

Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill

Government Bill

Explanatory note

General policy statement

This bill introduces a number of significant changes to current taxation laws. Amendments to the Income Tax Act 1994 will assist in promoting venture capital investments in New Zealand by non-residents. This is a significant component of the Government's Growth and Innovation Strategy.

Further amendments to the Income Tax Act 1994 introduce a rebate of income tax for small business taxpayers who pay tax on their self-employed or partnership income during their first year in business. These provisions are expected to reduce the cash-flow pressures experienced by many such small businesses in their second year in business and are a component of the Government's Small and Medium Enterprise Strategy.

A series of generally minor amendments to the Tax Administration Act 1994 give effect to the post-implementation review of the rules governing the conduct of the tax disputes procedures, initially introduced in 1996.

The bill also contains a large number of remedial and consequential amendments. Some of these amendments have retrospective application. This is necessary to ensure that the intended policy of the provisions, as amended, applies to all taxpayers intended to be subject to that policy. Clauses with retrospective effect are identified in the clause-by-clause analysis.

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

Part 1

Annual Rates of Income Tax 2004–05

The provision sets the annual income tax rates that will apply for the 2004–05 income year. The rates that will apply are those in Schedule 1 of the Income Tax Act 1994.

The rates in Schedule 1 vary from the rates that applied for the 2003–04 income year in the following ways:

- a rate of 19.5% will apply to Maori authorities (see section 78(2) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003);
- two new progressive rates of specified superannuation contribution withholding tax will apply if an employer has made an election under section NE 2AB of the Income Tax Act 1994 (see section 100 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003).

Part 2

Amendments to Income Tax Act 1994

The tax treatment of venture capital

Amendments are proposed to assist non-residents who invest in commercial activities in New Zealand through unlisted companies resident in New Zealand. Further amendments relate to investments through special partnerships.

Currently, non-residents who invest in the shares of unlisted resident companies may be liable to pay income tax on gains in the value of the shares. Amendments are proposed that exclude the gains from tax under certain conditions.

An exclusion will be available to a non-resident investor who is resident in a country with which New Zealand has a double tax agreement (with the exception of Switzerland) and who is effectively exempt from tax in that country. An exclusion will also be available to a foreign fund in which other foreign funds invest (a “foreign fund of funds”) if the foreign fund is resident in the United States, the United Kingdom, France, Germany, Japan, Canada or Australia and no taxable investor owns more than 10% of the fund.

The exclusion will apply to investments in the shares of unlisted resident companies that do not predominantly carry on a prescribed excluded activity. The sale of such shares will not be subject to

sections CD 3, CD 4 and CD 5 of the Income Tax Act 1994. The current dividend rules will continue to apply.

Investors wanting to take advantage of the new exclusion will be required to file a nil tax return on the sale of shares in an eligible investment.

Section HC 1 of the Income Tax Act 1994 currently prevents partners in a special partnership from offsetting losses from the special partnership against other income. A proposed amendment repeals that provision.

Another proposed amendment removes from the Partnership Act 1908 the requirement to re-register a special partnership every 7 years.

All the proposed changes will come into force on 1 April 2004.

Sale and lease-back of intangibles

Amendments are proposed to ensure that taxpayers entering into transactions involving the sale and lease-back of intangibles do not get deductions for what are, in effect, repayments of loan principal. The proposed amendments are designed to protect the tax base. They follow an announcement by the Government in May 2003 that it would propose remedial legislation preventing such deductions.

An issues paper was sent to interested parties in October 2003 and, after further consideration by the Government, the following specific amendments are proposed to the definition of “finance lease” so as to expand the application of the finance lease rules:

- include the granting of a licence to use intangible property by the owner of that property;
- include a lease under which ownership of the lease asset is transferred to the lessee or an associate before or at the end of the term of the agreement; the current definition refers to a transfer at the end of the term;
- include a sale and lease-back arrangement under which the lessor has no substantive rights and obligations of ownership, other than those relating to enforcement of the agreement;
- include a lease where a transfer to the lessee or an associate, or an option granted to the lessee or an associate, is part of the arrangement but is not specified in the lease agreement itself.

The amendments will apply to payments under arrangements that are entered on or after the date of introduction of this bill.

Early payment rebate of income tax

An amendment is proposed that introduces a rebate of income tax for small business taxpayers who pay tax on their self-employed or partnership income during their first year in business. Currently such a taxpayer does not have to pay income tax until after the end of the taxpayer's first business year. But during the second business year the taxpayer also has to pay provisional tax. As a result, many such taxpayers experience cash-flow problems. The rebate will provide an incentive for them to pay their tax earlier.

The rebate will be calculated at the rate of 6.7% on the amount paid as income tax during the year or on 105% of the taxpayer's residual income tax calculated at the end of the year, whichever is the lesser. This approach ensures that the incentive is targeted at early payment of the correct amount of tax.

The proposed amendment will apply for the 2005–06 and subsequent income years.

Horticultural plants

New rules are proposed to address concerns raised with regard to the tax treatment of horticultural plants. The rules provide for amortising planting expenditure and deducting a limited amount of replacement planting (including re-grafting) expenditure. The Commissioner of Inland Revenue will be able to specify the plants that fall under the new rules.

Plants falling under the new rules will be amortised at rates based on their estimated useful life. The Commissioner will determine these rates in much the same way as for the depreciation rules. Also, current-year deductions will be allowed in relation to a limited proportion of replacement plantings. The proportion will be limited to a maximum of 15% of an orchard or vineyard over a three-year period, with no more than 7.5% being deducted in any one year.

The amendments provide for a proportion of replacement planting expenditure to be treated in the same way as repairs and maintenance are currently treated. They are intended to give more flexibility in the tax treatment of replanting activities and to encourage the planting of commercially-desirable varieties. At present, a current-year deduction is possible only in relation to a vine or tree that replaces one of the same species and variety that has died or been destroyed.

The amendments will apply for the 2003–04 and subsequent income years.

Patent and resource management application costs

An amendment is proposed that allows costs associated with patent and resource-management-consent applications to be deducted, although the applications are not granted or are withdrawn. Costs for such applications cannot currently be claimed under the general deductibility rules as they are a capital expense. Nor can they be depreciated as there is no depreciable asset. Under the proposed change, the deductible expenditure consists of those costs that would have been depreciable if a patent or a resource management consent had been granted.

Part 3

Amendments to Tax Administration Act 1994

Disputes procedures

Amendments are proposed to further the objective of resolving a tax dispute between the taxpayer and the Commissioner fairly and efficiently before the dispute gets to Court. The proposals follow the discussion document *Resolving tax disputes: a legislative review*, which was released in July 2003.

Some amendments ensure that the various steps required to facilitate the resolution of a dispute are completed as the legislation intended. One amendment provides that the Commissioner must, other than in prescribed circumstances, apply all the legislated steps for resolving a dispute. Another allows the parties by agreement to extend the period for completion of a dispute by 12 months. Another expands the circumstances in which a document that is provided late by a taxpayer will be accepted.

Further amendments ensure that the disputes process is as efficient and cost-effective as possible. These amendments include: simplifying the documentation required by both parties to progress a dispute; extending the time within which a taxpayer must initiate a dispute; introducing a more accessible small-claims process; and allowing the disputes process to be stayed by agreement of the parties pending the outcome of a test case.

Most of the amendments will apply to disputes commenced, under Part IVA of the Tax Administration Act 1994, on or after 1 April

2005. The amendment to the definition of *response period* will apply to notices issued on or after 1 April 2005.

Time frames for refunds

The period within which a taxpayer must claim a tax refund is reduced to 4 years, other than in cases of clear mistake or simple oversight. The period within which a taxpayer must make a disputable claim for GST input tax is reduced to 2 years. These measures will help to protect the Government's fiscal position from large backdated refund claims and provide greater certainty and consistency for both Inland Revenue and taxpayers in relation to their returns.

Amendments relating to refunds of income tax will apply for the 2004–5 and subsequent income years. Amendments relating to GST refunds and input tax deductions will apply for GST return periods that begin on or after 1 April 2005.

Self-assessment and GST returns

Amendments to the Tax Administration Act 1994 are proposed that will align the legislation with the practice of self-assessment for GST. The GST self-assessment amendments follow the approach used for income tax self-assessment. The introduction of self-assessment for GST will augment and enhance other improvements being made to simplify tax administration.

The amendments will apply for GST return periods that begin on or after 1 April 2005.

Part 4

Amendments to other Acts

Amendments to Goods and Services Tax Act 1985

Self-assessment and GST returns

Proposed amendments to the Goods and Services Tax Act 1985 are consequential on the amendments that align the Tax Administration Act 1994 with the practice of self-assessment for GST.

The amendments will apply for GST return periods that begin on or after 1 April 2005.

Clause-by-clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the commencement dates for the Act.

Part 1

Annual Rates of Income Tax 2004–05

Clause 3 sets the income tax imposed by *section BB 1* of the Income Tax Act 1994 at the basic rates specified in Schedule 1 of the Income Tax Act 1994.

Part 2

Amendments to Income Tax Act 1994

Clause 4 amends *section CB 2*. The clause adds new *subsection (1)(g) and (h)*, which provide for the sale proceeds from shares in some companies to be exempt income for a qualifying foreign equity investor. The clause adds a definition of *qualifying foreign equity investor* to *subsection (4)*. It adds new *subsection (6)*, which provides for the determination of residence for a person in deciding whether a person is a qualifying foreign equity investor and adds new *subsection (7)*, which provides for the Governor-General to make Orders in Council concerning the territories in which a qualifying foreign equity investor may be resident.

Clause 5 consequentially amends *section CG 11* to refer to new *sections DO 4B, DO 4C and DO 4D* (proposed by *clause 13*).

Clause 6 corrects the heading to *section CG 25* so that it more accurately describes the situations to which the section applies.

Clause 7 amends the formula in *section CL 4(2)* to clarify the amount of a withdrawal from a superannuation fund that is treated as being gross income of the superannuation fund for the purposes of the specified superannuation contribution withdrawal tax.

Clause 8 amends *section CL 8* to clarify the situations in which a withdrawal from a superannuation fund is currently not subject to the specified superannuation contribution withdrawal tax and to introduce an exclusion from the tax in some situations where specified superannuation contributions have not been made throughout the last 3 complete income years before the member ceases employment.

Clause 9 consequentially amends *section DJ 5* to refer to new *section 51B* of the Goods and Services Tax Act 1985 (proposed by *clause 134*).

Clause 10 amends *section DJ 6* to provide for a deduction of expenditure incurred in making an application for a patent if the application is refused or withdrawn.

Clause 11 inserts new *section DJ 14B*, which provides for a deduction of expenditure incurred in making an application for a resource consent under the Resource Management Act 1991 if the application is refused or withdrawn.

Clause 12 amends *section DO 4* to establish the relationship between that section and the new *sections DO 4B, DO 4C and DO 4D* (proposed by *clause 13*). It also updates some terminology in line with the new sections.

Clause 13 inserts new *sections DO 4B, DO 4C and DO 4D* to provide rules for the deduction of expenditure related to planting and replacing horticultural plants. Planting expenditure is capitalised and amortised, and a taxpayer carrying on a horticultural business is allowed a deduction for replacement expenditure of an amount that is determined by the percentage of the land under cultivation that is affected by the replacement.

Clause 14 consequentially amends *section DO 8* to refer to new *sections DO 4B, DO 4C and DO 4D* (proposed by *clause 13*).

Clause 15 amends *section EO 2* to exclude the application of the section to finance leases.

Clause 16 amends *section ES 1* to clarify the effect under *subsection (1)(b)* of a net loss of a loss attributing qualifying company and to add, to the types of property referred to in *subsection (e)(ii)*, shares in foreign companies that do not produce gross income upon disposal other than under the FIF rules.

Clause 17 amends *section ES 2* to clarify the types of lender who may make a limited recourse loan in relation to an arrangement in order for *Part ES* to apply to the arrangement.

Clause 18 amends *section ES 3* to clarify the effect under *subsections (1) and (2)* of a net loss of a loss attributing qualifying company.

Clause 19 consequentially amends *section FC 8B* to reflect the amendment to the definition of *finance lease* proposed by *clause 65(8)(b)*.

Clause 20 amends *section FC 10(8)* so that *paragraph (a)* of the definition of *lessee's acquisition cost* for a hire purchase agreement refers to the consideration provided under the hire purchase agreement rather than the consideration provided for the hire purchase agreement.

Clause 21 consequentially amends *section FD 10* to refer to new *sections DO 4B, DO 4C and DO 4D* (proposed by *clause 13*).

Clause 22 amends *section FDB 1* to clarify the prerequisites for a company to be a member of an imputation group.

Clause 23 amends the heading to *section GC 14* to remove a redundant reference to "assessable".

Clause 24 repeals *section HC 1*, which relates to the treatment of net losses that arise from the activities of a special partnership.

Clause 25 amends the heading to *section HH 3* to remove a redundant reference to "assessable".

Clause 26 amends *section HI 3(3)* so that it specifies the date on which an election to become a Maori authority takes effect.

Clause 27 amends *section HI 4* to add taxable bonus issues to the list of amounts that are treated as distributions by a Maori authority.

Clause 28 amends *section HI 5* to provide that a taxable bonus issue by a Maori authority is a taxable Maori authority distribution.

Clause 29 amends *Table HI 8* to provide for the treatment of taxable income that is derived by a Maori authority after the 2003–04 income year.

Clause 30 amends *section IE 1* by inserting *new subsection (2B)*, which provides for the treatment, by a partner in a special partnership, of a net loss arising from the activities of the special partnership.

Clause 31 amends *section IG 2* to refer to *new section IE 1(2B)* (proposed by *clause 30*).

Clause 32 adds 3 organisations to the list in *section KC 5(1)* of donee organisations for which a gift may give rise to a tax rebate for the donor under the section.

Clause 33 inserts *new Part MBC* which provides for a rebate of tax, under certain conditions, for a small business taxpayer who makes a payment of an amount as income tax before the taxpayer becomes liable to pay provisional tax.

Clause 34 replaces *subsections (1) and (2) of section MD 1* to align the statutory time bar of 4 years with the period within which a taxpayer can claim a refund. The clause also inserts a new *subsection (2B)* which allows a further 4 years when an overpayment was the result of clear mistake or simple oversight.

Clause 35 amends *section MD 2B* by inserting *new subsections (1B) and (4B)*, which relate to the treatment of income tax that is paid in excess by a Maori authority.

Clause 36 amends *section MD 4* so that a credit, that would otherwise be prevented by the section, may arise under certain conditions in the imputation credit account or dividend withholding payment account of a company or consolidated group when the Commissioner does not refund an overpaid amount but instead transfers the amount as a credit for another period or tax type. The amendment applies for the 1997–98 and subsequent income years for which *section MD 4* applied before being repealed by *section 41 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003*.

Clause 37 amends *section ME 1C* by correcting the formula. The amendment is treated as coming into force on 1 October 2003, the same date as the original provision.

Clause 38 amends *section ME 10* to clarify the treatment of debits and credits that arise other than as a result of a transaction.

Clause 39 amends *section ME 12* by removing an unnecessary restriction on the transfer of a credit balance in a group's imputation credit account to the group's policyholder credit account.

Clause 40 amends *section ME 18* to: correct references to the provisions under which a credit may be transferred from an imputation credit account to the policyholder credit account of a company; provide for allocation deficit debits arising under *new section MG 8B* (proposed by *clause 49*); and remove an unnecessary restriction on the transfer of a credit balance in a company's policyholder credit account to an imputation credit account.

Clause 41 amends *section ME 19* by removing unnecessary restrictions on elections that arise under the section if a company uses a

credit balance in the company's policyholder credit account to meet an income tax or provisional tax liability.

Clause 42 amends *section ME 26* to provide for allocation deficit debits arising under *new section MG 8B* (proposed by *clause 49*).

Clause 43 amends *section MF 4* by removing a cross-reference to a repealed provision, with the same application as the original amending provision.

Clause 44 amends *section MF 5* by correcting the way in which *subsection (6B)* provides for the conversion, into a net loss, of an excess amount of a debit in a branch equivalent tax account that is credited against an income tax liability. The amendment has the same application as the original amending provision.

Clause 45 amends *section MF 8* by correcting the descriptions of the items in the formula and removing a cross-reference to a repealed provision. The amendments have the same application as the original amending provision.

Clause 46 amends *section MF 10* by correcting the way in which *subsection (5B)* provides for the conversion, into a net loss, of an excess amount of a debit in a group's branch equivalent tax account that is credited against an income tax liability. The amendment has the same application as the original amending provision.

Clause 47 amends *section MG 5* by providing for allocation deficit debits arising under *new section MG 8B* (proposed by *clause 49*).

Clause 48 amends *section MG 8* by repealing *subsections (5) to (7)*. The subsections are superseded by *new section MG 8B* (proposed by *clause 49*).

Clause 49 inserts *new section MG 8B*, which applies to a policyholder credit account company. The new section compares, over a period called the *DWP reference period*, a quantity called the *policyholder DWP ratio* with another quantity called the *shareholder DWP ratio*. Under the section, an allocation deficit debit arises in the company's policyholder credit account if, for the DWP reference period, the shareholder DWP ratio exceeds the policyholder DWP ratio and the company's policyholder income exceeds the company's policyholder net loss. A company may elect that the amendment apply for an imputation year that begins after 31 March 1995 and before 1 April 2004.

Clause 50 amends *section MG 9* by correcting an amendment to *subsection (5C)(b)* with the same application as the original amending provision.

Clause 51 amends *section MG 15* by substituting a cross-reference to new *section MG 8B* (proposed by *clause 49*).

Clause 52 amends *section MG 16A* by substituting a cross-reference to new *section MG 8B* (proposed by *clause 49*).

Clause 53 amends *section MK 8* by providing for payments of further income tax by a Maori authority to be credited against income tax or provisional tax and for payments of income tax to be credited against further income tax.

Clause 54 amends *section NBB 2* by replacing references to an *officer* of a company with references to a *director, secretary or statutory officer* of the company, with the same commencement as the original provision.

Clause 55 amends *section NBB 4* by providing for a situation in which an employer who has entered an arrangement with a PAYE intermediary provides the PAYE intermediary with an authority to make payments under the arrangement by way of transfers from an account of the employer.

Clause 56 amends *section NBB 5* to take into account the amendments made by *clause 55*.

Clause 57 amends *section NBB 6* to take into account the amendments made by *clause 55*.

Clause 58 amends *section NC 6* by removing unnecessary references to amounts of PAYE deductions fixed by an annual taxing Act.

Clause 59 amends *section NC 7(2)* to set a lower withholding rate for companies that are non-resident contractors and do not make a tax declaration. A specific anti-avoidance rule is included that prevents structuring to take advantage of the lower withholding rate for companies.

Clause 60 amends *section NC 12* by removing an unnecessary reference to an annual taxing Act.

Clause 61 amends *section ND 12* to insert an omitted reference to *section ND 10(3)*.

Clause 62 amends *section NF 1* to exclude interest paid under section 120D of the Tax Administration Act 1994 from being resident withholding income and to consequentially repeal *subsections (3) and (3A)*.

Clause 63 amends *subsection (2)(a)* of *section NH 1* so that local authorities, non-profit bodies and charities are not required to deduct dividend withholding payments from dividends paid by foreign companies.

Clause 64 amends *section NH 6* by substituting a reference to *new section MG 8B* (proposed by *clause 49*).

Clause 65 amends *section OB 1* with various commencement dates and application provisions. *Subclause (2)* amends the definition of *allocation deficit debit* by substituting a reference to *new section MG 8B* (proposed by *clause 49*). *Subclause (3)* corrects a cross-reference in the definition of *community trust*. *Subclause (4)* inserts into the definition of *depreciable property* cross-references to *new sections DO 4C and DO 4D* (proposed by *clause 13*). *Subclause (5)* inserts into the definition of *diminished value* cross-references to *new sections DO 4C and DO 4D* (proposed by *clause 13*). *Subclause (6)* inserts a definition of *early payment rebate* for the purpose of *new Part MBC*. *Subclause (7)* adds a *new paragraph (c)*, relating to listed horticultural plants, to the definition of *estimated useful life*. *Subclause (8)* extends the definition of *finance lease* by: including arrangements of which a lease forms a part; providing for the transfer of the lease asset during, as well as at the end of, the lease term; and providing for an arrangement under which the lessee or an associate is a former owner of the lease asset and the lessor's rights and obligations in relation to the lease asset relate to the enforcement of the lease. *Subclause (9)* corrects the list of provisions affected by the definition of *insurer*. *Subclause (10)* repeals the definition of *land tax*. *Subclause (11)* amends the definition of *lease* by inserting a missing cross-reference to another definition, correcting a cross-reference to a section and extending the definition to include a licence to use intangible property. *Subclause (12)* omits unnecessary words from the definition of *lessee*. *Subclause (13)* amends the definition of *lessee's acquisition cost* for a finance lease asset by including in the term all consideration provided to the lessee under the finance lease. *Subclause (14)* inserts a definition of *listed horticultural plant* for the purpose of *new sections DO 4B to DO 4D* (proposed by *clause 13*). *Subclause (15)* corrects a cross-reference

in the definition of *net loss*. *Subclause (16)* inserts a definition of *non-listed horticultural plant*. *Subclause (17)* amends the definition of *PAYE intermediary* to require such a person to have agreements with not less than 10 employers. *Subclause (18)* inserts a definition of *planting* for the purpose of *new sections DO 4B to DO 4D* (proposed by *clause 13*). *Subclause (19)* inserts a definition of *plot* for the purpose of *new sections DO 4B to DO 4D* (proposed by *clause 13*). *Subclause (20)* amends the definition of *premium* so that an amount is within the definition if it is payable in respect of a contract of insurance. *Subclause (21)* inserts a definition of *qualifying foreign equity investor* for the purpose of *section CB 2* as amended by *clause 4*. *Subclause (22)* inserts a definition of *replaced area fraction* for the purpose of *new sections DO 4B to DO 4D* (proposed by *clause 13*). *Subclause (23)* inserts a definition of *replacement plant* for the purpose of *new sections DO 4B and DO 4D* (proposed by *clause 13*). *Subclause (24)* amends the definition of *resident in Australia* so that a person who is resident in New Zealand may satisfy the definition. *Subclause (25)* inserts a definition of *small business taxpayer* for the purpose of *new Part MBC* (proposed by *clause 33*). *Subclause 26* includes in the definition of *special corporate entity* an incorporated society that does not issue shares to members. *Subclause (27)* removes an incorrectly numbered definition and inserts a *new definition* of *tax credit advantage*. *Subclause (28)* corrects a reference in the definition of *taxable period* to the *Goods and Services Tax Act 1985*.

Clause 66 amends *section OB 6* by inserting a missing cross-reference.

Clause 67 amends *section OD 3* by inserting *new subsections (4) and (5)* that provide for the continuity of ownership of companies owned by incorporated societies. *New subsection (4)* applies for tax positions taken for the 1997–98 to 2002–03 income years. *New subsection (5)* applies for tax positions taken for the 2003–04 and subsequent income years.

Clause 68 amends *Schedule 7* consequentially on the new definition of *non-listed horticultural plant* (proposed by *clause 65(16)*).

Part 3

Amendments to Tax Administration Act 1994

Clause 69 amends *section 2* to remove the reference to the provisions in Part VI, as part of the amendments proposed to be made by *Part 4* relating to the self-assessment of GST.

Clause 70 amends *section 3*. A new paragraph (b)(iv) is added to the definition of *disputable decision*. New defined terms: *disqualifying offence*; *disqualifying penalty*; *GST payable*; *responsible department*; and *student allowance*, are inserted. A cross-reference in the definition of *late payment penalty* is corrected. The definition of *response period* is replaced.

Clause 71 amends *section 17* by replacing in *subsection (1C)(a)(i)* “in the knowledge, possession or control of” with “held by”.

Clause 72 amends *section 81* to substitute “the responsible department” for “the department for the time being responsible for the administration of the Social Security Act 1964”.

Clause 73 amends *subsections (1) to (7)* of *section 82* generally to substitute “the responsible department” for “the department for the time being responsible for the administration of the Social Security Act 1964”. The clause similarly amends the definition of *authorised officer*, inserts a new *subsection (7B)* to expand the employment particulars which the Commissioner may provide to that department, amends the definition of *beneficiary* to include a person who is a spouse of the recipient of a student allowance for the purposes of the Student Allowances Regulations 1998, and inserts a definition of *benefit*.

Clause 74 amends *section 85* by: inserting a new purpose subsection; substituting “the responsible department” for “the department for the time being responsible for the administration of the Social Security Act 1964”; and adding a new paragraph to the definition of *debtor*.

Clause 75 amends *section 87* by inserting a missing cross-reference.

Clause 76 inserts into *section 89C* two new grounds for issuing an assessment without undertaking the steps required under the disputes procedures. The first arises when the assessment is in relation to a matter for which the material facts and relevant law are identical to those for another assessment of the taxpayer that is before the courts, and the second arises when a taxpayer has left New Zealand having been involved in fraudulent activity.

Clause 77 inserts a new subsection in *section 89D* requiring a taxpayer to file a GST return before taking steps under the disputes process.

Clause 78 amends *section 89DA* to include a reference to a GST return period and inserts a new *subsection (1B)* giving a taxpayer 2 years within which to provide a notice of proposed adjustment in relation to an input tax credit. The clause also replaces *subsection (2)*.

Clause 79 amends *section 89E(1)* to increase the threshold for the small claims jurisdiction of the Taxation Review Authority to \$30,000.

Clause 80 replaces *section 89F* to clarify what both the Commissioner and a taxpayer must set out in a notice of proposed adjustment.

Clause 81 replaces *subsection (2)* of *section 89G* to clarify what a notice of response must contain.

Clause 82 amends *section 89K* by including GST returns and the step of issuing a statement of position within its ambit. The definition of *exceptional circumstance* is also replaced and widened to include minimal lateness by a taxpayer or an agent and the effect of statutory holidays.

Clause 83 amends *section 89M*. The Commissioner is required to issue a disclosure notice, and a new *subsection (6B)* is inserted to limit the matters that are required as evidence. *Subsection (7)* is replaced, clarifying the situation when a disputant does not issue a statement of position.

Clause 84 inserts new *sections 89N and 89O*. *Section 89N* requires the disputes process to be completed by both the Commissioner and the taxpayer, except in certain specified circumstances, before an assessment can be amended under *section 113*. *Section 89O* provides for a test case procedure when a dispute is significantly similar to a case that is designated as a test case and is being heard by the court.

Clause 85 amends *section 90* by replacing *subsection (6)* to extend the powers of the Commissioner in relation to an existing determination, including giving a power to cancel the determination.

Clause 86 amends *section 90AC* by inserting a reference to the increased powers given to the Commissioner by *clause 85*.

Clause 87 amends *section 90AD* by inserting a reference to the increased powers given to the Commissioner by *clause 85*.

Clause 88 amends *section 90AE* by inserting a reference to the increased powers given to the Commissioner by *clause 85*.

Clause 89 amends *section 90A* by replacing *subsection (6)* to extend the powers of the Commissioner in relation to an existing determination, including giving a power to cancel the determination.

Clause 90 inserts *new section 91AB* to give the Commissioner the power to make determinations in relation to listed horticultural plants, as required by the amendments proposed by *clause 13*.

Clause 91 amends *section 91E* by repealing *subsection (6)(d)*.

Clause 92 amends *section 92* to change the section heading, and to replace *subsection (2)* to clarify when an assessment is made.

Clause 93 inserts a new *section 92B* in relation to the self-assessment of GST.

Clause 94 amends *section 106* by inserting new *subsections (1D) and (1E)* relating to default assessments for GST. The amendment follows the changes made to the Goods and Services Tax Act 1985 relating to assessments made under that Act.

Clause 95 replaces *section 108(2)* by adding a third limb for the reopening of an assessment, that is, the material overstatement of a deduction, and also adds the materiality requirement when gross income is not mentioned.

Clause 96 amends *section 108A* by replacing *subsections (1) and (3)* following the changes made under the self-assessment reforms.

Clause 97 amends *section 108B* by replacing *subsection (1)* and adding a new *subsection (1B)*. The amendments extend the waiver period to 12 months, and provide that Commissioner may not investigate new issues during the waiver period. An amendment is also made to *subsection (3)* following the changes made under the self-assessment reforms.

Clause 98 inserts a new *subsection (7)* in *section 111* that follows the changes made to the Goods and Services Tax Act 1985 relating to assessments made under that Act.

Clause 99 amends *section 113* to establish the relationship between this section and proposed *section 89N*.

Clause 100 replaces *section 114* to provide an express statement that an assessment is not invalidated because the assessment is made in compliance with a recommendation or direction by an authorised officer or in compliance with a policy statement.

Clause 101 amends *section 1200B* by amending cross-references affected by *clause 55*.

Clause 102 amends *section 138B(3)* to clarify the time period within which a disputant must file proceedings.

Clause 103 amends *section 138E* to add references to provisions containing discretions of the Commissioner that may not be challenged.

Clause 104 amends *section 138F* to clarify the relationship between that provision and *section 138B*.

Clause 105 amends *section 139A* to impose on the Commissioner a requirement to send or make public a notice before imposing a late filing penalty in relation to an imputation return.

Clause 106 consequentially amends *section 141(2)* to refer to new *section 141AA(1)* (proposed by *clause 107*).

Clause 107 inserts new *section 141AA*, which imposes a specific shortfall penalty on a person who fails to make a deduction from a withholding payment that the person makes to a non-resident contractor who is relieved by a double tax agreement from liability for tax on the withholding payment. The new section relieves the person from paying the normal shortfall penalty that would apply in the absence of the section.

Clause 108 replaces *section 141FB*. The replacement provision clarifies the effect of the replaced provision, defines a new term of *disqualifying penalty*, includes provision for the new concept of a *disqualifying offence* and clarifies the treatment of shortfall penalties that arise from tax shortfalls of which the Commissioner becomes aware as a consequence of a single investigation or voluntary disclosure.

Clause 109 repeals *section 141FC*, consequential on *clause 110*.

Clause 110 inserts new *section 141FD* which provides that a shortfall penalty may not be imposed on a loss attributing qualifying company if the net loss of the company is reduced after being

attributed and that a shortfall penalty may be imposed on a shareholder who claims a deduction for a proportion of the attributed net loss.

Clause 111 amends section 141JB to amend cross-references affected by clause 55.

Clause 112 amends section 167 to amend cross-references affected by clause 55.

Clause 113 amends section 168 to amend cross-references affected by clause 55.

Clause 114 amends section 169 to amend cross-references affected by clause 55.

Clause 115 amends section 173L, providing consistency of reference.

Clause 116 amends section 177C provides that the Commissioner may use a figure for the net loss of a taxpayer from the most recent return of income of the taxpayer if the taxpayer has failed to file a return for the preceding income year.

Clause 117 amends section 181D to provide for the remission of late payment penalties and interest imposed on a Maori authority in circumstances in which late payment penalties and interest imposed on a company would be remitted.

Clause 118 includes in section 183A(1) a reference to the shortfall penalty imposed by section 141AA (proposed by clause 107).

Clause 119 includes in section 183D(1)(b) a reference to the shortfall penalty imposed by section 141AA (proposed by clause 107).

Clause 120 inserts a reference in section 185 to the Goods and Services Tax Act 1985.

Clause 121 inserts a reference in section 225 to the Goods and Services Tax Act 1985. The clause also changes the section heading.

Clause 122 inserts a reference in section 226 to the Goods and Services Tax Act 1985.

Part 4

Amendments to other Acts and Regulations

Amendments to Goods and Services Tax Act 1985

Clause 124 consequentially amends *section 2* to refer to new *section 51B* (proposed by *clause 136*).

Clause 125 repeals an incorrectly numbered subsection of *section 11A* that was inserted by an earlier amendment Act and inserts a new *subsection (6)*, correctly numbered.

Clause 126 inserts a new *subsection (3)* in *section 16* relating to the notice of assessment under new *section 92B* of the Tax Administration Act 1994 (proposed by *clause 93*).

Clause 127 inserts a new *subsection (3)* in *section 17* relating to the notice of assessment under new *section 92B* of the Tax Administration Act 1994 (proposed by *clause 93*).

Clause 128 inserts a new *subsection (2B)* in *section 19B* relating to the notice of assessment under new *section 92B* of the Tax Administration Act 1994 (proposed by *clause 93*).

Clause 129 replaces the *proviso* to *section 20(3)* to provide that a deduction from output tax may be made in a later taxable period if the failure to make the deduction arises because a person has difficulty in obtaining a tax invoice or through clear mistake or simple oversight.

Clause 130 consequentially amends *section 20A* to refer to new *section 51B* (proposed by *clause 136*).

Clause 131 amends *section 21E* to clarify that apportionment can be used in the application of *subsection (4)* to goods and services and to correct a cross-reference.

Clause 132 repeals *section 23(3)*.

Clause 133 repeals *Part IV* following the changes to the Tax Administration Act 1994 relating to assessments made under that Act.

Clause 134 replaces *section 45* to align the rules about refunds of excess GST with those for income tax.

Clause 135 repeals *section 50* as a tidy-up measure.

Clause 136 inserts a new *section 51B* to describe persons who are treated as registered because of the actions they have undertaken. It follows the changes to the Act and to the Tax Administration Act 1994 relating to the making of assessments.

Clause 137 repeals *section 61B* as a tidy-up measure.

Clause 138 repeals *section 80* as a tidy-up measure.

Clause 139 repeals *section 81* as a tidy-up measure.

Clause 140 amends *section 84B* to correct the transitional provisions for the reverse charge on imported services.

Amendment to Taxation Review Authorities Act 1994

Clause 141 amends *section 13B* to increase the threshold to \$30,000.

Amendment to Income Tax Act 1976

Clause 142 amends the definition of *special corporate entity* in *section 8B* in a way that corresponds with the amendment proposed by *clause 65(26)*.

Amendment to Taxation Review Authorities Regulations 1998

Clause 143 replaces the definition of *disputable decision* in *regulation 2* for consistency with the Tax Administration Act 1994.

Clause 144 inserts a new *subclause (6)* in *regulation 18* to provide a definition of *precedent* for the purpose of *subclause (5)*.

Amendment to Partnership Act 1908

Clause 145 repeals *section 57*.

Regulatory impact and compliance cost statement

In developing tax law, an objective is to ensure that costs associated with the functioning of the tax system are minimised. This objective must, however, be balanced by the needs to protect the tax base, treat taxpayers fairly and ensure an efficient tax system. All the proposals in this bill are intended to improve the efficiency and equity of the system. Some proposals that deliver various levels of tax savings are also likely to increase tax-related compliance costs.

Compliance cost statement

The following proposals in the bill will reduce compliance costs:

Horticultural plants: Provisions that address current uncertainties with regard to the tax treatment of horticultural plants by establishing a process for amortising planting expenditure and authorising the

deduction of a limited amount of replacement-planting (including re-grafting) expenditure will significantly reduce compliance costs.

Fund withdrawal tax: Amendments to the provisions of the Income Tax Act 1994 that impose fund withdrawal tax, clarifying the exemption for funds that are withdrawn on the cessation of employment and clarifying that the rules do not apply to funds from employer specified superannuation contributions that were taxed at a higher rate or treated as salary or wages, will slightly reduce compliance costs because the amendments remove uncertainty in the law.

Maori authorities: Amendments to the Income Tax Act 1994 and Tax Administration Act 1994 to clarify the rules relating to Maori authorities will reduce compliance costs because the amendments remove uncertainty in the law.

RWT on use-of-money interest: An amendment to remove the Commissioner's obligation to deduct resident withholding tax from use-of-money interest paid to taxpayers in respect of overpaid tax will reduce compliance costs.

PAYE intermediaries: Amendments to the Income Tax Act 1994 providing an alternative to the requirement that employees' net salary and wages pass through a PAYE intermediary's trust account and clarifying the meaning of "officer" will reduce compliance costs for both PAYE intermediaries and their clients.

The following proposals in the bill will not change compliance costs:

Annual rates: The provision to confirm the annual rates of income tax for the 2003–04 income year.

Post-implementation review of the tax disputes process: Provisions to give effect to the post-implementation review of the tax disputes process.

Sale and lease-back of intangibles: Amendments to ensure that taxpayers entering into transactions involving the sale and lease-back of intangibles are unable to take deductions for what are, in substance, repayments of loan principal.

Tax treatment of venture capital: Provisions that remove the potential for income tax to be payable on share gains of certain non-residents that invest in certain unlisted resident companies.

Patent and resource management application costs: Amendments that allow the deduction of costs associated with patent and

resource-management-consent applications that are not granted or that are withdrawn.

Loss attributing qualifying companies: Amendments that require the shareholders of a loss attributing qualifying company to be charged with any penalties that arise from an adjusted assessment that reduces a net loss of the company.

Early payment rebate of income tax: Amendments to the Income Tax Act 1994 to permit small business taxpayers who pay income tax on their self-employed or partnership income during their first year in a business are expected, on balance, to have no impact on compliance costs.

Remedial provisions: Remedial amendments that should have no impact on compliance costs are made to—

- confirm that an assessment issued by an Inland Revenue officer at the direction of another Inland Revenue officer is valid;
- provide certainty for taxpayers and Inland Revenue that the date of a self-assessment is the date of receipt of the taxpayer's notice of assessment;
- allow a net loss to be calculated at the date on which the last return is filed, rather than according to a taxpayer's return of income for the income year immediately preceding the income year in which the outstanding tax is written off;
- remove the requirement for local authorities to account for dividend withholding payments on dividends paid by a foreign company;
- make consistent the references in sections ES 1 and ES 2 of the Income Tax Act 1994 to losses from loss attributing qualifying companies;
- amend the Tax Administration Act 1994 to ensure the secrecy of gaming information provided by Inland Revenue to the Department of Internal Affairs and the Ministry of Health;
- allow determinations issued by the Commissioner under the accruals rules to be cancelled, including determinations for which no replacement determination is being issued;
- amend the multi-rate fringe benefit tax rules to insert an omitted section reference;

- make minor technical and drafting amendments to correct errors in the trans-Tasman imputation and branch equivalent tax account rules;
- amend the allocation deficit debit rules for life insurance companies to ensure that the ratio by which dividend withholding payment credits are attached to shareholder dividends does not exceed the equivalent ratio for policyholders.

The following proposals in the bill may increase compliance costs:

Incorporated societies: Amendments to allow incorporated societies to carry forward tax losses, and offset their income and losses with the income and losses of their wholly-owned subsidiaries and with commonly-owned incorporated societies may have small compliance-cost implications. As the amendments will have retrospective effect, some incorporated societies may seek to have their returns reassessed for the relevant period.

Non-resident contractors withholding tax: Amendments that allow for a reduced rate of tax deductions from withholding payments that are made to non-resident contractors, and that provide in some circumstances for a standard shortfall penalty for failing to make such tax deductions, may produce a small and temporary increase in compliance costs arising from the need for taxpayers to adapt to the changed legislation.

Consultation

Proposals contained in the bill were, with the exception of a number of minor remedial amendments, subject to the Generic Tax Policy Process. This is a robust consultative and tax policy development process focussed on tax policy development. For the major measures in the bill, this process included the release of the following discussion documents or issue papers:

Making tax easier for small businesses

Resolving tax disputes: a legislative review

Specific consultation was undertaken with a number of professional groups, industry representatives and individual taxpayers, according to their expertise or membership. These consultations included:

- Institute of Chartered Accountants of New Zealand
- New Zealand Law Society
- New Zealand Fruitgrowers Federation Incorporated

- Minter Ellison Rudd Watts
 - PricewaterhouseCoopers
 - Ernst & Young
 - KPMG
 - Deloitte
 - Corporate Taxpayer Group
 - Robbie Cullen (Barrister)
 - Taxation Review Authority
 - The Treasury
 - Datacom Employer Services Limited
 - Investment, Savings and Insurance Association of New Zealand
 - Russell McVeagh.
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Hon Dr Michael Cullen

Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Act 2004**.

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section. 5
- (2) **Sections 15 and 65(11)(a)(i)** are treated as coming into force on 20 May 1999.
- (3) **Section 61(1)** is treated as coming into force on 1 April 2000, subject to **subsection (4)**. 10
- (4) **Subsection (3)** does not apply to an employer in relation to a period for which the employer has, before 29 March 2004, filed a fringe benefit tax return that relies on section ND 12 as that section was before the enactment of **section 61**.
- (5) **Section 131** is treated as coming into force on 10 October 2000. 15
- (6) **Section 65(15)** is treated as coming into force on 1 July 2002.
- (7) **Sections 22, 38, 39, 40(1) and (4), 41, 65(24) and 105** are treated as coming into force on 1 April 2003.

- (8) **Section 37** is treated as coming into force on 1 October 2003.
- (9) **Section 140** is treated as coming into force on 25 November 2003.
- (10) **Sections 54 to 57** are treated as coming into force on 15 January 2004. 5
- (11) **Sections 3, 4, 65(21), 66 and 145** are treated as coming into force on 1 April 2004.
- (12) **Sections 24, 26 to 32, 34, 35, 53, 65(3) and (27), 92, 95 and 117** come into force on 1 October 2004.
- (13) **Sections 9, 69, 70(2) and (4), 91, 96, 103, 115, 118, 119 and 143** come into force on 1 April 2005. 10
- (14) **Section 125** comes into force on the date that is to be appointed by the Governor-General by Order in Council under section 2(19) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003. 15

Part 1

Annual Rates of Income Tax 2004–05

- 3 Rates of income tax for 2004–05 income year**
- (1) Income tax imposed by section BB 1 of the Income Tax Act 1994 must, for the 2004–05 income year, be paid at the basic rates specified in Schedule 1 of that Act. 20
- (2) The Taxation (Annual Rates of Income Tax 2003–04) Act 2003 is repealed.

Part 2

Amendments to Income Tax Act 1994

- 4 Non-residents' exempt income** 25
- (1) In section CB 2(1)(f), “company.” is replaced by “company:” and the following is added:
- “(g) any amount derived by a qualifying foreign equity investor from the sale or other disposition of a share in a company (called the **resident company**) that is resident in New Zealand, if— 30
- “(i) the share is purchased by the qualifying foreign equity investor on a day that is 12 months or more before the day of the sale or other disposition; and 35

“(ii) the shares of the resident company are quoted on the official list of a recognised exchange at no time in a period that—	
“(A) begins within the 12-month period beginning on the day on which the share is purchased:	5
“(B) ends on the day of the sale or disposition or on the day that is 12 months after the day on which the period begins, whichever is the earlier; and	10
“(iii) the resident company does not have a main activity that is one or more of—	
“(A) property development:	
“(B) land ownership:	
“(C) mining:	15
“(D) provision of financial services:	
“(E) insurance:	
“(F) construction of public infrastructure assets:	
“(G) acquisition of public infrastructure assets:	
“(H) investing with a main aim of deriving, from the investment, gross income in the form of interest, dividends, royalties or lease payments:	20
“(h) any amount derived by a qualifying foreign equity investor from the sale or other disposition of a share in a company (called the resident company) that is resident in New Zealand, if—	25
“(i) the share is purchased by the qualifying foreign equity investor on a day that is 12 months or more before the day of the sale or other disposition; and	30
“(ii) the shares of the resident company are quoted on the official list of a recognised exchange at no time in a period that—	
“(A) begins within the 12-month period beginning on the day on which the share is purchased:	35
“(B) ends on the day of the sale or disposition or on the day that is 12 months after the day on which the period begins, whichever is the earlier; and	40

- “(iii) the main activity of the resident company is providing capital in the form of debt or equity funding to other companies, each of which is resident in New Zealand and in the same wholly-owned group of companies as the resident company; and 5
- “(iv) each member, other than the resident company, of the wholly-owned group referred to in **subparagraph (iii)** satisfies **paragraph (g)(ii) and (iii)**.”
- (2) In section CB 2(4), after the definition of **pleasure craft**, the following is added: 10
- “**qualifying foreign equity investor** means a person who is not resident in New Zealand and who is one or more of the following—
- “(a) a person who—
- “(i) is resident in a territory, under a double tax agreement between New Zealand and the territory, that is approved for the purpose of this paragraph by the Governor-General by an Order in Council; and 15
- “(ii) is treated by the taxation laws of the territory as the person who, other than as a body that handles income of another person or persons, derives the proceeds from a sale or other disposition of shares that are held by the person; and 20
- “(iii) would in no circumstances be entitled, under the laws of the territory, to receive from the Government of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness or other compensation for a payment of the tax that would, in the absence of **section CB 2(1)(g) and (h)**, be imposed by this Act on an amount derived by the person from a sale or other disposition of shares to which **section CB 2(1)(g) or (h)** would apply: 25 30
- “(b) an unincorporated body that consists of persons (called **partners**) and that— 35
- “(i) is established under the laws of a territory that is approved for the purpose of this paragraph and **paragraph (c)** by the Governor-General by an Order in Council; and
- “(ii) has at least 1 partner (called a **general partner**) who is liable for all debts of the unincorporated 40

- body and who has significant involvement in, and control of, the business activities of the unincorporated body; and
- “(iii) has at least 1 partner (called a **special partner**) whose liability for debts of the unincorporated body is limited and who has limited involvement in, and control of, the business activities of the unincorporated body; and 5
- “(iv) has no general partner who is not resident of a territory, under a double tax agreement between New Zealand and the territory, that is approved for the purpose of this paragraph and **paragraph (c)** by the Governor-General by an Order in Council; and 10
- “(v) has no partner who— 15
- “(A) has, when treated as holding the interests of any person who is associated with the partner under section OD 8(3) of the Income Tax Act 1994, an interest of 10% or more in the capital of the unincorporated body; and 20
- “(B) is resident of a territory that is not approved for the purpose of **paragraph (a)** by the Governor-General by an Order in Council; and 25
- “(vi) has no partner who—
- “(A) has, when treated as holding the interests of any person who is associated with the partner under section OD 8(3) of the Income Tax Act 1994, an interest of 10% or more in the capital of the unincorporated body; and 30
- “(B) would in any circumstances be entitled, under the laws of the territory in which the partner is resident, to receive from the Government of the territory a benefit in the form of a payment, credit, rebate or other compensation for a payment of the tax that would, in the absence of **section CB 2(1)(g) and (h)**, be imposed by this Act on an amount derived by the unincorporated body or the 40

- partner from a sale or other disposition of shares to which **section CB 2(1)(g) or (h)** would apply.
- “(vii) is treated by the laws of the territory as not being subject to a tax on income other than as a body that handles income of the partners; and 5
- “(viii) has a status under the laws of the territory that resembles the status of a special partnership under the laws of New Zealand;
- “(c) a person who— 10
- “(i) is established as a legal entity under the laws of a territory that is approved for the purpose of this paragraph and **paragraph (b)** by the Governor-General by an Order in Council; and
- “(ii) has persons (called **members**) who hold interests in the capital of the legal entity and who are entitled to shares of the income of the legal entity that are in proportion to those interests; and 15
- “(iii) is treated by the laws of the territory referred to in **subparagraph (i)** as not being subject to a tax on income other than as a body that handles income of the members; and 20
- “(iv) is resident in—
- “(A) the territory under whose laws the person is established; or 25
- “(B) another territory that is approved, for the purpose of this paragraph and **paragraph (b)**, by the Governor-General by an Order in Council, and has laws that treat the legal entity as having for the purpose of taxation the status that is described in **subparagraph (iii)**; and 30
- “(v) has no member who—
- “(A) has, when treated as holding the interests of any person who is associated with the member under section OD 8(3) of the Income Tax Act 1994, an interest of 10% or more in the capital of the legal entity; and 35
- “(B) is not a resident of a territory that is approved for the purpose of **paragraph (a)** by 40

- the Governor-General by an Order in Council; and
- “(vi) has no member who—
- “(A) has, when treated as holding the interests of any person who is associated with the member under section OD 8(3) of the Income Tax Act 1994, an interest of 10% or more in the capital of the legal entity; and 5
- “(B) would in any circumstances be entitled, under the laws of the territory in which the member is resident, to receive from the Government of the territory a payment, credit, rebate or other compensation for a payment of the tax that would, in the absence of **section CB 2(1)(g) and (h)**, be imposed by this Act on an amount derived by the legal entity or the member from a sale or other disposition of shares to which **section CB 2(1)(g) or (h)** would apply.” 10 15 20
- (3) After section CB 2(5), the following is added:
- “(6) For the purpose of **subsection (1)(g) and (h)** and the definition of **qualifying foreign equity investor** in **subsection (4)**, whether a person is resident in a territory other than New Zealand is determined— 25
- “(a) if there is a double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, under the double tax agreement:
- “(b) if there is no double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, under the laws of the territory. 30
- “(7) The Governor-General may, from time to time by Order in Council—
- “(a) approve a territory for the purpose of **paragraph (a)** of the definition of **qualifying foreign equity investor** in **subsection (4)**: 35
- “(b) approve a territory for the purpose of **paragraphs (b) and (c)** of the definition of **qualifying foreign equity investor** in **subsection (4)**: 40

- “(c) withdraw the approval of a territory for the purpose of **paragraph (a)** of the definition of **qualifying foreign equity investor** in **subsection (4)**:
“(d) withdraw the approval of a territory for the purpose of **paragraphs (b) and (c)** of the definition of **qualifying foreign equity investor** in **subsection (4)**.” 5

5 Branch equivalent income calculation

- (1) In section CG 11(7), “, **DO 4C, DO 4D,**” is inserted after “DO 4”.
(2) **Subsection (1)** applies for the 2003–04 and subsequent income years. 10

6 Cases where assessable income calculation cannot be undertaken

- (1) In the heading to section CG 25, “**assessable income**” is replaced by “**foreign attribution**”.
(2) **Subsection (1)** comes into force on the date on which this Act receives the Royal assent. 15

7 Certain withdrawal amounts are gross income of superannuation fund

- (1) In section CL 4(2)—
(a) the formula is replaced by the following: 20

$$\frac{\text{“0.05”}}{\text{tax rate}} \times (\text{withdrawn} - \text{other contributions})$$

(b) after “where—”, the following is inserted: 25
“**withdrawal** is the amount withdrawn
other contributions is the part, if any, of the amount withdrawn that the trustee of the superannuation fund establishes is not employer contributions to superannuation savings”.
- (2) Section CL 4(6) is omitted. 30
(3) **Subsections (1) and (2)** apply to a withdrawal from a superannuation fund that is made on or after 14 September 2000.

8 Exception for withdrawal when member ceases employment

Section CL 8(2) is replaced by the following:

- “(2) Subsection (3) applies if, when the member ceases employment with the employer— 5
- “(a) the employer or another employer has made, on behalf of the member, specified superannuation contributions that—
- “(i) have been made throughout the period that includes the last 2 complete income years before the member ceases employment and ends when the member ceases employment; and— 10
- “(ii) have been made to the superannuation fund or to a superannuation fund that has transferred, whether directly or indirectly, the funds relating to its members to the superannuation fund; and 15
- “(iii) have not been part of a withdrawal, other than as a result of the application of section CL 13 to a transfer between superannuation funds that is referred to in **subparagraph (ii)**; and 20
- “(iv) have not, in each of the last 2 complete income years in the period, been 150% or more of the specified superannuation contributions made on behalf of the member in the previous income year; and 25
- “(v) do not, if made in the income year in which the member ceases employment, have an annualised value that is 150% or more of the specified superannuation contributions made on behalf of the member in the previous income year; 30
- “(b) the employer or another employer has made, on behalf of the member, employer specified superannuation contributions that—
- “(i) relate to part, but not all, of the period that includes the last 3 complete income years before the member ceases employment and ends when the member ceases employment; and 35
- “(ii) have been made to the superannuation fund or to a superannuation fund that has transferred, whether directly or indirectly, the funds relating to its members to the superannuation fund; and 40

- “(iii) have not been part of a withdrawal, other than as a result of the application of section CL 13 to a transfer between superannuation funds that is referred to in **subparagraph (ii)**; and
- “(iv) the Commissioner considers to be consistent in size and frequency with the employer specified superannuation contributions for other employees in comparable positions; and
- “(v) the Commissioner considers to be consistent in size and frequency during the period or periods to which the employer specified contributions relate.”
- 9 Expenditure relating to determination of liability to tax**
In section DJ 5(4), in paragraph (b)(i) of the definition of **goods and services tax payable**, “section 27(6)” is replaced by “section 51A”.
- 10 Patent expenses**
(1) Before section DJ 6(1), the following is inserted:
“(1A) A taxpayer who applies for the grant of a patent and is refused the grant or withdraws the application is allowed, in the income year of the refusal or withdrawal, a deduction for expenditure—
“(a) that the taxpayer incurs in relation to the application; and
“(b) that would have been part of the cost of fixed life intangible property if the application had been granted; and
“(c) for which the taxpayer is not allowed a deduction under another provision.”
- (2) **Subsection (1)** applies for applications that are refused or withdrawn in the 2004–05 and subsequent income years.
- 11 New section DJ 14B inserted**
(1) After section DJ 14, the following is inserted:
“DJ 14B **Expenditure on unsuccessful application for resource consent**
A taxpayer who applies for the grant of a resource consent under the Resource Management Act 1991 and is refused the

- grant or withdraws the application is allowed, in the income year of the refusal or withdrawal, a deduction for expenditure—
- “(a) that the taxpayer incurs in relation to the application; and 5
 - “(b) that would have been part of the cost of fixed life intangible property if the application had been granted; and
 - “(c) for which the taxpayer is not allowed a deduction under another provision.” 10
- (2) **Subsection (1)** applies for applications that are refused or withdrawn in the 2004–05 and subsequent income years.
- 12 Expenditure on land improvements used for farming or agriculture**
- (1) In section DO 4— 15
- (a) in subsection (1), “Subject to **sections DO 4B, DO 4C and DO 4D,**” is inserted before “Any taxpayer”;
 - (b) in subsection (2), “Subject to **sections DO 4B, DO 4C and DO 4D,**” is inserted before “Any taxpayer”;
 - (c) in subsection (4), “vines or trees” is replaced by “non-listed horticultural plants”. 20
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.
- 13 New sections inserted**
- (1) After section DO 4, the following are inserted: 25
- “DO 4B Accounting for expenditure on listed horticultural plants under sections DO 4C and DO 4D**
- “(1) In this section and **sections DO 4C and DO 4D—**
- “**planting** for a taxpayer and an income year means 1 or more listed horticultural plants that are involved in the business of the taxpayer during the income year and for which the taxpayer must account under **sections DO 4C and DO 4D,** for the income year, separately from any other listed horticultural plants that are involved in the business of the taxpayer 30
 - “**plot** means the land occupied by the listed horticultural plants in a planting 35

“**replaced area fraction** for a planting and an income year means the amount given by the following formula:

$$\frac{a}{b} \times 100\% \quad 5$$

where—

- a is the area, at the end of the income year, of the part of the plot on which listed horticultural plants in the planting are planted or regrafted during the income year as replacement plants 10
- b is the total area, at the end of the income year, of the plot.

“(2) A taxpayer to whom **section DO 4C** applies and who has had a deduction under **section DO 4D** for either or both of the 2 income years that immediately precede an income year must, for the income year and subsequent income years, account separately under **sections DO 4C and DO 4D** for listed horticultural plants that— 15

- “(a) the taxpayer acquires in the income year; and
- “(b) benefit the business of the taxpayer in the income year; 20
- and
- “(c) are not replacement plants.

“(3) A taxpayer who has had no deduction under **section DO 4D** for listed horticultural plants for both of the 2 income years that immediately precede an income year and who would, but for this subsection, be required by **subsection (2)** to account under **sections DO 4C and DO 4D** for the listed horticultural plants as 2 or more plantings for the income year may account under those sections for all of the listed horticultural plants as 1 planting for the income year and subsequent income years. 25

“**DO 4C Expenditure on land—planting of listed horticultural plants**

“(1) This section applies if a taxpayer— 35

- “(a) carries on a farming or agricultural business (including a horticultural business) on land in New Zealand; and
- “(b) develops the land by planting on the land listed horticultural plants.

“(2) Subject to **subsection (3)**, in an income year in which the planting benefits the business, the taxpayer is allowed—

- “(a) if the taxpayer owns the land, a deduction relating to expenditure incurred by the taxpayer, or by another person, in developing the land:
- “(b) if the taxpayer does not own the land, a deduction relating to expenditure incurred by the taxpayer in developing the land. 5
- “(3) The taxpayer is not allowed a deduction under **subsection (2)** in an income year in which—
- “(a) if the taxpayer owns the land, the taxpayer disposes of the land; or 10
- “(b) if the taxpayer does not own the land, the taxpayer ceases carrying on the business on the land.
- “(4) Subject to **subsections (5) and (6)**, the amount of the deduction is calculated using the following formula: 15
- $$1.2 \times a \times b$$
- where—
- a is the percentage rate determined for the type of listed horticultural plant by the Commissioner under **section 91AB** of the Tax Administration Act 1994
- b is the diminished value of the expenditure. 20
- “(5) If a listed horticultural plant of the taxpayer ceases in an income year to exist or to be used in deriving gross income and the taxpayer has no deduction under **section DO 4D** for the income year for expenditure incurred in replacing the listed horticultural plant, the taxpayer has a deduction— 25
- “(a) of the amount of the diminished value of the expenditure on the listed horticultural plant at the time that the listed horticultural plant ceases to exist or to be used in deriving income:
- “(b) for the income year. 30
- “(6) If a listed horticultural plant in a planting of the taxpayer ceases in an income year to exist or to be used in deriving gross income and the taxpayer has a deduction under **section DO 4D** for the income year for all or some of the expenditure incurred in replacing the listed horticultural plant, the diminished value, immediately before the replacement, of the expenditure on the listed horticultural plant is added, in the way chosen by the taxpayer, to the diminished values, at the 35

end of the income year, of the expenditure on listed horticultural plants that are in the planting at the end of the income year.

- “DO 4D **Expenditure on land—horticultural replacement planting** 5
- “(1) This section applies to a taxpayer who carries on a horticultural business on land in New Zealand and who, in an income year (called the **current income year**)—
- “(a) plants, or causes to be planted, on the land a listed horticultural plant as a replacement plant: 10
- “(b) regrafts, or causes to be regrafted, a listed horticultural plant on the land as a replacement plant.
- “(2) The taxpayer is allowed a deduction for the current income year, of the amount given by one of **subsections (3) and (4)** for the expenditure incurred in the current income year by the taxpayer in replacing a listed horticultural plant if, in the current income year— 15
- “(a) the replacement plant benefits the business; and
- “(b) the taxpayer does not dispose of the land on which the listed horticultural plant is cultivated; and 20
- “(c) the taxpayer elects that this section apply to the expenditure.
- “(3) For a taxpayer who has had no deduction under this section for either or both of the 2 income years that immediately precede the current income year, the amount of the deduction under **subsection (2)** for expenditure incurred in replacing a listed horticultural plant in a planting is given by the following formula: 25
- $$c \times \frac{7.5\%}{d} \quad 30$$
- where—
- c is the amount of the expenditure incurred by the taxpayer
- d is the greater of 7.5% and the replaced area fraction for the planting for the current year. 35
- “(4) For a taxpayer who has had a deduction under this section for a planting for both of the 2 income years that immediately precede the current income year, the amount of the deduction

under **subsection (2)** for expenditure incurred in replacing a listed horticultural plant in the planting is the smaller of—
“(a) the amount that is given by the following formula:

$$c \times \frac{7.5\%}{d} \quad 5$$

where—

c is the amount of the expenditure incurred by the taxpayer

d is the greater of 7.5% and the replaced area fraction for the planting for the current year: 10

“(b) the amount given by the following formula:

$$c \times \frac{15\% - f - g}{e} \quad 15$$

where—

c is the amount of the expenditure incurred by the taxpayer

e is the replaced area fraction for the planting for the current year 20

f is the smaller of 7.5% and the replaced area fraction for the planting for the earlier of the 2 income years that immediately precede the current year

g is the smaller of 7.5% and the replaced area fraction for the planting for the later of the 2 income years that immediately precede the current year.” 25

(2) **Subsection (1)** applies for the 2003–04 and subsequent income years. 30

14 Amalgamated company entitled to deductions for farming, agriculture, and aquaculture expenditure

(1) In section DO 8(c), “or section DO 5” is replaced by “, **DO 4C, DO 4D** or DO 5”.

(2) **Subsection (1)** applies for the 2003–04 and subsequent income years. 35

15 Deduction to lessee in non-specified lease

(1) In section EO 2(1), “or a finance lease” is inserted after “specified lease”.

- (2) In section EO 2(2), “or a finance lease” is inserted after “specified lease”.

16 Application of subpart

- (1) Section ES 1(1)(b)(i)(B) is replaced by the following:
- “(B) net losses of a loss attributing qualifying company, to the extent that shareholders with effective interests in the company are deemed under section HG 16 to incur amounts of loss that correspond to the net losses; and”.
- (2) In section ES 1(1)(e)(i), “date:” is replaced by “date; and”.
- (3) In section ES 1(1)(c)(ii)(F), “section CH 2.” is replaced by “section CH 2:” and the following is added:
- “(G) shares in a foreign company, if the proceeds of a disposition of the shares would not be gross income of the holder other than under the FIF rules.”
- (4) **Subsections (1) to (3)** apply for the 2004–05 and subsequent income years subject to **subsection (5)**.
- (5) **Subsections (1) to (3)** do not apply to a participant for an arrangement that the participant enters before the 2004–05 income year unless—
- (a) at the time of entering the arrangement, the participant could reasonably expect that 10 or more persons would acquire an interest in the arrangement; and
- (b) 70% or more of the allowable deductions of the participant from the arrangement for the income year, calculated on the same basis as for section ES 1(1)(b)(i) of the Income Tax Act 1994 as amended by **subsection (1)**, arise from an interest of the participant in—
- (i) fixed life intangible property;
- (ii) software.

17 Defined terms for subpart

- (1) Section ES 2(3)(d) is replaced by the following:
- “(d) involves money that is provided by—
- “(i) a lender who is not an associated person of the borrower under a provision of section OD 7 or

- OD 8(3) and who does not provide the money on arms-length terms and who—
- “(A) is not a person who regularly provides money to persons on arm’s-length terms under arrangements that do not satisfy paragraphs (a) to (c): 5
- “(B) is not resident in New Zealand under section OE 1 or OE 2 and does not carry on business in New Zealand through a fixed establishment in New Zealand; or 10
- “(ii) a lender who is an associated person of the borrower under a provision of section OD 7 or OD 8(3) and who obtains the money under an arrangement that satisfies paragraphs (a) to (c).”
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years subject to **subsection (3)**. 15
- (3) **Subsection (1)** does not apply to a participant for an arrangement that the participant enters before the 2004–05 income year unless—
- (a) at the time of entering the arrangement, the participant could reasonably expect that 10 or more persons would acquire an interest in the arrangement; and 20
- (b) 70% or more of the allowable deductions of the participant from the arrangement for the income year, calculated on the same basis as for section ES 1(1)(b)(i) of the Income Tax Act 1994 as amended by **section 16(1)**, arise from an interest of the participant in— 25
- (i) fixed life intangible property;
- (ii) software.
- 18 Deferral of surplus allowable deductions from arrangement** 30
- (1) In section ES 3(1)—
- (a) paragraph (a)(i) is replaced by the following:
- “(i) allowable deductions and losses, including any allowable deduction incurred under subsection (3) and any loss incurred under section HG 16; and” 35
- (b) paragraph (b)(i) is replaced by the following:

- “(i) allowable deductions and losses, including any allowable deduction incurred under subsection (3) and any loss incurred under section HG 16; and”.
- (2) In section ES 3(2)— 5
- (a) the definitions of items **a** and **b** are replaced by the following:
- “a is the amount for the income year by which the allowable deductions and losses, including any allowable deduction incurred under subsection (3) and any loss incurred under section HG 16, of the participant from the arrangement exceed the gross income, other than under this section, of the participant from the arrangement 10
- b is the total amount for the income year by which the allowable deductions and losses, including any allowable deduction incurred under subsection (3) and any loss incurred under section HG 16, from the arrangement exceed the gross income, other than under this section, from the arrangement for the group that consists of— 15
- (a) the participant; and
- (b) the affected associates of the participant who are not a loss attributing qualifying company and who each have for the income year allowable deductions and losses, including any allowable deduction incurred under subsection (3) and any loss incurred under section HG 16, from the arrangement that in total exceed the gross income, other than under this section, from the arrangement”: 20
- (b) paragraph (a) of the definition of item “c” is replaced by the following:
- “(a) the total amount for the income year by which the allowable deductions and losses, including any allowable deduction incurred under subsection (3) and any loss incurred under section HG 16, from the arrangement exceed the gross income, other than under this section, from the arrangement for the group that consists of— 25
- (i) the participant; and 30
- (i) the participant; and 35
- (i) the participant; and 40

- (ii) the affected associates of the participant who are not a loss attributing qualifying company that has incurred a net loss from the arrangement for the income year; and”.
- (3) **Subsections (1) and (2)** apply for the 2004–05 and subsequent income years subject to **subsection (4)**. 5
- (4) **Subsections (1) and (2)** do not apply to a participant for an arrangement that the participant enters before the 2004–05 income year unless— 10
- (a) at the time of entering the arrangement, the participant could reasonably expect that 10 or more persons would acquire an interest in the arrangement; and
- (b) 70% or more of the allowable deductions of the participant from the arrangement for the income year, calculated on the same basis as for section ES 1(1)(b)(i) of the Income Tax Act 1994 as amended by **section 16(1)**, arise from an interest of the participant in— 15
- (i) fixed life intangible property;
- (ii) software. 20
- 19 Rules for lease asset during term of finance lease**
- (1) In section FC 8B(2), “before or” is inserted before “on the date”.
- (2) In section FC 8B(3), “at the end of the lease term” is replaced by “by the date that the lease term ends”. 25
- (3) **Subsections (1) and (2)** apply for an arrangement that is entered on or after 29 March 2004.
- 20 Taxation of hire purchase agreements**
- In section FC 10(8)(a), “consideration paid to the lessee for the hire purchase agreement” is replaced by “consideration provided to the lessee under the hire purchase agreement”. 30
- 21 Special provisions relating to dispositions of property**
- (1) In section FD 10(3)(b), “**DO 4C, DO 4D,**” is inserted after “DO 4,”.
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years. 35

- 22 Companies that may constitute imputation group**
- (1) Section FDB 1(1)(e) is repealed.
- (2) After section FDB 1(2)(a), the following is inserted:
“(ab) all members of the consolidated group are or would be members of the imputation group; and”.
- (3) In section FDB 1(2)(b), the words before subparagraph (i) are replaced by “for an imputation group that contains or will contain members of more than 1 consolidated group, all the members of the consolidated groups have been members of a single wholly-owned group of companies throughout the period that—”.
- 23 Income assessable to beneficiaries**
In the heading to section GC 14, “**assessable to**” is replaced by “**of**”.
- 24 Special partnerships**
- (1) Section HC 1 is repealed.
- (2) **Subsection (1)** applies to gross income and allowable deductions of a special partner from a special partnership for the 2004–05 and subsequent income years.
- 25 Gross income assessable to beneficiaries**
- In the heading to section HH 3, “**assessable to**” is replaced by “**of**”.
- 26 Election to become Maori authority**
- (1) Section HI 3(3) is replaced by the following:
- “(3) A person who elects to become a Maori authority becomes a Maori authority—
- “(a) on the first day of the income year in which the person gives notice of the election to the Commissioner, if paragraph (b) does not apply;
- “(b) on the first day of the income year immediately succeeding the income year in which the person gives notice of the election to the Commissioner, if the person nominates that date in the notice of the election.”
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

- 27 Distributions by Maori authority**
- (1) In section HI 4(1)(e), “consideration.” is replaced by “consideration:” and the following is added:
 “(f) a taxable bonus issue.”
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years. 5
- 28 Amount distributed to member by Maori authority**
- (1) After section HI 5(3), the following is added:
 “(4) A taxable bonus issue referred to in **section HI 4(1)(f)** that is made by a Maori authority to a member is a taxable Maori authority distribution.” 10
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.
- 29 Table HI 8—Transitional rules**
- (1) In the transitional rules in Table HI 8, row 4 is replaced by the following: 15
- | | | | | |
|----|-------------------|---------------------------------------|--|----|
| “4 | a Maori authority | a trust that is not a Maori authority | taxable income derived by the Maori authority is treated as trustee income.” | 20 |
|----|-------------------|---------------------------------------|--|----|
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.
- 30 Net losses may be offset against future net income** 25
- (1) After section IE 1(2), the following is inserted:
 “(2B) A taxpayer who is a partner in a special partnership may not carry forward under this section a net loss if—
 “(a) the taxpayer has a deduction in an income year that arises from the activities of the special partnership; and 30
 “(b) the net loss arises from the deduction; and
 “(c) during the income year, the taxpayer derives no gross income, whether from the activities of the special partnership or otherwise.”
- (2) **Subsection (1)** applies to a net loss of a taxpayer for the 2004–05 and subsequent income years. 35

- 31 Net loss offset between group companies**
- (1) Section IG 2(2)(a)(i) is replaced by the following:
- “(i) a net loss for the year of offset that does not consist of a mining outgoing excess and is not prevented by **section IE 1(2B)** from being carried forward under sections IE 1 and IF 1:” 5
- (2) **Subsection (1)** applies to a net loss of a taxpayer for the 2004–05 and subsequent income years.
- 32 Rebate for gifts of money**
- (1) In section KC 5(1)(cl), “Zealand.” is replaced by “Zealand:” 10
and the following is added:
- “(cm) Medicine Mondiale:
“(cn) New Zealand Jesuits in India Trust:
“(co) Operation Vanuatu Charitable Trust.”
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years. 15
- 33 New Part MBC inserted**
- (1) After Part MBB, the following is inserted:
- “Subpart BC—Early payment rebate of income tax
- “MBC 1 **Purpose** 20
- “(1) The purpose of this subpart is to encourage, by means of a rebate of income tax, payments of amounts as income tax by small business taxpayers in the income year that precedes the income year in which the taxpayers are first required to pay provisional tax. 25
- “(2) In this subpart—
- “**early payment rebate** means a rebate of income tax under this subpart
- “**small business taxpayer** means a taxpayer who—
- “(a) conducts a business on the taxpayer’s own account, acting alone or as a partner in a partnership; and 30
- “(b) does not use a company or a trust in the conduct of the business; and
- “(c) derives gross income that is predominantly—
- “(i) from the business; and 35

“(ii) not interest, dividends, royalties, rents or beneficiary income.

“MBC 2 Availability of early payment rebate

- “(1) This section applies to a small business taxpayer for an income year if the small business taxpayer— 5
- “(a) is not required to make payments of provisional tax in the income year; and
- “(b) on or before the taxpayer’s balance date for the income year, makes payments as income tax for the income year; and 10
- “(c) has, for earlier income years—
- “(i) never been required to make payments of provisional tax and—
- “(A) never received an early payment rebate; or 15
- “(B) derived gross income from a business at no time in a period of 4 income years that began after the latest income year for which the small business taxpayer received an early payment rebate; or
- “(ii) derived gross income from a business at no time in a period of 4 income years that began after the latest income year for which the small business taxpayer was required to make payments of provisional tax. 20
- “(2) If a small business taxpayer to whom this section applies makes a return of income for the income year and in that return applies for an early payment rebate, the Commissioner must credit the income tax account of the small business taxpayer with an early payment rebate equal to 6.7% of the lesser of the following: 25
- “(a) the amount that, on or before the small business taxpayer’s balance date for the income year, the small business taxpayer paid as income tax for the income year; 30
- “(b) 105% of the small business taxpayer’s residual income tax for the income year. 35

“MBC 3 Credit treated as being payment as income tax

A credit of an early payment rebate for a small business taxpayer for an income year is treated as being a payment

- made by the small business taxpayer as income tax for the income year.”
- (2) **Subsection (1)** applies for income years commencing on and after 1 April 2005.
- 34 Refund of excess tax** 5
- (1) Section MD 1(1) is replaced by the following:
- “(1) Subject to sections MD 2, MD 2A, MD 2B, MD 3 and NH 4, and **subsection (2)**, the Commissioner must refund an amount that a taxpayer has paid as tax if—
- “(a) the Commissioner is satisfied that the amount represents an excess over the tax properly payable by the taxpayer; and 10
- “(b) the 4-year period referred to in section 108 of the Tax Administration Act 1994 has not expired.”
- (2) Section MD 1(2) is replaced by the following: 15
- “(2) Subject to sections MD 2, MD 2A, MD 2B, MD 3, and NH 4, the Commissioner must refund an amount that a taxpayer has paid as tax if—
- “(a) the taxpayer paid the amount as a result of an amendment to an assessment that increased the amount of tax payable by the taxpayer; and 20
- “(b) the Commissioner is satisfied that the amount represents an excess over the tax properly payable by the taxpayer; and
- “(c) the 4-year period beginning at the end of the income year in which the assessment was amended has not expired. 25
- “(2B) The Commissioner may refund an amount that is referred to in **subsection (1) or (2)** within the period of 4 years beginning after the end of the 4-year period referred to in the subsection, if— 30
- “(a) the Commissioner considers that the overpayment of tax is the result of a clear mistake or simple oversight:
- “(b) the taxpayer is entitled to a rebate of income tax under Part KD.”
- (3) **Subsections (1) and (2)** apply for the 2004–05 and subsequent income years. 35

35 Limits on refunds of tax in relation to Maori authorities

- (1) In section MD 2B(1)(a), “the end” is replaced by “unless **subsection (1B)** applies, the end”.
- (2) After section MD 2B(1), the following is inserted:
- “(1B) Despite subsection (1)(a), a Maori authority that furnishes its Maori authority credit account 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—
- “(a) the Maori authority has furnished the Maori authority credit account return within an extension of time given by the Commissioner; and
- “(b) the amount of the refund does not exceed the credit balance in the Maori authority’s Maori authority credit account on the last day of the imputation year for which the Maori authority credit account return was furnished.”
- (3) In section MD 2B(4), “If income” is replaced by “Unless **subsection (4B)** applies, if income”.
- (4) After section MD 2B(4), the following is inserted:
- “(4B) Despite subsection (4), 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) **Subsections (1) to (4)** apply for the 2004–05 and subsequent income years.

36 Application of income tax or dividend withholding payments not refunded

- (1) This section amends section MD 4 as it read before being repealed by section 41 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003.
- (2) Section MD 4 is amended by adding the following:
- “(2) Subsection (1) does not prevent a credit (called a **permitted credit**), of an amount given by **subsection (3)**, arising in an imputation credit account or dividend withholding payment account if—
- “(a) a company or consolidated group is entitled to a refund of overpaid income tax or overpaid dividend withholding payment; and

- “(b) the company or consolidated group makes a request for the Commissioner to transfer the refundable amount to another period or another tax type; and
- “(c) after the overpayment that gives rise to the entitlement to a refund and before the request for the transfer, a debit in the imputation credit account or dividend withholding payment account arises under section ME 5(1)(i), ME 12(1)(h), MG 5(1)(i) or MG 15(1)(i); and 5
- “(d) a credit would have arisen to the account of the company or consolidated group in the event that— 10
- “(i) the refundable amount had been refunded by the Commissioner at the time of the requested transfer; and
- “(ii) the company or consolidated group had immediately paid the amount of the refund to the Commissioner in payment of a tax liability for the other period or tax type; and 15
- “(e) the company or consolidated group requests at any time that this subsection apply to the transfer of the refundable amount. 20
- “(3) The amount of the permitted credit to which **subsection (2)** refers is the amount of the credit to which **subsection (2)(d)** refers, reduced by the amount of the debit that would have arisen under section ME 5(1)(e) at the time of the refund to which **subsection (2)(d)(i)** refers.” 25
- (3) **Subsection (2)** applies for the 1997–98 and subsequent income years.
- 37 Amount of dividend for imputation rules if paid in Australian currency**
- In section ME 1C, the formula is replaced by the following: 30
- “ $a \times b$ ”.
- 38 Consolidated imputation group to maintain separate imputation credit account**
- Section ME 10(1D)(b) is replaced by the following:
- “(b) are associated with a company that, at the time the debit or credit arises— 35

- “(i) will be a member of the resident imputation subgroup, if the debit or credit arises before the formation of the resident imputation subgroup:
- “(ii) is a member of the resident imputation subgroup, if the debit or credit arises at or after the formation of the resident imputation subgroup.” 5
- 39 Debits arising to imputation credit account of group**
Section ME 12(1)(b)(i) is omitted.
- 40 Credits and debits arising to policyholder credit account of company** 10
- (1) In section ME 18(1)(a)—
- (a) “under section ME 7 by” is omitted:
- (b) in subparagraph (i), “under section ME 14 by” is inserted before “the nominated company”:
- (c) in subparagraph (ii), “under section ME 7 by” is inserted before “the company,”. 15
- (2) After section ME 18(1)(b), the following is inserted:
- “(bb) an amount equal to any allocation deficit debit that arises in the company’s dividend withholding payment account under **section MG 8B**, if the amount of the allocation deficit debit is given by **section MG 8B(4)(a)**:
- “(bc) an amount equal to the credit balance in the company’s dividend withholding payment account immediately before an allocation deficit debit arises in the company’s dividend withholding payment account under **section MG 8B**, if the amount of the allocation deficit debit is given by **section MG 8B(4)(b)**.” 20
- (3) After section ME 18(2)(b), the following is inserted:
- “(bb) in the case of a credit referred to in **paragraph (bb) or (bc)** of that subsection, at the end of the imputation year in respect of which the credit arises:” 25
- (4) In section ME 18(3)(b)—
- (a) in subparagraph (i), “and not a member of a consolidated group” is omitted:
- (b) in subparagraph (ii), “or of a consolidated group that is a consolidated imputation group” is omitted. 30
- (5) **Subsections (2) and (3)** apply for dividends paid in the 2004–05 and subsequent imputation years. 35

- (6) **Subsections (2) and (3)** apply for dividends paid by a company in an imputation year that begins after 31 March 1995 and before 1 April 2004 if the company elects in writing that **section MG 8B** apply for the imputation year.
- (7) **Subsections (2) and (3)** apply for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company if the amalgamated company elects in writing that **section MG 8B** apply for the dividends and the imputation year. 5
- 41 Election to use credit balance as credit against policyholder base income tax liability or as credit in imputation credit account** 10
- (1) In section ME 19(3)(a), “and not a member of a consolidated group” is omitted.
- (2) In section ME 19(3)(b), “or of a consolidated group that is a consolidated imputation group” is omitted. 15
- (3) In section ME 19(4)(b)(i), “and not a member of a consolidated group” is omitted.
- (4) In section ME 19(4)(b)(ii), “or of a consolidated group that is a consolidated imputation group” is omitted. 20
- 42 Credits and debits arising to group policyholder credit account**
- (1) After section ME 26(2)(c), the following is added:
- “(d) an amount equal to any allocation deficit debit that arises in the consolidated group’s dividend withholding payment account under **sections MG 8B** and NH 6(4), if the amount of the allocation deficit debit is given by **sections MG 8B(4)(a)**: 25
- “(e) an amount equal to the credit balance in the consolidated group’s dividend withholding payment account immediately before an allocation deficit debit arises in the consolidated group’s dividend withholding payment account under **sections MG 8B** and NH 6(4), if the amount of the allocation deficit debit is given by **section MG 8B(4)(b)**.”. 30 35
- (2) After section ME 26(3)(c), the following is inserted:

- “(d) in the case of a credit referred to in **paragraph (d) or (e)** of that subsection, at the end of the imputation year in respect of which the credit arises:”.
- (3) **Subsections (1) and (2)** apply for dividends paid in the 2004–05 and subsequent imputation years. 5
- (4) The nominated company for a consolidated imputation group may elect in writing that **subsections (1) and (2)** apply for dividends paid by a member of the consolidated imputation group in an imputation year that begins after 31 March 1995 and before 1 April 2004. 10
- 43 Credits and debits arising to branch equivalent tax account of company**
- (1) In section MF 4(2)(a), “or paragraph (b)” is omitted.
- (2) **Subsection (1)** applies for the 1997–98 and subsequent income years, subject to **subsection (3)**. 15
- (3) **Subsection (1)** does not apply to a taxpayer for an income year if—
- (a) the taxpayer has, before 26 June 2003, filed a return of income for the income year; and
- (b) the return of income relies on section MF 4 of the Income Tax Act 1994 as the section was before the enactment of section 60 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003. 20
- 44 Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability** 25
- (1) Section MF 5(6B) is replaced by the following:
- “(6B) If an election under subsection (4) relates to an amount that exceeds the income tax liability, for the income year, of the company that receives the offset under subsection (6), the excess amount is treated as giving rise to a net loss of the company for the purpose of Parts IF and IG of an amount given by the following formula: 30
- $$\frac{a}{b}$$
- 35
- where—
- a is the amount of the excess

- b is the basic rate of income tax, expressed as a percentage, stated in—
 - (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority; or
 - (b) Schedule 1, Part A, clause 2, if the company is a Maori authority.” 5
 - (2) **Subsection (1)** applies for the 1997–98 and subsequent income years, subject to **subsection (3)**.
 - (3) **Subsection (1)** does not apply to a taxpayer for an income year if— 10
 - (a) the taxpayer has, before 26 June 2003, filed a return of income for the income year; and
 - (b) the return of income relies on section MF 5 of the Income Tax Act 1994 as the section was before the enactment of section 61 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003. 15
- 45 Debits and credits arising to group branch equivalent tax account**
- (1) In section MF 8(2)(a)— 20
 - (a) in the definition of item d, “or LC 5” is replaced by “, LC 5 or LC 16”;
 - (b) in the definition of item e, “companies that are members of the consolidated group” is replaced by “other companies”. 25
 - (2) In section MF 8(3)(a)—
 - (a) “the credits referred to in paragraphs (a) and (b)” is replaced by “a credit referred to in paragraph (a)”;
 - (b) “those paragraphs” is replaced by “that paragraph”.
 - (3) **Subsections (1) and (2)** apply for the 1997–98 and subsequent income years, subject to **subsection (4)**. 30
 - (4) **Subsections (1) and (2)** do not apply to a taxpayer for an income year if—
 - (a) the taxpayer has, before 26 June 2003, filed a return of income for the income year; and 35
 - (b) the return of income relies on section MF 8 of the Income Tax Act 1994 as the section was before the enactment of section 63 of the Taxation (GST, Trans-

Tasman Imputation and Miscellaneous Provisions) Act
2003.

- 46 Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability** 5
- (1) Section MF 10(5B) is replaced by the following:
- “(5B) If an election under subsection (3) or (4) relates to an amount that exceeds the income tax liability, for the income year, of the company or group that receives the offset under subsection (5), the excess amount is treated as giving rise to a net loss of the company or group for the purpose of Parts IF and IG of an amount given by the following formula: 10
- $$\frac{a}{b}$$
- where— 15
- a is the amount of the excess
- b is the basic rate of income tax, expressed as a percentage, stated in—
- (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority or the group does not consist of Maori authorities; or 20
- (b) Schedule 1, Part A, clause 2, if the company is a Maori authority or the group consists of Maori authorities.”
- (2) **Subsection (1)** applies for the 1997–98 and subsequent income years, subject to **subsection (3)**. 25
- (3) **Subsection (1)** does not apply to a taxpayer for an income year if—
- (a) the taxpayer has, before 26 June 2003, filed a return of income for the income year; and 30
- (b) the return of income relies on section MF 10 of the Income Tax Act 1994 as the section was before the enactment of section 64 of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003. 35

- 47 Debits arising to dividend withholding payment account**
- (1) In section MG 5(1)(f), “section MG 8” is replaced by “section MG 8(4)”.
(2) In section MG 5(1)(g), “section MG 8(5)” is replaced by “**section MG 8B**”. 5
(3) **Subsections (1) and (2)** apply for dividends paid in the 2004–05 and subsequent imputation years.
(4) **Subsections (1) and (2)** apply for dividends paid by a company in an imputation year that begins after 31 March 1995 and before 1 April 2004 if the company elects in writing that **section MG 8B** apply for the imputation year. 10
(5) **Subsections (1) and (2)** apply for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company if the amalgamated company elects in writing that **section MG 8B** apply for the dividends and the imputation year. 15
- 48 Allocation rules for dividend withholding payment credits**
- (1) Section MG 8(5) to (7) are repealed.
(2) **Subsection (1)** applies for dividends paid in the 2004–05 and subsequent imputation years. 20
(3) **Subsection (1)** applies for dividends paid by a company in an imputation year that begins after 31 March 1995 and before 1 April 2004 if the company elects in writing that **section MG 8B** apply for the imputation year. 25
(4) **Subsection (1)** applies for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company if the amalgamated company elects in writing that **section MG 8B** apply for the dividends and the imputation year. 30
- 49 New section MG 8B inserted**
- (1) After section MG 8, the following is inserted:
“MG 8B **Policyholder credit account companies and dividend withholding payment credits**
“(1) This section applies to a policyholder credit account company (called the **company**) that is not a conduit tax relief company and an imputation year (called the **dividend year**) in which 35

the company pays a dividend with a dividend withholding payment credit attached.

- “(2) An allocation deficit debit of an amount given by **subsection (4)** arises at the end of the dividend year in the company’s dividend withholding payment account if— 5
- “(a) the total of the amounts of the company’s policyholder income and policyholder net loss for the DWP reference period, found using the policyholder base calculation for each imputation year, is greater than nil:
- “(b) the shareholder DWP ratio for the DWP reference period exceeds the policyholder DWP ratio for the DWP reference period. 10
- “(3) In this section—
- “**DWP reference period** means the period that consists of— 15
- “(a) the dividend year:
- “(b) the maximum period of consecutive imputation years—
- “(i) that ends immediately before the dividend year; and
- “(ii) in which the company paid no dividend that had a dividend withholding payment credit attached 20
- “**maximum deficit debit** means the quantity that is given by the following formula:
- $$(a - b) \times d \times (1 - r)$$
- where—
- a is the company’s shareholder DWP ratio for the DWP reference period: 25
- b is the company’s policyholder DWP ratio for the DWP reference period:
- d is the total of the amounts of the company’s policyholder income and policyholder net loss found for the DWP reference period using the policyholder base calculation: 30
- r is the basic rate of income tax, expressed as a percentage, stated in—
- (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority: 35
- (b) Schedule 1, Part A, clause 2, if the company is a Maori authority

“**policyholder DWP ratio** means the quantity that is given by the following formula:

$$\frac{c}{d \times (1 - r)}$$

where—

- | | | |
|---|--|----|
| | 5 | |
| c | is the total for the DWP reference period of all the credits that have arisen in the company’s policyholder credit account as a result of an election by the company under section MG 7 in relation to a credit balance in the company’s dividend withholding payment credit account | 10 |
| d | is the total of the amounts of the company’s policyholder income and policyholder net loss found for the DWP reference period using the policyholder base calculation | 15 |
| r | is the basic rate of income tax, expressed as a percentage, stated in— | |
| | (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority; | |
| | (b) Schedule 1, Part A, clause 2, if the company is a Maori authority | 20 |

“**reduced deficit debit** means the quantity that is given by the following formula:

$$e + f - \frac{g \times (f + c + e)}{g + (d \times (1 - r))}$$

where—

- | | | |
|---|--|----|
| c | is the total for the DWP reference period of all the credits that have arisen in the company’s policyholder credit account as a result of an election by the company under section MG 7 in relation to a credit balance in the company’s imputation credit account | 30 |
| d | is the total of the amounts of the company’s policyholder income and policyholder net loss found for the DWP reference period using the policyholder base calculation | 35 |
| e | is the credit balance in the company’s dividend withholding payment account at the end of the dividend year immediately before any allocation deficit debit arises under this section | 40 |

- f is the total amount of DWP credits that the company has attached to dividends paid by the company in the DWP reference period
- g is the total amount of dividends paid by the company in the DWP reference period 5
- r is the basic rate of income tax, expressed as a percentage, stated in—
- (a) Schedule 1, Part A, clause 5, if the company is not a Maori authority:
- (b) Schedule 1, Part A, clause 2, if the company is a Maori authority 10
- “**shareholder DWP ratio** means the quantity given by the following formula:
- $$\frac{f}{g} \quad 15$$
- where—
- f is the total amount of DWP credits that the company has attached to dividends paid by the company in the DWP reference period
- g is the total amount of dividends paid by the company in the DWP reference period. 20
- “(4) The amount of the allocation deficit debit that arises under **subsection (2)** is—
- “(a) equal to the maximum deficit debit, if the maximum deficit debit is less than or equal to the credit balance that is in the company’s dividend withholding payment account immediately before any allocation deficit debit arises under this section: 25
- “(b) equal to the reduced deficit debit, if **paragraph (a)** does not apply. 30
- “(5) This section does not apply to a dividend that is the subject of a determination made by a statutory producer board or a co-operative company under section ME 30 or section ME 35.”
- (2) **Subsection (1)** applies for dividends paid in the 2004–05 and subsequent imputation years. 35
- (3) A company may elect in writing that **subsection (1)** apply for dividends paid by the company in an imputation year that begins after 31 March 1995 and before 1 April 2004.

- (4) An amalgamated company may elect in writing that **subsection (1)** apply for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company in relation to the amalgamated company. 5
- 50 Further dividend withholding payment payable by company**
- (1) In section MG 9(5C)(b), “payment of income tax” is replaced by “dividend withholding payment”.
- (2) **Subsection (1)** applies for imputation years that begin on and after 1 April 1998. 10
- 51 Debits arising to group dividend withholding payment account**
- (1) In section MG 15(1)(g), “section MG 8(5)” is replaced by “**section MG 8B**”. 15
- (2) **Subsection (1)** applies for dividends paid in the 2004–05 and subsequent imputation years by a company that is at the time of payment a member of the consolidated group.
- (3) **Subsection (1)** applies for dividends paid in an imputation year that begins after 31 March 1995 and before 1 April 2004 by a company that is at the time of payment a member of the consolidated group if the nominated company for the group elects in writing that **section MG 8B** apply for the imputation year. 20
- 52 Application of specific dividend withholding provisions to consolidated groups** 25
- (1) In section MG 16A(1)—
- (a) “Section MG 8 applies” is replaced by “Sections MG 8 and **MG 8B** apply”;
- (b) “section MG 8(2) to (4)” is replaced by “those sections”. 30
- (2) **Subsection (1)** applies for dividends paid in the 2004–05 and subsequent imputation years.
- (3) **Subsection (1)** applies for dividends paid by a company in an imputation year that begins after 31 March 1995 and before 1 April 2004 if the nominated company for the consolidated 35

- group elects in writing that **section MG 8B** apply for the imputation year.
- (4) **Subsection (1)** applies for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company and a member of the consolidated group if the amalgamated company is a member of the consolidated group and the nominated company for the consolidated group elects in writing that **section MG 8B** apply for the dividends and the imputation year. 5
- 53 Further tax payable for end of year debit balance or when Maori authority ceases to exist** 10
- (1) Section MK 8(5) is replaced by the following:
- “(5) A Maori authority that pays an amount of further income tax for which the authority is liable may elect, with effect from the date on which the Commissioner receives the payment, that the amount paid be also credited in payment of a liability of the authority to pay income tax or provisional tax in relation to an income year that corresponds to an imputation year in which the authority was required to establish and maintain a Maori authority credit account. 15 20
- “(5B) A Maori authority that pays an amount of income tax in relation to an income year in which the authority was required to establish and maintain a Maori authority credit account and that is liable to pay further income tax in relation to an imputation year may elect, with effect from the date on which the Commissioner receives the payment, that the amount of the payment of tax be also credited in payment of the liability of the authority to pay the further income tax.” 25
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years. 30
- 54 Accreditation requirements of PAYE intermediaries**
- (1) In section NBB 2(1)(c), “an officer” is replaced by “a director, secretary or statutory officer”.
- (2) In section NBB 2(4)(b), “an officer” is replaced by “a director, secretary or statutory officer”. 35

**55 Employer having PAYE intermediary—responsibilities
and status under PAYE rules and SSCWT rules**

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

- “(1) An employer who is in an arrangement with a PAYE intermediary that applies to an employee and a pay period must— 5
- “(a) if the employer has authorised the PAYE intermediary to direct the transfer of amounts from a bank account of the employer in satisfaction of the obligations under the arrangement of the PAYE intermediary to make payments on behalf of the employer, ensure that, at a time specified by the PAYE intermediary, the funds in the bank account of the employer that are available for transfer are sufficient to satisfy the obligations of the PAYE intermediary that relate to the employee and the pay period; or 10
- “(b) if the employer has not authorised the PAYE intermediary as described in **paragraph (a)**, pay into the trust account established by the PAYE intermediary and identified in the employer’s notice to the Commissioner under section NBB 3— 15
- “(i) if **subparagraph (ii)** does not apply, the employee’s gross salary or wages for the pay period after deduction of any amount that is owed by the employee to the employer and may be lawfully withheld by the employer from the salary or wages: 20
- “(ii) if the employer has paid salary or wages to the employee in the way authorised by subsection (4), the amount that the employer is required by **subsection (4)(d)** to make available to the PAYE intermediary: 25
- “(iii) if the PAYE intermediary has agreed to assume obligations of the employer under the SSCWT rules, the specified superannuation contributions that are made in the pay period by the employer on behalf of the employee. 30
- “(1B) An employer who is in an arrangement with a PAYE intermediary that applies to an employee and a pay period must— 35
- “(a) keep records of the gross salary or wages of the employee for the pay period and the amounts withheld by the employer for the pay period; and 40

- “(b) provide information requested by the PAYE intermediary within the time agreed by the employer and the PAYE intermediary.”
- (2) In section NBB 4(2), “subsection (1)” is replaced by “subsections (1) and **(1B)**”. 5
- (3) In section NBB 4(3), “subsection (1)” is replaced by “subsections (1) and **(1B)**”.
- (4) Section NBB 4(4)(c) and (d) are replaced by the following:
- “(c) the employer makes from the gross salary or wages of the employee the deduction that the PAYE rules and SSCWT rules would require of an employer who did not have a PAYE intermediary; and 10
- “(d) the employer makes available to the PAYE intermediary, in the way required by **subsection (1)**, the amount of the deduction referred to in **paragraph (c)**.” 15
- 56 PAYE intermediary—responsibilities and status under PAYE rules and SSCWT rules**
- (1) In section NBB 5(1), “and **(1B)**” is inserted after “section NBB 4(1)” in both places that it occurs.
- (2) After section NBB 5(1), the following is inserted: 20
- “(1B) If a PAYE intermediary has been authorised by an employer to direct the transfer of amounts from a bank account of the employer as described in **section NBB 4(1)(a)**, the PAYE intermediary must direct that, at or before the time of the transfer of the amount of salary or wages owing to the employee, an amount representing the deductions from the gross salary or wages of the employee that are required by the PAYE rules and SSCWT rules be transferred to— 25
- “(a) the Commissioner:
- “(b) the trust account established by the PAYE intermediary and identified in the employer’s notice to the Commissioner under section NBB 3.” 30
- (3) In section NBB 5(2B), “and **(1B)**” is inserted after “section NBB 4(1)” in both places that it occurs.
- 57 Operation of trust account** 35
- In section NBB 6(2), the following is inserted before paragraph (a):

“(aa) deductions from gross salary or wages that are required by the PAYE rules and SSCWT rules:”.

58 Amounts of tax deductions

- (1) Section NC 6(1) is repealed.
- (2) In section NC 6(1A), “For a period for which the amount of a tax deduction is not fixed by an annual taxing Act, the” is replaced by “A”. 5
- (3) In section NC 6(1B), “by an annual taxing Act or” is omitted.
- (4) In section NC 6(1C), “by an annual taxing Act or” is omitted.
- (5) Section NC 6(2) is repealed. 10

59 Delivery of withholding declaration

- (1) Section NC 7(2) is replaced by the following:
- “(2) If a person who is making a withholding payment has not received the withholding declaration required by subsection (1), the person must make from the withholding payment a tax deduction that is equal to the sum of the amount of the tax deduction that would, apart from this subsection, be made from the withholding payment and an amount equal to—
 - “(a) 15% of the amount of the withholding payment, if neither of **paragraphs (b) and (c)** applies; or 20
 - “(b) 5% of the amount of the withholding payment, if—
 - “(i) the person receiving the withholding payment is a company that is a non-resident contractor for the purposes of the Income Tax (Withholding Payments) Regulations 1979; and 25
 - “(ii) the person referred to in **subparagraph (i)** receives the withholding payment other than directly or indirectly as a result of a choice that is made for purposes that include a purpose of defeating the intent and application of **paragraph (a)**; and 30
 - “(iii) **paragraph (c)** does not apply; or
 - “(c) nil, if the withholding payment is a payment of the class specified in clause 4(b) of Part B of the Schedule to the Income Tax (Withholding Payments) Regulations 1979.” 35
- (2) **Subsection (1)** applies for withholding payments made on or after 1 April 2005.

- 60 Amount of tax deductions for pay period current when tax deductions altered**
In section NC 12(1), “by an annual taxing Act or” is omitted.
- 61 Special filing rule for employer who stops employing staff during year** 5
In section ND 12, “section ND 10(4)” is replaced by “section ND 10(3), ND 10(4)”.
- 62 Application of RWT rules**
- (1) In section NF 1(2)(a)(x), “Commissioner.” is replaced by “Commissioner; or” and the following is added: 10
“(xi) interest payable on overpaid tax in accordance with section 120D of the Tax Administration Act 1994.”
- (2) Section NF 1(3) and (3A) are repealed.
- (3) **Subsections (1) and (2)** apply to payments of interest made on or after 1 April 2005. 15
- 63 Liability to make deduction in respect of foreign withholding payment dividend**
- (1) Section NH 1(2)(a) is replaced by the following:
- “(a) a dividend that is paid by a foreign company and that—
- “(i) is derived by a company that is resident in New Zealand; and 20
- “(ii) is exempt income under section CB 10(1) for the company that is resident in New Zealand; and
- “(iii) would not, in the absence of section CB 10, be exempt income under section CB 3(b) or CB 4 for the company that is resident in New Zealand:” 25
- (2) Section NH 1(3) is repealed.
- (3) **Subsections (1) and (2)** apply for a dividend that is derived on or after the date on which this Act receives the Royal assent.
- 64 Application of specific dividend withholding payment provisions to consolidated groups** 30
- (1) In section NH 6(4), “Section MG 8(5), (6), and (7) shall apply” is replaced by “Section **MG 8B** applies”.
- (2) **Subsection (1)** applies for dividends paid in the 2004–05 and subsequent imputation years. 35

- (3) **Subsection (1)** applies for dividends paid by a company in an imputation year that begins after 31 March 1995 and before 1 April 2004 if the nominated company for the consolidated group elects in writing that **section MG 8B** apply for the imputation year. 5
- (4) **Subsection (1)** applies for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company and a member of the consolidated group if the amalgamated company is a member of the consolidated group and the nominated company for the consolidated group elects in writing that **section MG 8B** apply for the dividends and the imputation year. 10
- 65 Definitions**
- (1) This section amends section OB 1.
- (2) In the definition of **allocation deficit debit**, “or section MG 8(5)” is replaced by “or **MG 8B**”. 15
- (3) In the definition of **community trust**, “section 2” is replaced by “section 4”.
- (4) In paragraph (b) of the definition of **depreciable property**— 20
- (a) in subparagraph (vi)—
- (i) “**DO 4D**,” is inserted after “DO 3,”;
- (ii) “**DO 4C**,” is inserted after “DO 4,”;
- (b) in subparagraph (viii), “DO 4, **DO 4C**,” is inserted after “DO 3,”.
- (5) In the definition of **diminished value**— 25
- (a) in the introductory words, “**DO 4C**” is inserted after “sections DL 2, DO 4,”;
- (b) in paragraph (b), “sections DL 2, DO 4, **DO 4C**, **DO 4D** and DO 5” replaces “section DL 2 or section DO 4 or section DO 5”. 30
- (6) After the definition of **early income year**, the following is inserted:
- “**early payment rebate** is defined in **section MBC 1** for the purpose of **Part MBC**”.
- (7) In the definition of **estimated useful life**, the following is added: 35
- “(c) in respect of a listed horticultural plant, the period of time over which the listed horticultural plant might

- reasonably be expected to be useful to a person in deriving income or in carrying on a business in New Zealand, having regard to such factors as natural and incidental damage, decay, disease, or exhaustion, with the expectation based on an assumption of normal and reasonable maintenance”.
- (8) In the definition of **finance lease**—
- (a) in the words before paragraph (a), “under which” is replaced by “that involves or is part of an arrangement that involves”;
- (b) paragraph (a) is replaced by the following:
- “(a) the transfer of the ownership of the lease asset to the lessee or an associate of the lessee during or at the end of the lease term; or”;
- (c) in paragraph (b), “has” is replaced by “having”;
- (d) in paragraph (c)—
- (i) “the lease term” is replaced by “a lease term that”;
- (ii) “section EG 4(3):” is replaced by “section EG 4(3); or” and the following is added:
- “(d) a lessee who is a former owner of the lease asset, or is associated with such a former owner, and a lessor who has, during the term of the lease, no substantive rights or obligations in relation to the lease asset other than rights or obligations that relate to the enforcement of the lease”.
- (9) The definition of **insurer** is replaced by:
- “**insurer**, in the definition of **insured person** and in sections CN 4 and OE 4, means a person who assumes liability under a contract of insurance”.
- (10) The definition of **land tax** is repealed.
- (11) In paragraph (f) of the definition of **lease**—
- (a) in the words preceding subparagraph (i)—
- (i) “operating lease,” is inserted after “lease term,”;
- (ii) “FC 8G” is replaced by “FC 8I”;
- (b) in subparagraph (ii), “a licence to use intangible property,” is inserted after “bailment,”.
- (12) In paragraph (b) of the definition of **lessee**, “, hires, or bails” is omitted.

- (13) In paragraph (a) of the definition of **lessee’s acquisition cost**, “means the consideration provided to the lessee for the finance lease asset (as determined under the definition of **consideration**)” is replaced by “for a finance lease asset, means the consideration provided to the lessee under the finance lease, as determined under the definition of **consideration**.”. 5
- (14) After the definition of **listed company** the following is inserted:
“listed horticultural plant, in sections **DO 4B, DO 4C and DO 4D—** 10
 “(a) means a horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land, that is of a type that is listed in a determination made by the Commissioner under **section 91AB of the Tax Administration Act 1994:** 15
 “(b) does not include—
 “(i) a tree planted mainly for the purpose of timber production:
 “(ii) a tree or similar plant planted mainly for the purpose of ornament”. 20
- (15) In the definition of **net loss**, “section 177C(4)” is replaced by “section 177C(5)”. 25
- (16) After the definition of **non-filing taxpayer**, the following is inserted:
“non-listed horticultural plant, in section DO 4 and Schedule 7, Part A, item 12— 25
 “(a) means—
 “(i) a horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land, that is not a listed horticultural plant: 30
 “(ii) a tree or similar plant planted mainly for the purpose of ornament:
 “(b) does not include a tree planted mainly for the purpose of timber production”. 35
- (17) In paragraph (a)(ii) of the definition of **PAYE intermediary**, “section NBB 3; or” is replaced by “section NBB 3; and” and the following is added: 35

- “(iii) has entered agreements that have been approved by the Commissioner under section NBB 3 with not less than 10 employers; or”.
- (18) After the definition of **physical cost of production**, the following is inserted: 5
“planting is defined in **section DO 4B(1)** for the purpose of **sections DO 4B, DO 4C and DO 4D**”.
- (19) After the definition of **pleasure craft**, the following is inserted:
“plot is defined in **section DO 4B(1)** for the purpose of **sections DO 4B, DO 4C and DO 4D**” 10
- (20) In the definition of **premium**, paragraph (b) is replaced by:
“(b) in the definition of insured person, and in sections CN 4, GD 13 and OE 4, means a premium, guarantee fee or other amount payable in respect of a contract of insurance”. 15
- (21) After the definition of **qualifying debenture**, the following is inserted:
“qualifying foreign equity investor is defined in section CB 2(4) for the purpose of that section”. 20
- (22) After the definition of **rents**, the following is inserted:
“replaced area fraction is defined in **section DO 4B(1)** for the purpose of **sections DO 4B, DO 4C and DO 4D**”.
- (23) After the definition of **replacement permit**, the following is inserted: 25
“replacement plant, in sections **DO 4B and DO 4D**, means a listed horticultural plant that replaces a listed horticultural plant, whether or not it is of the same type of listed horticultural plant”.
- (24) In the definition of **resident in Australia**, paragraph (a) is omitted. 30
- (25) After the definition of **significant financial hardship**, the following is inserted:
“small business taxpayer is defined in **section MBC 1** for the purpose of **Part MBC**”. 35
- (26) In the definition of **special corporate entity**, after paragraph (h), the following is added:

- “(j) any body incorporated under the Incorporated Societies Act 1908, for an income year in which the body on no day in the income year has shares on issue to the members of the body”.
- (27) The definition of **tax credit advantage** is replaced by the following: 5
“**tax credit advantage** is defined in—
“(a) section GC 22(9) for the purpose of that section:
“(b) section GC 27B(10) for the purpose of that section”.
- (28) In the definition of **taxable period**, “1975” is replaced by “1985”. 10
- (29) **Subsection (26)**, other than in the application of Part IG, applies for the 1995–96 and subsequent income years.
- (30) **Subsection (26)**, in the application of Part IG— 15
(a) in relation to a society and an income year for which section OD 3(4) does not apply, applies for an assessment of income tax that is—
(i) not affected by a time bar under section 107A(1) or 108(1) of the Tax Administration Act 1994; 20
and
(ii) for the 1995–96 or a subsequent income year:
(b) in relation to a society and an income year for which section OD 3(4) applies, applies—
(i) for the purpose of section IG 2(1) and (2)(e), for an assessment of income tax that is— 25
(A) not affected by a time bar under section 107A(1) or 108(1) of the Tax Administration Act 1994; and
(B) for the 1995–96 or a subsequent income year: 30
(ii) other than for the purpose of section IG 2(1) and (2)(e), for an assessment of income tax that is—
(A) not affected by a time bar under section 107A(1) or 108(1) of the Tax Administration Act 1994; and 35
(B) for the 1995–96, 1996–97, 2003–04 or a subsequent income year.
- (31) **Subsections (8), (11)(b) and (12)** apply for an arrangement entered on or after 29 March 2004.

- (32) **Subsections (4), (5), (7), (14), (16), (18), (19), (22) and (23)** apply for the 2003–04 and subsequent income years.
- (33) **Subsections (3) and (27)** apply for the 2004–05 and subsequent income years.
- (34) **Subsection (2)** applies for dividends paid in the 2004–05 and subsequent imputation years. 5
- (35) **Subsection (2)** applies for dividends paid by a company in an imputation year that begins after 31 March 1995 and before 1 April 2004 if the company elects in writing that **section MG 8B** apply for the imputation year. 10
- (36) **Subsection (2)** applies for dividends paid, in an imputation year that begins after 31 March 1995 and before 1 April 2004, by a company that was an amalgamating company if the amalgamated company elects in writing that **section MG 8B** apply for the dividends and the imputation year. 15
- (37) **Subsection (17)** applies for pay periods beginning on or after 1 April 2004.
- (38) **Subsections (6) and (25)** apply for income years commencing on and after 1 April 2005.
- 66 Meaning of “income tax”** 20
In section OB 6(1)(b), “CB 2,” is inserted before “CB 10”.
- 67 Voting interests**
- (1) After section OD 3(3), the following is added:
- “(4) For the purpose of Part IG, other than section IG 2(1) and (2)(c)— 25
- “(a) if a society that is incorporated under the Incorporated Societies Act 1908 has issued no shares, each member of the society, while being a member, is treated as holding a share issued by the society:
- “(b) a person who is a member of a society at the beginning of the 1997–98 income year is treated as holding a share referred to in **paragraph (a)** for all previous income years: 30
- “(c) a share referred to in **paragraph (a)** is treated as holding all the types of right that are shareholder decision-making rights: 35

“(d) all the shareholder decision-making rights in the society are treated as being carried by the shares that the society is treated as having issued under paragraph (a) ;	
“(e) section OD 3(3)(d) does not apply to a share referred to in paragraph (a) .”	5
(2) After section OD 3(4) , as inserted by subsection (1) , the following is added:	
“(5) For the purpose of Part IG, other than section IG 2(1) and (2)(c), the members at the beginning of the 2003–04 income year of a society are treated as being the members of the society for the 1997–98 to 2002–03 income years if the society is—	10
“(a) subject to subsection (3) for the 2002–03 income year; and	
“(b) a special corporate entity at the beginning of the 2003–04 income year.”	15
(3) Subsection (1) applies for a taxpayer and a tax position taken by the taxpayer for the 1997–98 to 2002–03 income years.	
(4) Subsection (2) applies for a taxpayer and a tax position taken by the taxpayer for the 2003–04 and subsequent income years.	20
68 Schedule 7—Expenditure on land and aquaculture improvements	
(1) In Schedule 7, Part A, item 12, “vines or trees on the land other than trees planted primarily and principally for the purposes of timber production” is replaced by “non-listed horticultural plants on the land”.	25
(2) Subsection (1) applies for the 2003–04 and subsequent income years.	
Part 3	
Amendments to Tax Administration Act 1994	30
69 Purpose of Act	
In section 2(4), “that are not in Part VI (which relates to assessments) and” is inserted after “provisions of this Act”.	
70 Interpretation	
(1) This section amends section 3(1).	35

- (2) In paragraph (b)(iii) of the definition of **disputable decision**, “Part VIIIA:” is replaced by “Part VIIIA; or” and the following is added:
- “(iv) that is left to the Commissioner’s discretion under sections 89K, 89L, 89M(8) and (10) and 89N(3)”.
- (3) After the definition of **disputant’s statement of position**, the following is inserted:
- “disqualifying offence** is defined in **section 141FB(3)** for the purpose of section 141FB
- “disqualifying penalty** is defined in **section 141FB(3)** for the purpose of section 141FB”.
- (4) After the definition of **GST**, the following is inserted:
- “GST payable** has the meaning given to **tax payable** by section 2 of the Goods and Services Tax Act 1985”.
- (5) In the definition of **late payment penalty**, “21Q” is replaced by “12Q”.
- (6) The definition of **response period** is replaced by the following:
- “response period** for a notice in response to another notice (called the **initiating notice**) means—
- “(a) the 2-month period starting on the date of issue of the initiating notice, if the initiating notice is—
- “(i) a notice of proposed adjustment:
- “(ii) a notice of disputable decision:
- “(iii) a notice revoking or varying a disputable decision that is not an assessment:
- “(iv) a disclosure notice:
- “(v) a notice from the Commissioner rejecting an adjustment proposed by a disputant:
- “(b) the 2-month period starting on the date of issue of the initiating notice, if the initiating notice is a disputant’s statement of position:
- “(c) if the notice is a notice of proposed adjustment that is issued by a taxpayer under section 89D and the initiating notice is a notice of assessment issued by the Commissioner, the 4-month period starting on the date of the notice:

- “(d) if the notice is a notice of proposed adjustment that is issued by a taxpayer under section 89DA and the initiating notice is a notice of assessment issued by the taxpayer, the 4-month period starting on the date on which the taxpayer’s notice of assessment is received at an office of the department”.
- (7) After the definition of **response period**, the following is inserted:
“responsible department, in sections 81(4)(f) and (o), 82 and 85, means—
- “(a) in relation to a benefit that is not a student allowance, the department for the time being responsible for administration of the Social Security Act 1964:
“(b) in relation to a student allowance, the department for the time being responsible for administration of Part XXV of the Education Act 1989”.
- (8) After the definition of **status ruling**, the following is inserted:
“student allowance means an allowance paid under regulations made under section 303 of the Education Act 1989”.
- (9) **Subsection (6)** applies—
- (a) for notices issued in relation to GST return periods that commence on or after 1 April 2005;
(b) for notices that are not issued in relation to GST return periods and that are issued on or after 1 April 2005.
- 71 Information to be furnished on request of Commissioner**
In section 17(1C)(a)(i), “in the knowledge, possession or control of” is replaced by “held by”, in both places where it appears.
- 72 Officers to maintain secrecy**
- (1) In section 81(4)(l), in the portion preceding subparagraph (i), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.
- (2) In section 81(4)(o), “the department for the time being responsible for the administration of the Social Security Act 1964” where it first appears is replaced by “the responsible

department” and where it appears for the second time is replaced by “that department”.

73 Disclosure of information for matching purposes

- (1) In section 82(1), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”. 5
- (2) In section 82(2), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.
- (3) In section 82(6), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”. 10
- (4) In section 82(7), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”. 15
- (5) After section 82(7), the following is inserted:
 “(7B) If the Commissioner supplies under subsection (6) or (7) information about a person to the responsible department, the Commissioner may also supply to that department the following additional information that is held by the Department and that relates to the person— 20
 “(a) the full name and date of birth of the person;
 “(b) if the information held by the Department includes information about the person’s employment—
 “(i) the telephone number of each employer of the person; and 25
 “(ii) the email address of each employer of the person; and
 “(iii) the tax code or codes applicable to the person during each period for which the person received a benefit.” 30
- (6) In section 82(9)—
 (a) in paragraph (a) of the definition of **authorised officer**, “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”; 35
 (b) the definition of **beneficiary** is replaced by the following:

“**beneficiary** means—

“(a) a person who is receiving, or has received, a benefit or earnings related compensation:

“(b) an applicant for a benefit or earnings related compensation: 5

“(c) in the case of a benefit that is a student allowance, a person who is a spouse of the recipient of the benefit under regulation 2 of the Student Allowances Regulations 1998”:

(c) after the definition of **beneficiary information**, the following is inserted: 10

“**benefit** includes a benefit payable under the Social Security Act 1964 and a student allowance payable under Part XXV of the Education Act 1989”.

74 Disclosure of address information in relation to debtors 15

(1) Section 85(1) is replaced by the following:

“(1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the responsible department for the purpose of assisting the responsible department to recover money owed by debtors to the responsible department, acting in the name of the Crown.” 20

(2) In section 85(2), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”.

(3) In section 85(3), “the department for the time being responsible for the administration of the Social Security Act 1964” is replaced by “the responsible department”. 25

(4) Section 85(6) is amended by—

(a) in the definition of **authorised officer**, replacing “the department for the time being responsible for the administration of the Social Security Act 1964” by “the responsible department”: 30

(b) after paragraph (c) of the definition of **debtor**, adding the following:

“(d) a person who is not currently receiving a student allowance and from whom a debt relating to an allowance (as defined in section 302 of the Education Act 1989) is recoverable under section 307B of that Act”. 35

- 75 Further secrecy requirements**
- (1) In section 87(5)(a)(i), “(eb),” is inserted after “(e),”.
- (2) **Subsection (1)** applies for secrecy certificates that are signed on or after the date on which this Act receives the Royal assent.
- 76 Notices of proposed adjustment required to be issued by Commissioner** 5
- (1) After section 89C(d), the following is inserted:
- “(db) the assessment is made in relation to a matter for which the material facts and relevant law are identical to those for an assessment of the taxpayer for another income year that is at the time the subject of court proceedings; or” 10
- (2) After section 89C(e), the following is inserted:
- “(eb) the Commissioner has reasonable grounds to believe that the taxpayer has left New Zealand and may have been involved in fraudulent activity; or” 15
- (3) **Subsections (1) and (2)** apply to assessments for which notices are issued on or after 1 April 2005.
- 77 Taxpayers and others with standing may issue notices of proposed adjustment** 20
- (1) After section 89D(2B) the following is inserted:
- “(2C) A taxpayer who has not provided a GST tax return for a GST return period may not dispute the assessment made by the Commissioner other than by providing a GST return for the GST return period.” 25
- (2) Section 89D(4) is repealed.
- (3) **Subsections (1) and (2)** apply for GST return periods that begin on or after 1 April 2005.
- 78 Taxpayer may issue notice of proposed adjustment for taxpayer assessment** 30
- (1) In section 89DA(1), “or a GST return period” is inserted after “income year”.
- (2) After section 89DA(1), the following is inserted:
- “(1B) If a notice under subsection (1) proposes an adjustment that involves an input tax credit under the Goods and Services Tax 35

- Act 1985, other than an amount that is referred to in the proviso to section 20(3) of that Act, the notice must be issued within 2 years of the date on which the taxpayer's GST tax return to which the adjustment relates is received at an office of the department." 5
- (3) Section 89DA(2) is replaced by the following:
- “(2) Subject to **subsection (1B)**, a notice of proposed adjustment under this section must be issued within the response period for the notice.”
- (4) **Subsections (1) to (3)** apply to notices issued in relation to GST return periods that begin on or after 1 April 2005. 10
- 79 Election of small claims jurisdiction of Taxation Review Authority**
- (1) In section 89E(1), wherever it appears, “\$15,000” is replaced by “\$30,000”. 15
- (2) **Subsection (1)** applies to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005.
- 80 Section 89F replaced**
- (1) Section 89F is replaced by the following: 20
- “89F **Content of notice of proposed adjustment**
- “(1) A notice of proposed adjustment must—
- “(a) contain sufficient detail of the matters described in **subsections (2) and (3)** to identify the issues arising between the Commissioner and the taxpayer; and 25
- “(b) be in the prescribed form.
- “(2) A notice of proposed adjustment issued by the Commissioner must—
- “(a) identify the adjustment or adjustments proposed to be made to the assessment; and 30
- “(b) state concisely—
- “(i) the facts and the law that the Commissioner considers make the adjustment or adjustments necessary; and
- “(ii) how the law applies to the facts. 35

- “(3) A notice of proposed adjustment issued by a taxpayer must—
- “(a) provide a clear and detailed statement of the facts and the law that the taxpayer considers make the adjustment or adjustments necessary; and
 - “(b) state how the law applies to the facts; and 5
 - “(c) include copies of all documentary evidence in support of the adjustment—
 - “(i) that is materially relevant to the issues arising between the Commissioner and the taxpayer; and
 - “(ii) of which the taxpayer is aware at the time that the notice is issued.” 10
- (2) **Subsection (1)** applies to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005.
- 81 Issue of response notice** 15
- (1) Section 89G(2) is replaced by the following:
- “(2) A notice of response must state concisely—
- “(a) the facts or legal arguments in the notice of proposed adjustment that the issuer of the notice of response considers are wrong; and 20
 - “(b) why the issuer of the notice of response considers those facts or legal arguments to be wrong; and
 - “(c) any facts and legal arguments relied on by the issuer of the notice of response; and
 - “(d) how the arguments apply to the facts; and 25
 - “(e) the quantitative adjustments to any figure referred to in the notice of proposed adjustment that result from the facts and legal arguments relied on by the issuer of the notice of response.”
- (2) **Subsection (1)** applies to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005. 30
- 82 Late actions deemed to occur within response period**
- (1) In section 89K(1)(a)(ii), “GST tax return” is replaced by “GST tax return; or” and the following is added: 35
- “(iii) issuing a statement of position”.
- (2) In section 89K(1)(b)(ii)(B), “section 89F” is replaced by “section 89F; or” and the following is added:

- “(iii) a statement of position”.
- (3) In section 89K(1)(d), “proposed adjustment” is replaced by “proposed adjustment; or”, and the following is added:
“(e) the disputant’s statement of position”.
- (4) Section 89K(3)(a) and (b) are replaced by the following: 5
- “(a) an **exceptional circumstance** arises if—
- “(i) an event or circumstance beyond the control of a disputant provides the disputant with a reasonable justification for not rejecting a proposed adjustment, or for not issuing a notice of proposed adjustment or statement of position, within the response period for the notice: 10
- “(ii) a disputant is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the lateness is minimal, or results from 1 or more statutory holidays falling in the response period: 15
- “(b) an act or omission of an agent of a disputant is not an exceptional circumstance unless—
- “(i) it was caused by an event or circumstance beyond the control of the agent that could not have been anticipated, and its effect could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or 20 25
- “(ii) the agent is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the lateness is minimal, or results from 1 or more statutory holidays falling in the response period.” 30
- (5) **Subsections (1) to (4)** apply to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005.
- 83 Disclosure notices**
- (1) In section 89M(1), “the Commissioner may issue” is replaced by “and subject to section 89N, the Commissioner must issue”. 35
- (2) After section 89M(6), the following is inserted:

- “(6B) In subsections (4)(b) and (6)(b), **evidence** refers to the available documentary evidence on which the person intends to rely, but does not include a list of potential witnesses, whether or not identified by name.”
- (3) Section 89M(7) is replaced by: 5
- “(7) A disputant who does not issue a statement of position in the prescribed form within the response period for the statement of position, is treated as follows:
- “(a) if the Commissioner has proposed the adjustment to the assessment, the disputant is treated as having accepted the Commissioner’s notice of proposed adjustment or statement of position: 10
- “(b) if the disputant has proposed the adjustment to the assessment, the disputant is treated as not having issued a notice of proposed adjustment.” 15
- (4) **Subsections (1) to (3)** apply to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005.
- 84 New sections 89N and 89O inserted**
- (1) After section 89M, the following are inserted: 20
- “**89N Completing the disputes process**
- “(1) This section applies if—
- “(a) a notice of proposed adjustment has been issued; and
- “(b) the dispute has not been resolved by agreement between the Commissioner and the taxpayer; and 25
- “(c) none of the following applies:
- “(i) the dispute involves allegations of criminal matters:
- “(ii) the Commissioner has reasonable grounds to believe that the taxpayer involved in the dispute may take steps in relation to the existence or location of the taxpayer’s assets to avoid or delay the collection of tax from the taxpayer: 30
- “(iii) the Commissioner has reasonable grounds to believe that a person who is, under section OD 8(3) of the Income Tax Act 1994, an associated person of the taxpayer involved in the dispute may take steps in relation to the existence or 35

- location of the taxpayer’s assets to avoid or delay the collection of tax from the taxpayer:
- “(iv) the taxpayer involved in the dispute has begun judicial review proceedings in relation to the dispute: 5
 - “(v) a person who is, under section OD 8(3) of the Income Tax Act 1994, an associated person of the taxpayer and is involved in another dispute with the Commissioner involving similar issues has begun judicial review proceedings in relation to the other dispute: 10
 - “(vi) during the disputes process, the taxpayer fails to comply with a request under a statute by the Commissioner for information relating to the dispute: 15
 - “(vii) the disputant elects under section 89E to have the dispute heard by a Taxation Review Authority acting in its small claims jurisdiction:
 - “(viii) the taxpayer and the Commissioner agree in writing that they have reached a position in which the dispute would be resolved more efficiently by being submitted to the court or Taxation Review Authority without completion of the disputes process: 20
 - “(ix) the taxpayer and the Commissioner agree in writing to suspend proceedings in the dispute pending a decision in a test case referred to in **section 89O**. 25
- “(2) If this section applies, the Commissioner may not amend an assessment under section 113 without completing the disputes process set out in this Part. 30
- “(3) Despite **subsection (2)**, the Commissioner may apply to the High Court to allow more time for the completion of the disputes process, or for an order that completion of the process is not required.
- “89O **Test cases** 35
- “(1) This section applies if—
- “(a) a dispute between a taxpayer and the Commissioner has been identified; and
 - “(b) the Commissioner has designated a separate challenge as a test case. 40

- “(2) The taxpayer and the Commissioner may agree in writing to suspend the proceedings in the dispute because there is significant similarity between the facts and questions of law in the dispute and the facts and questions of law in the challenge that has been designated as a test case. 5
- “(3) A suspension that is agreed under **subsection (2)** starts on the date of the agreement and ends on the earliest of—
 “(a) the date of the court’s decision in the test case:
 “(b) the date on which the test case is otherwise resolved:
 “(c) the date on which the dispute is otherwise resolved. 10
- “(4) The Commissioner may make an assessment in relation to a suspended dispute that is consistent with the resolution of the test case.
- “(5) The period of time before a time bar, under an Inland Revenue Act, that affects a suspended dispute is extended by the period of the suspension that is described in **subsection (3)**.” 15
- (2) **Subsection (1)** applies to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005.
- 85 Determinations in relation to financial arrangements 20**
- (1) Section 90(6) is replaced by the following:
- “(6) The Commissioner may at any time—
 “(a) make a determination that varies, cancels, restricts or extends in scope an earlier determination made under this section: 25
 “(b) issue a notice that cancels a determination made under this section.
- “(6B) A person who acquires or issues a financial arrangement before the date of notification or publication of a determination, or notice, that is authorised by **subsection (6)** is not required to apply the determination to the financial arrangement, or treat the notice as affecting the financial arrangement, until the date that is 4 years after that date of notification or publication.” 30
- (2) In section 90(7)— 35
 (a) “and notices issued by the Commissioner under **subsection (6)(b)**” is inserted after “subsection (1)”;
 (b) “or notice” is inserted after “determination”.

- (3) In section 90(8), “or notice” is inserted after “determination”.

86 Determinations relating to financial arrangements

Section 90AC(6) is replaced by the following:

- “(6) The Commissioner may at any time—
- “(a) make a determination that varies, cancels, restricts or extends in scope an earlier determination under this section: 5
 - “(b) issue a notice that cancels a determination made under this section.”

87 Notification of determinations 10

- (1) In the heading to section 90AD, “**and notices**” is added after “**determinations**”.
- (2) In section 90AD(1), “or notice” is inserted after “determination” wherever it occurs.
- (3) In section 90AD(2), “or notice” is inserted after “determination”. 15

88 Section 90AE replaced

Section 90AE is replaced by the following:

- “**90AE Four-year period in which determination not required to be applied** 20
- A person who enters into a financial arrangement before the date of notification or publication of a determination, or notice, that is authorised by **section 90AC(6)** is not required to apply the determination to the financial arrangement, or treat the notice as affecting the financial arrangement, until the date that is 4 years after that date of notification or publication.” 25

89 Determinations in relation to apportionment of interest costs

- (1) Section 90A(6) is replaced by the following:
- “(6) The Commissioner may at any time— 30
- “(a) make a determination that varies, cancels, restricts or extends in scope an earlier determination under this section:
 - “(b) issue a notice that cancels a determination under this section. 35

- “(6B) A person who enters into a financial arrangement before the date of notification or publication of a determination, or notice, that is authorised by **subsection (6)** is not required to apply the determination to the financial arrangement, or treat the notice as affecting the financial arrangement, until the first income year that commences after that date of notification or publication.” 5
- (2) In section 90A(7)—
- (a) “and notices issued by the Commissioner under **subsection (6)(b)**” is inserted after “subsection (1)”: 10
- (b) “or notice” is inserted after “determination”.
- (3) In section 90A(8), “or notice” is inserted after “determination”.
- 90 New section 91AB inserted**
- After section 91AA, the following is inserted: 15
- “91AB Determinations relating to types and diminishing values of listed horticultural plants**
- “(1) For the purpose of **sections DO 4B, DO 4C and DO 4D** of the Income Tax Act 1994, the Commissioner may determine—
- “(a) that a type of horticultural plant, tree, vine, bush, cane, 20
or similar plant that is cultivated on land, is a type of listed horticultural plant:
- “(b) the banded rate set out in column 1 of Schedule 11 of the Income Tax Act 1994 that is to be used to calculate the diminishing value for a type of listed horticultural 25
plant.
- “(2) In making a determination, the Commissioner must take into account the estimated useful life of the type of plant, and may also take into account—
- “(a) the main purpose for which the type of plant is 30
cultivated:
- “(b) the manner in which the type of plant is cultivated and managed.
- “(3) The determination may set out the income year or income years for which it is to apply, but may not apply for income 35
years before the 2003–04 income year.
- “(4) The determination may provide for the extension, limitation, variation, cancellation or revocation of an earlier determination.

- “(5) A person affected by a determination made under this section may dispute or challenge the determination under Parts IVA and VIIIA.
- “(6) Within 30 days of issuing a determination under this section, the Commissioner must publish a notice in the *Gazette* that— 5
“(a) gives notice that the determination has been issued; and
“(b) states where copies of the determination can be obtained.”
- 91 Commissioner to make private rulings on request**
Section 91E(6)(d) is repealed. 10
- 92 Taxpayer assessment**
- (1) The heading to section 92 is replaced by “**Taxpayer assessment of income tax**”.
- (2) Section 92(2) is replaced by the following:
“(2) An assessment under this section is made on the date on which 15
the taxpayer’s return of income is received at an office of the Department.”
- (3) Section 92(3) is repealed.
- (4) **Subsections (1) to (3)** apply for the 2004–05 and subsequent 20
income years.
- 93 New section 92B inserted**
- (1) After section 92A, the following is inserted:
“92B Taxpayer assessment of GST
“(1) A taxpayer who is required under the Goods and Services Tax 25
Act 1985 to provide a GST tax return for a GST return period must make an assessment of the amount of GST payable by the taxpayer for the return period.
“(2) An assessment under this section is made on the date on which 30
the taxpayer’s GST tax return is received at an office of the department.”
- “(3) This section does not apply to a taxpayer for a GST return period if the Commissioner has made an assessment of the GST payable by the taxpayer for the return period.”
- (2) **Subsection (1)** applies for GST return periods beginning on or 35
after 1 April 2005.

- 94 Assessment where default made in furnishing returns**
- (1) After section 106(1C), the following is inserted:
- “(1D) If a person who is required to provide a GST tax return for a GST return period does not provide a GST tax return for the return period, or provides a GST tax return with which the Commissioner is not satisfied, the Commissioner may make an assessment of the GST payable by the person for the return period. 5
- “(1E) A person who is assessed under **subsection (1D)** is liable to pay the GST assessed unless the person establishes in proceedings challenging the assessment that the assessment is excessive, or that the person is not chargeable with GST.” 10
- (2) **Subsection (1)** applies for GST return periods beginning on or after 1 April 2005.
- 95 Time bar for amendment of income tax assessment** 15
- (1) Section 108(2) is replaced by the following:
- “(2) The Commissioner may, at any time, amend an assessment to increase its amount if the Commissioner considers that a taxpayer has provided a return of income that—
- “(a) is fraudulent or wilfully misleading; or 20
- “(b) materially understates gross income by not mentioning gross income that is of a particular nature or is derived from a particular source, and for which a return must be provided; or
- “(c) materially overstates the amount of a deduction that is allowed under the Income Tax Act 1994.” 25
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.
- 96 Time bar for assessment of GST**
- (1) The heading to section 108A is replaced by “**Time bar for amending GST assessment**”. 30
- (2) Section 108A(1) is replaced by the following:
- “(1) Subject to this section and section 108B, if a taxpayer provides a GST tax return for a GST return period and an assessment has been made, the Commissioner may not amend the assessment to increase the amount assessed if 4 years have 35

passed from the end of the GST return period in which the tax return was provided.”

- (3) Section 108A(2) is repealed.
- (4) Section 108A(3) is replaced by the following:
 - “(3) The Commissioner may, at any time, amend an assessment to increase the amount of the assessment if the Commissioner considers that the person assessed has knowingly or fraudulently failed to disclose to the Commissioner all of the material facts that are necessary for determining the amount of GST payable for a GST return period.”
- (5) **Subsections (1) to (4)** apply for GST return periods beginning on or after 1 April 2005.

97 Extension of time bars

- (1) Section 108B(1) is replaced by the following:
 - “(1) The Commissioner and a taxpayer may agree by waiver to an extension of not more than 12 months to the period of time before the application of a time bar that is referred to in subsection (3).
 - “(1B) During the period of a waiver under **subsection (1)**, the Commissioner must not investigate issues between the taxpayer and the Commissioner that were not identified and known to both parties before the start of the period.”
- (2) In section 108B(3)(f), “for which the GST return was provided or, as the case may be, the assessment made; and” is replaced by “in which the GST tax return was provided.”
- (3) Section 108B(3)(g) is repealed.
- (4) **Subsection (1)** applies to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005.
- (5) **Subsections (2) and (3)** apply for GST return periods beginning on or after 1 April 2005.

98 Commissioner to give notice of assessment to taxpayer

- (1) After section 111(7), the following is added:
 - “(8) If the Commissioner makes an assessment in relation to goods that are treated under section 5(2) of the Goods and Services

- Tax Act 1985 as being supplied by a person, the Commissioner must send a copy of the notice referred to in subsection (1) to whichever of the following is the person not assessed:
- “(a) the person whose goods were sold:
 - “(b) the person selling the goods.” 5
- (2) **Subsection (1)** applies to notices that are issued on or after 1 April 2005.
- 99 Commissioner may at any time amend assessments**
- (1) In section 113(1), “The Commissioner may from time to time and at any time make all such alterations in or additions to” is replaced by “Subject to section 89N, the Commissioner may from time to time, and at any time, amend” 10
- (2) In section 113(2), “alteration or addition” is replaced by “amendment”.
- (3) **Subsection (1)** applies to amendments for which notices are issued on or after 1 April 2005. 15
- 100 Section 114 replaced**
Section 114 is replaced by the following:
- “114 **Validity of assessments**
An assessment made by the Commissioner is not invalidated— 20
- “(a) through a failure to comply with a provision of this Act or another Inland Revenue Act; or
 - “(b) because the assessment is made wholly or partially in compliance with— 25
 - “(i) a direction or recommendation made by an authorised officer on matters relating to the assessment;
 - “(ii) a current policy or practice approved by the Commissioner that is applicable to matters relating to the assessment.” 30
- 101 Variation to definitions for determining interest chargeable or payable to PAYE intermediaries**
- (1) In section 120OB(1)(a), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”. 35

- (2) In section 1200B(1)(b), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”.
- (3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004.
- 102 When disputant entitled to challenge assessment** 5
 In section 138B(3)(b), “adjusted.” is replaced by “adjusted; and”, and the following is added:
 “(c) for the purposes of paragraph (b), the written disputable decision from the Commissioner is not limited to the Commissioner’s notice of response.” 10
- 103 Certain rights of challenge not conferred**
 In section 138E(1)(c)(iv), “Act,—” is replaced by “Act; or” and the following is added:
 “(v) any of Parts IV, VI, VII and XI (other than section 76) of the Goods and Services Tax Act 1985—”. 15
- 104 Challenging disputable decisions which are not assessments**
 In section 138F(1), “under section 138B” is inserted after “challenge”. 20
- 105 Late filing penalties**
 In section 139A(5), “annual imputation return or” is omitted.
- 106 Tax shortfalls**
 (1) In section 141(2), “, subject to **section 141AA(1)**” is inserted after “penalty”. 25
 (2) **Subsection (1)** applies for withholding payments made on or after 1 April 2005.
- 107 New section 141AA inserted**
 (1) After section 141, the following is inserted:
“141AA Shortfall penalty if non-resident contractor relieved from all liability to pay tax on withholding payment 30
 “(1) If a person makes a withholding payment to a person who is a non-resident contractor for the purposes of the Income Tax

- (Withholding Payments) Regulations 1979 and who is relieved by a double tax agreement from all liability to pay tax on the withholding payment, the person who makes the withholding payment to the non-resident contractor is liable to pay a shortfall penalty of \$250 for each return period—
- “(a) for which the person is required to deliver to the Commissioner an employer monthly schedule; and
 - “(b) in which the person fails to make a required tax deduction from a withholding payment to the non-resident contractor; and
- “(2) A person who is liable to pay a shortfall penalty under **subsection (1)** is not liable to pay a shortfall penalty based on the tax shortfall that, but for this section, would be calculated under section 141 in relation to the required tax deduction.
- “(3) The liability under **subsection (1)** of a person is limited to a total of \$1,000 for each return period for which the person is required to deliver to the Commissioner an employer monthly schedule.”
- (2) **Subsection (1)** applies for withholding payments made on or after 1 April 2005.

108 Section 141FB replaced

Section 141FB is replaced by the following:

- “141FB **Reduction of penalties for previous behaviour**
- “(1) A shortfall penalty (called the **current penalty**) for which a taxpayer is liable under section 141E is reduced, to 50% of the amount that would be payable by the taxpayer in the absence of this section, if the taxpayer is not—
- “(a) convicted of an offence that is a disqualifying offence;
 - “(b) liable for another shortfall penalty that is a disqualifying penalty for the purpose of this subsection.
- “(2) A shortfall penalty (called the **current penalty**) for which a taxpayer is liable under any of sections 141A to 141D is reduced, to 50% of the amount that would be payable by the taxpayer in the absence of this section, if the taxpayer is not—
- “(a) convicted of an offence that is a disqualifying offence;
 - “(b) liable for another shortfall penalty that is a disqualifying penalty for the purpose of this subsection.

- “(3) For the purpose of this section—
- “**disqualifying offence** means—
- “(a) an offence under section 143A, 143B, 143F, 143G, 143H or 145 for which a conviction is entered—
- “(i) on or after 26 March 2003; and 5
- “(ii) before the taxpayer takes the tax position to which the current penalty relates;
- “(b) an offence under section 143 or 144 that relates to the type of tax to which the current penalty relates and for which a conviction is entered— 10
- “(i) on or after 26 March 2003; and
- “(ii) after the date that precedes, by the period specified in **subsection (4)**, the date on which the taxpayer takes the tax position to which the current penalty relates; and 15
- “(iii) before the taxpayer takes the tax position to which the current penalty relates
- “**disqualifying penalty** means—
- “(a) for the purpose of **subsection (1)**, a shortfall penalty that— 20
- “(i) relates to the type of tax to which the current penalty relates; and
- “(ii) is for evasion or a similar act; and
- “(iii) is not reduced for voluntary disclosure by the taxpayer; and 25
- “(iv) relates to a tax position that is taken on or after 26 March 2003 and before the date on which the taxpayer takes the tax position to which the current penalty relates;
- “(b) for the purpose of **subsection (2)**, a shortfall penalty 30
- “(i) relates to the type of tax to which the current penalty relates; and
- “(ii) if the current penalty is—
- “(A) for gross carelessness or taking an abusive tax position, is a shortfall penalty for evasion or a similar act or for gross carelessness or taking an abusive tax position; 35
- “(B) for not taking reasonable care or taking an unacceptable tax position, is a shortfall penalty of any sort; and 40

- “(iii) is not reduced for voluntary disclosure by the taxpayer; and
- “(iv) relates to a tax position that is taken—
- “(A) on or after 26 March 2003; and
- “(B) after the date that precedes, by the period specified in **subsection (4)**, the date on which the taxpayer takes the tax position to which the current penalty relates; and
- “(C) before the date on which the taxpayer takes the tax position to which the current penalty relates.
- “(4) The period referred to in the definitions of **disqualifying offence** and **disqualifying penalty**, in **subsection (3)**, and in **subsection (5)** is—
- “(a) 2 years, if the current penalty relates to—
- “(i) the taxpayer’s application of the PAYE rules;
- “(ii) fringe benefit tax;
- “(iii) goods and services tax;
- “(iv) resident withholding tax;
- “(b) 4 years, if the period is not given by **paragraph (a)**.
- “(5) For the purpose of **subsection (2)**, a shortfall penalty that relates to a tax shortfall arising from a tax position taken by a taxpayer is determined as if the taxpayer were not liable for a shortfall penalty that relates to a tax shortfall arising from another tax position taken by the taxpayer, if—
- “(a) the Commissioner becomes aware of both tax shortfalls as a consequence of a single investigation or voluntary disclosure; and
- “(b) the taxpayer—
- “(i) takes both tax positions on the same date;
- “(ii) is not liable for a shortfall penalty at any time in the period specified in **subsection (4)** that ends on the earliest date on which the taxpayer takes a tax position that gives rise to a tax shortfall of which the Commissioner becomes aware as a consequence of the investigation or disclosure to which **paragraph (a)** refers.”

109 Section 141FC repealed

- (1) Section 141FC is repealed.

- (2) **Subsection (1)** applies with respect to shortfall penalties imposed on and after 1 April 2005.

110 New section 141FD inserted

- (1) After section 141FB, the following is inserted:

“141FD Shareholders of loss attributing qualifying companies 5

- “(1) This section applies to a shortfall penalty under Part IX that arises because—

“(a) a loss attributing qualifying company attributes a net loss to a person who is a shareholder of the loss attributing qualifying company on any day in the income year in which the company had the net loss; and 10

“(b) the net loss is subsequently reduced because—

“(i) deductions claimed by the loss attributing qualifying company for the income year are disallowed: 15

“(ii) the gross income of the loss attributing qualifying company for the income year is increased.

“(2) The shortfall penalty that would be imposed on the loss attributing qualifying company in the absence of this section may not be imposed on the loss attributing qualifying company. 20

“(3) A shortfall penalty may be imposed on the person in relation to the amount of a deduction that the person claimed in respect of the attributed net loss.

“(4) No shortfall penalty under Part IX relating to the reduction of the attributed net loss of the company may be imposed on the shareholder other than the shortfall penalty permitted by **subsection (3)**.” 25

- (2) **Subsection (1)** applies with respect to shortfall penalties imposed on and after 1 April 2005.

111 Application of Part IX to PAYE intermediaries 30

(1) In section 141JB(1)(a), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”.

(2) In section 141JB(1)(b), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”.

(3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004. 35

- 112 Recovery of tax deductions from employers or PAYE intermediaries**
- (1) In section 167(2B)(b)(i), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”.
- (2) In section 167(2B)(b)(ii), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”. 5
- (3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004.
- 113 Employer or PAYE intermediaries failing to make tax deductions** 10
- (1) In section 168(4)(a), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”.
- (2) In section 168(4)(b), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”.
- (3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004. 15
- 114 Unpaid tax deductions, etc., to constitute charge on employer’s or PAYE intermediary’s property**
- (1) In section 169(1B)(a), “section NBB 4(1)(b)” is replaced by “**section NBB 4(1)**”. 20
- (2) In section 169(1B)(b), “section NBB 4(1)(d)” is replaced by “**section NBB 4(1B)(b)**”.
- (3) **Subsections (1) and (2)** apply for pay periods beginning on or after 1 April 2004.
- 115 Transfer of excess tax within taxpayer’s accounts** 25
- In section 173L(2)(a), “taxable period” is replaced by “GST return period”.
- 116 Write-off of tax by Commissioner**
- (1) Section 177C(6) is replaced by the following:
- “(6) For the purpose of subsection (5), the net loss that may be extinguished is the net loss of the taxpayer at the time at which the outstanding tax is written off and the Commissioner may use a figure for that net loss based on the most recent return of income furnished by the taxpayer.” 30

- (2) **Subsection (1)** applies to tax written-off on and after the date on which this Act receives the Royal assent.
- 117 New section 181D inserted**
- (1) After section 181C, the following section is inserted:
- “181D **Remission of late payment penalties and interest incurred due to obligation by Maori authority to pay further income tax** 5
- An amount that is interest under section 120D of the Tax Administration Act 1994, or a late payment penalty relating to further income tax, and that is paid or payable by a Maori authority and to which **section MK 8(5) or (5B)** applies must be remitted by the Commissioner to the extent that the amount of further income tax charged in relation to an imputation year is equal to or less than the amount of unpaid income tax.” 10
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years. 15
- 118 Remission for reasonable cause**
- Section 183A(1) is replaced by the following:
- “(1) This section applies to—
- “(a) a late filing penalty: 20
- “(b) a non-electronic filing penalty;
- “(c) a late payment penalty;
- “(d) imputation penalty tax imposed by section 140B;
- “(e) dividend withholding payment penalty tax imposed by section 140C: 25
- “(f) Maori authority distribution penalty tax imposed by section 140CB;
- “(g) a shortfall penalty imposed by section 141AA.”
- 119 Remission consistent with collection of highest net revenue over time** 30
- After section 183D(1)(b), the following is inserted:
- “(bb) a shortfall penalty imposed by section 141AA; and”.
- 120 Payment out of Crown Bank Account**
- In section 185(1)(a), “or the Goods and Services Tax Act 1985” is added after “Income Tax Act 1994”. 35

121 Regulations—Income tax related

- (1) The heading to section 225 is replaced by “**Regulations**”.
- (2) In section 225(1), “or Goods and Services Tax Act 1985” is added after “Income Tax Act 1994” in all the places that it occurs.

5

122 Power to extend time for doing anything under Act

In section 226, “or the Goods and Services Tax Act 1985” is inserted after “Income Tax Act 1994” in both places that it occurs.

Part 4

10

Amendments to other Acts and Regulations

Amendments to Goods and Services Tax Act 1985

123 Goods and Services Tax Act 1985

Sections 124 to 140 amend the Goods and Services Tax Act 1985.

15

124 Interpretation

- (1) In section 2(1), in paragraph (a) of the definition of **tax payable**, “section 27(6)” is replaced by “**section 51B**”.
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

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125 Zero-rating of services

Section 11A(5), as added by section 149(8) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003, is repealed and the following is added:

- “(6) The availability of a deduction under subsection (1)(q) and (r) must be determined using a method allowed by section 20E.”

25

126 Taxable period returns

- (1) After section 16(2), the following is added:
 - “(3) A return must contain a notice of the assessment that must be made under **section 92B** of the Tax Administration Act 1994.”
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

30

- 127 Special returns**
- (1) After section 17(2), the following is added:
- “(3) A return must contain a notice of the assessment that must be made under **section 92B** of the Tax Administration Act 1994.”
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005. 5
- 128 Particulars to be furnished and prepared where change in accounting basis**
- (1) After section 19B(2), the following is inserted:
- “(2B) The particulars required by subsection (1) must be furnished in a return that contains a notice of the assessment that must be made under **section 92B** of the Tax Administration Act 1994.” 10
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.
- 129 Calculation of tax payable** 15
- (1) The proviso to section 20(3) is replaced by the following:
- “Provided that a registered person who is entitled to deduct an amount from the output tax attributable to a taxable period may deduct that amount from the output tax attributable to a later taxable period if— 20
- “(a) the failure to make the deduction in the earlier taxable period arises through an inability to obtain a tax invoice or through a clear mistake or simple oversight; and
- “(b) the amount has not previously been deducted from the output tax of the registered person.” 25
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.
- 130 Goods and services tax incurred relating to determination of liability to tax**
- (1) In section 20A(1)(b), in the definition of **goods and services tax payable**, “section 27(6)” is replaced by “**section 51B**”. 30
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

131	Application of section 21F	
(1)	In section 21E(4), in the words preceding paragraph (a), “if—” is replaced by “to the extent that—”.	
(2)	In section 21E(4)(a), “sections 21 and 21I” are replaced by “sections 21 or 21I”.	5
132	Payment of tax	
(1)	Section 23(3) is repealed.	
(2)	Subsection (1) applies for taxable periods beginning on or after 1 April 2005.	
133	Part IV repealed	10
(1)	Part IV is repealed.	
(2)	Subsection (1) applies for taxable periods beginning on or after 1 April 2005.	
134	Section 45 replaced	15
(1)	Section 45 is replaced by the following:	
	“45 Refund of excess tax	
“(1)	Subject to this Part, and to Part XI of the Tax Administration Act 1994, the Commissioner must refund an amount that a person has paid as tax if—	
	“(a) the Commissioner is satisfied that the amount represents an excess over the amount properly assessed for a taxable period; and	20
	“(b) the 4-year period referred to in section 108A of the Tax Administration Act 1994 has not expired.	
“(2)	Despite section 20(5), the Commissioner must refund an amount that a person has paid as tax if—	25
	“(a) the Commissioner is satisfied that the person paid the amount as a result of an assessment that changed the amount of tax payable by the registered person; and	
	“(b) the Commissioner is satisfied that the amount represents an excess over the amount properly assessed for a taxable period; and	30
	“(c) the 4-year period beginning from the end of the year in which the assessment was made has not expired.	
“(3)	Despite section 20(5), the Commissioner must refund an amount that a person has paid as tax if—	35

- “(a) the Commissioner is satisfied that the amount represents an excess over the amount properly assessed for a taxable period; and
 - “(b) the person has received a refund under section 19C(8), 20(5) or 46; and 5
 - “(c) the Commissioner is satisfied that the amount was properly refundable to the person at the time of the refund but was not refunded at that time; and
 - “(d) the 4-year period beginning from the end of the year in which the refund was made has not expired. 10
- “(4) The Commissioner may refund an amount that is referred to in **subsection (2) or (3)** within the period of 4 years beginning after the end of the 4-year period referred to in the subsection, if the Commissioner considers that the overpayment of tax is the result of a clear mistake or simple oversight.” 15
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.

135 Section 50 repealed
Section 50 is repealed.

136 New section 51B inserted 20

- (1) After section 51, the following is inserted:
- “51B Persons treated as registered**
- “(1) For the purposes of Parts III and VI, and of Part IX of the Tax Administration Act 1994, the following are treated as registered persons: 25
- “(a) a person who is not otherwise a registered person but who supplies goods or services, representing that tax is charged on the supply;
 - “(b) if goods are treated by section 5(2) as being supplied by a person— 30
 - “(i) the person selling the goods, if **subparagraph (ii)** does not apply; or
 - “(ii) the person whose goods are sold, if the person supplies a written statement under section 5(2)(a) to the person selling the goods and the Commissioner considers that the written statement is incorrect: 35

- “(c) a person whose registration has been cancelled under section 52(5) with effect from the original date of registration.
- “(2) If a person referred to in **subsection (1)** represents that tax is being charged on a supply that they make in a taxable period, the person is liable to pay the amount of the tax. 5
- “(3) If a person is treated by **subsection (1)(c)** as being a registered person, the person is treated as being registered from the original date of registration to the date when the Commissioner cancels the registration.” 10
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 April 2005.
- 137 Section 61B repealed**
Section 61B is repealed.
- 138 Section 80 repealed** 15
Section 80 is repealed.
- 139 Section 81 repealed**
Section 81 is repealed.
- 140 Supplies of services made before insertion of section 8(4B)** 20
- (1) In section 84B(2), “given by section 9 or sections 21 to 21H” is replaced by “the services are performed”.
- (2) In section 84B(3), in the words preceding paragraph (a), “the time given by” is omitted.
- (3) In section 84B(3)(a), “section 9 or sections 21 to 21H” is replaced by “the time the services are performed”. 25
- Amendment to Taxation Review Authorities Act 1994*
- 141 Small claims jurisdiction of authorities**
- (1) In section 13B(1)(a), “\$15,000” is replaced by “\$30,000”.
- (2) **Subsection (1)** applies to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005. 30

Amendment to Income Tax Act 1976

- 142 Interpretation—voting and market interests**
- (1) In section 8B of the Income Tax Act 1976, the definition of **special corporate entity** (as that definition was on 31 March 1994) is amended by adding the following: 5
- “(j) any body incorporated under the Incorporated Societies Act 1908, for an income year in which the body on no day in the income year has shares on issue to the members of the body:”
- (2) **Subsection (1)**, other than in the application of sections 191 and 191A of the Income Tax Act 1976, applies to the 1992–93 to 1994–95 income years. 10
- (3) **Subsection (2)**, in the application of sections 191 and 191A of the Income Tax Act 1976, applies for the 1992–93 to 1994–95 income years to an assessment of income tax that is not affected by a time bar under section 25 of that Act. 15

*Amendments to Taxation Review Authorities
Regulations 1998*

- 143 Interpretation** 20
- In regulation 2 of the Taxation Review Authorities Regulations 1998, the definition of **disputable decision** is replaced by the following:
- “**disputable decision** has the meaning given to it by section 3 of the Tax Administration Act 1994”.
- 144 Decisions** 25
- (1) After regulation 18(5) of the Taxation Review Authorities Regulations 1998, the following is added:
- “(6) In subclause (5), **precedent** means a decision of the Authority in its small claims jurisdiction that affects or may affect the outcome of a separate and unrelated dispute between the Commissioner and a taxpayer other than the disputant.” 30
- (2) **Subsection (1)** applies to disputes that are commenced under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005.

Amendment to Partnership Act 1908

145 Duration of partnerships

Section 57 of the Partnership Act 1908 is repealed.