

Student Loan Scheme Amendment Bill (No 2)

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Student Loan Scheme Amendment Bill (No 2) and recommends by majority that it be passed with the amendments shown.

Minority views

While supporting the intent of the bill to collect overdue student loan repayments, the New Zealand Labour Party has concerns about clause 39(4) which inserts a regulation-making power, and therefore opposes this clause.

The Green Party opposes the bill in its entirety.

Introduction

The student loan scheme represents a major financial commitment by the Government to support people in tertiary education. The bill aims to improve the value and fairness of the scheme, and to ensure

that student loans are administered as efficiently as possible. It seeks to amend the Student Loan Scheme Act 2011 in two main ways:

- introducing information-matching with the New Zealand Customs Service to locate borrowers in serious default when they enter or leave the country
- widening the definition of income for student loan repayment purposes so that a borrower's repayment obligation more accurately reflected their ability to pay. The amended definition of income would broadly align with that used for Working for Families tax credits and student allowances.

The bill also proposes that various measures, which were provided for in the Act and due to be implemented from 2013 to make administration of the scheme more efficient, should not now proceed. This reprioritisation would allow the Inland Revenue Department to focus on the Act's core policies within the constraints of its existing computer system, and would have minimal impact on borrowers.

Finally, the bill seeks to make several technical remedial amendments to ensure the Act works as intended.

This commentary discusses the more significant amendments we recommend to the bill. We are also recommending several minor and technical amendments, which are not discussed in this commentary. They include changes or insertions in clauses 7(2), 13, 15, 21A, 25A, 31, 53, 56A, 57A, 57B, and 57C.

Repayment obligations for first-time borrowers

We recommend amending clauses 6(7) and 13 (inserting new section 72) to correct an unintended consequence of the 2011 Act. From 1 January 2012, the Act enabled the Inland Revenue Department to receive information from StudyLink about loan advances almost instantly, rather than only once a year, in February. This allowed borrowers to view their consolidated loan balance, rather than having to add the amounts managed by two different agencies. However, an unintended drawback of the earlier transfer has been that new borrowers' repayment obligations are calculated on their income for the entire tax year, even when they have had the loan for only a short time.

The amendment we propose would provide that a new borrower who took out a loan after 31 December would not be subject to the end-

of-year assessment for that tax year. (Repayment deductions would, however, continue to be made from any salary or wages from the date that the borrower first drew down the loan.) We recommend that this amendment apply from 1 April 2012 for the 2013 and future tax years.

To assist any borrower adversely affected in the 2012 tax year, we recommend amending clause 39 and inserting new clause 49A to continue the relief currently provided through the Student Loan Scheme Act 2011 (Transitional Provisions) Regulations 2012, which would otherwise expire in 2015.

Further reprioritisation measures

The bill recognises that some of the changes to the administration of the student loan scheme originally provided for in the Student Loan Scheme Act 2011 would be too complicated to implement within the Inland Revenue Department's current computer system, and should therefore not proceed. Based on further examination of priorities, and the costs and benefits of making changes, we recommend that four other measures provided for in the 2011 Act should also be cancelled. They are discussed below.

Relief for small amounts of loan obligations

Under the Student Loan Scheme Act 1992, repayment obligations under \$20 were not collected and were written off. The 2011 Act changed this so that small amounts remain part of a borrower's loan balance, for future collection. As the scheme will continue to be administered under the Inland Revenue Department's current computer system, it is most cost-effective to reinstate the discretion to write off small obligation amounts under \$20. We therefore recommend amending clause 22 by inserting subclauses (2) and (3) to reinstate this discretion in section 144 of the Act.

Loan interest calculation method

In the bill as introduced, clause 54 would change the interest calculation method in two ways with effect from 1 April 2013: loan interest would only be calculated for overseas-based borrowers, and it would be calculated daily and charged and compounded monthly.

We recommend the removal of clause 54 so that the current system for calculating loan interest is retained. Under the current system, loan interest is calculated for all borrowers and then written off for New Zealand-based borrowers; the method used entails interest accruing daily and being charged and compounded annually.

Removing clause 54 from the bill would have the effect of retaining the existing loan interest regime in sections 134 to 137 of the Act.

As a consequence of the above, we recommend inserting clause 59A, amending section 196 of the 2011 Act in order to retain the 30-day grace period currently allowed for cancelling loan interest if a borrower's consolidated loan balance is paid in full within 30 days of receiving a notification of their loan balance. Section 196 would otherwise expire on 1 May 2013. We consider retention of the grace period desirable if, as recommended above, the existing system for daily accrual of interest is retained.

Payment allocation

We recommend the removal of clause 59 in the bill as introduced in order to retain the existing way in which payments are allocated to repayment obligations and debt. The current practice is for payments and deductions first to be offset against any interest charged, with any remainder then used against any principal outstanding. In the bill as introduced, clause 59 would have changed the practice to allocate payments and deductions in a specific order.

However, we also recommend the insertion of new clauses 59 and 59A to retain a useful point of clarification from clause 59 of the bill as introduced. This would make it clear that standard deductions and Commissioner deductions (made to collect previous under-deductions) must always be allocated to the loan balance (that is, such deductions would be "full and final"), and could not be used to satisfy the repayment of unpaid amounts for other current-year obligations such as interim or terminal payments or penalties. This would avoid any misunderstanding on the part of borrowers.

Meaning of adjusted net income

Clause 64 and Schedule 3 of the bill would make changes to the definition of "adjusted net income" so that it broadly aligned with the definition of income under the Working for Families tax credit rules.

To maintain consistency, we recommend that recent clarification of the Working for Families definition of “family scheme income” also be reflected in the bill, by amending clauses 5 and 9 of Schedule 3. These changes would ensure that withdrawals made from KiwiSaver or a complying superannuation fund would be disregarded in calculating net income, and that certain tax-exempt overseas pensions would be included in the calculation.

Transitional regulation-making provision

After careful consideration, we recommend the insertion of clause 39(4) to amend Schedule 6 to include a transitional provision allowing regulations to be made to smooth the transition to the new regime.

The changes the bill would make to the 2011 Act are complex. They involve amendments to previous amendments that have not yet come into force, the repeal of provisions that were to come into force in the future, and inter-relationships between provisions that would be amended or repealed at different points in time. There is also the challenge of ensuring that Inland Revenue’s computer system implements the amendments accurately. There is a relatively high risk that unforeseen issues or unintended consequences may emerge in the transition to this legislation, creating a need for regulations.

The amendment we propose is similar to that in section 216 of the 2011 Act, which provided a power to make regulations on the recommendation of the Minister to enable an orderly transition to the new legislation.

Appendix

Committee process

The Student Loan Scheme Amendment Bill (No 2) was referred to the committee on 20 September 2012. The closing date for submissions was 31 October 2012. We received and considered 10 submissions from interested groups and individuals. We heard two submissions. We received advice from the Inland Revenue Department.

Committee membership

Todd McClay (Chairperson)

Maggie Barry

David Bennett

Dr David Clark

Hon Clayton Cosgrove

Paul Goldsmith

John Hayes

Dr Russel Norman

Hon David Parker

Rt Hon Winston Peters

Hon Dr Nick Smith

**Student Loan Scheme Amendment
Bill (No 2)**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Peter Dunne

Student Loan Scheme Amendment Bill (No 2)

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
- This Act is the Student Loan Scheme Amendment Act (No 2) **2012.**
- 2 Commencement** 5
- (1) **Sections 6, 7(1) and (3), 10, 11, 13, 15(1AA) to (1AC), 16, 17, 22, 24, 25, 31(2), 35, 37, 38, 39(2), 41, 42, and 49** are deemed to have come into force on 1 April 2012.
- (2) The rest of **Part 1** comes into force on the day after the date that this Act receives the Royal assent. 10
- (3) **Part 2** comes into force on **1 April 2013.**
- (4) **Part 3** comes into force on **1 April 2014.**

Part 1
Amendments to principal Act

- 3 Principal Act**
This Act amends the Student Loan Scheme Act 2011 (the **principal Act**). 5
- 4 Application of provisions deemed to have come into force on 1 April 2012**
The provisions of this Act that are deemed to have come into force on 1 April 2012 apply for the 2012–2013 and later tax years. 10
- 5 Section 2 amended (Commencement)**
Repeal section 2(5).
- 6 Section 4 amended (Interpretation)**
- (1) In section 4(1), definition of **adjusted net income**, replace “section 88A” with “**section 73**”. 15
- (2) In section 4(1), insert in its appropriate alphabetical order:
“**end-of-year repayment obligation** means the repayment obligation of a New Zealand-based borrower for the adjusted net income the borrower derives for a tax year, calculated in accordance with **section 77 or 78**”. 20
- (3) In section 4(1), definition of **declaration of pre-taxed income**, replace “**pre-taxed income**” with “**adjusted net income**”.
- (4) In section 4(1), replace the definition of **interim payment** with: 25
“**interim payment** means the amount that a borrower is obliged to pay towards the next tax year’s end-of-year repayment obligation in accordance with **section 82 or 83** or **section 84 or 85**”.
- (5) In section 4(1), repeal the definitions of **net pre-taxed income**, **other income**, **other income repayment obligation**, **pre-taxed repayment obligation**, and **remaining repayment**. 30

- (6) In section 4(1), definition of **repayment obligation**, replace paragraphs (c) and (d) with:
“(c) an end-of-year repayment obligation.”
- (7) In section 4(1), insert in ~~its~~ their appropriate alphabetical order: 5
“new borrower, in relation to a tax year, means—
“(a) a person who becomes a borrower for the first time under the student loan scheme in the period starting on 1 January of the tax year and ending on the close of the last day of the tax year; 10
“(b) a person to whom all of the following apply:
“(i) the person had been a borrower under the student loan scheme before the tax year; and
“(ii) the person fully repaid his or her loan before the start of the tax year; and 15
“(iii) in the period starting on 1 January of the tax year and ending on the close of the last day of the tax year, the person again became a borrower under the student loan scheme
“terminal payment means the amount that a borrower is 20
obliged to pay in relation to an end-of-year repayment obligation in accordance with **section 80 and section 81 or 85**”.
- (8) Replace section 4(2) with:
“(2) A reference to a borrower estimating his or her end-of-year repayment obligation is a reference to a borrower making a fair and reasonable estimate of his or her end-of-year repayment obligation in accordance with section RC 7 of the Income Tax Act 2007, as applied by **section 86** and **Schedule 4** of this Act.” 25
- 7 Section 5 amended (Meaning of unpaid amount)** 30
- (1) Replace section 5(1)(a) with:
“(a) a terminal payment.”
- ~~(2) In section 5(2), definition of due date, paragraph (b)(ii), replace “under section 112(3) or 115(1)(d)” with “under section 112(3), 115(1)(d), or 115A”.~~ 35
- (2) In section 5(2), definition of due date, replace paragraph (b)(ii) with:

- “(ii) if the Commissioner has determined the instalments that must be paid under **section 112(3)**, **115(1)(d)**, or **115A**, the final date determined by the Commissioner; and”.
- (3) In section 5(2), definition of **interim payment default**, paragraph (a)(i) and (ii), replace “pre-taxed repayment obligation or other income repayment obligation” with “end-of-year repayment obligation”. 5
- (4) In section 5(2), replace the definition of **overseas-based instalment default** with: 10
“**overseas-based instalment default** means the sum of the instalments of an overseas-based borrower’s repayment obligations for a tax year that must be paid in accordance with sub-part 5 of Part 2.”
- 7A** **New section 8A inserted (Application of provisions of Act)** 15
After section 8, insert:
- “**8A** **Application of provisions of Act**
Schedule 6 contains application, savings, and transitional provisions that affect this Act’s other provisions as from time to time amended, repealed, and replaced (*see* **section 220**).” 20
- 8** **Section 15 amended (Right to cancel loan contract)**
- (1) In section 15(1)(b), delete “; and”.
- (2) Repeal section 15(1)(c).
- 9** **Section 28 amended (Borrower to notify Commissioner of absence from New Zealand of 184 or more days)** 25
After section 28(2), insert:
- “(3) *See* **section 193C** concerning the obligation on a borrower if there is a change in any of the contact details provided to the Commissioner under this section.”
- 10** **Section 31 amended (Repayment obligations that apply to New Zealand-based borrowers and overseas-based borrowers)** 30
In section 31(1)(a), replace “subparts 1 to 3” with “**subparts 1 and 2**”.

- 11 Section 32 amended (Interrelationship between subparts 1 to 3)**
- (1) In the heading to section 32, replace “**1 to 3**” with “**1 and 2**”.
- (2) Replace section 32(3) to (8) with:
- “(3) If a borrower derives only income other than salary or wages, **subpart 2** applies to that borrower. 5
- “(4) If a borrower derives income from salary or wages and income other than from salary or wages, **subparts 1 and 2** both apply to that borrower.”
- 12 Section 67 amended (Procedure if significant over-deduction made)** 10
- In section 67(2), delete “in writing”.
- 13 Subparts 2 and 3 of Part 2 replaced**
- Replace subparts 2 and 3 of Part 2 with:
- “Subpart 2—Repayment obligations for 15
New Zealand-based borrowers with income
other than, or as well as, salary or wages
- ~~“72 Application of this subpart~~
- ~~This subpart applies to New Zealand-based borrowers—~~
- ~~“(a) who derive \$1,500 or more of adjusted net income for a tax year; and 20~~
- ~~“(b) whose income from adjusted net income and salary or wages (if any) for that tax year is \$1,500 or more above the annual repayment threshold.~~
- “72 Application of this subpart 25
- This subpart applies to the following New Zealand-based borrowers, other than new borrowers:
- “(a) borrowers who derive \$1,500 or more of adjusted net income for a tax year and who have income from adjusted net income and salary or wages (if any) for that tax year of \$1,500 or more above the annual repayment threshold: 30
- “(b) borrowers to whom **paragraph (a)** does not apply in relation to a tax year and who—

- “(i) have been required to pay interim payments for that tax year; or
“(ii) have been issued a default assessment for an end-of-year repayment obligation under section 106 of the Tax Administration Act 1994 for that tax year. 5

“73 Meaning of adjusted net income

“(1) In this Act, **adjusted net income** means a borrower’s income calculated in accordance with the formula—

$$a = b - c \quad 10$$

where—

- a is the borrower’s adjusted net income
b is the borrower’s annual gross income other than from salary or wages
c is the borrower’s annual total deductions. 15

“(2) However, the income and deductions for any investment activity, or for any business, for a tax year are ignored when calculating a borrower’s adjusted net income for that tax year if, treating the borrower as having only the income and deductions of that investment activity or of that business, the borrower would have a net loss for that year. 20

“(3) For the purposes of applying **subsection (2)**, 2 or more business or investment activities may be treated as a single activity if the Commissioner considers that those business or investment activities are of a kind that are normally carried on in association with each other. 25

“(4) For the purposes of applying **subsection (2)**, as modified by **subsection (3)**, deductions that relate to an asset used in carrying on 2 or more business or investment activities must be appropriately apportioned between those activities on the basis of the use of that asset in those activities. 30

“(5) **Subsections (2) to (4)** do not apply to a borrower whose only income for the tax year is from pre-taxed income, or pre-taxed income and salary and wages.

“(6) In this section,— 35
“**business** has the same meaning as in section YA 1 of the Income Tax Act 2007

“**investment activity** has the same meaning as in section MB 3(5) of the Income Tax Act 2007.

“**74 Declaration of adjusted net income**

“(1) If this subpart applies to a borrower and the borrower is not required to file a return of his or her income for the tax year or provide details of his or her annual gross income and annual total deductions under section 114, the borrower must make a declaration of the borrower’s adjusted net income. 5

“(2) The declaration of adjusted net income must be made—

“(a) by notifying the Commissioner in a manner acceptable to the Commissioner; and 10

“(b) on or before—

“(i) 7 July in the tax year following the tax year in which the adjusted net income was derived; or

“(ii) if the borrower has received an extension of time to make the declaration in accordance with **section 75**, the date on which the borrower is required to make the declaration; or 15

“(iii) if the Commissioner has granted the borrower an extension of time to make the declaration (other than in accordance with **section 75**), the date on which the borrower is required to make the declaration as specified by the Commissioner. 20

“**75 Extension of time for making declaration of adjusted net income** 25

A borrower may apply to the Commissioner for an extension of time for the making of a declaration of adjusted net income in accordance with section 37(3) to (5) of the Tax Administration Act 1994, and those subsections apply, as far as applicable and with all necessary modifications, as if— 30

“(a) the reference to ‘the due date required under this section’ were a reference to ‘the due date required under **section 74(2)(b)(i)** of the Student Loan Scheme Act 2011’; and

“(b) every reference to a taxpayer were a reference to a borrower; and 35

“(c) every reference to a return or a return of income were a reference to a declaration of adjusted net income.

“**76 Commissioner to assess borrower’s end-of-year repayment obligation**

“(1) The Commissioner must assess the amount (if any) of a borrower’s end-of-year repayment obligation for a tax year as soon as practicable after the borrower provides—

“(a) his or her return of income for that tax year; or

“(b) details of his or her annual gross income and annual total deductions under section 114; or

“(c) his or her declaration of adjusted net income.

“(2) In making the assessment, the Commissioner may have regard to—

“(a) any document provided under **subsection (1)**:

“(b) any other information that the Commissioner considers to be relevant.

“(3) The assessment must be made in accordance with this subpart and the loan contract.

“(4) Section 203 applies if there is an inconsistency between this subpart and the loan contract.

“(5) The Commissioner must, as soon as practicable after making the assessment, notify the borrower in writing of—

“(a) the borrower’s end-of-year repayment obligation; and

“(b) the due dates, if any, on or before which the end-of-year repayment obligation must be paid (*see sections 81, 84, and 85*); and

“(c) the amounts, if any, that must be paid on or before those due dates.

“Compare: 1992 No 141 s 15

“**76A Commissioner must assess borrowers to whom section 72(b) applies as having zero repayment obligation**

If the Commissioner is satisfied that a borrower meets the criteria in **section 72(b)**, the Commissioner must assess the borrower as having a zero repayment obligation for that tax year.

- “77 **Calculation of borrower’s end-of-year repayment obligation if salary or wages less than annual repayment threshold**
- “(1) **Subsection (2)** applies if, in relation to a tax year,—
- “(a) this subpart applies to a borrower; and 5
 - “(b) the gross income that the borrower derived from salary or wages is less than the annual repayment threshold.
- “(2) The borrower’s end-of-year repayment obligation for the tax year must be calculated in accordance with the formula—
- $$a = b \times (c - d) \quad 10$$
- where—
- a is the borrower’s end-of-year repayment obligation for the tax year
 - b is the repayment percentage
 - c is the income that the borrower derives from adjusted net income and from salary or wages for the tax year 15
 - d is the annual repayment threshold.
- “(3) If the borrower’s end-of-year repayment obligation for the tax year is zero or less, the borrower has no end-of-year repayment obligation for the tax year. 20
- “78 **Calculation of borrower’s end-of-year repayment obligation where salary or wages equal to or more than annual repayment threshold**
- “(1) **Subsection (2)** applies if, in relation to a tax year,—
- “(a) this subpart applies to a borrower; and 25
 - “(b) the gross income that the borrower derived from salary or wages is equal to or more than the annual repayment threshold.
- “(2) The borrower’s end-of-year repayment obligation for the tax year must be calculated in accordance with the formula— 30
- $$a = b \times c$$
- where—
- a is the borrower’s end-of-year repayment obligation for the tax year
 - b is the repayment percentage 35

c is the income that the borrower derives from adjusted net income for the tax year.

“79 Payment of end-of-year repayment obligation

“(1) A borrower whose end-of-year repayment obligation for a tax year is greater than zero must pay a terminal payment— 5

“(a) calculated in accordance with **section 80**:

“(b) on or before the due date under **section 81** or a due date determined by the Commissioner under **section 85**.

“(2) **Subsection (3)** applies to a borrower if—

“(a) the borrower’s end-of-year repayment obligation for a tax year is \$1,000 or more; or 10

“(b) the borrower has not made a declaration of adjusted net income for a tax year, provided a return of income, or provided details of his or her annual gross income and annual gross deductions under section 114 for a tax year, and the amount of the borrower’s end-of-year repayment obligation for the immediately preceding tax year was \$1,000 or more. 15

“(3) A borrower must also pay interim payments for the tax year—

“(a) calculated in accordance with **section 82 or 83**: 20

“(b) on or before the due dates determined in accordance with **section 84 or 85**.

“(4) However, a borrower is not liable to make interim payments for a tax year if the borrower’s end-of-year repayment obligation for that year is less than \$1,000. 25

“80 Calculation of terminal payment for tax year

“(1) The amount of a borrower’s terminal payment for the tax year must be calculated in accordance with the formula—

$$a = (b - c) - (d - c)$$

where— 30

a is the amount of the borrower’s terminal payment

b is the borrower’s end-of-year repayment obligation for the tax year

c is the amount of the borrower’s interim payments for the tax year in accordance with **section 82 or 83** 35

d is the sum of any amounts that satisfy (so far as they extend) the borrower's end-of-year repayment obligation for the tax year.

“(2) However,—

“(a) if the sum of (b – c) is less than zero, then it must be treated as if it were zero; and 5

“(b) if the sum of (d – c) is less than zero, then it must be treated as if it were zero.

“**81 Due date for terminal payment**

A borrower must pay his or her terminal payment on or before the borrower's **terminal tax date**, as defined in section YA 1 of the Income Tax Act 2007, for the tax year. 10

“**82 Calculation of interim payments for next tax year**

“(1) The amount of each of the borrower's interim payments for the tax year may vary and must be calculated separately in accordance with the formula— 15

$$a = b \times (c \div d) - e$$

where—

a is the amount of the borrower's interim payment

b is, as applicable,— 20

(i) the amount of the borrower's estimated end-of-year repayment obligation for the tax year; or

(ii) the amount of the borrower's uplifted end-of-year repayment obligation for the tax year

c is a number reflecting which of the interim payments for the tax year is being calculated (for example, 2 if the second interim payment for the tax year is being calculated) 25

d is the total number of interim payment due dates the borrower has for the tax year 30

e is the aggregate amount of all of the borrower's interim payments for the tax year that were due before the interim payment being calculated.

“(2) For the purposes of this section, the total number of interim payment due dates a borrower has is determined by reference 35

to the number of interim payments the borrower must make as determined in accordance with **section 84 or 85**.

“(3) In this section, **uplifted end-of-year repayment obligation**—

“(a) means—

“(i) the amount of the borrower’s end-of-year repayment obligation for the immediately preceding tax year multiplied by 105%; or

“(ii) if the borrower did not make a declaration of adjusted net income for the immediately preceding tax year, the amount of the borrower’s end-of-year repayment obligation for the year before the immediately preceding tax year multiplied by 110%; but

“(b) the amount calculated in accordance with **paragraph (a)** must not exceed the sum of the borrower’s loan balance on 1 April of the relevant tax year plus any loan advances made or charged to the borrower for that tax year after that date.

“(4) For the purposes of **subsection 3(b)**, the borrower’s loan balance on 1 April of the relevant tax year must be determined by subtracting the amount of any repayment obligation or other amount that the Commissioner has, on or before that day, required the borrower to pay and that is payable on or after that day.

“Compare: 1992 No 141 s 27

“83 **Commissioner may assess interim payments if information for preceding year not provided**

“(1) The Commissioner may assess a borrower’s interim payments for a tax year in the manner set out in section RC 6(3) of the Income Tax Act 2007 if, for the immediately preceding tax year, the borrower did not provide—

“(a) his or her return of income; or

“(b) details of his or her annual gross income and annual total deductions under section 114; or

“(c) his or her declaration of adjusted net income under **section 74**.

“(2) **Section 82** does not apply if the Commissioner makes an assessment in accordance with **subsection (1)**.

“84 Due dates for payment of interim payments

- “(1) A borrower must pay an interim payment for a tax year on or before each of the dates on which the borrower must pay his or her provisional tax for that tax year in accordance with the provisional tax rules. 5
- “(2) However,—
- “(a) if a borrower uses a GST ratio to determine his or her provisional tax for a tax year and that year is not a transitional year for the borrower, the due dates for the payment of the borrower’s interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower’s balance date: 10
- “(b) if a borrower uses a GST ratio to determine his or her provisional tax for a tax year and that year is a transitional year for the borrower, the due dates for the payment of the borrower’s interim payments are every second date in the table headed ‘**GST ratio provisional taxpayers**’ in Part B of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower’s balance date, except that— 15
- “(i) if the borrower has only 1 payment date, the borrower has only 1 due date; and
- “(ii) if the borrower has an odd number of payment dates, then the last payment date does not apply to the borrower: 25
- “(c) if a borrower does not pay provisional tax for a tax year, the due dates for the payment of the borrower’s interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower’s balance date: 30
- “(d) if a borrower pays provisional tax on a 6-monthly basis for the 2012–13 tax year, the due dates for the payment of the borrower’s interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower’s balance date. 35

“(3) In this section, **GST ratio** and **transitional year** have the same meanings as in section YA 1 of the Income Tax Act 2007.

“**85 Commissioner’s powers in relation to due dates**

“(1) The Commissioner may determine the dates on or before which a borrower must pay his or her terminal payment or interim payments for a tax year if— 5

“(a) the borrower requests the Commissioner to determine the borrower’s terminal payment due date or interim payment due dates; or

“(b) the Commissioner considers it necessary or appropriate in the circumstances. 10

“(2) The dates determined by the Commissioner under **subsection (1)** may differ from the dates specified in **section 81 or 84**.

“(3) If the Commissioner determines the dates on or before which a borrower must pay his or her terminal payment or interim payments for a tax year,— 15

“(a) the Commissioner must, as soon as practicable, notify the borrower in writing—

“(i) of that fact; and

“(ii) of the dates determined by the Commissioner; 20
and

“(b) the amount of the terminal payment or the interim payments must be calculated by reference to those dates.

“(4) This section overrides **sections 81 and 84**.

“Compare: 1992 No 141 s 30(2)

25

“**86 Interim payments to be paid in same manner as provisional tax**

Subject to **Schedule 4**,—

“(a) interim payments for a borrower’s end-of-year repayment obligation for a tax year are payable in the same manner as provisional tax; and 30

“(b) a borrower must comply with the requirements of the provisional tax rules.

“Compare: 1992 No 141 s 28

“87 Consequence of failure to meet repayment obligations

A borrower may be liable to pay late payment interest if the borrower does not meet his or her repayment obligations under this subpart (*see* section 139(1)).”

14 Section 110 amended (Repayment obligations of overseas-based borrowers) 5

(1) Replace section 110(1) with:

“(1) This section applies to an overseas-based borrower who—

“(a) is not or is no longer entitled to a repayment holiday under section 107B or 108A(2); and 10

“(b) has not had his or her overseas-based repayment obligation reassessed under **section 115A**.”

(2) Replace section 110(6)(a) and (b) with:

“(a) if a borrower was not overseas-based at the start of the tax year, the borrower’s consolidated loan balance on the date on which the borrower became overseas-based; and 15

“(b) if a borrower was overseas-based at the start of the tax year (**year A**), the sum determined by—

“(i) including the amount of the borrower’s consolidated loan balance on 31 March in the year prior to year A (the **previous year**); and 20

“(ii) including the amount of any annual administration fee charged under section 189 for the previous year; and 25

“(iii) subtracting any 10% bonus the borrower is entitled to under Part 3 for an excess repayment for the previous year.”

15 Section 111 amended (Exceptions to repayment obligations of overseas-based borrowers) 30

(1AA) Replace section 111(5)(a) with:

“(a) for the first tax year during a period when section 110 applies to a borrower, the sum determined by—

“(i) including the borrower’s loan balance on the day on which that section first applies to the borrower in that period; and 35

- “(ii) subtracting the amount of any repayment obligation or other amount that the Commissioner has, on or before that day, required the borrower to pay and that is payable on or after that day; and”
- (1AB) In section 111(5)(b)(iii), after “previous year”, insert “; and”. 5
- (1AC) In section 111(5)(b), after paragraph (iii), insert:
- “(iv) subtracting the amount of any repayment obligation or other amount that the Commissioner has, on or before that day, required the borrower to pay and that is payable on or after that day.” 10
- (1) Replace section 111(4) with—:
- “(4) This section—
- “(a) overrides section 110; and
- “(b) does not apply to an overseas-based borrower who has had his or her overseas-based repayment obligation reassessed under **section 115A.**” 15
- (2) Replace section 111(5) with:
- “(5) In this section, **loan balance** means,—
- “(a) if a borrower was not overseas-based at the start of the tax year, ~~the borrower’s loan balance on the date on which the borrower became overseas-based less the amount of any repayment obligations that are not yet due, and~~ the sum determined by—
- “(i) including the borrower’s loan balance on the day on which the borrower became overseas-based; 20
- and
- “(ii) subtracting the amount of any repayment obligation or other amount that the Commissioner has, on or before that day, required the borrower to pay and that is payable on or after that day; and 25
- “(b) if a borrower was overseas-based at the start of the tax year (**year A**), the sum determined by—
- “(i) including the amount of the borrower’s loan balance on 31 March in the year prior to year A (the **previous year**); and 30
- “(ii) including the amount of any annual administration fee charged under section 189 for the previous year; and 35

- “(iii) subtracting any 10% bonus the borrower is entitled to under Part 3 for an excess repayment for the previous year; and
- ~~“(iv) subtracting the amount of any repayment obligations that are not yet due.”~~ 5
- “(iv) subtracting the amount of any repayment obligation or other amount that the Commissioner has, on or before that day, required the borrower to pay and that is payable on or after that day.”
- 16 Section 112 amended (Repayment to be made by instalments)** 10
Replace section 112(3) with:
- “(3) However, the Commissioner may determine the dates on or before which a borrower must pay instalments of his or her overseas-based repayment obligations, and the amount of those instalments, if the Commissioner considers it necessary or appropriate in the circumstances. 15
- “(4) If the Commissioner makes a determination under **subsection (3)**, the Commissioner must, as soon as practicable, notify the borrower in writing— 20
- “(a) of that fact; and
- “(b) of the dates and the amounts determined by the Commissioner.”
- 17 Section 114 amended (Notification of worldwide income by New Zealand-based non-resident borrowers)** 25
Replace section 114(3)(a) with:
- “(a) a declaration of adjusted net income; or”.
- 18 Section 115 amended (Repayment obligations of borrowers who are overseas-based for part of tax year)**
In section 115(2), after “despite anything to the contrary in this Act”, insert “, except as provided in **section 115A**”. 30

19 New section 115A inserted (Reassessment of overseas-based borrower's repayment obligation in year of return to New Zealand)

After section 115, insert:

“115A Reassessment of borrower's overseas-based repayment obligations in year of return to New Zealand 5

“(1) The Commissioner may reassess a borrower's overseas-based repayment obligation if the borrower notifies the Commissioner—

“(a) that the borrower has returned to New Zealand; and 10

“(b) that he or she intends to become New Zealand-based; and

“(c) of the specific date from which he or she expects to become New Zealand-based.

“(2) The borrower must notify the Commissioner of any other information that the Commissioner may reasonably require for the purposes of either or both of the following: 15

“(a) establishing any of the matters in **subsection (1):**

“(b) the reassessment.

“(3) If the Commissioner reassesses a borrower's overseas-based repayment obligation under this section,— 20

“(a) the reassessment must be made in accordance with section 115, as if the borrower were New Zealand-based from the date notified by the borrower under **subsection (1)(c); and 25**

“(b) section 109(6) and (7) apply to the reassessment as if it were an assessment under that section.

“(4) Despite the reassessment of a borrower's overseas-based repayment obligation under this section, the borrower continues to be treated as an overseas-based borrower for all other purposes (for example, interest continues to be calculated in accordance with the borrower's overseas-based status) until the borrower becomes New Zealand-based. 30

“(5) The Commissioner may review a reassessment of a borrower's overseas-based repayment obligation made under this section if— 35

“(a) the borrower does not become New Zealand-based; or

“(b) the borrower becomes New Zealand-based from a date that is different from the expected date notified to the Commissioner under **subsection (1)(c)**.”

20 Section 120 amended (Commissioner must notify borrower of excess repayment) 5

Replace section 120(1) with:

“(1) Subsection (2) applies if **subpart 2** of Part 2 applies to a borrower and—

“(a) an excess repayment is made for the borrower; or

“(b) upon investigation by the Commissioner of the borrower’s repayment obligation for a prior tax year, the Commissioner is satisfied that—

“(i) the repayment obligation assessed by the Commissioner is incorrect; and

“(ii) as a result, an excess repayment has been made.” 15

21 Section 132 amended (Borrower may receive refund or apply excess repayment to future repayment obligations)

Replace section 132(2) with:

“(2) To exercise a choice under subsection (1), the borrower must notify the Commissioner in a manner acceptable to the Commissioner within 6 months after whichever is the latest of the following: 20

“(a) the date on which the borrower was notified of the excess repayment in accordance with section 120:

“(b) the day after the end of the tax year to which the excess repayment relates: 25

“(c) the day after the due date of the final instalment of the borrower’s overseas-based repayment obligation.”

21A Section 134 amended (Loan interest charged for all borrowers) 30

(1) In section 134(2), after “the formula”, insert “(except as provided in **subsection (3)**)”.

(2) After section 134(2), insert:

“(3) If a tax year includes an extra day because of a leap year, the reference to 365 in the formula in subsection (2) must be treated as if it were a reference to 366.”

22 Section 144 amended (Power of Commissioner in relation to small amounts) 5

(1AA) In section 144(1)(c), after “collecting a repayment obligation”, insert “(or part of a repayment obligation)”.

(1) In section 144(2)(a), replace “is more than \$20” with “is \$20 or more”.

(2) Replace section 144(3)(a) with: 10
“(a) under subsection (1)(c) is written off.”.

23 Section 154 amended (Application for instalment arrangement)

In section 154(1)(a), replace “an unpaid amount; and” with “an unpaid amount or an amount that is not yet due; and”. 15

24 Section 155 amended (Late filing penalty for certain declarations)

Replace section 155(5) with:

“(5) In this section, **declaration** means a declaration of adjusted net income.” 20

25 Section 156 amended (Due dates for payment of late filing penalty)

In section 156(b) and (c), delete “or 114A”.

25A Section 160 replaced (Notification of student loan shortfall penalty) 25

Replace section 160 with:

“160 Notification and payment obligations if Commissioner imposes student loan shortfall penalty

“(1) This section applies if the Commissioner imposes a student loan shortfall penalty on a borrower. 30

“(2) The Commissioner must notify the borrower in writing of—
“(a) the amount of the student loan shortfall penalty and the reasons for its imposition; and

- “(b) the date on or before which the student loan shortfall penalty must be paid (which must be at least 30 days after the date of the notification).”
- “(3) The Commissioner must also notify the borrower in writing of the amount of the repayment obligation shortfall that remains due and payable and that that amount is subject to late payment interest.” 5
- “(4) The Commissioner may notify the borrower of the information required under **subsection (2)** and the information required under **subsection (3)** in 2 separate notices.” 10
- “(5) The borrower must pay the student loan shortfall penalty on or before the date specified in the notice given under **subsection (2)**.”
- 26 Section 161 amended (Student loan shortfall penalty reduced or removed to reflect change to shortfall penalty)** 15
In section 161(1)(a), after “a borrower”, insert “disputes or”.
- 27 Cross-heading above section 174 replaced**
Replace the cross-heading above section 174 with:
“*Rights to challenge and challenge procedures*”.
- 28 New section 174A inserted (Part 8A of Tax Administration Act 1994 applies to challenges under this Act)** 20
After section 174, insert:
“174A Part 8A of Tax Administration Act 1994 applies to challenges under this Act
The procedures under Part 8A of the Tax Administration Act 1994 apply, with all necessary modifications, to a challenge of a matter under this Act.” 25
- 29 New section 182A inserted (Challenge to decision concerning repayment holiday)** 30
After section 182, insert:
“182A Challenge to decision concerning repayment holiday
A borrower may challenge a decision by the Commissioner under section 107B not to grant the borrower a repayment holiday, on the ground that the decision is not fair and reasonable.”

- 30 Section 188 repealed (Commissioner’s decision on challenges)**
Repeal section 188.
- 31 Section 191 amended (Limit on repayment obligation for pay period or tax year)** 5
(1) In section 191(1), replace “derives only” with “derives”.
(2) After section 191(3), insert:
“(3A) For the purposes of subsections (1) and (2), the amount of the borrower’s loan balance on the day referred to in each of those provisions must be determined by subtracting the amount of any repayment obligation or other amount that the Commissioner has, on or before that day, required the borrower to pay and that is payable on or after that day.” 10
- 32 New section 193C inserted (Changes relating to contact details of borrower)** 15
After section 193B, insert:
“193C Changes relating to contact details of borrower
If there is a change in any of the borrower’s contact details, the borrower must promptly notify the Commissioner of the changed details.” 20
- 33 Section 204 amended (Commissioner may exercise rights in loan contracts to recall loans)**
In section 204(3)(c), replace “before or after” with “before, on, or after”.
- 34 Section 208 amended (Disclosure of information between Inland Revenue Department and New Zealand Customs Service for information-matching purposes)** 25
Replace section 208(1) with:
“(1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the New Zealand Customs Service for the purpose of establishing an information-matching programme to assist the Commissioner to— 30

- “(a) verify whether borrowers are New Zealand-based or overseas-based; and
 - “(b) verify whether borrowers are New Zealand residents; and
 - “(c) locate, when they enter or leave New Zealand, borrowers who are in **serious default** (within the meaning of section 280G of the Customs and Excise Act 1996) in relation to student loans.” 5
- 35 Section 215 amended (Regulations)** 10
Replace section 215(d) with:
- “(d) specifying further information requirements in accordance with sections 10(2)(d), 13(i), 16(2)(a)(viii), 16A(1)(e) or 107A(2)(e):”.
- 35A New section 220 replaced (Savings and transitional provisions)** 15
Replace section 220 with:
- “220 Application, savings, and transitional provisions**
- “(1) The application, savings, and transitional provisions set out in Schedule 6 have effect for the purposes of this Act.**
 - “(2) The application, savings, and transitional provisions relating to this Act and the amendment Acts specified in the first column of the following table are set out in the Parts of Schedule 6 specified in the second column of the table:** 20
- | <u>Principal Act and Amendment Acts</u> | <u>Part of Schedule 6</u> |
|---|----------------------------------|
| <i>Principal Act</i> | |
| <u>Principal Act as enacted</u> | <u>Part 1</u> |
| <i>Amendment Acts</i> | |
| <u>Provisions relating to Student Loan Scheme Amendment Act (No 2) 2012</u> | <u>Part 2</u> |
- 36 Section 221 repealed (Amendments to this Act)** 25
Repeal section 221.
- 37 Schedule 3 repealed**
Repeal Schedule 3.

38 Schedule 4 replaced
Replace Schedule 4 with the **Schedule 4** set out in **Schedule 2** of this Act.

39 Schedule 6 amended
(1AA) This section amends Schedule 6. 5
(1AB) Replace the Schedule 6 heading and the cross-heading above clause (1) with:

Schedule 6 **ss 8A, 220**
Application, savings, and transitional provisions 10

Part 1

Provisions relating to principal Act as enacted

Savings provisions

(1AC) After clause 2, insert: 15

“2A Commissioner must not collect amount assessed as repayment obligation of certain borrowers for 2011-2012 tax year

“(1) The purpose of this clause is to ensure that the substantive effect of the provisions of the Student Loan Scheme Act 2011 (Transitional Provisions) Regulations 2012 continues, including beyond 1 April 2015, in respect of borrowers to whom those regulations applied before they were revoked by section 49A of the Student Loan Scheme Amendment Act (No 2) 2012. 20 25

“(2) This clause applies if—

“(a) a person became a borrower under the student loan scheme for the first time in the period starting on 1 January 2012 and ending on the close of 31 March 2012; or 30

“(b) a person is a person to whom all of the following apply:

“(i) the person had been a borrower under the student loan scheme before the 2011–2012 tax year; and

“(ii) the person fully repaid his or her loan before the start of the 2011–2012 tax year; and 35

- “(iii) the person again became a borrower under the student loan scheme in the period starting on 1 January 2012 and ending on the close of 31 March 2012.
- “(3) Despite clause 2, any other provision of this Act, and anything in the Student Loan Scheme Act 1992,—
- “(a) the Commissioner must refrain from collecting the amount that the Commissioner assesses, under section 15 of the Student Loan Scheme Act 1992, as the borrower’s repayment obligation for the 2011-2012 tax year; and
- “(b) the amount that the Commissioner refrains from collecting under **paragraph (a)** is not written off and remains part of the borrower’s loan balance.”
- (1) ~~In Schedule 6, replace~~ Replace clause 6(1) with: 15
- “(1) Any amount that the Commissioner has refrained from collecting from the borrower in accordance with section 51(3) of the Student Loan Scheme Act 1992 and that remains unpaid on the close of 31 March 2012 is added to a borrower’s loan balance under this Act.” 20
- (2) ~~In Schedule 6, replace~~ Replace clause 12(1) with:
- “(1) This clause applies if—
- “(a) a borrower—
- “(i) has entered into an instalment arrangement with the Commissioner on or before 31 March 2012 in relation to an amount (the **instalment amount**) that must be paid under the Student Loan Scheme Act 1992; and 25
- “(ii) some of the payments that are required under the instalment arrangement must be paid on or after 1 April 2012; or 30
- “(b) a borrower—
- “(i) has entered into an instalment arrangement with the Commissioner under this Act between 1 April 2012 and 31 March 2013 (inclusive) in relation to an amount (the **instalment amount**) that must be paid under this Act; and 35

- “(ii) some of the payments that are required under the instalment arrangement must be paid on or after 1 April 2013.”
- (3) After clause 15, insert:
- Part 2 5
- “Transitional provision relating to Student Loan Scheme Amendment Act (No 2) 2012”.
- (4) After the new Part 2 heading, insert:
- “16 Interpretation 10
- In this Part,—
- “amendment Act means the Student Loan Scheme Amendment Act (No 2) 2012
- “principal Act means the Student Loan Scheme Act 2011.
- “17 Regulations for transitional purposes 15
- “(1) In this clause, **transition** means the transition to the changes made by the amendment Act.
- “(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing transitional provisions for the purpose of facilitating or ensuring an orderly transition. 20
- “(3) Regulations made under this clause may—
- “(a) provide that, subject to such conditions as may be specified in the regulations, 1 or more provisions (including definitions) of the amendment Act do not apply, or apply with modifications or additions: 25
- “(b) provide that, subject to such conditions as may be specified in the regulations, 1 or more provisions repealed, amended, or revoked by the amendment Act are to continue to apply, or apply with modifications or additions, as if they had not been repealed, amended, or revoked: 30
- “(c) provide for any other matter necessary to facilitate or ensure an orderly transition.
- “(4) The Minister must not recommend the making of regulations unless the Minister is satisfied that the regulations—
- “(a) are reasonably necessary for the purpose of facilitating or ensuring an orderly transition; and 35

- “(b) are consistent with the purposes of the principal Act.
- “(5) Regulations made under this clause must include a date on which the regulations are revoked, and that date must be no later than 3 years after the date on which they are made.
- “(6) This clause is repealed on the close of 1 April 2017.” 5
- “(7) To avoid doubt, if any regulations made under this clause include a revocation date that is later than 1 April 2017 (but no later than 3 years after the date on which they are made), the regulations continue in force until the revocation date included in the regulations, unless earlier revoked, despite the repeal of this clause by **subclause (6)**.” 10
- ~~40~~ **Schedule 7 repeated**
Repeat Schedule 7.
- 41 **Consequential amendments to principal Act**
Amend the principal Act as set out in **Schedule 1**. 15
- Amendments to other Acts*
- 42 **Accident Compensation Act 2001 amended**
- (1) This section amends the Accident Compensation Act 2001.
- (2) In section 123(2)(i), replace “subparts 1 to 3” with “**subparts 1, 2**.” 20
- 43 **Customs and Excise Act 1996 amended**
Sections 44 to 46 amend the Customs and Excise Act 1996.
- 44 **Section 280G amended (Defined terms for sections 280H and 280I)**
In section 280G, insert in their appropriate alphabetical order: 25
“**serious default** means the state of having an unpaid amount due and owing under the Student Loan Scheme Act 2011 and satisfying criteria established in a manner to be determined by the Commissioner
“**unpaid amount** has the meaning given to it by section 5 of 30
the Student Loan Scheme Act 2011.”

45 Section 280H amended (Disclosure of arrival and departure information for purposes of Student Loan Scheme Act 2011)

(1) Replace section 280H(1) with:

“(1) The purpose of this section is to facilitate the exchange of information between the Customs and the Department for the purposes of assisting the Commissioner to—

“(a) verify whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act 2011: 5 10

“(b) verify whether borrowers are New Zealand residents for the purposes of that Act:

“(c) locate, when they enter or leave New Zealand, borrowers who are in serious default in relation to a student loan.” 15

(2) After section 280H(4)(d), insert:

“(e) information provided by the borrower when arriving in or, as the case may be, departing from New Zealand.”

46 Section 280I amended (Direct access to arrival and departure information for purposes of Student Loan Scheme Act 2011) 20

Replace section 280I(1) with:

“(1) The purpose of this section is to facilitate the Department’s access to information stored in a database for the purpose of assisting the Commissioner to— 25

“(a) verify whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act 2011:

“(b) verify whether borrowers are New Zealand residents for the purposes of that Act: 30

“(c) verify whether borrowers are in New Zealand for the purposes of that Act:

“(d) locate, when they enter or leave New Zealand, borrowers who are in serious default in relation to a student loan.” 35

47 Privacy Act 1993 amended

(1) This section amends the Privacy Act 1993.

(2) Replace section 103(1C) with:

“(1C) Nothing in subsection (1) prevents the Commissioner of
Inland Revenue from immediately taking action to recover 5
amounts relating to—

“(a) unpaid amounts owed to the Commissioner by an indi-
vidual who is in serious default identified in informa-
tion supplied to the Commissioner under section 280H
of the Customs and Excise Act 1996; or 10

“(b) financial support under the Child Support Act 1991
owed to the Commissioner by an individual who is
identified in information supplied to the Commissioner
under section 280K or 280L of the Customs and Excise
Act 1996.” 15

48 Student Loan Scheme Amendment Act 2012 amended

(1) This section amends the Student Loan Scheme Amendment
Act 2012.

(2) Repeal section 57.

49 Tax Administration Act 1994 amended 20

(1) This section amends the Tax Administration Act 1994.

(2) In section 3(1), definition of **tax**, paragraphs (a)(x) and (d)(ix),
replace “a pre-taxed repayment obligation, an other income re-
payment obligation,” with “an end-of-year repayment obliga-
tion”. 25

(3) In the Schedule, after the item relating to the Stamp Duty Abo-
lition Act 1999, insert “Student Loan Scheme Act 1992”.

Revocation

49A Revocation

The Student Loan Scheme Act 2011 (Transitional Provisions) 30
Regulations 2012 (SR 2012/271) are revoked.

Part 2
Amendments to principal Act that apply
for 2013–2014 and later tax years

- 50 Section 4 amended (Interpretation)**
- (1) In section 4(1), definition of **consolidated loan balance**, re- 5
place paragraphs (b) and (c) with:
“(b) any unpaid amount”.
- (2) In section 4(1), definition of **loan balance**, after paragraph
(a)(iv), insert:
“(iva) an underestimation penalty; and” 10
- (3) In section 4(1), definition of **repayment obligation**, replace
paragraph (c) with:
“(c) any amount that must be paid by a borrower in accord-
ance with a written notification under section 52:
“(d) end-of-year repayment obligation:” 15
- (4) In section 4(1), insert in its appropriate alphabetical order:
“**underestimation penalty** means a penalty that a borrower is
liable to pay under **section 161A**”.
- 51 Section 5 amended (Meaning of unpaid amount)**
- After section 5(1)(e), insert: 20
“(f) an amount that must be paid by a borrower in accord-
ance with a written notification under section 52:
“(g) a late filing penalty:
“(h) a student loan shortfall penalty:
“(i) an underestimation penalty.” 25
- 52 Section 117 repealed (Overseas-based borrower’s
standard and Commissioner deductions satisfy
overseas-based repayment obligation)**
Repeal section 117.
- 53 Section 119 amended (meaning of excess repayment)** 30
~~In section 119(3), definition of **total obligations**, replace para-
graph (b) with:~~

~~“(b) any standard deductions that were deducted in the tax year, except a significant over-deduction, and”.~~

53 Section 119 replaced (Meaning of excess repayment)

Replace section 119 with:

5

“119 Meaning of excess repayment

“(1) An excess repayment, in relation to a borrower and a tax year, is any amount paid or deducted in relation to the borrower’s consolidated loan balance for the tax year that is in excess of the total of—

10

“(a) all repayment obligations of the borrower for the tax year; and

“(b) all penalties charged to the borrower for the tax year; and

“(c) the borrower’s unpaid amounts.

15

“(2) In determining whether an excess repayment has been made, the Commissioner must—

“(a) disregard any standard deduction (other than a significant over-deduction) or Commissioner deductions for the purposes set out in section 49(1)(a); and

20

“(b) disregard a salary or wage deduction or a payment made to the Commissioner that is subsequently refunded; and

“(c) treat a borrower’s repayment obligation as if any relief granted under section 147 had not been granted; and

“(d) disregard any fee refunded by an education provider to the loan manager or the Commissioner.”

25

54 Sections 134 to 137 and cross-heading replaced

Replace sections 134 to 137 and the cross-heading above section 134 with:

“Loan interest charged for borrowers who are overseas-based

30

“134 Loan interest charged for borrowers who are overseas-based

“(1) A borrower is liable to pay loan interest on his or her loan balance for each day that the borrower is overseas-based.

35

~~“(2) Loan interest must be calculated in accordance with the formula—~~

$$a = (b \times e) \div 365$$

~~where—~~

- ~~a~~ is the loan interest 5
- ~~b~~ is the borrower’s loan balance on the relevant day
- ~~e~~ is the base interest rate.

“135 Loan interest calculated daily and charged and compounded monthly

~~“(1) Loan interest is calculated each day that a borrower is overseas-based and has a loan balance. 10~~

~~“(2) Loan interest is charged and added to the borrower’s loan balance on the last day of each month.~~

~~“(3) However, no interest is charged or added under **subsection (2)** for a month if the loan balance is paid in full on or before the last day of that month. 15~~

“136 Notification that loan interest has compounded

If loan interest is added to a borrower’s loan balance in accordance with **section 435(2)**, the Commissioner must, at least once in the following 12 months, notify the borrower in writing of— 20

~~“(a) the opening and closing dates of the period covered by the notification; and~~

~~“(b) the borrower’s loan balance on the opening and closing dates; and 25~~

~~“(c) the date and amount of all loan interest charged to the borrower during the period covered by the notification.~~

~~“Compare: 1992 No 141 s 43(1)~~

“137 Loan interest written off for quick repayment of consolidated loan balance 30

~~“(1) This section applies to a person who—~~

~~“(a) was an overseas-based borrower; and~~

~~“(b) would subsequently have been treated as being New Zealand-based except that he or she ceased to be a borrower because of **paragraph (c)**; and 35~~

- ~~“(c) fully repaid his or her consolidated loan balance before the end of the period of 183 consecutive days under which the borrower would have been treated as being New Zealand-based.”~~
- ~~“(2) Loan interest that is charged on the person’s loan balance is reduced to zero for the period—~~
- ~~“(a) starting on the first day of the 183-day period; and~~
- ~~“(b) ending on the day on which the person’s consolidated loan balance was fully repaid.”~~
- ~~“Compare: 1992 No 141 s 38AM².”~~
- 55 Section 139 amended (Late payment interest charged on unpaid amount)**
- (1) In section 139(2)(a) and (b), replace “0.843% of” with “the late payment interest rate multiplied by”.
- (2) After section 139(2), insert:
- “(3) In this section, **late payment interest rate** means the base interest rate plus 4%, calculated as an equivalent monthly rate expressed as a percentage and truncated to 3 decimal places.”
- 56 Section 141 replaced (Monthly late payment interest written off if instalment arrangement complied with)**
- Replace section 141 with:
- “141 Late payment interest reduced if instalment arrangement complied with**
- “(1) This section applies if—
- “(a) a borrower is liable to pay late payment interest on an unpaid amount under section 139; and
- “(b) the borrower has entered into an instalment arrangement in relation to the unpaid amount in accordance with section 154.
- “(2) For each month that the borrower meets his or her obligations under the instalment arrangement, any late payment interest that the borrower is liable to pay on the unpaid amount for that month must be calculated as if, in the definition of late payment interest rate in **section 139(3)**, the reference to base interest rate plus 4% were a reference to base interest rate plus 2%.

“(3) However, **subsection (2)** applies only to the days in a month during which an instalment arrangement applies.”

56A Section 145 amended (Application of different types of relief for borrower)

After section 145(1)(a), insert:

5

“(ab) relief from a penalty (*see* **section 146A**):”.

57 Section 146 replaced (Commissioner may grant relief from late payment interest)

Replace section 146 with:

“146 Commissioner may grant relief from late payment interest 10

“(1) Subsection (2) applies—

“(a) if a borrower has been charged with late payment interest; and

“(b) regardless of whether that late payment interest has been paid, either in whole or in part; and 15

“(c) if an application is made under section 145(1)(a) for relief from late payment interest.

“(2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the late payment interest as the Commissioner considers equitable. 20

“(3) If late payment interest is cancelled,—

“(a) the borrower’s consolidated loan balance is decreased by the amount of the cancelled late payment interest; and 25

“(b) if the late payment interest has been added to the borrower’s unpaid amount under section 141(2), the borrower’s unpaid amount is decreased by the amount of the cancelled late payment interest; and

“(c) any payment made in excess of the remaining amount of late payment interest payable (if any) by the borrower (an **excess payment**) must be offset against the borrower’s consolidated loan balance as follows: 30

“(i) first, against any unpaid amount; and

“(ii) secondly, against the loan balance; and 35

“(d) the Commissioner must refund any remaining excess payment to the borrower (*see* sections 199 and 200).
“Compare: 1992 No 141 s 53”.

57A New section 146A and cross-heading inserted

After section 146, insert:

5

“Relief from penalties

“146A Commissioner may grant relief from penalties

“(1) Subsection (2) applies—

“(a) if a borrower has been charged with a penalty; and

“(b) regardless of whether that penalty has been paid, either in whole or in part; and

10

“(c) if an application is made under section 145(1)(ab).

“(2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the penalty as the Commissioner considers equitable.

15

“(3) For the purposes of this section, penalty—

“(a) means—

“(i) a late filing penalty;

“(ii) an underestimation penalty;

20

“(iii) a student loan shortfall penalty; but

“(b) despite paragraph (a)(iii), does not include a student loan shortfall penalty where, for the purposes of the application of section 159 (as set out in section 158), the shortfall penalty for which the borrower was liable was imposed under section 141D or 141E of the Tax Administration Act 1994.”

25

57B Section 147 amended (Hardship relief for any tax year)

Replace section 147(2) with—

“(2) However, the Commissioner must not—

30

“(a) refund any amount that was deducted or paid to meet a repayment obligation for a tax year prior to the current tax year other than the tax year that immediately precedes the current tax year; or

“(b) decrease a repayment obligation if—

35

“(i) a student loan shortfall penalty has been imposed on a borrower under section 159 in relation to the tax year that the repayment obligation relates to; and

“(ii) for the purposes of the application of section 159 (as set out in section 158), the shortfall penalty for which the borrower was liable was imposed under section 141D or 141E of the Tax Administration Act 1994.”

57C Section 159 amended (Commissioner may impose loan shortfall penalties) 10

In section 159(2), replace item b of the formula with:

b is the amount of the repayment obligation shortfall (treating any relief granted under section 147 as if it had not been granted) 15

58 New section 161A and cross-heading inserted

After section 161, insert:

“Underestimation penalty

“161A Underestimation penalty where interim payments underestimated as at terminal payment date 20

“(1) A borrower is liable to pay an underestimation penalty if the borrower has estimated his or her end-of-year repayment obligation in respect of a tax year and, on the due date for the borrower’s last interim payment for the tax year,—

“(a) the estimate applying is less than 80% of the borrower’s end-of-year repayment obligation and is less than the borrower’s end-of-year repayment obligation would have been had the borrower not estimated; and 25

“(b) the amount of the interim payments made on or before the due date for the borrower’s last interim payment is less than 80% of the borrower’s end-of-year repayment obligation for the year. 30

“(2) The amount of the underestimation penalty is calculated in accordance with the formula—

$$a = (b - c) \times 10\% \quad 35$$

where—

- a is the amount of the underestimation penalty
- b is the borrower's end-of-year repayment obligation for the tax year
- c is the greater of—
- (i) the amount of the borrower's estimate, applying at the due date for payment of the last interim payment; and 5
- (ii) the amount of the interim payments paid on or before the due date for payment of last interim payment. 10
- “(3) A penalty imposed under this section is payable on or before the borrower's due date for payment of his or her terminal payment under **section 81 or 85.**”
- 59 Section 194 replaced (Order in which salary or wage deductions and payments offset against borrower's consolidated loan balance)** 15
- Replace section 194 with:
- “194 Definition used in sections 194A to 194D**
- In sections 194A to 194D, current year obligations means** each of the following that has a due date in or for the tax year in which the payment was received by the Commissioner: 20
- “(a) an amount that must be paid by a borrower in accordance with a written notification under section 52:
- “(b) a terminal payment:
- “(c) an interim payment: 25
- “(d) an instalment of an overseas-based borrower's repayment obligation for a tax year that must be paid in accordance with section 112 or 115(1)(d):
- “(e) a late filing penalty:
- “(f) a student loan shortfall penalty: 30
- “(g) an underestimation penalty.
- “194A Order in which salary or wage deduction offset against borrower's consolidated loan balance**
- “(1) A standard deduction received by the Commissioner in respect of a borrower must be offset against the borrower's loan balance: 35

~~“(2) A Commissioner deduction for the purposes set out in section 49(1)(a) received by the Commissioner in respect of a borrower must be offset against the borrower’s loan balance.~~

~~“(3) A Commissioner deduction for the purpose set out in section 49(1)(b) received by the Commissioner in respect of a borrower must be offset as follows:~~ 5

~~“(a) first, against any unpaid amount the borrower has; and~~

~~“(b) secondly, any remainder must be offset against the borrower’s current year obligations; and~~

~~“(c) thirdly, any remainder must be offset against the borrower’s loan balance.~~ 10

~~“(4) A borrower deduction received by the Commissioner in respect of a borrower must be offset as follows:~~

~~“(a) first, against any unpaid amount the borrower has; and~~

~~“(b) secondly, any remainder must be offset against the borrower’s current year obligations; and~~ 15

~~“(c) thirdly, any remainder must be offset against the borrower’s loan balance.~~

~~“Compare: 1992 No 141 s 50~~

~~“194B Order in which payments offset against borrower’s consolidated loan balance” 20~~

~~A payment received by the Commissioner in respect of a borrower’s consolidated loan balance must be offset as follows:~~

~~“(a) first, against any unpaid amount the borrower has; and~~

~~“(b) secondly, any remainder must be offset against the borrower’s current year obligations; and~~ 25

~~“(c) thirdly, any remainder must be offset against the borrower’s loan balance.~~

~~“Compare: 1992 No 141 s 50~~

~~“194C Exception to sections 194A and 194B if instalment arrangement entered into” 30~~

~~“(1) This section applies to borrower deductions or payments that—~~

~~“(a) are made by, or on behalf of, a borrower who has entered into an instalment arrangement in accordance with section 154; but~~ 35

- ~~“(b) are not made for the borrower to meet his or her obligations under the instalment arrangement.~~
- ~~“(2) The borrower deductions and payments must be offset as follows:~~
- ~~“(a) first, against the borrower’s current year obligations; and 5~~
- ~~“(b) secondly, any remainder must be offset against any unpaid amount the borrower has; and~~
- ~~“(c) thirdly, any remainder must be offset against the borrower’s loan balance. 10~~
- ~~“(3) This section overrides sections 194A and 194B.~~
- ~~“194D Manner in which salary or wage deductions and payments are offset~~
- ~~“(1) A salary or wage deduction or payment that is offset against an unpaid amount must be credited to the borrower’s unpaid amount. 15~~
- ~~“(2) A salary or wage deduction or payment that is offset against current year obligations must—~~
- ~~“(a) be offset against each of the borrower’s current year obligations in the order in which those obligations become due, from the earliest to the latest; and 20~~
- ~~“(b) if a terminal payment and an interim payment are due on the same date, be offset against the terminal payment before being offset against the interim payment; and~~
- ~~“(c) be credited to the borrower’s loan balance. 25~~
- ~~“(3) A salary or wage deduction or payment that is offset against a loan balance must be credited to the borrower’s loan balance.~~
- ~~“Compare: 1992 No 141 s 50²².”~~

59 Section 194 amended (Order in which salary or wage deduction offset against borrower’s consolidated loan balance) 30

In section 194, insert as subsection (2):

- ~~“(2) The following must not be used to satisfy other repayment obligations, unpaid amounts, or penalties:~~
- ~~“(a) a standard deduction that is not a significant over-deduction. 35~~

“(b) a Commissioner deduction for the purposes of section 49(1)(a) that does not exceed the total amount specified under section 49(2)(b).”

- 59A Section 196 amended (Cancellation of interest if consolidated loan balance repaid early)** 5
- (1) In section 196(1)(a), delete “on or before 31 March 2013”.
- (2) Repeal section 196(4).
- 60 Section 197 replaced (Write-off of consolidated loan balance)** 10
- Replace section 197 with:
- “197 Write-off of consolidated loan balance**
- “(1) A borrower’s consolidated loan balance must be reduced to zero if—**
- “(a) the borrower dies; or**
- “(b) the Commissioner has reasonable grounds for believing that the borrower has died.** 15
- “(2) The Commissioner may reduce a borrower’s consolidated loan balance to zero if that balance is less than \$20.**
- “(3) Subsection (1)(a) has effect from the day on which the borrower died.** 20
- “(4) Subsection (1)(b) has effect from the day on which the borrower is believed to have died.**
- “(5) Subsection (2) has effect from the day on which the Commissioner exercises his or her discretion to reduce the consolidated loan balance to zero.** 25
- “(6) If a borrower’s consolidated loan balance is reduced to zero under subsection (1)(a) or (2), that action may not be reversed.**
- “(7) Subsection (6) applies despite anything to the contrary.** 30
- “Compare: 1992 No 141 s 60”.**
- 61 Section 219 repealed (Early applications and issues of certificates for transition to this Act)**
- Repeal section 219.

62 Schedule 6 amended
In Schedule 6, repeal clause 6(1)(b).

62A Schedule 7 repealed
Repeal Schedule 7.

Part 3

5

**Amendments to principal Act that apply
for 2014–2015 and later tax years**

**Amendments relating to meaning of adjusted net
income**

63 Section 4 amended (Interpretation) 10
In section 4(1), repeal the definitions of **annual gross income**,
annual total deduction, and **pre-taxed income**.

64 Section 73 replaced (Meaning of adjusted net income)
Replace **section 73** with:

“73 Meaning of adjusted net income 15
In this Act, **adjusted net income** means **net income**, as de-
fined in section YA 1 of the Income Tax Act 2007, with the
adjustments set out in **Schedule 3** of this Act (including any
adjustment determined by the Commissioner under **clause 15**
of that schedule) and excluding salary or wages.” 20

**65 Amendments consequential on repeal of definitions of
annual gross income and annual total deduction**
In the following provisions, replace “annual gross income and
annual total deductions” with “adjusted net income” in each
place: sections **74(1)**, **76(1)(b)**, **79(2)(b)**, **83(1)(b)**, 114(2) 25
and (4), 114A(2), 155(5)(b) and 202(d), and Schedule 1,
clause 11(2).

66 New Schedule 3 inserted
After Schedule 2, insert the **Schedule 3** set out in **Schedule 3**
of this Act. 30

*Amendments relating to repeal of provisions on
10% bonus*

- 67** **Section 111 amended (Exceptions to repayment obligations of overseas-based borrowers)**
In section 111(5)(b), repeal subparagraph (iii). 5
- 68** **Student Loan Scheme (Budget Measures) Amendment Act 2012 consequentially amended**
- (1)** **This section amends the Student Loan Scheme (Budget Measures) Amendment Act 2012.**
- (2)** **Repeal section 9.** 10
-

Schedule 1**s 41****Consequential amendments to principal
Act****Section 54**

Replace section 54(1)(b)(ii) and (iii) with: 5

“(ii) in the case of a borrower to whom **subpart 2** applies, adjusted net income.”

Section 115

In section 115(1)(a),—

(a) replace “subparts 1 to 3” with “subparts 1 and **2**”; and 10

(b) replace “subparts 2 and 3” with “**subpart 2**”.

In section 115(1)(b), replace “subparts 1 to 3” with “subparts 1 and **2**”.

Section 119

In section 119(3), definition of **total obligations**, replace paragraphs 15

(d) and (e) with:

“(d) any end-of-year repayment obligation for the tax year; and”.

Section 144

Repeal section 144(1)(b) and (d). 20

Section 157

In section 157, definition of **repayment obligation shortfall**, paragraph (a), replace “other income repayment obligation” with “end-of-year repayment obligation”.

Section 190

Replace section 190(1)(a) with: 25

“(a) derives adjusted net income; and”.

Section 191

Replace section 191(2) with: 30

“(2) If a borrower derives adjusted net income for a tax year, the borrower’s end-of-year repayment obligation for that tax year

Section 191—*continued*

must not exceed the amount of the borrower’s loan balance on the last day of that tax year.”

Section 195

In section 195(4)(b), replace “pre-taxed payment obligation or other income repayment obligation for that tax year” with “end-of-year 5 repayment obligation for that tax year”.

Section 202

In section 202(d), replace “a declaration of pre-taxed income” with “a declaration of adjusted net income”.

Schedule 6

10

In Schedule 6, clause 14(3), replace “other income payments” with “interim payments”.

In Schedule 6, clause 14(3)(b), replace “other income repayment obligations” with “end-of-year repayment obligations”.

Schedule 2**s 38****Schedule 4 replaced****Schedule 4****ss 4(2), 86****Application of provisional tax rules for
purposes of section 86**

5

Interim payments for adjusted net income to be
paid in same manner as provisional tax

1 The provisional tax rules apply for the purposes of **section 86**, as far as applicable and with all necessary modifications, as if— 10

(a) every reference to provisional tax were a reference to the amount of interim payments payable by a borrower; and

(b) every reference to a person, a person liable to pay provisional tax, or a provisional taxpayer were a reference to a borrower; and 15

(c) every reference to residual income tax were a reference to the amount of an end-of-year repayment obligation; and

(d) every reference to income tax were a reference to an end-of-year repayment obligation; and 20

(e) every reference to an instalment were a reference to an interim payment; and

(f) every reference to a return of income were a reference to,— 25

(i) for a borrower who is required to make a declaration of their adjusted net income, that declaration; and

(ii) for a borrower who is required to notify the Commissioner of the borrower's annual gross income and annual total deductions under section 114 of this Act, that notification; and 30

(g) every reference to \$2,500 or less (being the threshold below which a person is not required to make provisional tax payments during the year) were a reference to the \$1,000 threshold in **section 79**; and 35

Schedule 4—*continued*

- (h) every reference to section RC 10 of the Income Tax Act 2007 or to an amount calculated under section RC 10 of the Income Tax Act 2007 were a reference to **section 82** of this Act or to the amount of a borrower's interim payments calculated in accordance with **section 82** of this Act; and 5
 - (i) the reference in section RC 9(9) of the Income Tax Act 2007 to interest calculated under section 120KC of the Tax Administration Act 1994 were a reference to late payment interest calculated under section 139 of this Act. 10
- 2 However,—
- (a) sections LB 2, RC 3, RC 4, RC 5(6) and (8), RC 7(6), RC 8, RC 11, RC 15 to RC 19, RC 24, RC 28 to RC 35, RC 37 to RC 39, RZ 3, and RZ 5B of the Income Tax Act 2007, and the definition of early-payment discount in section RC 40 of that Act, do not apply to an interim payment; and 15
 - (b) section RC 5(2) of the Income Tax Act 2007—
 - (i) applies only if the borrower's end-of-year repayment obligation for the second preceding tax year is \$1,000 or more; and 20
 - (ii) applies as if the calculation in that section were a reference to the calculation in **section 82** of this Act; and 25
 - (c) for a borrower required to either make a declaration of adjusted net income or notify the Commissioner of the borrower's annual gross income and annual total deductions under section 114 of this Act, section RC 5(3) of the Income Tax Act 2007— 30
 - (i) applies only if the borrower's end-of-year repayment obligation for the second preceding tax year is \$1,000 or more; and
 - (ii) for a declaration of adjusted net income or a notification of the borrower's annual gross income and annual total deductions under section 114 of 35

Schedule 4—*continued*

this Act for the immediately preceding tax year, or an estimate of the end-of-year repayment obligation, that is not filed by the due date for payment of the final interim payment, applies as if the borrower has filed a statement showing an estimate of the end-of-year repayment obligation for that tax year equal to the total amount of interim payments paid by the borrower on or before that date. 5

Compare: 1992 No 141 s 28

Schedule 3 **s 66**
New Schedule 3 inserted

Schedule 3 **s 73**
Adjustments to net income for purposes
of section 73, applying from 1 April 2014 **5**
for 2014–2015 and later tax years

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1 Interpretation

In this schedule, unless the context otherwise requires—

- (a) any term or expression that is defined in the Income Tax Act 2007 and used, but not defined, in this schedule has the same meaning as in the Income Tax Act 2007; and 10
- (b) **Act** means the Income Tax Act 2007.

Schedule 3—*continued*

- 2 Adjustments to net income for purpose of determining adjusted net income**
For the purposes of **section 73** of this Act, the adjustments to net income in **clauses 3 to 15** apply for the purposes of determining adjusted net income. 5
- 3 Non-resident's foreign-sourced income**
The adjusted net income of a borrower who is non-resident includes the net income of the non-resident's foreign-sourced income, as if the borrower were a New Zealand resident.
- 4 Borrowers who carry on business and investment activities** 10
- (1) The income and deductions for any investment activity, or for any business, for a tax year are ignored when calculating a borrower's adjusted net income for that tax year if, treating the borrower as having only the income and deductions of that investment activity or of that business, the borrower would have a net loss for that year. 15
- (2) For the purposes of applying **subclause (1)**, 2 or more business or investment activities may be treated as a single activity if the Commissioner considers that those business or investment activities are of a kind that are normally carried on in association with each other. 20
- (3) For the purposes of applying **subclause (1)**, as modified by **subclause (2)**, deductions that relate to an asset used in carrying on 2 or more business or investment activities must be appropriately apportioned between those activities on the basis of the use of that asset in those activities. 25
- Compare: 2007 No 97 s MB 3
- 5 Exempt income included** 30
An amount derived by the borrower is not treated as exempt income if it is—
- (a) ~~an amount referred to in section CW 28(1)(c) of the Act (which relates to overseas pensions):~~

Schedule 3—*continued*

- (a) an overseas pension within the meaning of section CW 28(2)(a) of the Act:
- (b) an amount of salary or wages that is exempt from income tax under an Act, or under a regulation or Order in Council made under an Act, that is listed in Schedule 38 of the Act (Acts exempting income from tax: income included in family scheme income). 5

Compare: 2007 No 97 s MB 1(2)

6 Income from portfolio investment entities

- (1) An amount of income attributed by a portfolio investment entity to the borrower for an income year— 10
 - (a) is not included in adjusted net income of the borrower for the income year if the portfolio investment entity is a superannuation fund or retirement savings scheme:
 - (b) is included in adjusted net income of the borrower for the income year if **paragraph (a)** does not apply. 15
- (2) A distribution from a listed PIE that is derived by the borrower in an income year is included in adjusted net income of the borrower for the income year. 20

Compare: 2007 No 97 s MB 1(5)

7 Refunds from main income equalisation accounts

A refund under sections EH 8 to EH 26 of the Act (which relate to refunds from main income equalisation accounts) of a deposit made on or after 1 April 2014 is not included in adjusted net income of a borrower, except to the extent that the refund is interest payable to the borrower under section EH 6 of the Act (Interest on deposits in main income equalisation account). 25

Compare: 2007 No 97 s MB 9

8 Borrowers who are shareholders in close companies 30

If a borrower is a major shareholder in a close company on the last day of the company's balance date for financial purposes and the company has paid the major shareholder a dividend in the income year,—

Schedule 3—*continued*

- (a) the amount of the borrower's adjusted net income calculated under the formula in **paragraph (b)** is reduced by the total dividends for the income year; and
- (b) the borrower's adjusted net income includes an amount calculated using the formula— 5
- $$(a \div b) \times c$$
- where—
- a is the number of shares issued by the company and held by the borrower, excluding fixed-rate shares, on the last day of the company's accounting year 10
- b is the number of shares issued by the company, excluding fixed-rate shares, on the last day of the company's accounting year
- c is the net income of the company for the company's accounting year. 15

Compare: 2007 No 97 s MB 4

9 Treatment of distributions from superannuation schemes

- (1) **Subclause (2)** applies if a borrower receives a distribution from a superannuation scheme in an income year and— 20
- (a) an employer of the borrower has made contributions to the superannuation scheme in the income year in which the distribution was received or in the 2 income years immediately before that income year; and
- (b) the borrower continues to work for the employer for 1 month or more after the date of the distribution; ~~and~~ 25
- ~~(c) the borrower has not received the distribution from the superannuation scheme as a result of, and on or after, the borrower's retirement from employment with an employer who was a contributor to the scheme; and~~ 30
- (1A) **Subclause (2)** does not apply if a borrower receives a distribution from a superannuation scheme—
- (a) as a result of, and on or after, the person's retirement from employment with an employer who was a contributor to the scheme; or 35

Schedule 3—*continued*

- (b) if the superannuation scheme is a KiwiSaver scheme or a complying superannuation fund.
- (2) For the purposes of calculating adjusted net income, the distribution (excluding any amount attributable to a contribution by the borrower as a member of the superannuation scheme) is adjusted net income of the borrower derived in the tax year or tax years that corresponds to the income year or years in which the employer contributions were made. 5
Compare: 2007 No 97 s MB 5
- 10 Treatment of distributions from retirement savings schemes** 10
- (1) **Subclause (2)** applies if—
- (a) a borrower receives a distribution of a retirement scheme contribution from a retirement savings scheme in an income year; and 15
- (b) RSCT has been withheld from the contribution; and
- (c) at the time of the distribution, the person—
- (i) is not eligible for New Zealand superannuation; and
- (ii) is eligible for a distribution of a retirement scheme contribution from a retirement scheme contributor. 20
- (2) For the purposes of calculating adjusted net income, the distribution is adjusted net income of the person derived in the income year in which the distribution is made. 25
Compare: 2007 No 97 s MB 6
- 11 Borrowers who are settlors of trusts**
- (1) **Subclause (3)** applies if a borrower is the settlor of a trust (the **borrower's trust**) at a time in the income year, other than solely as a result of providing personal services for less than market value in the administration of the trust or the maintenance of trust property. 30
- (2) However, **subclause (3)** does not apply if—
- (a) the trustee of the borrower's trust is registered as a charitable entity under the Charities Act 2005: 35

Schedule 3—*continued*

- (b) the borrower's trust is solely for the benefit of a local authority:
- (c) interest and dividends derived by the trustee of the borrower's trust would be exempt income of the trustee under section CW 45 (Funeral trusts) of the Act: 5
- (d) the borrower's trust is a superannuation fund:
- (e) the borrower and the members of the borrower's family are not permitted to benefit from the borrower's trust except under an order of a court.
- (3) If this subclause applies, the adjusted net income of the borrower for that income year includes an amount calculated in accordance with the following formula: 10
- $$(a + b - c) \div d$$
- where—
- a is the net income of the trustee of the borrower's trust for the income year reduced, to not less than zero, by the amount of the trustee's income that vests or is paid by the trustee as beneficiary income for the income year 15
- b is the total of amounts calculated for companies in which, at the end of the company's income year, the trustee of the borrower's trust and associated persons hold voting interests of 50% or more, or market value interests of 50% or more if there is a market value circumstance, with the amount for each company being calculated by multiplying the company's net income for the income year by the trustee's voting interest or market value interest in the company at the end of the income year 20
- c is the total amount, not exceeding b, of dividends that are derived by the trustee of the borrower's trust in the income year from companies referred to in item b of the formula 25
- d is the number of settlors of the borrower's trust, including the borrower, to which this clause applies. 30
- Compare: 2007 No 97 s MB 7 35

Schedule 3—*continued*

- 12 Income from fringe benefits**
- (1) **Subclause (2)** applies if—
- (a) a borrower is an employee of a company in which the borrower and associated persons hold—
 - (i) voting interests of 50% or more; or 5
 - (ii) market value interests of 50% or more (if a market value circumstance exists); and
 - (b) the company provides a fringe benefit that must be attributed to the borrower under section RD 47 of the Act (Attribution of certain fringe benefits). 10
- (2) The adjusted net income of the borrower for the income year includes an amount equal to the total of the following amounts:
- (a) the taxable value of the fringe benefits that the company must attribute to the borrower under sections RD 47 to RD 49 of the Act for the income year; and 15
 - (b) the company's FBT liability in relation to the borrower under section RD 50 of the Act (Employer's liability for attributed benefits) for the income year.
- Compare: 2007 No 97 s MB 8
- 13 Income from deposits in main income equalisation accounts** 20
- The adjusted net income of a borrower for an income year includes the amount of a deduction under section DQ 1 of the Act (Main income equalisation scheme) allowed for a payment made to the Commissioner under section EH 4 of the Act (Main deposit) for an accounting year, corresponding to the same tax year as does the income year, and for a business of— 25
- (a) the borrower:
 - (b) a company that meets the requirements of section MB 4 of the Act for the borrower's adjusted net income to be affected by net income of the company for the accounting year: 30
 - (c) a trustee of a trust that meets the requirements of section MB 7 for the borrower's adjusted net income to be 35

Schedule 3—*continued*

affected by net income of the trustee for the accounting year:

- (d) a company in which a trustee referred to in **paragraph (c)** and associated persons hold a voting interest of 50% or more, or a market value interest of 50% or more if a market value circumstance exists. 5

Compare: 2007 No 97 s MB 9

14 Income from certain pensions and annuities

If, in the income year, a borrower derives a pension or an annuity that is exempt income of the borrower under section CW 4 of the Act (Annuities under life insurance policies) or is a pension from a superannuation fund, the adjustable net income of the borrower for the income year— 10

- (a) includes half the amount of pension or annuity derived in the income year; and 15
- (b) does not include the other half of the amount of pension or annuity derived in the income year.

Compare: 2007 No 97 s MB 10

15 Payments from trusts, not being beneficiary income, and where borrower not settlor 20

- (1) For the purposes of calculating adjusted net income, a borrower must include all payments from trusts in the adjusted net income of the person derived in the income year in which the distribution is made where—
- (a) the distribution is not beneficiary income in relation to the borrower; and 25
- (b) the borrower is not the settlor of the trust.
- (2) The Commissioner may, in his or her discretion, determine the circumstances in which payments from a trust should be excluded for the purposes of calculating adjusted net income. 30

**Student Loan Scheme Amendment
Bill (No 2)**

Legislative history

23 August 2012
20 September 2012

Introduction (Bill 56–1)
First reading and referral to Finance and
Expenditure Committee
