to clarify that the cessation of employment exemption from the superannuation fund withdrawal tax applies only if employer contributions are not more than 150% of the previous year's contributions in the 2 years before the income year in which employment ceases.

*Clause 13* amends *section DF 1* to disallow a deduction for pensions paid to former partners, except if otherwise allowed by the Act.

*Clause 14* consequentially amends *section DF 4*, as a result of the amendment to *section FF 17*, proposed by *clause 29*.

*Clause 15* amends *section DF 5* to remove references to the timing of a deduction for a lump sum bonus, gratuity or retiring allowance paid to an employee at the time of the employee's retirement. An amendment is also made to provide that a deduction is not allowed to the purchaser of a business to the extent that the purchaser assumes the liability to make payments that would have been made by the vendor.

*Clause 16* inserts a new *section DF 8A* to allow deductions for pensions paid by partnerships to retired partners and spouses of deceased partners.

*Clause 17* inserts a new *section DF 9* to disallow a deduction for GST adjustments on fringe benefits.

*Clause 18* inserts a new *section DF 10* to provide that the vendor of a business may deduct monetary remuneration payable in respect of transferring employees if the vendor and the purchaser agree on the amount payable. If the purchaser is an associated person of the vendor, the purchaser may deduct monetary remuneration payable if

the vendor would have been able to make the deduction had the business not been sold.

*Clause 19* inserts a new *section DJ 22* to disallow a deduction for bribes paid to public officials.

*Clause 20* replaces *section DM 6* to disallow a deduction for the cost of ownership interests in a controlled petroleum mining entity.

*Clause 21* amends *section ED 4* as a result of bringing the definition of *taxable supply* into *section OB 1*.

*Clause 22* inserts a new *section EE 2A* to allow certain taxpayers to use the opening value of their trading stock as their closing value, if the taxpayer reasonably estimates that the value of their trading stock is less than \$5,000 at the end of the year.

*Clause 25* amends *section EH 5* to ensure that the clawback rules do not apply if a resettlement is made to a trust which has been established primarily to benefit natural persons for whom the creditor has natural love and affection and/or charities.

*Clause 26* inserts a new *section EH 46(4)* to ensure that an absolute assignment of financial arrangements with deferred consideration does not terminate existing financial arrangements.

*Clause 27* amends *section EH 52* to ensure that the clawback rules do not apply if a resettlement is made to a trust which has been established primarily to benefit natural persons for whom the creditor has natural love and affection and/or charities.

*Clause 28* amends *section EM 1* to change the depreciation rate for broodmares purchased, or first eligible for depreciation, on or after 1 April 2001.

*Clause 29* amends *section FF 17* to provide that new *section DF 8A* applies if the pension is paid to a spouse in accordance with an agreement made under the Matrimonial Property Act 1976 or in compliance with a court order made under that Act.

*Clause 30* amends *section FG 4* to include finance or specified leases in the asset base for the calculation of New Zealand debt percentage in the thin capitalisation rules, where the leases are not already included in the financial accounts. The amendment applies to calculations made on and after 3 December 2001.

*Clause 33* amends *section HH 3D* to clarify that the \$1,000 threshold for application of the minor beneficiary rule relates to the value of the loan(s) provided to the trust, not to the value of the interest

foregone on the loan(s), and to also clarify that the exception in the section only applies to “mixed trusts” as intended.

*Clause 34* amends *section HH 3F* to clarify that in determining whether a beneficiary is a minor, the age of the minor should be determined on the balance date of the year in which the income is earned by the trust.

*Clauses 35, 36, 38 and 39* amend *sections HH 4, HK 1, HK 14 and KC 4* to omit redundant references.

*Clause 37* amends *section HK 3* to provide that a principal’s obligations include furnishing returns.

*Clause 40* amends *section KC 5* to add Akha Rescue Ministry Charitable Trust to the list of donee organisations.

*Clause 41* amends *section KD 1* to remove some adjustments that need to be made when determining net income for family assistance purposes.

*Clause 42* amends *section KD 3* to allow the family tax credit to be paid to the principal caregiver instead of both spouses.

*Clause 43* consequentially amends *section LC 1* as a result of new *section LC 14A*, proposed by *clause 44*.

*Clause 44* inserts a new *section LC 14A*. The section relocates former *section OE 6* (repealed by *clause 58*) to Part LC because it concerns foreign tax credits.

*Clause 46* amends *section MB 2A* to insert a reference to a non-standard income year.

*Clause 47* replaces the section heading to *section MC 1* to more accurately reflect the section’s contents.

*Clause 48* amends *section MD 2* to remove the requirement for a company applying for a refund of imputation credit account credits to file an ‘interim’ imputation return. An amendment is also made to allow non-refundable income tax to be credited to a taxpayer’s provisional tax if the taxpayer’s residual income tax is payable on the provisional tax instalment date.

*Clause 49* amends *section ME 4* to provide that only income tax paid on category A income of group investment funds qualify for imputation credits. It is also amended to provide that a credit is to be recorded of imputation credits converted and transferred by a qualifying unit trust from the trust’s supplementary available subscribed capital account.

*Clause 50* amends *section ME 41* to ensure that a debit does not arise for imputation credits already recorded in a company's imputation credit account under *section ME 5(1)(i)* in the income year.

*Clause 51* inserts a new *subpart MJ* to allow qualifying unit trusts to maintain supplementary available subscribed capital accounts.

*Clause 52* amends *section ND 5* to ensure that the low income rebate applies in the fringe benefit tax multi-rate calculation, irrespective of an employee's residency status.

*Clause 53* amends *section NH 1* to ensure that a charitable company is not subject to a foreign dividend withholding payment on a foreign dividend received.

*Clause 54* amends *section NH 7* to remove an incorrect reference.

*Clause 55* amends *section OB 1*. Definitions are consequentially amended to reflect other amendments in the bill, and section references are corrected. The main amendments include:

- an amendment to the definition of *distribution* to ensure that resettlements of amounts forgiven that have qualified for the natural love and affection concession are subject to the clawback rules; and
- a new definition of *generally accepted accounting practice*; and
- an amendment to the definition of *settlor* to refer to the definition of *settlement*.

*Clause 56* amends *section OD 5* to ensure the ownership tracing rules do not adversely affect taxpayers if there is no underlying change in economic ownership on a 'spinout' of a subsidiary business. The amendments apply to a spinout on and after 1 March 2002.

*Clause 57* amends *section OD 8* to correct a section reference and as a result of the amendments to *sections CJ 6* and *DM 6*.

*Clause 58* repeals *section OE 6* as a result of the section's relocation to *Part LC*.

*Clause 59* amends *section OZ 1* to correct section references in the definitions of *PAYE rules* and *income tax*.

## Part 2

### Amendments to Tax Administration Act 1994

*Clause 61* amends *section 3* to provide cross-references to definitions used in the taxpayer relief and transfers of excess tax rules. The definition of *separated person* is also repealed.

*Clause 62* amends *section 25* to increase, from \$20 to \$50 per year, the threshold under which interest payers are not required to give resident withholding tax information to interest earners. An amendment is also made to allow payers to provide resident withholding tax information electronically.

*Clause 63* amends *section 33A(1)(a)* to clarify its application and allow natural persons to earn \$200 or less of income from which tax has not been withheld and not have to file a tax return. *Section 33A(2)(l)* is repealed.

*Clause 64* amends *section 43* to ensure that a tax return does not have to be filed on behalf of a deceased taxpayer if the taxpayer would have been eligible to use the non-filing criteria if the taxpayer had remained alive.

*Clause 65* consequentially amends *section 51* as a result of the amendments to *section 25*.

*Clause 66* amends *section 59* to clarify that a trustee is required to furnish a return of all income the trustee derives, whether beneficiary income or trustee income, with effect from the 1997–98 income year.

*Clause 67* amends the section heading to *section 61* to more accurately reflect the contents of the section.

*Clause 68* amends *section 69* to require a qualifying unit trust that keeps a supplementary available subscribed capital account (ASC account) to show in its annual imputation return the opening and closing balances of the ASC account and the amount and source of all debits and credits that have arisen in the account during the imputation year.

*Clauses 69 to 71* amend *sections 91DA, 91DC and 91DE* to allow the Commissioner to issue public rulings that apply indefinitely until formally withdrawn or until the law on which the ruling is based materially changes.

*Clause 72* amends *section 120K* to increase the use-of-money interest safe harbour threshold from \$30,000 to \$35,000 of residual income tax.

*Clauses 73* and *74* consequentially amend *sections 125* and *138E* as a result of new *sections 177A* and *177B*, inserted by *clause 78*.

*Clause 75* amends *section 139B* to make it clear that some of the debt subject to compulsory deductions must be repaid for late payment penalties to be cancelled. Consequential amendments are also made as a result of proposed new *section 139BA*, inserted by *clause 76*.

*Clause 76* inserts a new *section 139BA* to stop the imposition of late payment penalties while the Commissioner considers a taxpayer's request to enter into an instalment arrangement.

*Clause 77* inserts a new *Part XB* to allow the Commissioner to transfer excess tax paid by a taxpayer to another period or tax type of the taxpayer, regardless of whether there is an outstanding liability for tax in the period, if the transferor requests the transfer, and the tax is refundable and has not been offset by the Commissioner against a liability for unpaid tax of the taxpayer.

*Clause 78* replaces *sections 176* and *177* with *sections 176*, *177* and *177A to 177C* to provide for new taxpayer financial relief rules. New *section 176* provides that the Commissioner must maximise the recovery of outstanding tax, but not if a taxpayer is placed in serious hardship as a result of the recovery or if the recovery represents an inefficient use of the Commissioner's resources. New *section 177* sets out how a taxpayer applies for relief and how the Commissioner may respond to a request. New *section 177A* defines *serious hardship*. New *section 177B* allows a taxpayer to enter into an instalment arrangement with the Commissioner for the repayment of outstanding tax. New *section 177C* allows the Commissioner to write off tax that cannot be recovered. The new sections apply to tax outstanding on 1 July 2002, except if the taxpayer has entered into an instalment arrangement before that date, or the taxpayer has been advised by the Commissioner that the outstanding tax has been written off. New *section 177C* allows the Commissioner to write off permanently all amounts not recovered. An amount may be reinstated only if the taxpayer declares bankruptcy within a year of the amount being written off.

*Clause 79* inserts a new *section 177D* to provide for relief to taxpayers to whom new start grants are payable.

### Part 3

#### Amendments to Other Inland Revenue Acts

##### *Amendments to Goods and Services Tax Act 1985*

*Clause 81* amends *section 3A* to allow non-profit bodies, including charities, to claim input tax credits in relation to all their activities, except the making of exempt supplies.

*Clause 82* amends *section 5* to provide that, for the purpose of new *section 11A(1)(ma)*, the only supply of services is the supply for which consideration is provided by the warrantor.

*Clause 83* amends *section 10* to correct cross-references. The amendments apply on and after 15 December 1995.

*Clause 84* inserts a new *section 11A(1)(ma)* to zero-rate the supply of services under a warranty to a non-registered offshore supplier. A definition of *warranty* is also inserted.

*Clause 85* amends *section 14* to extend the treatment of penalty and default interest to include similar charges made under an enactment. The amendment applies on and after 10 October 2000.

*Clause 86* consequentially repeals *section 21F(3)*.

*Clause 87* amends *section 21G* to clarify that a single deduction for assets with a value of less than \$18,000 is not subject to the general timing rules for changes of use. The amendment applies on and after 10 October 2000.

*Clause 88* consequentially amends *section 21H*, as a result of the amendment to *section 21G*.

*Clause 89* amends *section 23A* to treat the GST adjustment on fringe benefits as a payment of fringe benefit tax for administrative purposes.

***Amendment to Estate and Gift Duties Act 1968***

*Clause 91* amends *section 75A* to correct a cross-reference.

***Amendment to Student Loan Scheme Act 1992***

*Clause 93* amends *section 25* to update section references.

***Amendment to Taxation (Taxpayer Assessment and  
Miscellaneous Provisions) Act 2001***

*Clause 95* amends *section 239* to correct a cross-reference.

***Regulatory impact and compliance cost statement***

One goal in formulating tax law is to ensure that the costs of the tax system are minimised. However, compliance costs must be balanced by the need to protect the tax base, ensure an efficient tax system, and to treat all taxpayers fairly. The majority of the proposals in the bill are aimed at reducing tax-related compliance costs, and all aim to improve the efficiency and equity of the tax system.

**Compliance cost statement**

The following proposals in the bill reduce compliance costs:

- *More time for business*: The proposals are aimed at reducing tax-related compliance costs and simplifying tax obligations for small businesses, wage and salary earners, companies, and banks and other financial institutions. They include:
  - extending the scope of non-filing;
  - reducing resident withholding tax information requirements;
  - removing the requirement for filing interim imputation returns;
  - removing the requirement to make adjustments for small amounts of trading stock;
  - simplifying family assistance; and
  - simplifying provisional tax.
- *Petroleum mining*: The proposal is expected to provide a minor decrease in compliance costs because petroleum miners who were structuring their affairs to obtain unintended deductions will be no longer have an incentive to restructure.

- *Shareholder continuity rules on a spinout:* The proposal will allow widely-held companies to continue holding ownership interests on behalf of small shareholders after a restructuring process. Without the proposed rules, these companies would be required to trace their ultimate shareholders when determining shareholder continuity for the purpose of carrying forward losses and tax credits. This would mean higher compliance costs.
- *Transfers of monetary remuneration:* The proposal will allow the vendor of a business a deduction for monetary remuneration provisions, thereby reducing present compliance costs because the parties to the transaction will be able to achieve a certain and sensible outcome without having to structure the transaction to achieve the same result.
- *Pensions paid by a partnership:* The proposal will remove considerable uncertainty as to whether a pension paid by a partnership to a former partner is deductible. If such a payment is not deductible, this is inconsistent with the tax treatment of pensions paid by an employer to a former employee. The proposal clarifies that partnership pensions are deductible.
- *Taxpayer financial relief:* The proposals will clarify the rules governing taxpayer obligations and the Commissioner's powers, and ensure a transparent and equitable treatment of taxpayers. They will reduce compliance costs for businesses, by clarifying taxpayer treatment and allowing taxpayers' concerns to be resolved more quickly.
- *Transfers of excess tax:* In relation to transfers of overpaid tax there is currently little legislative guidance, resulting in uncertainty and inconsistent treatment between taxpayers. The proposals will clarify the rules and ensure equitable treatment of taxpayers. Businesses will receive compliance cost benefits from having a clear set of legislative provisions governing the transfer of overpaid tax.

The ability to transfer between certain family members, companies in the same group, shareholder/employees and companies, partners in the same partnership, and family trusts and beneficiaries as at the date of overpayment will reduce the compliance costs associated with meeting tax liabilities where overpayments are available in other accounts.

- *GST and non-profit bodies*: The proposals will create certainty for charities and other non-profit bodies as to the claiming of input tax credits in relation to their activities.
- *Treatment of warranties payments by offshore warrantors*: The proposal will improve the ability of the GST Act to cater for different business arrangements, removing the inefficiency associated with the double impost of GST in certain situations involving warranties provided from offshore.

The following proposals in the bill increase compliance costs:

- *Unit trusts – negative dividends*: The proposal will impose compliance costs on funds that choose to keep a record of lost available subscribed capital in a supplementary available subscribed capital account, and file it along with their imputation credit account return. These funds may also need to convert and transfer imputation credits at the end of the imputation year. The long-term benefit of the proposal (in paying less tax) will outweigh the compliance costs.
- *Unit trusts – excess imputation credits*: The proposal will impose some compliance costs on unit trust managers, as they will have to ensure that they do not include the imputation credits in their annual return. However, the additional compliance costs will be minimal. This is because unit trust managers are already required to track imputation credits received from unit trusts on redemption.
- *Unit trusts – debits to imputation credit account*: This proposal imposes some additional compliance costs on unit trust managers that have suffered a loss of continuity, as it will be necessary to check whether imputation credits received on redemptions of units with the unit trust have been previously offset by a debit at the time of a shareholding continuity breach. However, the additional compliance costs will prevent double taxation occurring.

### **Consultation**

The proposals contained in the bill were, with the exception of two anti-avoidance measures, subject to the Generic Tax Policy Process, a robust consultative and tax policy development process. For three of the main measures in the bill, this process included the release of the following discussion documents:

- *More time for business*
- *Tax and charities*
- *Taxpayer compliance, standards and penalties: a review.*

Specific consultation was undertaken with a number of professional groups, industry representatives and individual taxpayers, according to their expertise on the proposed amendments. This included consultation with:

- a number of small businesses, charitable organisations and tax advisers
- Business New Zealand
- Federated Farmers of New Zealand
- Institute of Chartered Accountants of New Zealand
- Investment Savings and Insurance Association of New Zealand
- New Zealand Bankers' Association
- New Zealand Employers' Federation
- New Zealand Fund Management
- New Zealand Law Society
- New Zealand Motor Industry Association
- Retail Merchants' Association of New Zealand.

A detailed commentary, providing a thorough analysis of the bill's provisions and their intended application, is available at [www.taxpolicy.ird.govt.nz](http://www.taxpolicy.ird.govt.nz).

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*Hon Dr Michael Cullen*

# **Taxation (Relief, Refunds and Miscellaneous Provisions) Bill**

## **Government Bill**

### **Contents**

1	Title	15	Retiring allowances payable to employees
2	Commencement	16	New section DF 8A added DF 8A Deduction to partner of partnership for pension paid to former partner
<b>Part 1</b>			
<b>Amendments to Income Tax Act 1994</b>			
3	Income Tax Act 1994	17	New section DF 9 added DF 9 No deduction for goods and services tax payable on fringe benefit
4	Exclusions from term dividends	18	New section DF 10 added DF 10 Deduction allowed for actual and contingent monetary remuneration on sale of business
5	New section CF 7A inserted CF 7A Treatment of certain dividends derived by unit trust managers	19	New section DJ 22 inserted DJ 22 No deduction for bribes paid to public officials
6	Calculation and attribution of controlled foreign company repatriation	20	Section DM 6 replaced DM 6 No deduction for cost of ownership interests in controlled petroleum mining entity
7	Branch equivalent income calculation	21	Accounting for goods and services tax
8	Use of alternative methods	22	New section EE 2A inserted EE 2A Valuation of trading stock by certain taxpayers not required if closing stock estimated to be less than \$5,000
9	New section CH 4 added CH 4 Monetary remuneration payable may be gross income of purchaser of business	23	Cost of trading stock other than excepted financial arrangements
10	Section CJ 6 replaced CJ 6 Disposal of ownership interest in controlled petroleum mining entity not gross income	24	Requirement to value closing stock consistently
11	Section CJ 7 replaced CJ 7 Application of certain petroleum mining provisions		
12	Exception for withdrawal when member ceases employment		
13	Certain deductions not allowed—superannuation contributions, bonuses, retiring allowances, etc		
14	Pensions payable to former employees		



69	Content and notification of a public ruling		
70	Application of a public ruling		
71	Withdrawal of a public ruling		
72	Instalments of and due dates for provisional tax		
73	Certain rights of objection not conferred		
74	Certain rights of challenge not conferred		
75	Late payment penalty		
76	New section 139BA inserted 139BA Imposition of late payment penalties when financial relief sought		
77	New Part XB inserted  <b>Part XB</b> <b>Transfers of excess tax</b> 173K Application 173L Transfer of excess tax within taxpayer's accounts 173M Transfer of excess tax to another taxpayer 173N Transfer of excess tax—rebates		<p style="text-align: center;"><b>Part 3</b> <b>Amendments to other Inland Revenue Acts</b></p> <p style="text-align: center;"><i>Amendments to Goods and Services Tax Act 1985</i></p> <p>80 Goods and Services Tax Act 1985</p> <p>81 Meaning of input tax</p> <p>82 Meaning of term supply</p> <p>83 Value of supply of goods and services</p> <p>84 Zero-rating of services</p> <p>85 Exempt supplies</p> <p>86 Deductions from output tax for goods and services applied for making taxable supplies</p> <p>87 Timing of deduction under section 21F</p> <p>88 Application to make single deduction under section 21F</p> <p>89 Payment of tax relating to fringe benefits</p> <p style="text-align: center;"><i>Amendment to Estate and Gift Duties Act 1968</i></p> <p>90 Estate and Gift Duties Act 1968</p> <p>91 Exemption for certain dispositions of relationship property</p> <p style="text-align: center;"><i>Amendment to Student Loan Scheme Act 1992</i></p> <p>92 Student Loan Scheme Act 1992</p> <p>93 PAYE rules of Income Tax Act 1994 to apply to repayment deductions</p> <p style="text-align: center;"><i>Amendment to Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001</i></p> <p>94 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001</p> <p>95 Value of supply of goods and services</p>
78	Sections 176 and 177 replaced 176 Recovery of tax by Commissioner 177 Taxpayer may apply for financial relief 177A Definition of serious hardship 177B Instalment arrangements 177C Write-off of tax by Commissioner		
79	New section 177D inserted 177D Relief to taxpayers to whom new start grants payable		

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

**1 Title**  
This Act is the **Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2001**.

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

5

## Part 1

### Amendments to Income Tax Act 1994

- 3 Income Tax Act 1994**  
This Part amends the Income Tax Act 1994<sup>1</sup>. 5  
<sup>1</sup> 1994 No 164
- 4 Exclusions from term dividends**
- (1) In section CF 3(14), in paragraph (b) of the definition of **ineligible capital amount**, the second reference to “acquired company” is replaced by “acquiring company”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent. 10
- 5 New section CF 7A inserted**
- (1) After section CF 7, the following is inserted:
- “CF 7A **Treatment of certain dividends derived by unit trust managers**
- “(1) This section applies to a unit trust manager, a trustee or a person nominated by the manager or the trustee, who— 15
- “(a) acquires units from unit holders—
- “(i) in the ordinary course of their management activities in respect of the unit trust; and
- “(ii) in accordance with the terms on which the units were offered to potential unit holders; and 20
- “(b) derives a dividend from the redemption or other cancellation of units in the unit trust in the ordinary course of their management activities in respect of the unit trust.
- “(2) Despite section CF 6(1), in Parts B, C, E and F, the dividend derived does not include the amount of the imputation credit attached to the dividend to the extent that the dividend, exclusive of the imputation credit, recovers the price paid by the unit trust manager, the trustee or the person nominated by the manager or the trustee to acquire the units. 25 30
- “(3) To the extent that **subsection (2)** applies, section FC 3 does not apply.
- “(4) In this section, an **imputation credit** includes a dividend withholding payment credit.”
- (2) **Subsection (1)** applies on and after 1 April 1996. 35

- (3) Despite **subsection (2)**, **subsection (1)** does not apply if a unit trust manager, a trustee or a person nominated by the manager or the trustee has claimed a credit of tax for the imputation credit in a return of income or by using the disputes procedures of Part IVA of the Tax Administration Act 1994 before 6 November 2001. 5
- 6 Calculation and attribution of controlled foreign company repatriation**
- (1) In section CG 8(11), in item 'a', "principles of New Zealand" is replaced by "practice". 10
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 7 Branch equivalent income calculation**
- (1) In section CG 11(21)—
- (a) "BC 3," is inserted before "DN 1": 15
- (b) "IB 2, IB 3," is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 8 Use of alternative methods**
- (1) In section CG 17(6)(b), "principles" is replaced by "practice". 20
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 9 New section CH 4 added**
- (1) After section CH 3, the following is added: 25
- "CH 4 Monetary remuneration payable may be gross income of purchaser of business**
- If **section DF 10** applies in respect of a sale of a business to a purchaser who is not associated with the vendor and the provisions for actual and contingent monetary remuneration transferred to the purchaser are more than the amount actually paid by the purchaser, the excess is gross income of the purchaser at the time generally accepted accounting practice recognises the actual or contingent provision as being reduced." 30

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

#### **10 Section CJ 6 replaced**

- (1) Section CJ 6 is replaced by:

“**CJ 6 Disposal of ownership interest in controlled petroleum mining entity not gross income** 5

Consideration derived by a person from the disposal of shares or trust interests in a controlled petroleum mining entity is not gross income of the person.”

- (2) **Subsection (1)** applies on and after 3 December 2001. 10

#### **11 Section CJ 7 replaced**

- (1) Section CJ 7 is replaced by:

“**CJ 7 Application of certain petroleum mining provisions**

Except as otherwise expressly provided, sections CJ 3 to CJ 5 of this Act, and section 91 of the Tax Administration Act 1994, apply to gross income derived from the disposal of petroleum mining assets.” 15

- (2) **Subsection (1)** applies on and after 3 December 2001.

#### **12 Exception for withdrawal when member ceases employment** 20

- (1) In section CL 8(2)(b), “either” is replaced by “each”.

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

#### **13 Certain deductions not allowed—superannuation contributions, bonuses, retiring allowances, etc** 25

- (1) After section DF 1(b), the following is added:

“(c) any expenditure by way of a pension that is paid or payable to or for the benefit of a former partner of a partnership, or any relative of a former partner, during or on occasion of the former partner’s retirement.” 30

- (2) After section DF 1, the following is added as subsection (2):

“(2) In **subsection (1)(c)**, a **former partner** includes a partner in a previous partnership that carried on the same business that is carried on by the partnership.”

- (3) **Subsections (1) and (2)** apply to the 2000–01 and subsequent income years.

**14 Pensions payable to former employees**

- (1) In section DF 4(1), “section FF 17” is replaced by “section FF 17(1)”. 5
- (2) **Subsection (1)** applies to the 2000–01 and subsequent income years.

**15 Retiring allowances payable to employees**

- (1) In section DF 5(1)—
- (a) “In an income year, a” is replaced by “A”: 10
- (b) “in that income year” is omitted.
- (2) After section DF 5(2), the following is added:
- “(3) This section does not apply to the extent that the taxpayer has accepted a liability to make a lump sum payment as part of the purchase of the business.” 15
- (3) **Subsections (1) and (2)** apply on and after the date this Act receives the Royal assent.

**16 New section DF 8A added**

- (1) After section DF 8, the following is added:
- “DF 8A **Deduction to partner of partnership for pension paid to former partner** 20
- “(1) In an income year, a taxpayer who is a partner in a partnership is allowed a deduction for their share of an amount paid as a pension to a former partner in a previous partnership, or to the surviving spouse of the former partner, if— 25
- “(a) the previous partnership in which the former partner was a partner carried on the same business that is carried on by the partnership paying the pension; and
- “(b) the former partner has retired from the previous partnership or their employment ended through retirement; and 30
- “(c) the former partner has a right to receive the pension under a deed for a fixed period or for life, or the former partner’s spouse has a right to receive the pension under a deed for a fixed period or for life, or until the spouse remarries; and 35

- “(d) the pension is paid for the former partner’s past services in the previous partnership.
- “(2) **Subsection (1)** applies only to an amount that is reasonable in the particular circumstances of the case.
- “(3) **Subsection (1)** does not apply to a partnership which is engaged exclusively or principally in the investment of money or the holding of or dealing in shares, securities, investments or estates or interests in land.” 5
- (2) **Subsection (1)** applies to the 2000–01 and subsequent income years. 10
- 17 New section DF 9 added**
- (1) After **section DF 8A** (as added by **section 16**), the following is added:
- “**DF 9 No deduction for goods and services tax payable on fringe benefit** 15
- A taxpayer, being a registered person to whom **section 23A** of the Goods and Services Tax Act 1985 applies, is not allowed a deduction for the goods and services tax payable on the taxable value of a fringe benefit.”
- (2) **Subsection (1)** applies to goods and services tax payable and included in fringe benefit tax returns due— 20
- (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
- 18 New section DF 10 added**
- (1) After **section DF 9** (as added by **section 17**), the following is added: 30
- “**DF 10 Deduction allowed for actual and contingent monetary remuneration on sale of business**
- “(1) This section applies to a taxpayer who sells a business, or part of a business, if some or all of the employees of the business become employees of the purchaser. 35
- “(2) The taxpayer may deduct the provisions for actual and contingent monetary remuneration transferred to the purchaser in

respect of transferring employees if the taxpayer and the purchaser agree on the amount transferrable.

- “(3) The taxpayer is allowed the deduction on the date that the business is sold.
- “(4) If the purchaser is a person associated with the taxpayer— 5  
 “(a) **subsection (2)** does not apply; and  
 “(b) the purchaser may deduct the amount of actual and contingent monetary remuneration transferred in respect of transferring employees if the amount would have been deductible to the taxpayer had the business not been sold. 10
- “(5) If the provisions for actual and contingent monetary remuneration transferred are less than the amount actually paid by the purchaser, the purchaser is allowed a deduction for the amount of the difference.” 15
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**19 New section DJ 22 inserted**

- (1) After section DJ 21, the following is inserted:
- “DJ 22 **No deduction for bribes paid to public officials** 20
- “(1) This section applies if a person corruptly gives, offers, or agrees to give a bribe to another person with intent to influence a public official to act, or fail to act, in his or her official capacity, whether or not the act or the failure to act is within the scope of the official’s authority, in order to— 25  
 “(a) obtain or retain business; or  
 “(b) obtain any improper advantage in the conduct of business.
- “(2) This section applies even if the bribe was given, offered or agreed to be given outside New Zealand and was not, at the time it was given, offered or agreed to be given, an offence under the laws of the foreign country in which the principal office of the person, organisation or other body for whom the foreign public official is employed or otherwise provides services, is situated. 30 35
- “(3) A person is not allowed a deduction for the amount of the bribe given or offered.

- “(4) **Subsection (3)** does not apply to an amount paid for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action and the value of the benefit is small.
- “(5) In this section— 5
- “**benefit, foreign country and foreign public official** have the meanings set out in section 105C of the Crimes Act 1961
- “**bribe** has the meaning set out in section 99 of the Crimes Act 1961
- “**public official** means— 10
- “(a) a member of Parliament or a Minister of the Crown; and
- “(b) a judicial officer, a law enforcement officer or an official, as those terms are defined in section 99 of the Crimes Act 1961; and
- “(c) a foreign public official 15
- “**routine government action** has the meaning set out in section 105C of the Crimes Act 1961.”
- (2) **Subsection (1)** applies to bribes paid on and after the date this Act receives the Royal assent.
- 20 Section DM 6 replaced 20**
- (1) Section DM 6 is replaced by:
- “DM 6 **No deduction for cost of ownership interests in controlled petroleum mining entity**
- A person is not allowed a deduction for the cost of shares or trust interests in a controlled petroleum mining entity.” 25
- (2) **Subsection (1)** applies on and after 3 December 2001.
- 21 Accounting for goods and services tax**
- (1) In section ED 4(7)(a), “**services, and taxable supply**” is replaced by “**and services**”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income 30 years.
- 22 New section EE 2A inserted**
- (1) After section EE 2, the following is inserted:

- EE 2A Valuation of trading stock by certain taxpayers not required if closing stock estimated to be less than \$5,000**
- (1) This section applies to a taxpayer if the total value of the taxpayer's taxable supplies for the 12 months ending with the month of the taxpayer's balance date is not more than \$1,300,000. 5
- (2) A taxpayer may use the value of opening stock for an income year as the value of closing stock for the income year if the taxpayer reasonably estimates that the closing stock's value is less than \$5,000." 10
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.
- 23 Cost of trading stock other than excepted financial arrangements**
- (1) In section EE 5, "principles" is replaced by "practice" wherever it occurs. 15
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 24 Requirement to value closing stock consistently**
- (1) In section EE 16(2), "principles" is replaced by "practice". 20
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 25 Forgiveness of debt**
- (1) In section EH 5(2), ", including a distribution of beneficiary income," is inserted after "distribution". 25
- (2) After section EH 5(2), the following is inserted:
- Application**
- "(2A) Subsection (3) does not apply when a trustee of a trust to which subsection (1)(b) applies makes a distribution to another trust and the other trust is one to which subsection (1)(b) applies." 30
- (3) After section EH 5(3), the following is inserted:
- "Distributed amounts not gross income for purpose of beneficiary income definition**

- “(3A) Despite subsection (3), gross income derived by the trustee is not gross income for the purpose of the **beneficiary income** definition.”
- (4) In section EH 5(3)(b) and EH 5(4), “creditors” is replaced by “the creditor”. 5
- (5) In section EH 5, in the list of defined terms:  
 (a) “beneficiary income,” is inserted after “amount,”;  
 (b) “, trustee” is inserted after “qualified accruals rules”.
- (6) **Subsections (1) to (5)** apply on and after the date this Act receives the Royal assent. 10
- 26 Base price adjustment—exceptions**
- (1) After section EH 46(3), the following is added:  
**“Absolute assignments with deferred consideration**  
 “(4) A person must not calculate a base price adjustment if the person assigns their rights under a financial arrangement absolutely and all or part of the consideration for the assignment is deferred.” 15
- (2) In section EH 46, in the list of defined terms—  
 (a) “, consideration” is added after “business”;  
 (b) “, person” is added after “New Zealand resident”. 20
- (3) **Subsections (1) and (2)** apply on and after the date this Act receives the Royal assent.
- 27 Forgiveness of debt**
- (1) In section EH 52(2), “, including a distribution of beneficiary income,” is inserted after “distribution”. 25
- (2) After section EH 52(2), the following is inserted:  
**“Application**  
 “(2A) Subsection (3) does not apply when a trustee of a trust to which subsection (1)(b) applies makes a distribution to another trust and the other trust is one to which subsection (1)(b) applies.” 30
- (3) After section EH 52(3), the following is inserted:  
**“Distributed amounts not gross income for purpose of beneficiary income definition**

- “(3A) Despite subsection (3), gross income derived by the trustee is not gross income for the purpose of the **beneficiary income** definition.”
- (4) In section EH 52(3)(b) and EH 52(4), “creditors” is replaced by “the creditor”. 5
- (5) In section EH 52, in the list of defined terms—  
 (a) “beneficiary income,” is inserted after “amount,”;  
 (b) “, trustee” is inserted after “person”.
- (6) **Subsections (1) to (5)** apply on and after the date this Act receives the Royal assent. 10
- 28 Valuation of bloodstock**
- (1) In section EM 1(1)(a), “subsection (4)” is replaced by “subsection (4)(a), (4)(b) or (4)(c)”.
- (2) After section EM 1(1)(a), the following is inserted:  
 “(ab) in relation to bloodstock that is a broodmare and to an income year beginning on or after 1 April 2001, the first income year in which the broodmare (being a broodmare which at the end of that income year is 2 years of age or older) is— 15  
 “(i) first used by the taxpayer for breeding purposes in the course of the conduct of the business by the taxpayer of breeding bloodstock; or 20  
 “(ii) purchased with the intention of being used for breeding purposes by the taxpayer in the course of the conduct of the business by the taxpayer of breeding bloodstock; or 25  
 “(iii) owned in the course of the conduct of the business of breeding bloodstock and that taxpayer has the intention of using that bloodstock for breeding purposes,— 30  
 the amount that remains after deducting from the cost price the specified writedown determined under **subsection (4)(d)** in relation to the broodmare:”.
- (3) In section EM 1(1)(b), “paragraph (a)” is replaced by “either **paragraphs** (a) or **(ab)** apply”. 35
- (4) In section EM 1(1)(c), “, **(ab)**” is inserted after “(a)”.
- (5) After section EM 1(4)(c), the following is inserted:

“(d) in relation to a broodmare, an amount calculated according to the formula:

$$\frac{x \times y}{11 - z}$$

where— 5

x is—

(i) in the case of a broodmare that is bloodstock to which subsection (5)(a) and (5)(b) applies, 1.25:

(ii) in any other case, 1; and 10

y is the cost price of the broodmare; and

z is either—

(i) 8; or

(ii) the age of the broodmare if its age at the end of the income year in which **subsection (1)(ab)** applies to the broodmare and to the taxpayer is 7 or less.” 15

(6) **Subsections (1) to (5)** apply on and after the date this Act receives the Royal assent.

## 29 Pensions 20

(1) In section FF 17, the following is added as subsections (2) and (3):

“(2) **Subsection (3)** applies if part of the pension, otherwise payable by a partnership to a former partner, is paid by the partnership to a person other than the former partner in accordance with an agreement made between the former partner and the person under section 21 of the Matrimonial Property Act 1976 or in compliance with an order of the Court made under section 25 of that Act. 25

“(3) **Section DF 8A** applies in the same manner and to the same extent to the part of the pension so paid as it would have applied if the part had been paid by way of a pension to the former partner.” 30

(2) **Subsection (1)** applies to the 2000–01 and subsequent income years. 35

## 30 Rules for calculating New Zealand group debt percentage

(1) After section FG 4(3)(c), the following is inserted:

- “(ca) in the case of a specified lease or a finance lease that is not recognised as an asset under generally accepted accounting practice, the adjusted tax value of the lease asset; or”.
- (2) In section FG 4(3)(d), FG 4(4), FG 4(9) and FG 4(15), “principles of New Zealand” is replaced by “practice”. 5
- (3) In section FG 4(4), “subsection (3)(c)” is replaced by “either subsection (3)(c) or **subsection (3)(ca)**”.
- (4) **Subsections (1) and (3)** apply to measurement dates that occur on and after 3 December 2001. 10
- (5) **Subsection (2)** applies on and after the date this Act receives the Royal assent.
- 31 Rules for calculating worldwide group debt percentage**
- (1) In section FG 5(4)(a), FG 5(8)(c)(i), FG 5(8)(d)(ii), FG 5(10)(b) and FG 5(11), “principles of New Zealand” is replaced by “practice”. 15
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 32 Rules for determining consolidated foreign attributed income group debt percentage** 20
- (1) In section FH 4(6)(b) and FH 4(6)(c), “principles of New Zealand” is replaced by “practice”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 33 Treatment of various settlements** 25
- (1) In section HH 3D(1)(c), “, being loans for less than market value,” is replaced by “are loans for less than market value that”.
- (2) After section HH 3D(1), the following is inserted:
- “(1A) Subsection (1) does not apply if more than one settlement is made on a trust and none of the settlements are of the type referred to in section HH 3C.” 30
- (3) **Subsections (1) and (2)** apply to beneficiary income derived in relation to the 2001–02 and subsequent income years.

- (4) **Subsection (3)** does not apply if the trustee of a trust has filed a return of income for the 2001–02 income year before 3 December 2001 on the basis that section HH 3D, as enacted by section 20 of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001, applied. 5
- 34 Definitions of guardian, minor and relative**
- (1) After section HH 3F(2), the following is inserted:
- “(2A) In subsection (2), the balance date of the trust is the balance date for the income year in which the income, from which the distribution of beneficiary income is made, is derived.” 10
- (2) **Subsection (1)** applies to beneficiary income derived in relation to the 2001–02 and subsequent income years.
- (3) **Subsection (2)** does not apply if the trustee of a trust has filed a return of income for the 2001–02 income year before 3 December 2001 on the basis that section HH 3F(2), as enacted by section 20 of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001, applied. 15
- 35 Trustee income** 20
- (1) In section HH 4(2)(a), “or to any deduction by way of special exemption” is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 36 Agent to make returns and be assessed as principal** 25
- (1) In section HK 1(2), “an exemption or” is replaced by “a”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 37 Liability of principal not affected**
- (1) In section HK 3(1), “, furnish returns” is inserted after “assessments”. 30
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

- 38 Rents, royalties, or interest derived by Maori trustee and not distributed**
- (1) In section HK 14, “or to any deduction by way of special exemption” is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent. 5
- 39 Rebate in certain cases for housekeeper**
- (1) In section KC 4(2), in the definition of **qualifying payments**, “or special exemption” is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent. 10
- 40 Rebate for gifts of money**
- (1) After section KC 5(1)(bw), the following is inserted:  
“(bx) Akha Rescue Ministry Charitable Trust”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years. 15
- 41 Determination of net income**
- (1) In section KD 1(1)(a), “sections CB 1(1)(a), CB 1(1)(c), CB 5(1)(f), CB 9(a) and CB 9(d)” is replaced by “sections CB 5(1)(f) and CB 9(a)”. 20
- (2) After section KD 1(1)(b)(ii), the following is inserted:  
“(iii) the amount by way of depreciation in respect of a building; and  
“(iv) the amount allowed under section EI 3 or section EI 13; and”. 25
- (3) Section KD 1(1)(c), KD 1(1)(d), KD 1(1)(e)(iii), KD 1(1)(e)(iv) and KD 1(1)(e)(viii) is repealed.
- (4) Section KD 1(1)(e)(i) is replaced by:  
“(i) any amount of income equalisation reserve deposit made before the 2003–04 income year (not being interest payable under section EI 2) that is refunded to the person in the 2003–04 or a subsequent income year under any of sections EI 4, EI 5, EI 7 and EI 9; and”. 30

- (5) In section KD 1(1)(e)(ii), “in the income year” is replaced by “in the 2002–03 or a prior income year” in both places where it occurs.
- (6) In section KD 1(1)(e)(v), “, excluding a deduction allowed by way of depreciation in the 2003–04 or a subsequent income year” is inserted after “income year”. 5
- (7) Section KD 1(1)(e)(vi) is replaced by:  
 “(vi) any amount of adverse event income equalisation reserve deposit made under section EI 11 before the 2003–04 income year (not being interest payable under section EI 12) that is refunded to the person in the 2003–04 or a subsequent income year under section EI 14, or under either section EI 5 or section EI 7 as applied by section EI 15; and”. 10
- (8) **Subsections (1), (2) and (4) to (7)** apply to the 2003–04 and subsequent income years. 15
- (9) **Subsection (3)** applies on the first day of the 2003–04 income year.
- 42 Calculation of family tax credit**
- (1) Section KD 3(4) is replaced by: 20  
 “(4) If a person has a spouse and is the principal caregiver during an eligible period, the person is allowed a credit of tax for the income year containing the eligible period of an amount calculated using the formula in subsection (5).”
- (2) **Subsection (1)** applies to the 2003–04 and subsequent income years. 25
- 43 Credits in respect of tax paid in a country or territory outside New Zealand**
- (1) In section LC 1(5), “, CF 6, and OE 6” is replaced by “and CF 6”. 30
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 44 New section LC 14A inserted**
- (1) After section LC 14, the following is inserted:

<b>“LC 14A Source of dividends</b>		
	If a company is not resident in New Zealand, and for the purposes of a law of another territory in relation to which a double tax agreement has been made is resident in that territory, and the law imposes foreign tax, a dividend paid by the company is treated as being derived from a source in that other territory for the purposes of the double tax agreement.”	5
(2)	<b>Subsection (1)</b> applies on and after the date this Act receives the Royal assent.	
 <b>45 Dividends from grey list companies</b>		10
(1)	In section LF 5(5), in the definition of <b>retained earnings</b> , “principles” is replaced by “practice”.	
(2)	<b>Subsection (1)</b> applies on and after the date this Act receives the Royal assent.	
 <b>46 Election to be a provisional taxpayer</b>		15
(1)	In section MB 2A(1)(a)(i), “or a non-standard income year” is inserted after “year”.	
(2)	<b>Subsection (1)</b> applies to the 1998–99 and subsequent income years.	
 <b>47 Section heading to section MC 1 replaced</b>		20
(1)	The section heading to section MC 1 is replaced by: “ <b>Payment of terminal tax by provisional taxpayer</b> ”.	
(2)	<b>Subsection (1)</b> applies on and after the date this Act receives the Royal assent.	
 <b>48 Limits on refunds of tax</b>		25
(1)	After section MD 2(1), the following is inserted: “(1A) Despite subsection (1), an imputation credit account company that furnishes its imputation return for an imputation year before the end of the next imputation year may be refunded income tax in accordance with section MD 1 if the refund is not more than the credit balance of the company’s imputation credit account on the last day of the imputation year for which the imputation return was furnished.”	30
(2)	In section MD 2(3) and MD 2(4), “, <b>(1A)</b> ” is inserted after “subsections (1)”.	35

- (3) In section MD 2(5) and MD 2(7)(b), “subsection (1) or subsection (2)” is replaced “subsections (1), **(1A)** or (2)”.
- (4) After section MD 2(5), the following is inserted:  
 “(5A) Despite subsection (5), the income tax not refunded may be credited on a provisional tax instalment date if residual income tax is treated as being payable on the date specified in Part VII of the Tax Administration Act 1994.” 5
- (5) **Subsections (1) to (3)** apply to a refund paid on or after 1 April 2002.
- (6) **Subsection (4)** applies on and after the date that this Act receives the Royal assent. 10
- 49 Credits arising to imputation credit account**
- (1) Section ME 4(1)(a)(iii) is replaced by:  
 “(iii) in the case of a company that is a group investment fund deriving category B income, income tax paid in respect of the income:” 15
- (2) After section ME 4(1)(d), the following is inserted:  
 “(da) the amount calculated according to the formula:  
 “credit balance × maximum imputation ratio  
 “where 20  
 “credit balance is all or part of the credit balance of the supplementary available subscribed capital account that the qualifying unit trust or group investment fund elects to use under **section MJ 7**; and 25  
 maximum imputation ratio is the formula set out in section ME 8(1), as if the words ‘in which the dividend is paid’ in item ‘a’ were read as ‘to which the election made under **section MJ 7** relates’.” 30
- (3) After section ME 4(2)(c), the following is inserted:  
 “(ca) in the case of a credit referred to in **paragraph (da)**, on the date that a debit arises in the qualifying unit trust’s or group investment fund’s supplementary available subscribed capital account under **section MJ 6**.” 35

- (4) **Subsection (1)** applies to the 1997–98 and subsequent income years.
- (5) **Subsections (2) and (3)** apply to the 2002–03 and subsequent imputation years.
- 50 Special debits arising to imputation credit account of unit trust or group investment fund** 5
- (1) In section ME 41(2)—
- (a) in paragraph (a), “, excluding imputation credits that have been included in a debit to the company’s or consolidated group’s imputation credit account arising under section ME 5(1)(i) in the income year, being imputation credits attached to dividends derived by the company or group company in the circumstances described in subsection (1)” is inserted after “the dividends”: 10  
15
- (b) in paragraph (b)—
- (i) the formula is replaced by:
- $$\frac{a \times c - d}{b}$$
- (ii) at the end of item c, “year.” is replaced by “year; and” and the following is added: 20
- “d is the amount of imputation credits attached to dividends that have been included in a debit to the company’s or consolidated group’s imputation credit account that arises under section ME 5(1)(i) in the income year, being imputation credits attached to dividends derived by the company or group company in the circumstances described in subsection (1).” 25
- (2) **Subsection (1)** applies on and after 1 April 1996.
- 51 New subpart MJ inserted** 30
- (1) After subpart MI, the following is inserted:

“Subpart MJ—Supplementary available subscribed  
capital accounts

- “MJ 1 **Qualifying unit trust or group investment fund may elect to maintain supplementary available subscribed capital account** 5
- “(1) If a qualifying unit trust or a group investment fund that derives category A income issues shares on terms that their redemption will be subject to section CF 3(1)(b)(iv)(A), the qualifying unit trust or group investment fund may establish and maintain a supplementary available subscribed capital account on and after the date that the **Taxation (Relief, Refunds and Miscellaneous Provisions) 2001** receives the Royal assent (in this subpart, called the **start date**). 10
- “(2) Despite **subsection (1)**, if **section MJ 4(1)** applies, and a qualifying unit trust or group investment fund makes an actual or notional calculation as at a date within the period described in that subsection, the date after the date of the calculation is the start date. 15
- “MJ 2 **Balance of supplementary available subscribed capital account** 20
- “(1) The balance of a supplementary available subscribed capital account is the difference between the total amount of credits and the total amount of debits existing in the account.
- “(2) The account has a credit balance if credits are more than debits. 25
- “MJ 3 **Supplementary available subscribed capital account**
- “(1) For each imputation year, a qualifying unit trust or a group investment fund must record the following in its supplementary available subscribed capital account: 30
- “(a) the opening balance: 30
- “(b) credits arising under **section MJ 5** in the year:
- “(c) debits arising under **section MJ 6** in the year.
- “(2) The opening balance of the account is— 35
- “(a) for the first imputation year, nil; and
- “(b) for subsequent imputation years, the closing balance of the account for the prior imputation year.

“MJ 4 **Supplementary available subscribed capital account—  
opening balance**

- “(1) This section applies to a qualifying unit trust or a group investment fund that exists at any time between the date that the **Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2001** receives the Royal assent and 31 March 2003 (both dates inclusive). 5
- “(2) Despite **section MJ 3(2)**, for the 2002–03 imputation year, a qualifying unit trust or a group investment fund may calculate the opening balance of its supplementary available subscribed capital account according to either— 10
- “(a) an actual calculation of the total amount of available subscribed capital per share that is more than the total amount from the redemption of those shares; or
- “(b) a notional calculation according to the formula: 15
- $$\frac{\text{“further tax on liquidation—tax not available to impute dividends”}}{\text{maximum imputation ratio}}$$

where

- |                                       |  |    |
|---------------------------------------|--|----|
| further tax on liquidation            | is the tax that would be payable if the qualifying unit trust or group investment fund were liquidated on the day before the start date, and it had paid all tax and imputed all dividends (including redemption dividends) at the maximum rate allowed; and | 20 |
| tax not available to impute dividends | is the amount of further tax to be paid that arises due to the structural features of the taxation and imputation systems; and   | 25 |
| maximum imputation ratio              | is the formula set out in section ME 8(1), as if the words ‘in which the dividend is paid’ in item ‘a’ were read as ‘in which the start date occurs’.  | 30 |

- “(3) In **subsection (2)(b)**, tax must be calculated under the item **further tax on liquidation** based on an orderly realisation of assets in the ordinary course of business. 35

- “(4) For the purpose of **subsection (2)(b)**, the structural features of the taxation and imputation systems include, for example, the tax effects of—
- “(a) non-taxable gains and losses, including exempt income but excluding dividends subject to section NH 1; and 5
  - “(b) imputation credits lost because of a breach in the continuity provisions; and
  - “(c) foreign tax credits; and
  - “(d) retained earnings generated before the qualifying unit trust or group investment fund established an imputation credit account. 10
- “MJ 5 **Credits arising to supplementary available subscribed capital account**
- “(1) In an imputation year, a qualifying unit trust’s, or a group investment fund’s, supplementary available subscribed capital account may be credited to the extent that the available subscribed capital per share is more than the amount from the redemption of the share if the redemption of the share was subject to section CF 3(1)(b)(iv)(A). 15
- “(2) The credit arises on the date that the shares are redeemed. 20
- “(3) This section only applies to credits that arise in respect of redemptions that occur after the start date.
- “MJ 6 **Debits arising to supplementary available subscribed capital account**
- “(1) In an imputation year, a qualifying unit trust’s, or a group investment fund’s, supplementary available subscribed capital account must be debited with the amount elected to be recorded in the qualifying unit trust’s, or group investment fund’s, imputation credit account. 25
- “(2) The debit arises— 30
- “(a) on the last day of the imputation year in respect of which an election under **section MJ 7(1)** is made; or
  - “(b) immediately before the qualifying unit trust or group investment fund ceases to be an imputation credit account company if an election has been made under **section MJ 7(2)**. 35

- “MJ 7 Transfer of credit balance in supplementary available subscribed capital account to imputation credit account**
- “(1) A qualifying unit trust or a group investment fund that has a credit balance in its supplementary available subscribed capital account at the end of an imputation year may elect to use all or part of the balance for the purpose of recording credits in its imputation credit account to satisfy a debit balance in that account. 5
- “(2) A qualifying unit trust or a group investment fund that has a credit balance in its supplementary available subscribed capital account may, immediately before it ceases to be an imputation credit account company, elect to use all or part of the balance for the purpose of recording credits in its imputation credit account to satisfy a debit balance in that account. 10
- “(3) An election is made by debiting the supplementary available subscribed capital account and crediting the imputation credit account. 15

*“Credits and debits incorrectly recorded*

- “MJ 8 Correction by Commissioner of credits and debits**
- “(1) If the Commissioner considers that a credit or a debit in a qualifying unit trust’s, or group investment fund’s, supplementary available subscribed capital account is incorrectly recorded or determines that a debit or a credit has not been recorded at all, the Commissioner must determine the correct debit or credit amount and the date on which the debit or credit should be recorded. 20 25
- “(2) As soon as is convenient after a determination is made, the Commissioner must give notice of the determination of incorrect entry to the qualifying unit trust or group investment fund. 30
- “(3) Unless the qualifying unit trust or group investment fund establishes in proceedings challenging the determination that the Commissioner is wrong, the account must be corrected accordingly.
- “(4) The notice may be included in a notice of assessment under section 111(1) of the Tax Administration Act 1994. 35
- “(5) Failure to give notice does not invalidate the Commissioner’s determination.”

- (2) **Subsection (1)** applies to the 2002–03 and subsequent imputation years.
- 52 Multi-rate calculation for attributed fringe benefits**
- (1) In section ND 5(1), in the item **tax on cash remuneration**, “section KC 1” is replaced by “section KC 1, applied as if the employee were resident in New Zealand for the full income year for the purpose of that section,”. 5
- (2) **Subsection (1)** applies to a fringe benefit provided or granted by an employer—
- (a) on or after 1 April 2001, for an employer who pays fringe benefit tax on a quarterly or an annual basis; and 10
- (b) during the 2000–01 or a subsequent income year, for an employer who pays fringe benefit tax on an income year basis.
- 53 Liability to make deduction in respect of foreign withholding payment dividend** 15
- (1) After section NH 1(2), the following is added:
- “(3) In section NH 1(2)(a), dividends paid by a foreign company exclude dividends that would be exempt income under section CB 4 if section CB 10 did not apply.” 20
- (2) **Subsection (1)** applies to the 1997–98 and subsequent income years.
- 54 Reduction in liability under conduit tax relief**
- (1) In section NH 7(1), in the item “DWP”, “foreign” is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent. 25
- 55 Definitions**
- (1) This section amends section OB 1.
- (2) In the definition of **after-income tax earnings**, “principles of New Zealand” is replaced by “practice”, in both places where it occurs. 30
- (3) The definition of **common market value interest** is replaced by:

- “**common market value interest** is defined in section IG 1(5) for the purpose of that section and in **section OD 5(6E)** for the purpose of **section OD 5(6D)**”.
- (4) The definition of **common voting interest** is replaced by:  
 “**common voting interest** is defined in section IG 1(5) for the purpose of that section and in **section OD 5(6E)** for the purpose of **section OD 5(6D)**”.
- (5) In paragraph (b) of the definition of **consideration**, “DM 3, and DM 6” is replaced by “DM 3”.
- (6) In paragraph (b) of the definition of **controlled petroleum mining company**, “principles” is replaced by “practice”.
- (7) In the definition of **controlled petroleum mining holding company**, “principles” is replaced by “practice”.
- (8) In the definition of **controlled petroleum mining holding trust**, “principles” is replaced by “practice”.
- (9) In paragraph (b) of the definition of **controlled petroleum mining trust**, “principles” is replaced by “practice”.
- (10) In the definition of **distribution** in paragraph (d), “beneficiary;—” is replaced by “beneficiary; and” and the following is inserted:  
 “(e) for the purpose of **sections EH 5** and **EH 52**, the extent to which the trustee of the trust makes a settlement to, or for the benefit of, or on the terms of, another trust, and the sums, amounts, or property of the settlement were from amounts forgiven and treated as paid in circumstances described in either **section EH 5(1)** or **section EH 52(1)**;—”./
- (11) In the definition of **disposition of property**, “definition of **superannuation contribution**” is replaced by “definitions of **settlor** and **superannuation contribution**”.
- (12) In the definition of **foreign tax**, “sections CF 6 and OE 6” is replaced by “section CF 6”.
- (13) The definition of **generally accepted accounting principles** is repealed.
- (14) After the definition of **general power of appointment**, the following is inserted:  
 “**generally accepted accounting practice** has the meaning set out in section 3 of the Financial Reporting Act 1993, as if

- that section applied for the purpose of the Income Tax Act 1994”.
- (15) In the definition of **market value interest**—
- (a) in paragraph (a), “except as provided in **paragraph (ab)**,” is inserted before “means”: 5
- (b) after paragraph (a), the following is inserted:
- “(ab) in **section OD 5(6E)**, means, in relation to a person, a company, and a time, the percentage market value interest that the person is deemed to hold in the company by virtue of section OD 4, as modified by section **OD 5(6F)**.”. 10
- (16) In the definition of **mining venture**, “in sections DN 1, DN 5, IB 2, and IB 3” is replaced by “in the definition of **schedular gross income** and in sections DN 1 and DN 5”.
- (17) In paragraph (b)(ii) of the definition of **new provisional taxpayer**, “\$30,000” is replaced by “\$35,000”. 15
- (18) In paragraph (b) of the definition of **nominee**, “and OD 4(3)” is replaced by “, OD 4(3) and **OD 5(6A)**”.
- (19) In the definition of **non-filing taxpayer**—
- (a) in the words before paragraph (a), “natural” is omitted: 20
- (b) in paragraph (a), “section 33A(1)” is replaced by “section 33A of the Tax Administration Act 1994”.
- (20) In the definition of **petroleum licence**, “DM 6” is replaced by “DM 4”.
- (21) In the definition of **resident mining operator**, “IH 4” is replaced by “IH 5”. 25
- (22) In paragraph (a) of the definition of **settlor**, “in paragraph (b) of the definition of **settlement**, as that paragraph applies to sections HH 3C and HH 3D, and” is inserted before “in sections HH 3C and HH 3D”. 30
- (23) In the definition of **taxable supply**, “section ED 4, has the meaning assigned by section ED 4(7)” is replaced by “**sections ED 4 and EE 2A**, has the meaning set out in section 2 of the Goods and Services Tax Act 1985”.
- (24) In the definition of **voting interest**— 35
- (a) in paragraph (a), “except as provided in **paragraph (ab)**,” is inserted before “means”:
- (b) after paragraph (a), the following is inserted:

- “(ab) in **section OD 5(6E)**, means, in relation to a person, a company, and a time, the percentage voting interest that the person is deemed to hold in the company by virtue of section OD 3, as modified by **section OD 5(6F)**.”.
- (25) **Subsections (2), (6) to (12), (14), (16), (17), (19)(b), (20) and (21)** apply on and after the date this Act receives the Royal assent. 5
- (26) **Subsections (3), (4), (15), (18) and (24)** apply on and after 1 March 2002.
- (27) **Subsection (5)** applies on and after 3 December 2001.
- (28) **Subsection (13)** applies on the date this Act receives the Royal assent. 10
- (29) **Subsection (17)** applies to the 2003–04 and subsequent income years.
- (30) **Subsection (19)(a)** applies on and after 1 April 1999.
- (31) **Subsection (22)** applies to the 2001–02 and subsequent income years. 15
- (32) **Subsection (23)** applies to the 2002–03 and subsequent income years.
- 56 Modification to measurement of voting and market value interests in case of continuity provisions** 20
- (1) After section OD 5(6), the following is inserted:
- “(6A) **Subsection (6B)** applies if shares in a company (**company B**) are transferred or issued to shareholders of another company (**company A**) or to a nominee of a shareholder of company A, and— 25
- “(a) before the transfer or issue—
- “(i) company A is treated as holding voting or market value interests in another company (**company C**) under section OD 5(6)(b); and
- “(ii) company A holds all voting interests, and if a market value circumstance exists, all market value interests in company B, calculated as if sections OD 3(3)(d) and OD 4(3)(d) did not apply to deem company A’s interests to be held by others; and 30
- “(iii) company A is a limited attribution company at all relevant times; and 35
- “(b) after the transfer or issue—

- “(i) company B is treated as holding voting or market value interests in company C under section OD 5(6)(b); and
- “(ii) company B is a limited attribution company at all relevant times. 5
- “(6B) Despite sections OD 3(3)(d), OD 4(3)(d) and OD 5(6)(b), company B is treated as holding voting or market value interests in company C, being interests which company A held in company C and calculated as if sections OD 3(3)(d) and OD 4(3)(d) did not apply to deem company A’s interests to be held by others— 10
- “(a) for the periods before the transfer or issue that company A held interests in company C; and
- “(b) for the purpose of applying the continuity provisions on and after the date of transfer or issue; and 15
- “(c) to the extent that there is a group of persons who hold common interests in company A and company B immediately after the transfer or issue.
- “(6C) In **subsection (6A), at all relevant times** means— 20
- “(a) in **paragraph (a)(iii)**—
- “(i) in relation to the offset of a loss under Part I, the time between the first day of the period in which the loss is incurred and the date of transfer or issue:
- “(ii) in relation to a credit subject to the continuity provisions, the time between the date the credit arose and the date of transfer or issue; and 25
- “(b) in **paragraph (b)(ii)**—
- “(i) in relation to the offset of a loss under Part I, the time between the date of transfer or issue and the last day of the period in which the loss is offset: 30
- “(ii) in relation to a credit subject to the continuity provisions, the time between the date of transfer or issue and the date the credit is cancelled by a subsequent debit. 35
- “(6D) In **subsection (6B), common interests** means—
- “(a) if a market value circumstance does not exist in respect of company A or company B, the common voting interest:
- “(b) if a market value circumstance exists in respect of company A but not in respect of company B, the lower of 40

- the common voting interest in company A and company B and the market value interest in company A:
- “(c) if a market value circumstance exists in respect of company B but not in respect of company A, the lower of the common voting interest in company A and company B and the market value interest in company B: 5
- “(d) if a market value circumstance exists in respect of both company A and company B, the lower of the common market value interest and common voting interest in both companies A and B. 10
- “(6E) In **subsection (6D)**—
- “**common market value interest** of a person in relation to company A and company B is the market value interest held by the person in each company measured by either—
- “(a) the percentage market value interest of the person in each company if the percentages are the same in each case; or 15
- “(b) the lowest percentage market value interest of the person in each company if the percentages differ
- “**common voting interest** of a person in relation to company A and company B is the voting interest held by the person in each company measured by either— 20
- “(a) the percentage voting interest of the person in each company, if the percentages are the same in each case; or 25
- “(b) the lowest percentage voting interest of the person in each company if the percentages differ.
- “(6F) For the purpose of measuring common interests, sections OD 3(3)(b), OD 3(3)(d), OD 4(3)(b) and OD 4(3)(d) do not apply to deem a nominee’s or a company’s voting or market value interest in company A or company B to be held by another person if the person would be treated as holding a voting or market value interest of less than 10% in company A or company B by virtue of those sections applying.” 30
- (2) In section OD 5(7)(a), “and (6)” is replaced by “(6), **(6A)**, **(6B)** and **(6F)**”. 35
- (3) **Subsections (1)** and **(2)** apply in relation to a transfer or issue of shares on and after 1 March 2002.

- 57 Further definitions of associated persons**
- (1) In section OD 8(1)—
- (a) “CJ 6,” is omitted;
- (b) “DM 1 to DM 10” is replaced by “DM 1 to DM 5,  
DM 7 to DM 10”. 5
- (2) In section OD 8(1)(h), “CB 4(1)(k)” is replaced by “DJ 17”.
- (3) **Subsection (1)** applies on and after 3 December 2001.
- (4) **Subsection (2)** applies on and after the date this Act receives the Royal assent.
- 58 Section OE 6 repealed** 10
- (1) Section OE 6 is repealed.
- (2) **Subsection (1)** applies on the date this Act receives the Royal assent.
- 59 References to particular regimes in former Act, etc**
- (1) In section OZ 1(1), in the definition of **PAYE rules**, “Parts IC and NC and sections GC 18, LD 1, LD 4, and LD 5” is replaced by “Part NC and sections BC 2, GC 18 and LD 1”. 15
- (2) In section OZ 1(3)(h), “IB 2, IB 3,” is omitted.
- (3) **Subsections (1)** and **(2)** apply on and after the date this Act receives the Royal assent. 20

## Part 2

### Amendments to Tax Administration Act 1994

- 60 Tax Administration Act 1994** 25
- This Part amends the Tax Administration Act 1994<sup>2</sup>.
- <sup>2</sup> 1994 No 166
- 61 Interpretation**
- (1) This section amends section 3(1).
- (2) The definition of **abusive tax position** is replaced by:
- “**abusive tax position** is defined in—
- “(a) section 141D(7) for the purpose of Part IX; and
- “(b) **section 177C** for the purpose of that section”. 30
- (3) After the definition of **entitlement card**, the following is inserted:

- “**evasion or a similar act** is defined in **section 177C** for the purpose of that section”.
- (4) After the definition of **family certificate of entitlement**, the following is inserted:  
 “**family trust** is defined in **section 173M(5)** for the purpose of that section”. 5
- (5) After the definition of **reject**, the following is inserted:  
 “**relative** is defined in **section 173M(5)** for the purpose of that section”.
- (6) The definition of **separated person** is repealed. 10
- (7) In the definition of **tax**—  
 (a) after paragraph (c), the following is inserted:  
 “(ca) for the purpose of **Part XB**, also includes a rebate referred to in section 41A:”;  
 (b) in paragraph (d), “and 177” is replaced by “, **177, 177A to 177D**”. 15
- (8) **Subsections (2), (3) and (7)(b)** apply on and after 1 July 2002.
- (9) **Subsections (4), (5) and (7)(a)** apply to the 2002–03 and subsequent income years.
- (10) **Subsection (6)** applies on 1 July 2002. 20
- 62 Resident withholding tax deduction certificates**
- (1) In section 25(1), “in such form as the Commissioner may approve and containing” is replaced by “that contains”.
- (2) Section 25(6) is replaced by:  
 “(6) A resident withholding tax deduction certificate must include the following: 25  
 “(a) a statement as to whether the resident withholding income is interest or specified dividends:  
 “(b) the date on which the deduction was made, or if there is more than one deduction, the year in which the deductions were made: 30  
 “(c) the amounts of resident withholding tax income and resident withholding tax deductions.”
- (3) Section 25(6A) is repealed.
- (4) In section 25(7)(a) and 25(7)(b), “\$20” is replaced by “\$50”. 35
- (5) In section 25(10)(d), “business.” is replaced by “business; or” and the following is added:

- “(e) is sent electronically to the recipient or to a person authorised to act on behalf of the recipient and the recipient or the authorised person agree to receiving the certificate this way.”
- (6) **Subsections (1), (2) and (5)** apply to resident withholding certificates provided on or after 1 April 2002 that relate to interest or specified dividends paid in the 2001-02 and subsequent income years. 5
- (7) **Subsection (3)** applies on 1 April 2002.
- (8) **Subsection (4)** applies to the 2002-03 and subsequent income years. 10
- 63 Annual returns of income not required**
- (1) In section 33A(1)(a), the words before subparagraph (i) are replaced by:  
“(a) had gross income that was derived only from—”. 15
- (2) At the end of section 33A(1)(a)(iii), “and” is replaced by “or” and the following is inserted:  
“(iv) a source or sources other than those listed in subparagraphs (i) to (iii) and the total amount derived is \$200 or less; and”. 20
- (3) Section 33A(2)(1) is repealed.
- (4) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- (5) **Subsection (2)** applies to the 2002-03 and subsequent income years. 25
- (6) **Subsection (3)** applies on the first day of the 2002-03 income year.
- 64 Income tax returns and assessments by executors or administrators**
- (1) Section 43(4) is replaced by: 30  
“(4) The executor or administrator of a deceased taxpayer must request the Commissioner to issue an income statement if the taxpayer would have been a person to whom section 33A(5) refers if the taxpayer had remained alive and the Commissioner has not issued an income statement. 35

- “(5) The executor or administrator of a deceased taxpayer may request the Commissioner to issue an income statement if the taxpayer would have been a person to whom section 33A(1) applied if the taxpayer had remained alive.”
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years. 5
- 65 Resident withholding tax deduction reconciliation statements**
- (1) Section 51(2) is replaced by:
- “(2) The Commissioner may require the following information in relation to a deduction of resident withholding tax: 10
- “(a) the full name, address and tax file number of the person (the payer); and
- “(b) the full name and last known address of the recipient unless, after making reasonable inquiries, the payer is unable to obtain those details; and 15
- “(c) the tax file number of the recipient, if known to the payer; and
- “(d) whether the resident withholding income is interest or specified dividends; and 20
- “(e) the date on which the deduction was made, or if there is more than one deduction, the year in which the deductions were made; and
- “(f) the amounts of resident withholding tax income and resident withholding tax deductions; and 25
- “(g) further information that the Commissioner considers relevant.
- “(2A) If the person has paid interest or specified dividends to another person (the recipient) and has not deducted resident withholding tax because the recipient holds a valid certificate of exemption, the Commissioner may require the following information: 30
- “(a) the full name and last known address of the recipient; and
- “(b) the total interest or specified dividends paid to the recipient; and 35
- “(c) the recipient’s tax file number, except if the recipient is, at the time of payment, a person to whom any of

paragraphs (a) to (d) of section NF 9(1) of the Income Tax Act 1994 applies; and

“(d) further information that the Commissioner considers relevant.

“(2B) Information that may be required under **subsection (2)** or **subsection (2A)** must be provided in a form approved by the Commissioner.” 5

(2) In section 51(3), “or **subsection (2A)**” is inserted after “subsection (2)”.

(3) **Subsections (1)** and **(2)** apply to resident withholding certificates provided on or after 1 April 2002 that relate to interest or specified dividends paid in the 2001–02 and subsequent income years. 10

#### 66 Disclosure of trust particulars

(1) Section 59(3) is replaced by: 15

“(3) The trustee of every trust must in every case make a return of all income derived by the trustee as trustee of the trust, and each return is treated as being separate and distinct from any return made by the trustee in respect of another trust or in the trustee’s own right.” 20

(2) **Subsection (1)** applies to the 1997–98 and subsequent income years.

#### 67 Disclosure of interest in foreign investment fund

(1) In section 61, in the section heading “**foreign company or**” is inserted after “**in**”. 25

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

#### 68 Annual imputation return

(1) After section 69(1)(f), the following is inserted:

“(fa) where the company is a qualifying unit trust or a group investment fund that derives category A income— 30

“(i) the opening and closing balances of the trust’s or fund’s supplementary available subscribed capital account for the imputation year:

- “(ii) the amount and source of all credits and debits that have arisen in the trust’s or fund’s supplementary available subscribed capital account in accordance with **sections MJ 5** and **MJ 6** of the Income Tax Act 1994:”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.
- 69 Content and notification of a public ruling**
- (1) Section 91DA(1)(e) is replaced by:
- “(e) either—
- “(i) the period or income year for which the ruling applies; or
- “(ii) in the case of a ruling issued for an indefinite period, the date or income year from which the ruling applies.”
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 70 Application of a public ruling**
- (1) Section 91DC(1)(b) and 91DC(1)(c) is replaced by:
- “(b) for an arrangement that is specified in the ruling; and
- “(c) for an arrangement that is entered into either—
- “(i) during the period or income year for which the ruling applies; or
- “(ii) in the case of a ruling issued for an indefinite period, on or after the date, or on or after the first day of the income year, from which the ruling applies; and
- “(d) either—
- “(i) for the period or income year specified in the ruling; or
- “(ii) in the case of a ruling issued for an indefinite period, for an indefinite period.”
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 71 Withdrawal of a public ruling**
- (1) Section 91DE(4) is replaced by:

- “(4) If the Commissioner withdraws a public ruling, the ruling does not apply to an arrangement entered into after the date of withdrawal.
- “(4A) If the Commissioner withdraws a public ruling, the ruling continues to apply— 5
- “(a) to an arrangement to which it previously applied that was entered into before the date of withdrawal; and
- “(b) either—
- “(i) for the remainder of the period or income year specified in the ruling; or 10
- “(ii) in the case of a ruling issued for an indefinite period, for 3 years after the date stated in the notice of withdrawal.”
- (2) Section 91DE(5)(c) is replaced by:
- “(c) either— 15
- “(i) the original period or income year for which the ruling applied; or
- “(ii) in the case of a ruling issued for an indefinite period, the original date or income year from which the ruling applied; and” 20
- (3) **Subsections (1) and (2)** apply on and after the date this Act receives the Royal assent.
- 72 Instalments of and due dates for provisional tax**
- (1) In section 120K(4)(b), “\$30,000” is replaced by “\$35,000”.
- (2) **Subsection (1)** applies to the 2003–04 and subsequent income years. 25
- 73 Certain rights of objection not conferred**
- (1) In section 125(j)(iii)—
- (a) “IB 1,” is omitted;
- (b) “92A” is inserted after “89,”. 30
- (2) In section 125(j)(iv), “**177A to 177D,**” is inserted after “**176, 177,**”.
- (3) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- (4) **Subsection (2)** applies on and after 1 July 2002. 35

- 74 Certain rights of challenge not conferred**
- (1) In section 138E(1)(e)(iii)—
    - (a) “IB 1,” is omitted:
    - (b) “92A,” is inserted after “89,”.
  - (2) In section 138E(1)(e)(iv), “**177A to 177D**,” is inserted after “**176, 177**,”. 5
  - (3) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
  - (4) **Subsection (2)** applies on and after 1 July 2002.
- 75 Late payment penalty** 10
- (1) In section 139B(3B)(b), “and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers” is inserted after “subsection (2A)(a)”.
  - (2) Section 139B(3B) is replaced by: 15

“(3B) The part of an initial late payment penalty imposed under subsection (2A)(b) is not to be added if the Commissioner has exercised powers available under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law before the end of the 6th day after the day on which an initial late payment penalty is imposed under subsection (2A)(a) and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers.” 20
  - (3) In section 139B(5A)(b), “and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers” is inserted after “tax law”. 25
  - (4) Section 139B(5A) is replaced by:
 

“(5A) An incremental late payment penalty is not to be added if, for a month during which the tax to pay remains unpaid, the Commissioner has exercised powers available under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law and has received the tax deducted in accordance with the requirements for the month of a notice issued as a result of the Commissioner exercising those powers.” 30

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- (5) In section 139B(6), “and **section 139BA**” is inserted after “this section”.
- (6) **Subsection (1)** applies to late payment penalties imposed on and after 1 April 2002.
- (7) **Subsections (2), (4) and (5)** apply on and after 1 July 2002. 5
- (8) **Subsection (3)** applies to instalment arrangements entered into on and after 1 April 2002.
- 76 New section 139BA inserted**
- (1) After section 139B, the following is inserted:
- “139BA **Imposition of late payment penalties when financial relief sought** 10
- “(1) If a taxpayer has outstanding tax and contacts the Commissioner seeking financial relief before the due date, the Commissioner must impose the late payment penalty under section 139B(2A)(a) on unpaid tax but must not impose the late payment penalty under section 139B(2A)(b). 15
- “(2) If a taxpayer has outstanding tax and contacts the Commissioner seeking financial relief on or after the due date, the Commissioner must not impose an incremental late payment penalty on unpaid tax on and after the date of the request. 20
- “(3) **Subsections (1) and (2)** apply until the earlier of—
- “(a) the date that the Commissioner makes a decision on giving financial relief; and
- “(b) the last day of the response period allowed by **section 177(3)** if the taxpayer does not provide the information sought or respond to a counter offer. 25
- “(4) If an instalment arrangement is entered into, an incremental late payment penalty is not to be added if, for a month during which the tax to pay remains unpaid, the taxpayer complies with all of their obligations under the arrangement. 30
- “(5) If financial relief is not given, the Commissioner must impose those late payment penalties not imposed as if the request for financial relief had not been made.”
- (2) **Subsection (1)** applies on and after 1 July 2002.
- 77 New Part XB inserted** 35
- (1) After Part XA, the following is inserted:

**“Part XB  
“Transfers of excess tax**

**“173K Application**

- “(1) This Part applies if tax has been paid in excess of the amount properly payable— 5
- “(a) to the extent that the tax paid in excess by or on behalf of a taxpayer is refundable and after the date the tax was paid, and before it is transferred under this Part, has not been applied to satisfy a tax liability or other amount due: 10
- “(b) to allow the Commissioner to transfer all or part of the excess at the taxpayer’s request.
- “(2) For the purpose of the Inland Revenue Acts—
- “(a) tax transferred by the transferor is treated as a refund to the transferor on the date of transfer; and 15
- “(b) tax transferred to the transferee is treated as tax paid by the transferee on the date of transfer, except for the purpose of imposing a shortfall penalty under Part IX.

**“173L Transfer of excess tax within taxpayer’s accounts**

- “(1) A taxpayer or their agent may request that the Commissioner transfer all or part of the excess to another period or another tax type of the taxpayer. 20
- “(2) The taxpayer may choose the date on which all or part of the excess is transferred, being—
- “(a) in the case of a GST refund, a day after the end of the taxable period in which the refund arose: 25
- “(b) in the case of tax deducted on the taxpayer’s behalf, a day after the end of the income year in which the deduction occurred:
- “(c) in any other case, a date that occurs after the date the excess tax is paid. 30
- “(3) Despite **subsection (2)(b)**, a taxpayer who has an early balance date may, in the case of tax deducted on the taxpayer’s behalf, only choose a day after the end of the year in which the deduction occurred. 35

**“173M Transfer of excess tax to another taxpayer**

- “(1) A taxpayer or their agent may request that the Commissioner transfer all or part of the excess to another taxpayer.

- “(2) A request may be made for a transfer between a taxpayer and—
- “(a) a company in the same group of companies; or
  - “(b) a shareholder employee of the taxpayer; or
  - “(c) a partner in the same partnership; or 5
  - “(d) a relative; or
  - “(e) a trustee of a family trust of which the taxpayer is a beneficiary; or
  - “(f) another taxpayer not listed in **paragraphs (a) to (e)**.
- “(3) A taxpayer, being a trustee of a family trust, may request a transfer to a beneficiary of the trust. 10
- “(4) The taxpayer may choose the date on which all or part of the excess is transferred, being—
- “(a) if **subsection (2)(a) to (2)(e)** or **subsection (3)** applies, a date allowed by **section 173L**: 15
  - “(b) if **subsection (2)(f)** applies, the later of the following dates:
    - “(i) a date that occurs on or after the date of the request; and
    - “(ii) a date that occurs after the date that the relevant return is filed for the period in which the excess arose. 20
- “(5) In this section—
- “**family trust** means a trust that is established primarily to benefit—
- “(a) a natural person for whom the settlor has natural love and affection; or 25
  - “(b) an organisation or a trust whose income is exempt under section CB 4(1)(c) or CB 4(1)(e); or
  - “(c) a natural person that satisfies **paragraph (a)** and an organisation or a trust that satisfies **paragraph (b)** 30
- “**relative** means, in relation to a person, another person within one degree of relationship.
- “173N **Transfer of excess tax—rebates**
- Despite **sections 173L** and **173M**, if a taxpayer makes a request to transfer a refund arising from a rebate referred to in section 41A, the taxpayer may choose only the later of the following dates: 35
- “(a) a date that occurs on or after the date of the request; and

- “(b) a date that occurs after the date on which the taxpayer applies for a refund under section 41A.”
- (2) **Subsection (1)** applies to—
- (a) tax paid in excess, being tax on income derived in the 2002–03 and subsequent income years; and 5
  - (b) tax paid in excess, if the excess arises from an assessment made on or after the date that the **Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2001** receives the Royal assent; and
  - (c) tax deducted on behalf of another taxpayer and paid on or after 1 April 2002; and 10
  - (d) a dividend withholding payment paid on or after 1 April 2002; and
  - (e) an application for a refund made under section 41A of the Tax Administration Act 1994 on or after the date that the **Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2001** receives the Royal assent; and 15
  - (f) goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002; and 20
  - (g) gift duty, cheque duty, totalisator duty, lottery duty, gaming machine duty or casino duty paid in excess, being duty paid on or after 1 April 2002.
- 78 Sections 176 and 177 replaced**
- (1) Sections 176 and 177 are replaced by: 25
- “176 **Recovery of tax by Commissioner**
- “(1) The Commissioner must maximise the recovery of outstanding tax from a taxpayer.
- “(2) Despite **subsection (1)**, the Commissioner may not recover outstanding tax to the extent that— 30
- “(a) recovery is an inefficient use of the Commissioner’s resources; or
  - “(b) recovery would place a taxpayer, being a natural person, in serious hardship.
- “177 **Taxpayer may apply for financial relief** 35
- “(1) A taxpayer, or a person on a taxpayer’s behalf, applies for financial relief by either—

- “(a) making a claim, in writing, setting out why recovery of outstanding tax would place the taxpayer in serious hardship; or
- “(b) requesting to enter into an instalment arrangement with the Commissioner by telephone or in writing. 5
- “(2) Upon receiving a request, the Commissioner may—
- “(a) accept the taxpayer’s request; or
- “(b) seek further information from the taxpayer; or
- “(c) make a counter offer; or
- “(d) decline the taxpayer’s request. 10
- “(3) A taxpayer has 10 working days, or a longer period allowed by the Commissioner, to provide the information sought or to respond to a counter offer.
- “177A **Definition of serious hardship**
- “(1) In this section and sections **176, 177, 177B** and **177C**, **serious hardship**, in relation to a taxpayer— 15
- “(a) includes significant financial difficulties that arise because of—
- “(i) the taxpayer’s inability to meet minimum living expenses according to normal community standards; or 20
- “(ii) the cost of medical treatment for an illness or injury of the taxpayer or the taxpayer’s dependant; or
- “(iii) a serious illness suffered by the taxpayer or the taxpayer’s dependant; or 25
- “(iv) the cost of education for the taxpayer’s dependant; and
- “(b) does not include significant financial difficulties that arise because— 30
- “(i) the taxpayer is obligated to pay tax; or
- “(ii) the taxpayer may become bankrupt; or
- “(iii) the taxpayer’s, or the taxpayer’s dependant’s, social activities and entertainment may be limited; or 35
- “(iv) the taxpayer is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards.

- “(2) In **subsection (1), dependant** means, in relation to the taxpayer, a person within one degree of relationship.
- “(3) The Commissioner may take into account whether the recovery of outstanding tax would place a shareholder who owns, or two shareholders who jointly own, 50% or more of the shares in a company in serious hardship. 5
- “177B **Instalment arrangements**
- “(1) The Commissioner must not enter into an instalment arrangement with a taxpayer to the extent that the arrangement would place the taxpayer in serious hardship. 10
- “(2) The Commissioner may decline to enter into an instalment arrangement if—
- “(a) to do so would not maximise the recovery of outstanding tax from the taxpayer; or
  - “(b) the Commissioner considers that the taxpayer is in a position to pay all of the outstanding tax immediately; or 15
  - “(c) the taxpayer is being frivolous or vexatious; or
  - “(d) the taxpayer is requesting an instalment arrangement to stop the Commissioner taking action to recover the outstanding tax; or 20
  - “(e) the taxpayer has not met their obligations under a previous instalment arrangement; or
  - “(f) the taxpayer has previously made a request to enter into an instalment arrangement and the request has been declined. 25
- “(3) A taxpayer may renegotiate an instalment arrangement at any time.
- “(4) The Commissioner may renegotiate an instalment arrangement at any time after the end of 2 years from the date on which the instalment arrangement was entered. 30
- “(5) The renegotiation of an instalment arrangement is treated as if it were a new request for financial relief.
- “(6) The Commissioner may cancel an instalment arrangement if it was entered into on the basis of false or misleading information provided by the taxpayer. 35

- “177C Write-off of tax by Commissioner**
- “(1) Subject to **section 176(2)**, the Commissioner may write off outstanding tax that cannot be recovered.
- “(2) The Commissioner must write off outstanding tax that cannot be recovered in the following situations: 5
- “(a) bankruptcy;
- “(b) liquidation;
- “(c) a taxpayer’s estate has been distributed.
- “(3) Despite **subsection (1)**, the Commissioner must not write off outstanding tax if the taxpayer was liable to pay, in relation to the outstanding tax, a shortfall penalty for an abusive tax position or evasion or a similar act. 10
- “(4) If the Commissioner writes off outstanding tax for a taxpayer who has a net loss, the Commissioner must extinguish all or part of the taxpayer’s net loss, at the rate of 33%, in proportion to the amount written off. 15
- “(5) For the purpose of **subsection (4)**, a taxpayer’s net loss is measured on the date the Commissioner writes off outstanding tax.
- “(6) The Commissioner may reverse a write-off if— 20
- “(a) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off declares bankruptcy within a year of the outstanding tax being written off; or
- “(b) the outstanding tax was written off due to false or misleading information provided by the taxpayer. 25
- “(7) If the Commissioner enters into an instalment arrangement that provides for some outstanding tax to be written off, the Commissioner may not reverse the write-off even if, during the term of the instalment arrangement, the taxpayer does not meet the instalment arrangement’s terms. 30
- “(8) In this section—
- “**abusive tax position** means a tax position that—
- “(a) at the time at which the taxpayer’s tax position is taken, involves the taking of an unacceptable interpretation of a tax law; and 35
- “(b) viewed objectively, the taxpayer takes—

- “(i) in respect of, or as a consequence of, an arrangement that is entered into with a dominant purpose of avoiding tax, whether directly or indirectly; or  
“(ii) that has a dominant purpose of avoiding tax, whether directly or indirectly, and does not relate to an arrangement described in **subparagraph (i)** 5  
“**evasion or a similar act** means the actions described in section 141E(1).”
- (2) **Subsection (1)** applies to tax that is outstanding on and after 1 July 2002. 10
- (3) **Subsection (2)** does not apply—
- (a) to tax that is outstanding on and after 1 July 2002 and subject to an instalment arrangement that is entered into before 1 July 2002; and
- (b) if the Commissioner has advised the taxpayer, in writing before 1 July 2002, that the outstanding tax has been written off. 15
- 79 New section 177D inserted**
- (1) After **section 177C** (as inserted by **section 78**), the following is inserted: 20
- “177D Relief to taxpayers to whom new start grants payable**
- “(1) This section applies to a taxpayer to whom a new start grant is payable.
- “(2) The Commissioner must grant relief—
- “(a) to the taxpayer, or to a person or an entity associated with the taxpayer, to the extent that the Commissioner thinks it appropriate having regard to the matters referred to in section EZ 9(3) of the Income Tax Act 1994; and 25
- “(b) from the payment of unpaid tax that relates to an income tax liability that would have arisen if the taxpayer’s only gross income were derived from— 30
- “(i) the farming business for which the new start grant was paid; or
- “(ii) land used in carrying on the farming business; or 35
- “(iii) the sale of the farm.
- “(3) If a new start grant is paid to a taxpayer in respect of an adverse event, the Commissioner must grant additional relief—

- “(a) to the taxpayer; and  
 “(b) from the payment of unpaid tax deductions or amounts owing to the Commissioner under the PAYE rules if the unpaid tax deductions or amounts owing relate to source deduction payments made in respect of the farming business for which the new start grant was paid.” 5
- (2) **Subsection (1)** applies on and after 1 July 2002.

### Part 3

#### Amendments to other Inland Revenue Acts

*Amendments to Goods and Services Tax Act 1985* 10

#### 80 Goods and Services Tax Act 1985

**Sections 81 to 89** amend the Goods and Services Tax Act 1985<sup>3</sup>.

<sup>3</sup> 1985 No 141

#### 81 Meaning of input tax

- (1) After section 3A(4), the following is inserted: 15

“(4A) For the purpose of subsections (1) and (2), if a supply of goods and services acquired by a non-profit body is not acquired for the principal purpose of making exempt supplies, the supply is treated as being acquired for the principal purpose of making taxable supplies.” 20

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

#### 82 Meaning of term supply

- (1) After section 5(19), the following is added:

“(20) A supply of services to which **section 11A(1)(ma)** applies is treated as the only supply of services for the consideration provided by the warrantor.” 25

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

#### 83 Value of supply of goods and services

- (1) In section 10(12)(f), “section 5(8)(c)(iii)” is replaced by “section 5(8)(b)(iii)”. 30

- (2) In section 10(12)(g), “section 5(8)(c)(iv)” is replaced by “section 5(8)(b)(iv)”.

- (3) **Subsections (1) and (2)** apply on and after 15 December 1995.

**84 Zero-rating of services**

- (1) After section 11A(1)(m), the following is inserted:
- “(ma) the services relate to goods under warranty to the extent that the services are— 5
- “(i) provided under the warranty; and
- “(ii) supplied to a warrantor who is not resident in New Zealand, not a registered person and who is outside New Zealand at the time the services are performed; and 10
- “(iii) in respect of goods that were subject to tax under section 12(1); or”.
- (2) In section 11A(3), “and (1)(l)” is replaced by “, (1)(l) and **(1)(ma)**”.
- (3) After section 11A(3), the following is inserted: 15
- “(3A) In **section 11A(1)(ma)**, **warranty** in respect of goods supplied, means an undertaking given under the supply agreement to remedy any defect in the goods, without any further cost to the recipient, that appears during a certain period of time after the goods are supplied or before a certain level of usage is reached.” 20
- (4) **Subsections (1) to (3)** apply on and after the date this Act receives the Royal assent.

**85 Exempt supplies**

- (1) In section 14(3), “an enactment or” is inserted before “a contract”. 25
- (2) **Subsection (1)** applies on and after 10 October 2000.

**86 Deductions from output tax for goods and services applied for making taxable supplies**

- (1) Section 21F(3) is repealed. 30
- (2) **Subsection (1)** applies on 10 October 2000.

**87 Timing of deduction under section 21F**

- (1) After section 21G(1), the following is inserted:

- “(1A) Despite subsection (1), if section 21F(1) applies to goods that are capital assets with a cost of less than \$18,000, the person or the partnership referred to in section 21F(1) may make a single deduction in the taxable period during which the goods are applied for a purpose of making taxable supplies.” 5
- (2) **Subsection (1)** applies on and after 10 October 2000.
- 88 Application to make single deduction under section 21F**
- (1) In section 21H(3)(b), “21F(1)” is replaced by “21G(1)”.
- (2) In section 21H(3)(e)(i), “section 21G” is replaced by “this section”. 10
- (3) **Subsections (1)** and **(2)** apply on and after 10 October 2000.
- 89 Payment of tax relating to fringe benefits**
- (1) In section 23A, the following is added as subsection (2):
- “(2) Payment of the tax on the taxable value of the fringe benefit is treated as a payment of fringe benefit tax for the purposes of filing the fringe benefit return and Parts IVA, VI, VII, IX, X and XI of the Tax Administration Act 1994.” 15
- (2) **Subsection (1)** applies to tax paid on fringe benefits included in 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 20
- (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

*Amendment to Estate and Gift Duties Act 1968*

**90 Estate and Gift Duties Act 1968**

**Section 91** amends the Estate and Gift Duties Act 1968<sup>4</sup>.

<sup>4</sup> 1968 No 35

**91 Exemption for certain dispositions of relationship property** 30

- (1) In section 75A(6), “95(5)” is replaced by “95”.
- (2) **Subsection (1)** applies on and after 1 August 2001.

*Amendment to Student Loan Scheme Act 1992*

**92 Student Loan Scheme Act 1992**

**Section 93** amends the Student Loan Scheme Act 1992<sup>5</sup>.

<sup>5</sup> 1992 No 141

**93 PAYE rules of Income Tax Act 1994 to apply to  
repayment deductions**

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(1) Section 25(2) of the Student Loan Scheme Act 1992 is amended by—

(a) omitting the expression “IC 1, IC 2, IC 3”, and substituting the expression “BC 2”:

(b) omitting the expression “NC 17, and OB 4”, and substituting the expression “and NC 17”.

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

*Amendment to Taxation (Taxpayer Assessment and  
Miscellaneous Provisions) Act 2001*

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**94 Taxation (Taxpayer Assessment and Miscellaneous  
Provisions) Act 2001**

**Section 95** amends the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001<sup>6</sup>.

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<sup>6</sup> 2001 No 85

**95 Value of supply of goods and services**

(1) In section 239(1), “before its replacement by section 90 of the Taxation (GST and Miscellaneous Provisions) Act 2000 and” is omitted.

(2) **Subsection (1)** applies on and after 24 October 2001.