

Taxation (FBT, SSCWT and Remedial Matters) Bill

Government Bill

Explanatory note

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

Part 1

Amendments to Income Tax Act 1994

Amendments to the fringe benefit tax rules

The bill introduces a multi-rate fringe benefit tax (FBT) scheme to ameliorate the overtaxation of low and middle-income employees, while maintaining an FBT rate for high-income employees tied to the top personal income tax rate and minimising compliance costs on employers. Since its introduction in 1985, the FBT rules have overtaxed low-income employees.

Employers will be able to choose between one of the following options:

- applying FBT at a flat and final 64% rate on the taxable value of all fringe benefits provided; or
- attributing certain benefits to the individual employee receiving the benefit and applying FBT at a rate based on the employee's income. Those fringe benefits that cannot be attributed to individual employees will be subject to FBT at 49%.

FBT will still be payable by the employer.

Multi-rate fringe benefit tax

For those employers who opt in to the multi-rate FBT scheme, the following rules will apply:

All non-pool motor vehicles, low-interest loans, and other fringe benefits with a taxable value of more than \$1,000 per category per year must be attributed to the individual employee who received them. A benefit will be included in a specific category if it is of the type listed in paragraphs (d) to (h) of section CI 1 of the Income Tax Act 1994.

Fringe benefits that are attributable to an individual employee will be taxed at a rate based on the cash remuneration of the employee.

“Cash remuneration” for the purpose of the FBT rules will include remuneration gained from the employer who provided the fringe benefit such as salary and wages, non-exempt allowances, bonuses, and redundancy payments. Cash remuneration provided to part-year employees must be annualised for FBT purposes.

Employers will not be required to include income from other sources such as dividends or interest in the cash remuneration calculation, except in the case of a major shareholder-employee. The cash remuneration calculation for a shareholder-employee will include dividends and interest received. Any non-attributable benefits will be taxed at 64% should the major shareholder-employee gain benefit from them.

The proposed statutory FBT rates to apply to individually attributable fringe benefits will be:

Income not more than \$38,000	27%
Income more than \$38,000, but not more than \$60,000	49%
Income more than \$60,000	64%

All fringe benefits that are not required to be or cannot be attributed to an individual employee, are provided to past employees, or have a taxable value of less than \$1,000 per benefit category per year, will be taxed at a flat 49% rate unless an employer chooses to attribute these low-value fringe benefits.

Tax return filing

Employers who file quarterly will have the option of paying FBT at either 49% or 64% in the first three quarters of the income year. If an

employer applies the 49% rate in any quarter they will be required to undertake a “square-up” and file a multi-rate FBT return in the fourth quarter to account for any adjustments in FBT liability. Employers who have applied the 64% rate for the previous three quarters will have the option of paying 64% for the last quarter or filing an end-of-year multi-rate return.

Annual or income year filers will be able to either use the 64% rate or file a multi-rate return.

Application date

These rules will apply to fringe benefits provided or granted on or after 1 April 2000. Employers who pay FBT on an income year basis will apply these rules to fringe benefits provided or granted during the 2000-01 or a subsequent income year.

As a transitional measure, employers will be required to pay FBT at 64% for the April to June 2000 quarter. Any overpayments in this transitional quarter can be adjusted, if needed, in an end-of-year multi-rate return.

Employer superannuation contributions

Clauses 6 and 10 to 14 address a concern about the scope for tax-motivated behaviour by employers and employees as a result of the top personal tax rate increasing to 39% and the specified superannuation contribution withholding tax (SSCWT) rate remaining unchanged. To gain a tax advantage, employees earning over \$60,000 could negotiate an increase in their employer superannuation contributions which are subject to the 33% SSCWT rate. A corresponding reduction would be made to salary and wages that are subject to tax at 39%. The increased employer contributions would be withdrawn shortly afterwards, if the superannuation fund's trust deed allows for this, avoiding the 39% top personal income tax rate.

To minimise this avoidance concern, the Government proposes, in the case of defined contribution schemes, a withdrawal tax at 5% of the amount withdrawn although this would be restricted to the amount of employer contribution if this could be identified. Tax would not apply to withdrawals on cessation of employment or on the basis of hardship.

In the case of defined benefit schemes, the Government proposes that the SSCWT rate remain at 33% but that no withdrawal tax apply.

The Government also proposes that employers may elect to apply a 39% SSCWT rate from 1 October 2000.

These proposals minimise compliance costs on employers, employees and superannuation funds. These measures also ensure that current contributions or any already determined level of future contributions will not be affected by the withdrawal tax through “grandparenting” provisions.

The proposals are anti-avoidance in nature and are not expected to result in raising significant revenue. Their function is to avert tax-motivated behaviour that may otherwise occur.

In addition, a remedial amendment is proposed to the SSCWT rules to provide that PAYE deducted and paid from an employer’s contribution to a superannuation fund is treated as satisfying the employer’s obligation to pay contributions to the superannuation fund. This proposed amendment removes a technical problem. The proposed amendment will apply retrospectively from 26 November 1998 to coincide with the date that the policy allowing employers and employees to treat employer superannuation contributions as salary and wages came into force.

Company migrations and the foreign investment fund rules

The foreign investment fund rules are being amended to incorporate rules for when a resident entity migrates from New Zealand. The market value of a shareholder’s holding will be used to assess the threshold for the application of the rules as well as the value on entry to the rules themselves. The amendments also ensure that holders on revenue account can realise any gain or loss for tax purposes without having to sell their interest in the entity. The amendments also provide that a migrating company will not have to publish separate audited accounts for the periods before and after the change in residence if its shareholders are to use the accounting profits method. The amendments apply retrospectively from the 1999–2000 income year.

Part 2

Amendments to Tax Administration Act 1994

Use of money interest on fringe benefit tax

An amendment is proposed to remove use of money interest on FBT paid on an annual or an income year basis. It is a tax simplification measure intended to reduce the number of tax returns and payments that are made for FBT. This is the first initiative to be implemented from the government discussion document *Less Taxing Tax* which contains proposals aimed at reducing compliance costs for small businesses. The amendment applies to the 2001-2002 and subsequent income years.

To ensure that use of money interest is paid on FBT that is overpaid under the new multi-rate scheme, the use of money interest rules will be amended to provide a starting date from when interest will accrue. The date will be the later of the due date for payment of FBT for the final quarter or the date on which the return for the final quarter is filed.

Employer superannuation contributions

An amendment is proposed to allow a trustee of a superannuation fund to recover the tax paid on a withdrawal by a member or another person, as if the trustee had paid the tax on behalf of the member or the other person.

Clause by clause analysis

Part 1

Amendments to Income Tax Act 1994

Clause 4 amends *section CG 14* to provide rules to ensure that a shareholder will not be subject to the foreign investment fund rules if they hold shares in a company that migrates and the shares have a market value of \$20,000 or less.

Clause 5 amends *section CG 23* to insert a market valuation rule for use when a company migrates.

Clause 6 inserts new *sections CL 3* to *CL 9*.

The new *section CL 3* provides that 15.15% of an amount withdrawn from a superannuation fund is gross income of the superannuation fund (the gross income rule).

The new *section CL 4* extends the meaning of withdrawal to include situations in which a member borrows against their interest in a superannuation fund. It also excludes withdrawals that occur when an employee ceases employment or that are necessary to alleviate hardship.

The new *section CL 5* provides that the gross income rule does not apply to withdrawals transferred by a superannuation fund to another superannuation fund.

The new *section CL 6* sets out rules for the period 1 April 2000 to 30 September 2000, the period before an employer can elect to pay specified superannuation contribution withholding tax (SSCWT) at 39%.

The new *section CL 7* provides that the gross income rule does not apply to withdrawals of contributions on which SSCWT is paid at 39%.

The new *section CL 8* provides that the gross income rule does not apply to withdrawals from a defined benefit scheme, and sets out a definition of defined benefit scheme.

The new *section CL 9* provides that the gross income rule will apply to withdrawals from a superannuation fund that is wound up.

Clause 7 replaces *section ND 1* and inserts new *sections ND 1A* to *ND 1F*.

The new *section ND 1* imposes the liability to pay fringe benefit tax on an employer and sets out options for payment of the tax.

The new *section ND 1A* sets out the rules for an employer who elects to pay provisional fringe benefit tax at 49%. Despite being able to elect, the new *subsection (4)* requires an employer to pay fringe benefit tax at the rate of 64% for the quarter beginning 1 April 2000.

The new *section ND 1B* requires employers to attribute particular types of fringe benefits to individual employees.

The new *section ND 1C* requires an employer to calculate fringe benefit tax on attributed fringe benefits based on the cash remuneration of the employee to whom the fringe benefit is attributed.

The new *section ND 1D* requires an employer to pool non-attributed and other particular fringe benefits, and to calculate fringe benefit tax on the pooled fringe benefits at the rate of 49%, or 64% if a major shareholder employee benefits from the pooled fringe benefits.

The new *section ND 1E* defines cash remuneration for the purpose of determining the rate of fringe benefit tax to pay on attributed fringe benefits.

The new *section ND 1F* requires an employer who stops employing staff without intending to replace them to treat the quarter in which they stop employing staff as the final quarter of the income year.

Clause 8 amends *section ND 2* to set out the information required for employers who file quarterly and apply the multi-rate scheme to the final quarter. It also extends the time for filing the final quarter FBT return.

Clause 9 inserts a new *section ND 2A* to allow employers to whom the new *section ND 1F* applies 2 months from the end of their last quarter for filing their final quarter FBT return.

Clause 10 consequentially amends *section NE 2* to refer to new *Schedule 1, clause 10(b)*, inserted by *clause 14*.

Clause 11 inserts a new *section NE 2AA* to allow employers to elect to pay SSCWT on specified superannuation contributions made to superannuation funds on and after 1 October 2000 at 39%.

Clause 12 amends *section NE 6* to provide that PAYE deducted and paid from an employer's contribution to a superannuation fund is treated as satisfying the employer's obligation to pay contributions to the superannuation fund. The amendment applies retrospectively from 26 November 1998.

Clause 13 inserts new definitions *cash remuneration, defined benefit fund, employer contributions to superannuation savings, hardship and reserves* in *section OB 1*. It also amends the definition of *member*.

Clause 14 replaces *Schedule 1, clause 10* to refer to the new SSCWT rate of 39%.

Part 2

Amendments to Tax Administration Act 1994

Clause 16 consequentially amends *section 3(1)* and *3(4)* to remove references to *section 120S*.

Clause 17 amends the definition of *date interest starts* in *section 120C* to provide that interest will start for employers who have

overpaid their fringe benefit tax on the later of 31 May next following the end of the final quarter and the date on which a return is filed for the final quarter.

Clause 18 repeals *section 120S*.

Clause 19 inserts a new *section 165AA* to allow the trustee of a superannuation fund to recover the tax paid on a withdrawal from the superannuation fund if the withdrawal is subject to the new *section CL 3*.

Clause 20 amends *section 183(2)* to replace a reference to *section 120S* with a reference to *section 120T*. It applies from the 1997-98 income year, the time from which the new interest rules took effect.

Hon Dr Michael Cullen

Taxation (FBT, SSCWT and Remedial Matters)

Government Bill

Contents

1	Title		
2	Commencement		
	Part 1		
	Amendments to Income Tax Act 1994		
3	Income Tax Act 1994	8	ND 1F Special rule for employer who stops employing staff during an income year
4	Interpretation	9	Payment of fringe benefit tax every quarter
5	Treatment of circumstances of entry into or exit from foreign investment fund regime		New section inserted
6	New sections inserted		ND 2A Special filing rule for employer who stops employing staff during an income year
	CL 3 Certain withdrawal amounts gross income of superannuation fund	10	Specified superannuation contribution withholding tax imposed
	CL 4 Extended meaning of withdrawal	11	New section inserted
	CL 5 Withdrawals made and transferred to another superannuation fund		NE 2AA Election to pay higher rate of specified superannuation contribution withholding tax
	CL 6 Application of section CL 3	12	Tax deemed for certain purposes to have been received by superannuation fund
	CL 7 Treatment of withdrawal amount if employer elects to pay higher rate of SSCWT	13	Definitions
	CL 8 Treatment of withdrawal amount if superannuation fund is a defined benefit fund	14	Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax
	CL 9 Treatment of withdrawal amount on winding up of superannuation fund		Part 2
7	Replacement of section ND 1 and new sections inserted		Tax Administration Act 1994
	ND 1 Employer's liability for fringe benefit tax	15	Tax Administration Act 1994
	ND 1A Election to pay fringe benefit tax per quarter	16	Interpretation
	ND 1B Attributed fringe benefits	17	Definitions
	ND 1C Multi-rate calculation for attributed fringe benefits	18	Amount in nature of interest to be added to fringe benefit tax paid on annual or income year basis
	ND 1D Calculation of fringe benefit tax on non-attributed fringe benefits	19	New section inserted
	ND 1E Definition of cash remuneration	20	165AA Recovery of tax paid by superannuation fund
			Obligation to pay tax on foreign investment fund income able to be suspended

The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

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

**Part 1
Amendments to Income Tax Act 1994**

3 Income Tax Act 1994

This Part amends the Income Tax Act 1994¹. 10

¹ 1994, No 164

Amendments: 1994, Nos 165, 166; 1995, Nos 18, 21, 71, 73, 79, 82; 1996, Nos 17, 24, 27, 50, 58, 67, 68, 82, 85, 142, 159; 1997, Nos 9, 25, 59, 74; 1998, Nos 7, 101, 107; 1999, Nos 59, 62, 98, 143

4 Interpretation

(1) After section CG 14(1)(c), the following is inserted:

“(ca) if the property is an interest in an entity that becomes a foreign entity after the date on which the interest is acquired, the cost or expenditure incurred in acquiring the interest is the market value of the property at the end of the business day on which the entity became a foreign entity; and”.

(2) **Subsection (1)** applies to the 1999-2000 and subsequent income years. 20

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

(1) After section CG 23(7), the following is inserted:

“(7A) If a person holds property that becomes an interest in a fund due to an entity becoming a foreign entity, the person is treated as having— 25

“(a) disposed of the property to an unrelated person immediately before the entity became a foreign entity; and

- “(b) reacquired the property immediately after the entity became a foreign entity.
- “(7B) The consideration for the disposition is the market value of the property at the end of the business day on which the entity became a foreign entity. 5
- “(7C) The consideration for the reacquisition is treated as being the same amount as the consideration for the disposition.
- “(7D) If **subsection (7A)** applies and the person uses the accounting profits method after the entity becomes a foreign entity, subsection (7) applies as if— 10
- “(a) the property had become an interest in the fund as a result of any one of the paragraphs in section CG 15(2) ceasing to apply; and
- “(b) section CG 12 did not apply.”
- (2) **Subsection (1)** applies to the 1999-2000 and subsequent income years. 15

6 New sections inserted

- (1) After section CL 2, the following is inserted:
- “CL 3 **Certain withdrawal amounts gross income of superannuation fund** 20
- “(1) 15.15% of an amount withdrawn by a member of a superannuation fund or by another person to provide a benefit, whether directly or indirectly, to a member of a superannuation fund is gross income of the superannuation fund if the superannuation fund is— 25
- “(a) one to which an employer of the member has made specified superannuation contributions; or
- “(b) one that has received a transfer from another superannuation fund, being a transfer to which **section CL 5** applies. 30
- “(2) An amount withdrawn means money withdrawn or, if money is not withdrawn, the market value of the withdrawal.
- “(3) **Subsection (1)** does not apply to a withdrawal of an amount that existed in a superannuation fund before 1 April 2000.
- “(4) If part of an amount withdrawn is employer contributions to superannuation savings and the trustee of the superannuation fund can establish the amount of employer contributions to superannuation savings withdrawn, **subsection (1)** only applies 35

to the employer contributions to superannuation savings withdrawn.

“CL 4 Extended meaning of withdrawal

- “**(1)** An amount borrowed by a member of a superannuation fund is treated as being an amount withdrawn for the purpose of **section CL 3** if— 5
- “**(a)** the member of the fund borrows against their interest in the fund; and
- “**(b)** the rate of interest on the amount borrowed is at any time less than the rate of interest set out in the Income Tax (Fringe Benefit Tax, Interest on Loans) Regulations for the time being in force. 10
- “**(2)** For the purpose of **subsection (1)**, an amount borrowed is treated as being withdrawn on the first day on which the rate of interest on the amount borrowed falls below the rate of interest set out in the Income Tax (Fringe Benefit Tax, Interest on Loans) Regulations for the time being in force. 15
- “**(3)** **Section CL 3** does not apply to withdrawals made on or after the date an employee ceases employment unless—
- “**(a)** for either of the 2 years before the date on which the employee ceases employment, the specified superannuation contributions made in a year on behalf of the employee are 50% of, or more than 50% of, the specified superannuation contributions made in the previous year, in which case **section CL 3** applies; or 20
- “**(b)** the employee is employed for less than 2 years, in which case **section CL 3** applies. 25
- “**(4)** **Section CL 3** does not apply to a withdrawal to the extent that the withdrawal is necessary to alleviate significant hardship.
- “**(5)** In this section, **hardship** includes permanent physical or mental incapacity of such an extent to affect the member’s ability to earn income in the future. 30

“CL 5 Withdrawals made and transferred to another superannuation fund

- “**(1)** **Section CL 3** does not apply to a withdrawal that is transferred by a superannuation fund to another superannuation fund, other than a defined benefit fund as defined in **section CL 8(2)**, 35

even if the withdrawal would otherwise be subject to **section CL 3** by virtue of **section CL 4(3)**.

- “(2) Despite **subsections (3)** and **(4)**, if an amount is transferred to another superannuation fund as a result of an employee ceasing employment, **section CL 3** does not apply if the employee subsequently withdraws all or part of the amount transferred. 5
- “(3) If an amount is transferred to another superannuation fund, the amount of employer contributions to superannuation savings transferred is treated as being employer contributions to superannuation savings in the other superannuation fund if the superannuation fund transferring the amount can establish the amount of employer contributions to superannuation savings and notifies the other superannuation fund of this amount. 10
- “(4) If the superannuation fund transferring the amount cannot establish the amount of employer contributions to superannuation savings, all of the amount transferred is employer contributions to superannuation savings. 15

“CL 6 Application of section CL 3

- “(1) **Section CL 3** does not apply to a withdrawal made before 1 October 2000 if an employer— 20
- “(a) does not increase the amount of specified superannuation contributions made to a superannuation fund during the period from 1 April 2000 to 30 September 2000 (both dates inclusive); and
- “(b) elects under **section NE 2AA** to pay the higher rate of specified superannuation contribution withholding tax on specified superannuation contributions on and after 1 October 2000. 25
- “(2) **Section CL 3** applies to a withdrawal made on or after 1 April 2000 and before 1 October 2000 if **subsection (1)** does not apply. 30
- “(3) For the purpose of **subsection (1)**, an employer is not treated as increasing the amount of specified superannuation contributions made to a superannuation fund if—
- “(a) the increase is required by a trust deed or a contract, or an amendment to a trust deed or a contract and the increase is a requirement that existed before 1 April 2000; or 35

“(b) the amount of specified superannuation contributions have increased even though as a percentage of salary the percentage has not changed.

“CL 7 **Treatment of withdrawal amount if employer elects to pay higher rate of SSCWT** 5

“(1) **Section CL 3** does not apply to a withdrawal to the extent that the specified superannuation contributions withdrawn have been subject to the rate of specified superannuation contribution withholding tax set out in Schedule 1, Part A, **clause 10(a)**.

“(2) If an employer cannot establish the extent to which the specified superannuation contributions withdrawn have been subject to the rate of specified superannuation contribution withholding tax set out in Schedule 1, Part A, **clause 10(a)**, **section CL 3** applies to the entire amount of the withdrawal. 10

“CL 8 **Treatment of withdrawal amount if superannuation fund is a defined benefit fund** 15

“(1) **Section CL 3** does not apply to a withdrawal from a defined benefit fund.

“(2) For the purpose of **subsection (1)** and **section CL 5(1)**, a **defined benefit fund** is the Government Superannuation Fund established by the Government Superannuation Fund Act 1956 or a fund that has the following features— 20

“(a) an employer makes specified superannuation contributions that are not readily identifiable as being attributable to an individual member, other than minor specified superannuation contributions made to administer the fund; and 25

“(b) a member’s return is based on a pre-determined formula that relates the return to—

“(i) the length of the member’s employment; or 30

“(ii) the member’s final average salary, over one or more years; or

“(iii) the member’s salary as it was in one or more years before the date on which the member ceased employment; and 35

“(c) a member’s benefit arising from the specified superannuation contributions is only payable as a pension.

- “(3) If a superannuation fund has separate sections, whether or not specified as separate sections, and one or more but not all sections satisfy the **defined benefit fund** definition, **subsection (1)** applies to the sections that satisfy the definition as if they were separate superannuation funds. 5
- “CL 9 **Treatment of withdrawal amount on winding up of superannuation fund**
Section CL 3 applies to a withdrawal when a superannuation fund is wound up.”
- (2) **Subsection (1)** applies to a withdrawal from a superannuation fund made on or after 1 April 2000. 10
- 7 Replacement of section ND 1 and new sections inserted**
- (1) Section ND 1 is replaced by:
- “ND 1 **Employer’s liability for fringe benefit tax**
- “(1) Subject to section CI 5, an employer who has provided or granted a fringe benefit to an employee is liable to pay a special tax by way of an income tax to be known as fringe benefit tax. 15
- “(2) An employer must do one of the following—
- “(a) elect to pay fringe benefit tax at the rate of either 49% or 64% of the taxable value of a fringe benefit for the first three quarters of an income year in accordance with **section ND 1A** and pay fringe benefit tax for the final quarter in accordance with both **sections ND 1C** and **ND 1D**; or 20
or 25
- “(b) pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit for the first three quarters of an income year and either—
- “(i) pay fringe benefit tax for the final quarter in accordance with both **sections ND 1C** and **ND 1D**; or 30
- “(ii) pay fringe benefit tax for the final quarter at the rate of 64% of the taxable value of a fringe benefit; or
- “(c) if the employer pays fringe benefit tax on either an annual or an income year basis under section ND 3 or section ND 4 respectively, either— 35

- “(i) apply **sections ND 1C** and **ND 1D** to a year, calculate the fringe benefit tax on the fringe benefits provided or granted in that year and pay the resulting fringe benefit tax liability; or
- “(ii) pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit. 5
- “(3) An employer who applies **subsection (2)(c)(i)** must apply **sections ND 1C** and **ND 1D** as if references to the final quarter of the income year were read as being to the income year.
- “**ND 1A Election to pay fringe benefit tax per quarter** 10
- “(1) An employer may elect to pay fringe benefit tax at the rate of 49% of the taxable value of a fringe benefit provided or granted to an employee for any one or all of the first 3 quarters of an income year.
- “(2) An employer must pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit provided or granted to an employee for any of the first 3 quarters of the income year for which the employer does not pay fringe benefit tax at the rate of 49%. 15
- “(3) An employer makes an election under this section by filing a return and paying fringe benefit tax at the rate elected. 20
- “(4) Despite **subsection (1)**, an employer must pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit provided or granted to an employee for the quarter beginning 1 April 2000. 25
- “**ND 1B Attributed fringe benefits**
- “(1) For each income year, an employer must attribute the following fringe benefits to the employee to whom the fringe benefit is provided or granted:
- “(a) a benefit to which any one of paragraphs (a), (b) or (c) of section CI 1 applies; and 30
- “(b) a benefit with a taxable value of more than \$1,000 per category per year to which any one of paragraphs (d) to (h) (inclusive) of section CI 1 applies.
- “(2) If an employer provides or grants a fringe benefit to more than one employee and the fringe benefit is one that must be attributed under **subsection (1)**, the employer must attribute the fringe 35

benefit to the employee who principally uses, enjoys or receives the fringe benefit or to the employee to whom the fringe benefit is principally available for private use or enjoyment.

- “(3) An employer who cannot determine which employee principally uses, enjoys or receives a fringe benefit must pool the fringe benefit under **section ND 1D**. 5
- “(4) An employer who provides or grants a fringe benefit with a taxable value of less than \$1,000 per category per year to an employee must either— 10
 - “(a) attribute the fringe benefit as if it were a benefit to which **subsection (1)(b)** applies; or
 - “(b) pool the fringe benefit in accordance with **section ND 1D**.
- “(5) If an employer attributes a fringe benefit in the manner allowed by **subsection (4)(a)**, the employer must attribute all fringe benefits that have an annual taxable value of less than \$1,000 that fall within that fringe benefit category. 15
- “(6) For the purpose of **subsection (1)**, each of paragraphs (d) to (h) of section CI 1 is a fringe benefit category.
- “**ND 1C Multi-rate calculation for attributed fringe benefits** 20
 - “(1) An employer who must attribute a fringe benefit must—
 - “(a) calculate the cash remuneration the employer pays to the employee to whom the fringe benefit is attributed; and
 - “(b) for the final quarter of the income year, calculate fringe benefit tax at the rate of— 25
 - “(i) 27% of the annual taxable value of the fringe benefit, if the employee’s cash remuneration for the income year is not more than \$38,000; and
 - “(ii) 49% of the annual taxable value of the fringe benefit, if the employee’s cash remuneration for the income year is more than \$38,000 but not more than \$60,000; and 30
 - “(iii) 64% of the annual taxable value of the fringe benefit, if the employee’s cash remuneration for the income year is more than \$60,000. 35
 - “(2) An employer must apply this section according to the cash remuneration of an employee who is a major shareholder if—

- “(a) the employer provides or grants a fringe benefit to an associate of the employee who is a major shareholder; and
 - “(b) the fringe benefit is not received by the associate as an employee of the employer. 5
- “(3) An employer must apply this section according to the cash remuneration of an associate of an employee who is a major shareholder if—
- “(a) the employer provides or grants a fringe benefit to the associate; and 10
 - “(b) the fringe benefit is received by the associate as an employee of the employer.
- “ND 1D **Calculation of fringe benefit tax on non-attributed fringe benefits**
- “(1) An employer must pool non-attributed fringe benefits that— 15
- “(a) have a taxable value of less than \$1,000 per category per year and have not been attributed to a particular employee; or
 - “(b) cannot be attributed to a particular employee; or
 - “(c) were provided or granted to a former employee; or 20
 - “(d) are loans to which either section CI 2(8) or CI 2(9) applies (loans owing to life insurers).
- “(2) For the final quarter of the income year, an employer must calculate fringe benefit tax on the annual taxable value of pooled fringe benefits— 25
- “(a) at the rate of 64% if the employer is a close company and one of the recipients of the pooled fringe benefits is an employee who is a major shareholder:
 - “(b) at the rate of 49% in all other cases.
- “ND 1E **Definition of cash remuneration** 30
- “(1) For the purpose of **section ND 1C**, if an employee is not a major shareholder, the employee’s cash remuneration for the income year in which a fringe benefit is attributed is the cash remuneration paid to, credited to or applied on account of the employee by the employer (employer A) or a related employer 35
- during the income year but does not include the taxable value of a fringe benefit provided or granted by the employer or a related employer.

- “(2) For the purpose of **section ND 1C**, if an employee is a major shareholder, the employee’s cash remuneration for the income year in which a fringe benefit is attributed is the cash remuneration paid to, credited to or applied on account of the employee by the employer (employer A) or a related employer, including dividends and interest. 5
- “(3) For the purpose of **subsections (1) and (2)**, an employer is a related employer if the employer is treated as a separate employer from employer A and is— 10
- “(a) a branch or division of employer A; or
- “(b) a person associated with employer A.
- “(4) For the purpose of **section ND 1C**, if an employee has not been employed for a full income year, the employee’s cash remuneration is the result of **subsection (5)**.
- “(5) If an employer provides or grants a fringe benefit to an employee who has not been employed for a full income year, an employer must— 15
- “(a) annualise the cash remuneration, excluding an extra emolument; and
- “(b) add to the annualised cash remuneration an extra emolument paid to, credited to or applied on account of the employee in that part of the income year. 20
- “(6) In this section, except for **subsection (4)**, **cash remuneration** means—
- “(a) salary or wages; and 25
- “(b) salary, wages or gross income to which section OB 2(2) applies; and
- “(c) extra emoluments; and
- “(d) withholding payments; and
- “(e) a payment to a specified office holder. 30
- “ND 1F **Special rule for employer who stops employing staff during an income year**
- An employer who stops employing staff and does not intend to replace them during an income year that begins on 1 April and ends on the following 31 March must apply **sections ND 1C, ND 1D and ND 2** as if the final quarter of the income year were the quarter in which the employer stops employing staff.” 35
- (2) **Subsection (1)** applies to a fringe benefit provided or granted by an employer—

- (a) on or after 1 April 2000, for an employer who pays fringe benefit tax on a quarterly or an annual basis; and
- (b) during the 2000-2001 or a subsequent income year, for an employer who pays fringe benefit tax on an income year basis.

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8 Payment of fringe benefit tax every quarter

(1) Section ND 2(2) is replaced by:

“(2) This section does not apply—

- “(a) to the final quarter of an income year for an employer who elects to pay fringe benefit tax in accordance with **sections ND 1C** and **ND 1D**; and 10
- “(b) to an employer who pays fringe benefit tax—
 - “(i) on an annual basis under section ND 3; or
 - “(ii) on an income year basis under section ND 4.

“(2A) An employer who elects to pay fringe benefit tax in accordance with **sections ND 1C** and **ND 1D** must, for the final quarter of an income year, forward a return to the Commissioner by 31 May next following the end of the quarter setting out— 15

- “(a) the details of the fringe benefits received or enjoyed by each of the employer’s employees as required by a form prescribed by the Commissioner; and 20
- “(b) a calculation of the amount of fringe benefit tax payable on those fringe benefits; and
- “(c) the amount of fringe benefit tax paid in the previous 3 quarters of the income year. 25

“(2B) If the amount of fringe benefit tax paid in the previous 3 quarters of the income year is—

- “(a) more than the fringe benefit tax calculated as being payable in the final quarter, the employer is entitled to a refund of the excess tax: 30
- “(b) less than the fringe benefit tax calculated as being payable in the final quarter, the employer must pay the difference on or before 31 May next following the end of the quarter.”

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

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9 New section inserted

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

- “ND 2A **Special filing rule for employer who stops employing staff during an income year**
 An employer to whom **section ND 1F** applies must apply **section ND 2(2A)** and **ND 2(2B)** and **paragraph (d)** of the definition of **date interest starts** in **section 120(1)** of the Tax Administration Act 1994 as if the reference to ‘31 May next following the end of the quarter’ were to ‘the end of 2 months immediately following the quarter in which the employer stops employing staff.’ ” 5
- (2) **Subsection (1)** applies on and after 1 April 2000. 10
- 10 Specified superannuation contribution withholding tax imposed**
- (1) In section NE 2(1), “clause 10” is replaced by “**clause 10(b)**”.
- (2) **Subsection (1)** applies on and after 1 October 2000.
- 11 New section inserted** 15
- (1) After section NE 2, the following is inserted:
 “NE 2AA **Election to pay higher rate of specified superannuation contribution withholding tax**
 “(1) An employer may elect to pay specified superannuation contribution withholding tax on specified superannuation contributions made to a superannuation fund on or after 1 October 2000 at the rate specified in Schedule 1, Part A, **clause 10(a)**. 20
 “(2) An employer makes an election under this section by paying specified superannuation contribution withholding tax at the rate specified in Schedule 1, Part A, **clause 10(a)**.” 25
 (2) **Subsection (1)** applies on and after 1 October 2000.
- 12 Tax deemed for certain purposes to have been received by superannuation fund**
- (1) In section NE 6, “SSCWT rules” is replaced by “SSCWT rules or the amount of any PAYE payable by an employer in respect of any specified superannuation contribution in accordance with the PAYE rules as a result of an employee’s election under section NE 2A”. 30
- (2) **Subsection (1)** applies on and after 26 November 1998.

13 Definitions

- (1) This section amends section OB 1.
- (2) After the definition of **cash basis person**, the following is inserted:
“**cash remuneration** is defined in **section ND 1E(6)** for the purpose of Part ND”. 5
- (3) After the definition of **deemed rate of return method**, the following is inserted:
“**defined benefit fund** is defined in **section CL 8(2)** for the purpose of that section and **section CL 5(1)**”. 10
- (4) After the definition of **employer**, the following is inserted:
“**employer contributions to superannuation savings** means—
“(a) specified superannuation contributions made on or after 1 April 2000 other than those that are treated as salary or wages under section NE 2A; and 15
“(b) any return on those specified superannuation contributions; and
“(c) any reserves”.
- (5) After the definition of **guaranteed residual value**, the following is inserted: 20
“**hardship** is defined in **section CL 4(5)** for the purpose of that section”.
- (6) In the definition of **member**, the following is inserted after paragraph (a): 25
“(ab) in Part CL, has the meaning set out in the Superannuation Schemes Act 1989:”
- (7) After the definition of **replacement price option**, the following is inserted:
“**reserves**, in the definition of **employer contributions to superannuation savings**, means specified superannuation contributions made on or after 1 April 2000 which do not vest in a member of the superannuation fund and any return on those specified superannuation contributions”. 30
- (8) **Subsections (2) to (7)** apply on and after 1 April 2000. 35

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

(1) In Schedule 1, clause 10 is replaced by:

“10. Specified superannuation contribution withholding tax—

On the amount of a specified superannuation contribution (being the gross amount of the contribution before deduction of specified superannuation contribution withholding tax) by an employer to a superannuation fund, the specified superannuation contribution withholding tax for every \$1 of the amount is—

“(a) 39 cents if the employer has made an election under **section NE 2AA**; and

“(b) 33 cents if an election has not been made.”

(2) **Subsection (1)** applies on and after 1 October 2000.

Part 2

Tax Administration Act 1994

15 Tax Administration Act 1994

This Part amends the Tax Administration Act 1994².

² 1994, No 166

Amendments: 1995, Nos 24, 32, 72, 77; 1996, Nos 19, 56, 67, 142, 159, 161; 1997, Nos 9, 59, 74; 1998, Nos 7, 101, 107; 1999, Nos 59, 61, 62, 64, 98, 143

16 Interpretation

(1) In section 3(1), in the definition of **employer**, “sections 47, 120S of this Act” is replaced by “section 47”.

(2) In section 3(4)(b), “Sections 93, 120S,” is replaced by “Sections 93”.

(3) **Subsections (1)** and **(2)** apply—

(a) on and after 1 April 2001, for an employer who pays fringe benefit tax on an annual basis; and

(b) to the 2001-2002 and subsequent income years, for an employer who pays fringe benefit tax on an income year basis.

17 Definitions

(1) In section 120C(1), in paragraph (b) of the definition of **date interest starts**, the portion before subparagraph (i) is replaced by:

“(b) For overpaid tax, other than GST or fringe benefit tax that an employer has elected to pay in accordance with **sections ND 1C** and **ND 1D** of the Income Tax Act 1994, means the later of the following days—” 5

(2) In section 120C(1), at the end of paragraph (c)(iii) of the definition of **date interest starts**, “made:” is replaced by “made; and” and the following is inserted: 10

“(d) For the excess fringe benefit tax referred to in **section ND 2 (2B)(a)** of the Income Tax Act 1994, means the later of 31 May next following the end of the final quarter and the date on which the return for the final quarter is filed.” 15

(3) **Subsections (1)** and **(2)** apply on and after 1 April 2000.

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

(1) Section 120S is repealed. 20

(2) **Subsection (1)** applies—

(a) on 1 April 2001, for an employer who pays fringe benefit tax on an annual basis; and

(b) to the 2001–2002 income year, for an employer who pays fringe benefit tax on an income year basis. 25

19 New section inserted

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

“165AA Recovery of tax paid by superannuation fund

“(1) If a member or another person withdraws an amount from a superannuation fund and the withdrawal is one to which **section CL 3** of the Income Tax Act 1994 applies, the trustee of the superannuation fund may recover from the member or the other person an amount according to the formula in **subsection (2)**. 30

“(2) The formula is: 35

“tax rate × gross income

“where

- “tax rate is the basic rate of income tax stated in Schedule 1, Part A, clause 4 of the Income Tax Act 1994:
- “gross income is the amount of gross income of the superannuation fund under **section CL 3** of the Income Tax Act 1994. 5
- “(3) A trustee of a superannuation fund may recover an amount from the member or the other person making the withdrawal irrespective of the superannuation fund’s trust deed.
- “(4) For the purpose of section 165, a trustee is treated as paying tax on a withdrawal to which **section CL 3** of the Income Tax Act 1994 applies on behalf of the member or the other person who made the withdrawal.” 10
- (2) **Subsection (1)** applies on and after 1 April 2000.
- 20 Obligation to pay tax on foreign investment fund income able to be suspended 15**
- (1) In section 183(2), “120S” is replaced by “120T”.
- (2) **Subsection (1)** applies to tax obligations, liabilities and rights that are to be performed under or arise in respect of the 1997-98 and subsequent income years. 20