

Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill

Government Bill

Explanatory note

General policy statement

This taxation omnibus Bill introduces amendments to the—

- *Income Tax Act 2007*;
- *Tax Administration Act 1994*;
- *Student Loan Scheme Act 2011*.

There are 3 main policy proposals in the Bill. These are—

- Changes to business taxation to make tax simpler;
- Implementing the G20/OECD standard for *Automatic Exchange of Financial Account Information in Tax Matters*;
- Changes to implement the disclosure requirements for foreign trusts recommended by the *Government Inquiry into Foreign Trust Disclosure Rules*.

The Bill contains 3 measures to support the deployment of stage 1 of Inland Revenue's new computer system, START, including its co-existence with the existing FIRST system over the staged implementation of Inland Revenue's business transformation programme.

There is also a remedial amendment to the PAYE rules for employee income for share benefits to ensure the rules work as intended. The Bill also contains a remedial amendment to the *Student Loan Scheme Act 2011* to correct a terminology reference.

The following is a brief summary of the policy measures contained in this Bill. A comprehensive explanation of all the policy items will be included in a Commentary on the Bill. The Commentary will be available shortly after this Bill is introduced, at <http://taxpolicy.ird.govt.nz>.

Changes to business taxation to make tax simpler

The Bill proposes 16 discrete measures to make tax simpler for businesses. The 16 measures reflect 6 key themes—

- Changes to provisional tax to increase certainty:
- More accurate and timely payment of provisional tax:
- Self-management and integrity:
- Making the system fairer:
- Improving the operation of markets through greater tax transparency:
- Making the system simpler.

Changes to provisional tax to increase certainty

Increasing the current \$50,000 residual income tax limit for interest to \$60,000 (for individuals and non-individuals)

The Bill proposes to increase the current “safe-harbour” threshold from use of money interest. Currently, when businesses who have less than \$50,000 of residual income tax pay provisional tax using the standard “uplift” method, they are not subject to use of money interest. The Bill proposes to increase this limit to \$60,000 and extend it so that it applies to non-individuals as well as individuals. This will reduce the impact of use of money interest for these businesses and therefore provide greater certainty.

Removing use of money interest for the first 2 provisional tax payments for all taxpayers who use the uplift method

The Bill proposes amendments so that for taxpayers using the standard uplift method and who fall outside of the \$60,000 “safe-harbour”, use of money interest only applies from the final instalment date. As the final instalment date of provisional tax occurs after the end of the income year, these taxpayers will have reasonable certainty as to how much income they have earned before they make their final payment and become liable for use of money interest.

Additional rules are proposed to prevent taxpayers from taking inappropriate advantage of the new rules by switching income between related parties or by switching between provisional tax payment methods.

More accurate and timely payment of provisional tax

The Accounting Income Method

The Bill proposes to allow businesses to use the Accounting Income Method (AIM) to pay their provisional tax based on a calculation prepared by accounting software.

AIM is available for businesses where either—

- They have turnover of less than \$5 million a year:
- They have previously used AIM, have a good track record with taking reasonable care, and are continuing to use the same approved software package:

- They are using an accounting system that the Commissioner has approved as being suitable for persons with turnover greater than \$5 million.

For these businesses, AIM enables provisional tax to be calculated within their accounting software packages. Calculation of provisional tax in arrears means payments made under AIM will more closely match the accounting income of the business and be integrated into business practices.

For taxpayers using AIM, provisional tax payments will be made monthly for those on monthly GST filing and 2 monthly for those on 2 or 6 monthly GST filing. For businesses who aren't GST registered they will make payments in line with the GST dates that fit with their balance dates. If the taxpayer makes these required payments, then no use of money interest will apply should a shortfall arrive at year end.

Approval criteria

The Bill proposes the Commissioner must approve a software provider before they can become an approved AIM provider. To become an approved AIM provider, the provider must make a statutory declaration that it has an accounting system—

- that can make generate and keep comprehensive financial accounts, complete required tax adjustments, filing and payment requirements, and can produce the required reports; and
- the accounting system is fully documented and that there is support for end-users; and
- the product is updated regularly to reflect changes in tax law or Commissioner requirements.

If the Commissioner receives a statutory declaration of this and considers that approving the provider would not negatively affect the integrity of the tax system, the Commissioner may approve the provider as an approved AIM provider. The Commissioner may revoke this approval on the request of the provider or if the Commissioner considers that anything in their statutory declaration is not true, the providers accounting system provides a materially inaccurate tax calculation, or that revoking the approval would positively affect the integrity of the tax system.

The Bill provides that the Commissioner may make determinations setting out the required tax adjustments required by the software provider.

Provisional tax attribution for shareholder-employees

The Bill proposes to allow a company to make tax payments on behalf of shareholder-employees. This proposal is intended to enable companies to reduce compliance costs for their shareholder-employees by paying tax on their behalf and therefore potentially removing the shareholder-employee from the provisional tax rules.

This method would be optional and apply if a company and its shareholder-employees elect to use it by the company's first provisional tax payment date.

Once elected a company would add to its own provisional tax payments amounts equal to any provisional tax the shareholder-employee would have had in relation to

their salaries, if they had not elected into provisional tax attribution. At the end of the income year the company can allocate some of the provisional tax paid to its shareholder-employees which is treated as a tax credit for the shareholder-employee. If the tax credit is equal to or greater than the shareholder-employees' total tax liability they will have no further tax to pay.

Self-management and integrity

Electing own withholding rate

Amendments are proposed to allow contractors subject to the schedular payment rules to elect their own withholding rate. This will enable contractors to more easily match their withholding rates to their final tax liability without the need to make an application to Inland Revenue.

There are integrity measures proposed to minimise the risk of contractors picking low rates to defer or avoid paying their tax. This includes a minimum rate of withholding of 10% for residents and 15% for non-residents and contractors who are on temporary work visas. In addition the Commissioner has the power to prescribe a rate of withholding for contractors who are non-compliant with their tax obligations.

There is a "standard rate" of withholding for contractors that do not pick a withholding rate. In addition, if a contractor has previously changed their withholding rate twice in the year, they will require the consent of the payer to any further changes in their withholding rate. This is to reduce compliance costs for payers who may have contractors repeatedly changing their withholding rate.

These amendments do not apply to non-resident entertainers. This is to enable non-resident entertainers to retain their current treatment which allows them to be treated as non-filing taxpayers.

Labour-hire firms

Amendments are proposed to extend the current schedular payment rules to cover all contractors operating through labour-hire firms. This means that labour-hire firms will be required to withhold from any payment they make to their contractors, including those operating through a company. Certificates of exemption from withholding will not be available for contractors working through labour-hire firms.

This is a first step in modernising the coverage of the current schedular payment rules and is expected to reduce compliance costs for these contractors as well as address non-compliance issues identified by Inland Revenue.

Voluntary withholding

An amendment is proposed to enable contractors that are not subject to the schedular payment rules to opt in to the withholding rules through voluntary withholding agreements. These will be available where a contractor has the mutual consent of their payer to have withholding apply. This enables greater flexibility for contractors to elect into withholding and therefore a more pay-as-you go method of paying their tax.

Making the system fairer

Changes to late payment penalties

The Bill proposes to reform the late payment penalty by no longer imposing the 1% monthly incremental late payment penalty from new GST, income tax, and *Working for Families* tax credit overpayment debt.

This is intended to reduce the penalties imposed on businesses who may end up paying late so to allow businesses a chance to trade their way out of debt, without having onerous financial penalties being continually imposed.

This measure is proposed to apply to GST for GST periods ending 31 March 2017. The measure applies for provisional tax, income tax, and *Working for Families* tax credit debt from the 2017–18 income year.

Improving the operation of markets through greater tax transparency

Sharing tax information for significant debts with credit reporting agencies

The Bill proposes an amendment to the tax secrecy rules to allow Inland Revenue to disclose information about taxpayer's tax debts to approved credit reporting agencies. This will enable businesses contemplating providing credit to make more informed commercial decisions, as they will have a more comprehensive picture of a business's total debt position.

It is proposed that the criteria for initial disclosure of tax debt include—

- The debt is significant:
- The debt is not disputed:
- Reasonable efforts have been made to collect the debt:
- The debt is not subject to an existing instalment arrangement:
- The taxpayer has not applied for relief or remissions:
- The taxpayer has been served notice of the Commissioner's intention to disclose tax debt information to credit reporting agencies, and has been given 30 days to repay the debt or to arrange for repayment. The notice to a company will be served on the company's directors.

A significant tax debt would be a debt relating to unpaid income tax, GST or an employer's unpaid PAYE, child support, student loan or KiwiSaver employee deductions where the debt is—

- overdue by a period of 12 months and greater than 30% of a taxpayer's gross income; or
- new debt of more than \$150,000.

The Bill proposes a regulation making power to be able to adjust the \$150,000 threshold for "significant tax debt".

The Bill also proposes that the Commissioner has the ability to approve an organisation as an approved credit reporting agency when they carry on a business of credit reporting and approval would positively affect the integrity of the tax system.

An additional rule is proposed to enable Inland Revenue to disclose information to credit reporters when a taxpayer repeatedly avoids having their information disclosed through avoiding the thresholds for what is significant tax debt.

The Bill proposes that Inland Revenue will be required to report annually on its use of this amendment including the number of taxpayers whose information has been disclosed to approved credit reporting agencies.

Information sharing with the Registrar of Companies

The Bill proposes to enable Inland Revenue to share information about certain serious offences under the *Companies Act 1993* with the Registrar of Companies. This will enable the Registrar of Companies to more easily investigate and prosecute company directors who are operating outside of the law and reduce the harm that these directors cause.

The Bill proposes that Inland Revenue is permitted to share information with the Registrar of Companies when—

- there is reasonable suspicion that a serious offence has been, is being, or will be committed; and
- Inland Revenue considers the information will prevent, detect, aid in the investigation of, or provide evidence of, a serious offence that has been, is being, or will be committed; and
- Inland Revenue is satisfied that the information is readily available, it is reasonable and practicable to communicate it, and communication is in the public interest.

Making the system simpler

Motor vehicle expenditure of close companies

The Bill proposes to extend the rules for motor vehicle expenditure for sole traders and partnerships to close companies. Currently close companies that provide their shareholder-employees with a motor vehicle for private use are required to register and pay FBT on that benefit. This can result in an increase in compliance cost for these companies as they are required to register and pay FBT solely due to the provision of 1 or 2 motor vehicles to shareholder-employees.

This amendment will mean that companies will have the option to instead apportion expenditure incurred in relation to that vehicle between business and private use. This will mean that companies that are currently registered for FBT solely due to the provision of a motor vehicle to shareholder-employees will no longer have to file and pay FBT.

Increasing the threshold for annual FBT returns

Currently businesses are entitled to calculate and return FBT on an annual basis (instead of the standard quarterly basis) if they have combined PAYE and employer superannuation contribution tax obligations of not more than \$500,000 per year. The Bill proposes an amendment to increase this \$500,000 threshold to \$1 million.

Increasing the threshold for self-correction of minor errors

Currently, taxpayers who make a minor error in a return which results in a tax discrepancy of \$500 or less are allowed to correct the error in a subsequent return. The Bill proposes an amendment to increase this \$500 threshold to \$1,000.

Simplified calculation of deductions for dual use vehicles and premises

The Bill proposes to simplify the calculation of deductions for dual use vehicles and premises.

Currently, small business owners often use their personal vehicles and homes for both business and private purposes. Because there are numerous expenses for these items, allocating them between business and personal use can create a large compliance obligation compared to the amount of tax at stake.

The Bill proposes to simplify the calculation for vehicles by modifying and extending the current per kilometre options for calculating business use of vehicles so it is available regardless of kilometres travelled. The current rules only allow the method to be used if the business use is less than 5,000km per year.

The Bill proposes to simplify the calculation of deductions for business use of home premises by allowing taxpayers to simply multiply the number of square metres used primarily for business purposes by a single rate. This rate would be set by Inland Revenue.

This calculation would not cover mortgage interest, rates, or rental costs. Instead these would be deducted based on actual costs due to these costs being too variable to include in a single representative rate.

Removing the requirement to renew resident withholding tax exemption certificates annually

Some taxpayers who hold a certificate of exemption from resident withholding tax must renew their certificate annually. Taxpayers have indicated that this is creating compliance costs for relatively little value. To address this, the Bill proposes to legislatively require most RWT exemption certificates to be issued for an unlimited period.

Modifying the 63 day rule on employee remuneration

Currently, there is a special deduction and timing rule for the deferred payment of employee remuneration. This is intended to prevent taxpayers from claiming deductions for amounts of employee remuneration that have been accrued but not paid. This rule

can create an additional compliance burden for taxpayers because they need to track payments accrued at year end and paid within 63 days of the end of the income year.

The Bill proposes to alter this rule to make the deduction for payments made within 63 days of the income year optional for taxpayers. For those taxpayers that do not wish to undertake the exercise, it would not be required and the deduction for those payments paid after the end of the income year can be claimed in the following year.

Automatic exchange of information

The Bill proposes amendments to implement the G20/OECD standard for *Automatic Exchange of Financial Account Information in Tax Matters* (in short, Automatic Exchange of Information, or **AEOI**) in New Zealand.

AEOI is an international initiative that responds to concerns that individuals and entities can, with relative ease, evade their home country tax obligations by concealing their wealth in “off-shore” financial accounts.

In broad terms, AEOI implementation involves enacting legislation that requires financial institutions to—

- undertake due diligence to identify off-shore accounts; and
- report information on those accounts to the local tax authority.

Then, tax authorities exchange the reported information with applicable jurisdictions, under tax treaties.

In return for New Zealand providing information on off-shore accounts to other jurisdictions, Inland Revenue will receive reciprocal information from other jurisdictions on the off-shore accounts of New Zealand tax residents.

The information will be used to detect and prevent off-shore tax evasion.

Exchange of information

New Zealand has a wide network of tax treaties that currently extends to 90 jurisdictions. These treaties all contain exchange of information provisions that oblige the parties to assist each other in tax compliance matters.

This assistance primarily involves responding to specific requests for information. However, the majority of tax treaties also provide for other forms of assistance, including the ability to enter into automatic exchange programmes with treaty partners.

Automatic exchange programmes are typically specific to certain categories of information. AEOI is an automatic exchange programme for financial account information.

Inland Revenue has significant experience in automatic exchange programmes, but only has 1 existing precedent for the automatic exchange of financial account information. This is with the USA, and is referred to as the FATCA initiative (the term “FATCA” derives from the name of the USA enabling legislation, the *Foreign Account Tax Compliance Act*).

The Common Reporting Standard

The Bill proposes incorporating the *Common Reporting Standard (CRS)* into New Zealand law. The CRS is an element of the AEOI standard developed by the OECD that sets out the due diligence and reporting obligations to be imposed on financial institutions.

The other elements of the AEOI standard relate primarily to exchange of information with other jurisdictions, and generally do not require additional legislation.

Due diligence

The CRS due diligence procedures are complex and highly prescriptive.

The rules set out criteria for identifying the financial institutions that must conduct due diligence and reporting and the financial accounts that the financial institutions must conduct due diligence and reporting on. Additional rules apply to exclude certain financial institutions and accounts from these obligations.

The principal due diligence requirement for the relevant financial institutions is to identify and determine the tax residence of account holders.

Different due diligence procedures are prescribed for different types of accounts. For example, for new accounts, financial institutions must generally determine tax residence based on self-certifications from customers. However, for pre-existing accounts, financial institutions can rely generally on information on hand (including information collected pursuant to anti-money laundering/countering the financing of terrorism laws).

In addition, when an account holder is a passive non-financial entity (as defined in the CRS), it must be looked through to identify and determine the tax residence of the natural persons that are its ultimate controlling persons.

Reporting

The CRS provides that information on relevant accounts must be reported to Inland Revenue. The information to be reported includes identity information (including tax residence) and financial account information (such as account balances and interest earned).

If a financial institution is unable to determine the status of a pre-existing account it generally must report it as an “undocumented account”.

The information must be reported to Inland Revenue on an annual basis. For this purpose, the reporting period will be the New Zealand tax year (that is, the period ending 31 March), and the deadline for reporting will be 30 June.

Timing

The proposed due diligence obligations will apply in New Zealand from 1 July 2017. This means that the due diligence procedures for new accounts will apply to all new accounts opened from that date. The due diligence procedures for pre-existing accounts will apply to accounts already open on 1 July 2017.

For pre-existing accounts that are held by an individual and that have a balance that exceeds US \$1 million, the Bill proposes that due diligence and reporting must be completed by 30 June 2018.

For any other pre-existing account, the Bill proposes that due diligence and reporting must be completed by 30 June 2019.

Options

Although international consistency is a key requirement, the OECD has included certain options in the CRS that implementing jurisdictions can take to reduce some compliance costs.

The circumstances of each reporting financial institution can differ markedly, meaning that financial institutions may have different preferences as to whether these options should be adopted. Accordingly, the general approach proposed in this Bill is to permit each reporting financial institution to make its own decision on whether or not to adopt any particular CRS option.

In a small number of cases, a particular option will be mandated for all reporting financial institutions. For example, the New Zealand reporting period will be mandated, rather than allowing each financial institution to adopt its own preferred period.

The wider approach

New Zealand's list of tax treaty partners with which it will exchange AEOI information will increase over time. Absent specific rules, each addition of a new jurisdiction would trigger a new round of due diligence reviews for financial institutions to search for residents of that jurisdiction. This would impose significant compliance costs on financial institutions.

In recognition of this problem, a key option offered in the CRS is for implementing jurisdictions to allow financial institutions the option of identifying all non-residents rather than just residents of specific jurisdictions. This is referred to as the "wider approach".

This Bill proposes that New Zealand adopt the wider approach, and that this be mandatory for all financial institutions.

This Bill also proposes that financial institutions be permitted the option of reporting all of the non-residents that they have identified irrespective of whether they are residents of jurisdictions that New Zealand will exchange with. This will be optional rather than mandatory, as some reporting financial institutions may prefer to conduct the sorting and filtering of the data themselves. However, when financial institutions opt to report all non-residents, the task of sorting and filtering the data will fall to Inland Revenue.

Enforcement

The CRS requires implementing jurisdictions to have rules and procedures in place to ensure compliance and address non-compliance. This includes appropriate anti-avoid-

ance rules, document retention requirements, auditing programmes, and sanctions to deal with identified non-compliance.

To ensure New Zealand's full compliance with these requirements, this Bill proposes a comprehensive suite of enforcement rules and penalties.

The proposed approach recognises that New Zealand's rules will be subject to international peer review, and that any deficiency identified in that peer review could adversely affect New Zealand's international reputation. Accordingly, strong sanctions are proposed for serious failure by a financial institution to comply or for failure to comply through lack of reasonable care.

The Bill proposes that the following penalties will apply to financial institutions:

- A general (civil) penalty of \$300, to be imposed on a financial institution for any failure to comply with its CRS due diligence and reporting requirements:
- A specific (civil) penalty of \$300, to be imposed on a financial institution for each new account where there is a failure to obtain a self-certification on account opening when required by the CRS:
- The above provisions will be subject to a transitional period (until 31 March 2019) in which penalties will not be imposed if the financial institution is able to demonstrate it has made reasonable efforts to comply with its CRS due diligence and reporting obligations:
- A specific (civil) penalty of \$20,000 for a first offence and \$40,000 for any subsequent offence, to be imposed in circumstances where a financial institution fails to take reasonable care in complying with its CRS due diligence and reporting requirements:
- Knowledge based offences by financial institutions will be subject to the application of existing legislative provisions.

The Bill proposes that the penalties to be imposed on financial institutions will be backed up with specific obligations and penalties to be imposed directly on account holders, controlling persons, or persons that otherwise hold accounts for the benefit of others (including trusts and intermediaries)—

- A specific (civil) penalty of \$1,000, if a person provides a false self-certification or related information, fails to provide a self-certification or related information within a reasonable time after receiving a request, or fails to provide information about a material change of circumstances relating to a self-certification or related information within a reasonable period of time:
- Knowledge based offences by such persons will be subject to the application of existing legislative provisions.

However, these penalties are subject to a no fault defence (for persons providing self-certifications or other information about their own status) and a reasonable care defence.

Record keeping and anti-avoidance rules

The Bill proposes specific record-keeping requirements for financial institutions. The Bill also proposes an anti-avoidance provision that applies to arrangements and practices entered into or by financial institutions, persons, or intermediaries with “a main purpose” of circumventing CRS due diligence or reporting requirements.

Multilateral Convention

The *Multilateral Convention* was given effect in New Zealand in 2014 by means of an Order in Council made under *section BH 1 of the Income Tax Act 2007*. The Bill proposes a remedial amendment to *section BH 1* to clarify its application to multilateral treaties.

FATCA

For consistency, the Bill proposes amendments to the FATCA implementation legislation to—

- align the FATCA anti-avoidance rule with the AEOI anti-avoidance rule; and
- provide for the imposition of the same obligations and penalties on persons other than financial institutions under FATCA as for AEOI.

Changes to implement the disclosure requirements for foreign trusts recommended by the Government Inquiry into Foreign Trust Disclosure Rules

The Bill proposes amendments to the disclosure requirements for foreign trusts with New Zealand resident trustees. These amendments largely follow the recommendations of the *Government Inquiry into Foreign Trust Disclosure Rules*. The amendments in this Bill are intended to deter offshore parties from using NZ trusts for illicit purposes. This is intended to provide a clear signal about the importance of complying with the disclosure rules.

Registration

The Bill proposes an amendment to require foreign trusts to formally register with Inland Revenue. As part of this registration the trust will be required to declare that—

- the person establishing the foreign trust; and
- the settlor(s); and
- the trustees

have all been advised of, and have agreed to comply with the applicable requirements in the—

- *Tax Administration Act 1994*; and
- *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* and associated regulations; and
- AEOI requirements (as proposed in this Bill).

Disclosure upon registration

The Bill proposes increased disclosure requirements on registration. Specifically, that on registration the name, e-mail address, foreign residential address, country of tax residence, and taxpayer identification number of all of the following be provided to Inland Revenue:

- The settlor(s):
- The protector (if there is any):
- Non-resident trustees:
- Any other natural person who has effective control of the trust:
- Beneficiaries of fixed trusts, including the underlying beneficiary where a named beneficiary is a nominee.

The proposed amendments also require the trust deed of the trust to be filed with the registration form, and that, discretionary trusts are required to describe in the registration any class of beneficiary not listed in the trust deed. This will enable the identity of a beneficiary to be established at the time of a distribution or when vested rights are exercised.

Timing of registration requirements

The registration requirement will apply to all trusts formed after enactment of the enabling legislation. Existing foreign trusts will be required to meet the new information requirements by 30 June 2017.

Annual filing

The proposed amendments require foreign trusts to file annual returns with Inland Revenue. The proposed amendments require the return to include—

- Any changes to the information provided at registration:
- The trust's annual financial statement:
- The amount of any distributions paid or credited and the names, foreign address, taxpayer identification number, and country of tax residence of the recipient beneficiaries.

When a foreign trust qualifies to be exempt from New Zealand tax

Foreign trusts are not taxable under current law. The Bill proposes that a foreign trust will lose its exemption from New Zealand tax if it has not registered with Inland Revenue and fulfilled its associated disclosure obligations. This means that a foreign trust that fails to meet these requirements will be taxable in New Zealand on its worldwide income. The proposed amendment is intended to provide a sanction for non-registration.

Qualifying resident foreign trustee safe harbour

Currently, if a trustee of a foreign trust is convicted of an offence of not providing information requested by Inland Revenue then the foreign trust loses its exemption from New Zealand tax and is subject to New Zealand tax on its worldwide income.

However, legislation currently provides that the tax exemption will still apply, in the case where a trustee is convicted of a knowledge offence if the trustee of the foreign trust is a “qualifying resident foreign trustee”. To be a “qualifying resident foreign trustee”, the trustee must be a member of a specified professional body.

The Bill proposes an amendment to remove this “qualifying resident foreign trustee” exemption.

Register of foreign trusts shared with law enforcement agencies

The proposed amendments require Inland Revenue to share information contained in the foreign trusts register for law enforcement purposes with the Department of Internal Affairs and the New Zealand Police. This will apply from the date of enactment.

Registration and filing fee

The Bill proposes to require foreign trusts to pay a registration fee of \$270 and annual filing fee of \$50 to Inland Revenue. The Bill proposes a regulation making power to enable the amount of the fees to be adjusted through an Order in Council.

Other measures**Amendments to the UOMI and transfer rules**

The Bill proposes amendments to the use of money interest and transfer rules to prevent taxpayers from artificially obtaining credit use of money interest or reducing debit use of money interest.

Currently taxpayers can transfer amounts of tax to an earlier period and have use of money interest apply from the date of transfer, rather than the applicable date under the use of money interest rules. This means they can manipulate the amount of use of money interest payable by moving an overpayment or refund to an earlier period.

The proposed amendments address this by preventing taxpayers from transferring amounts of tax to a prior period that exceed the amount of debt or amount in dispute in that period. The amendments also clarify the difference between a GST refund and a GST overpayment to prevent an overpayment of GST being treated as a GST refund and having an earlier transfer date.

Amending the rules for new and increased assessments by the Commissioner

At present, when the Commissioner makes a new assessment or a re-assessment after the original due date of a taxable period, a new due date is set for the payment of the newly assessed tax that is 30 or more days after the date of the notice of assessment.

When this occurs, use of money interest applies from the day after the original due date for the period the assessment or re-assessment applies to, while a late payment

penalty applies for amounts unpaid from the day after the new due date. If a taxpayer has excess tax or a credit becomes refundable, for example from a different taxable period or from a different tax type, in the time between the new or increased assessment and the new due date for payment, the excess or credit is generally refunded to the taxpayer rather than being offset against the amount of tax as a result of the new assessment or re-assessment.

START has the ability to allow time for payment before the imposition of late payment penalties, whereas the current software platform, FIRST, requires a new due date to be set. Building a new due date concept into START would add unnecessary complexity. Setting new due dates increases compliance costs for some taxpayers.

The Bill proposes an amendment to remove the requirement for the Commissioner to set a new due date in these situations. Under the proposed amendment the Commissioner has discretion to set a new due date for a tax type when she considers this necessary because of resource constraints imposed on her during the period of co-existence of 2 Inland Revenue software platforms.

The amendment allows for any refund becoming available to be applied in payment for the new or increased tax liability from the assessment date. The timing of interest and penalty rules will not change. Taxpayers will continue to have at least 30 days after a new assessment or re-assessment before a late payment penalty is applied and before any collection action is taken.

Amendments to the late payment penalty grace period rules

Currently, if a taxpayer does not pay their tax on time and they have previously paid all taxes due in the 2 years prior to the late payment; they have a “grace period” before the late payment penalty is applied to them.

However, as Inland Revenue moves to its new computer system information relating to the taxpayer’s tax compliance history and payment activity will reside in 2 systems. This means it will be difficult for the Commissioner to look across all applicable tax types to determine whether the taxpayer is entitled to a grace period under the current legislation.

The Bill proposes an amendment to simplify the administration of the grace period during this transitional period. The Bill proposes that in determining whether or not to apply a grace period, the Commissioner has discretion to ignore any failure to pay tax on time if—

- the Commissioner decides it is appropriate to ignore; and
- it is necessary because of resource constraints imposed on the Commissioner during the period of co-existence of 2 Inland Revenue software platforms; and
- it does not impose a greater penalty than would have applied if not for this amendment.

Remedial amendments to the collection of tax on employment income from employee share benefits

The Bill proposes the following remedial amendments to ensure the PAYE rules for employment income from employee share benefits work as intended:

- Provide in the PAYE rules clearer points in time relating to when employment income in the form of a share benefit is derived by the employee for tax purposes, and when the employer declares that income to Inland Revenue:
- Correct a number of terminology references in the *Income Tax Act 2007* in relation to when large employers (employers with annual PAYE obligations, including Employer Superannuation Contribution Tax, of \$500,000 or more) are required to disclose information about a share benefit received by an employee.

Departmental disclosure statement

Inland Revenue is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=149>

Regulatory impact statement

Inland Revenue produced regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/ris>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the dates on which the sections come into force.

Part 1

Exchange of information

Subpart 1—Amendments to Income Tax Act 2007

Clause 3 provides that *Part 1, subpart 1* amends the *Income Tax Act 2007*.

Clause 4 amends *section BH 1(1)*, which defines *double tax agreement*. The amendment clarifies that a double tax agreement can be negotiated and agreed with more

than 1 government and comes into force on 21 October 2013, when the MCMAA convention was brought into force for New Zealand.

Clause 5 amends *section HC 26* by inserting *new subsection (1)(c)*, providing that a foreign-sourced amount derived by a resident trustee of a foreign trust is not exempt income if the foreign trust is not registered or the trustee has not complied with record-keeping, registration, or disclosure obligations.

Clause 6 amends *section YA 1* by replacing the definition of *foreign account information-sharing agreement*. The new definition refers generally to double tax agreements that facilitate the automatic exchange of information relating to financial accounts and specifically to both the FATCA agreement and MCMAA convention.

Subpart 2—Amendments to Tax Administration Act 1994

Clause 7 provides that *Part 1, subpart 2* amends the *Tax Administration Act 1994*.

Clause 8 amends *section 3(1)*. *Subclause (2)* inserts new definitions of *CRS applied standard*, *CRS publication*, and *CRS standard*. *Subclause (3)* inserts a new definition of *FATCA agreement*. *Subclause (4)* inserts a new definition of *maintain*, which refers to the functions of a financial institution in relation to a financial account. *Subclause (5)* inserts a new definition of *MCA agreement*. *Subclause (6)* inserts a new definition of *MCMAA convention*. *Subclause (7)* inserts a new definition of *passive income*. *Subclause (8)* repeals the definition of *qualifying resident foreign trustee*, which is not required under the proposed rules for foreign trusts. *Subclause (9)* inserts a new definition of *taxpayer identification number*, which refers to the equivalent of a tax file number assigned to a taxpayer by a foreign jurisdiction.

Clause 9 amends *section 22*, which provides for the keeping of business and other records. *Subclause (2)* inserts, in the list of persons to which the subsection applies, a reference to persons having obligations of a financial institution. *Subclause (3)* includes a specific requirement that such a person keep a record of a failure to obtain a self-certification as required by the CRS applied standard. *Subclause (4)* amends *section 22(7)*, by repealing *section 22(7)(d)(i) and (ii)*. Those subparagraphs refer to information that a resident trustee of a foreign trust will be required by *new section 59B* to provide to the Commissioner when applying for registration of the trust.

Clause 10 replaces *section 59B* with *new sections 59B to 59E*. *New section 59B* requires a resident trustee of a foreign trust to register the trust and provide specified information with the application for registration. *New section 59C* gives the time limits for a trustee to comply with the requirements of *new section 59B*. *New section 59D* requires a resident trustee of a foreign trust to provide an annual return for the trust to the Commissioner. *New section 59E* sets the fees for an application for registration and an annual report. The section provides a power for the Governor-General to amend the amounts of the fees by Order in Council.

Clause 11 amends *section 81* by inserting *new subsection (4)(z)*, which allows the Commissioner to provide information relating to the registration of a foreign trust to a member of the New Zealand Police or an officer, employee, or agent of the Department of Internal Affairs.

Clause 12 inserts *new sections 91AAU to 91AAW*, which give the Commissioner of Inland Revenue powers to issue determinations relating to obligations under the CRS applied standard. *Section 91AAU* gives the Commissioner a power to determine whether a territory outside New Zealand is, or has ceased to be, a participating jurisdiction. *Section 91AAV* gives the Commissioner a power to determine that a territory outside New Zealand is not to be treated as a reportable jurisdiction for a period of 3 months or less, although an earlier Order in Council has provided that the territory is a reportable jurisdiction. *Section 91AAW* gives the Commissioner a power to determine that a financial institution or type of financial institution is, or has ceased to be, a non-reporting financial institution and that a financial account or type of financial account is, or has ceased to be, an excluded account.

Clause 13 inserts *new sections 142H and 142I*, which impose penalties for failures to perform obligations imposed by Part 11B of the Act. *Section 142H* imposes penalties on a financial institution under the CRS applied standard that fails to comply with an obligation relating to financial accounts maintained by the financial institution. *Section 142I* imposes penalties on persons or entities that are obliged to provide information or a self-certification relating to a financial account and that provide false information or a false self-certification, or fail to provide the information or self-certification within a reasonable time, or fail to inform the person or entity provided with the information or self-certification of a material change in related circumstances.

Clause 14 amends *section 143* by inserting *new subsection (2C)*, which provides that an existing absolute liability offence for failing to satisfy obligations relating to the FATCA agreement does not apply to a failure to satisfy obligations relating to the CRS applied standard. The offence would otherwise overlap with *new section 142H*, which imposes penalties for corresponding failures.

Clause 15 amends *section 143A*, which provides for offences committed knowingly, by inserting a specific offence for failing to provide a self-certification to another person or entity and providing for the application of a defence that the person did not have control of the required information.

Clause 16 amends *section 185E* by inserting new subsections describing the obligations to which the other sections in Part 11B relate.

Clause 17 inserts a *new heading* after *section 185E* to indicate the sections relating to obligations under the FATCA agreement.

Clauses 18 to 22 amend *sections 185F to 185J* by replacing references to foreign account information-sharing agreements with references to the FATCA agreement.

Clause 23 repeals *section 185L*. A corresponding anti-avoidance provision applying for foreign account information-sharing agreements is inserted by *clause 24* as *new section 185R*.

Clause 24 inserts a *new heading* and *new sections 185N and 185O*, which relate to the application of the CRS applied standard, followed by another *new heading* and *new sections 185P to 185R*, which relate to the application of foreign account information-sharing agreements generally. *New section 185N* provides for the obligations of a fi-

financial institution under the CRS applied standard relating to the due diligence procedures to be applied for financial accounts maintained by the financial institution and the reporting of information to the Commissioner. In *new section 185O*, *subsection (2)* provides for the modification of the published CRS standard in the ways given by the items in *new schedule 2* of the Act. *Subsection (3)* provides for the modified CRS standard to be applied consistently with the published Commentary on the CRS standard. *Subsection (4)* provides that terms defined in the CRS standard or MCMAA convention are to be given those defined meanings when the CRS standard is applied. *Subsection (5)* provides for the general availability to persons or entities of elections under the CRS applied standard. *New section 185P* provides for the obligations of persons affected by the FATCA agreement or the CRS applied standard to provide information and self-certifications relating to a financial account. Under *subsection (4)*, the obligations include providing information about changes affecting information or self-certifications provided previously. In *new section 185Q*, *subsection (1)* provides that where an obligation or penalty under the FATCA agreement, the CRS applied standard, or the Act is expressed as being imposed on an entity that is a relationship rather than a person, the obligation or penalty is treated as being imposed on the persons in the relationship. *Subsection (2)* provides that a requirement to provide information to such an entity is treated as being a requirement to provide information to the persons given by *subsection (1)* for the entity. *New section 185R* is an anti-avoidance provision providing that an arrangement with a main purpose of avoiding an obligation relating to a foreign account information-sharing agreement is treated as having no effect on a person's obligations under the Act and giving the Commissioner a power to determine the appropriate obligations for the person.

Clause 25 inserts *new clause 226D*, which provides that the Governor-General may make regulations by Order in Council providing that a territory outside New Zealand is a reportable jurisdiction for the purposes of the CRS applied standard and the Act.

Clause 26 inserts *new schedule 2*, which lists amendments to the version of the CRS standard published by the Organisation for Economic and Cultural Development, for the purposes of determining the obligations of persons and entities under the CRS applied standard and the Act.

Part 2

Business tax: AIM provisional tax method

Subpart 1—Amendments to Income Tax Act 2007

Clause 27 provides that *Part 2, subpart 1* amends the *Income Tax Act 2007*.

Clause 28 amends *section LA 6*, to enable AIM provisional tax method taxpayers to transfer excess tax credits to shareholders and reduce the shareholders' use of money interest liability.

Clause 29 amends *section RA 14*, to provide the correct instalment dates for the AIM provisional tax method.

Clause 30 amends *section RC 1*, to provide the correct instalment dates for the AIM provisional tax method.

Clause 31 amends *section RC 5*, to provide the threshold criteria that a person must meet to be able to use the AIM provisional tax method.

Clause 32 inserts a *new section RC 7B*, to provide a description of the AIM provisional tax method. *New section RC 7B* contains the definition of *AIM-capable accounting system*.

Clause 33 amends *section RC 9*, to provide the correct instalment dates for the AIM provisional tax method, based on GST filing periods and the proposed amendments to schedule 3.

Clause 34 inserts a *new section RC 10B*, to calculate the amount of provisional tax a person must pay for an instalment date under the AIM provisional tax method.

Clause 35 amends *section RC 24*, to amend a cross-reference consequential to providing the correct instalment dates for the AIM provisional tax method.

Clause 36 inserts a *new section RM 6B*, to provide a part-year refund for overpaid provisional tax under the AIM provisional tax method.

Clause 37 amends *section RP 17*, to ensure that tax pooling can not be used for AIM provisional tax.

Clause 38 amends *section RP 17B*, to ensure that tax pooling can not be used for AIM provisional tax.

Clause 39 amends *section RP 19B*, to ensure that tax pooling can not be used for AIM provisional tax.

Clause 40 amends *section YA 1*. *Subclause (2)* inserts a new definition of *AIM-capable accounting system*, to provide minimum standards for software to be used for the AIM provisional tax method. *Subclause (3)* inserts a new definition of *approved AIM provider*, to ensure that only approved software providers can supply software to be used for the AIM provisional tax method. *Subclause (4)* inserts a new definition of *large business AIM-capable system*, to allow businesses with annual gross income of more than \$5 million to use an approved AIM-capable accounting system if the Commissioner has given approval.

Clause 41 amends *schedule 3*, to provide the correct instalment dates for the AIM provisional tax method, based on GST filing periods.

Subpart 2—Amendments to Tax Administration Act 1994

Clause 42 provides that *Part 2, subpart 2* amends the *Tax Administration Act 1994*.

Clause 43 amends *section 3(1)*, to amend the definition of *tax position* and ensure that the use of the AIM provisional tax method, including the use of software, counts as a tax position for purposes of the Tax Administration Act 1994, including penalties.

Clause 44 inserts a *new heading and new sections 15U to 15X*. *New section 15U* provides that the Commissioner may approve a person as an approved AIM provider in relation to an AIM-capable accounting system. *New section 15V* provides a process

by which the Commissioner may revoke a person's approval as an approved AIM provider. *New section 15W* provides a process by which a person's approval as an approved AIM provider is revoked upon notification by the person that they choose revocation. *New section 15X* provides that the Commissioner may publish notice of any of the matters in *new sections 15U to 15W*.

Clause 45 inserts *new sections 45 to 45D*. *New section 45* provides for the giving of information to the Commissioner by a person in relation to their use of the AIM provisional tax method. *New section 45B* provides for the giving of information to the Commissioner by an approved AIM provider in relation to their AIM-capable accounting system products. *New section 45C* provides that the Commissioner may approve an AIM-capable accounting system as a large business AIM-capable system for use by people with annual gross income of more than \$5 million. *New section 45D* provides that the Commissioner may approve a person's continued use of an AIM-capable accounting system, if the person has annual gross income of more than \$5 million.

Clause 46 inserts a *new heading and new sections 91AAX and 91AAY*. *New section 91AAX* provides for the Commissioner publishing binding determinations of tax adjustments for accounting income and expenditure under the AIM provisional tax method. *New section 91AAY* provides for that Commissioner publishing determinations of classes of taxpayers that must not use the AIM provisional tax method.

Clause 47 amends *section 119*, to provide that the Commissioner may determine the amount of a person's provisional tax if the AIM-capable accounting system they are using is inaccurate.

Clause 48 inserts a *new section 120KBC*, to provide concessionary use of money interest rules for people who use the AIM provisional tax method.

Clause 49 amends *section 120KC*, to amend a cross-reference consequential to providing the correct instalment dates for the AIM provisional tax method.

Clause 50 amends *section 120KE*, to remove AIM method taxpayers from the provisional tax safe harbour, as a consequence of their concessionary treatment under *new section 120KBC*.

Clause 51 inserts a *new section 120LB*, to enable AIM provisional tax method taxpayers to transfer excess tax credits to shareholders and reduce the shareholders' use of money interest liability.

Clause 52 inserts a *new section 120VB*, to remove the Commissioner's obligation to pay use of money interest to AIM method taxpayers.

Clause 53 amends *section 141*, to ensure the correct basis for calculating the amount of tax shortfall that may be penalised for the AIM provisional tax method.

Clause 54 amends *section 141B*, to remove the unacceptable tax position penalty in some circumstances for AIM method taxpayers.

Part 3

Business tax and remedial matters

Subpart 1—Amendments to Income Tax Act 2007

Clause 55 provides that *Part 3, subpart 1* amends the *Income Tax Act 2007*.

Clause 56 amends *section CD 32*, consequential to providing an election to use *subpart DE* for shareholder-employee motor vehicles instead of the FBT rules.

Clause 57 amends *section CE 2*, as part of ensuring that benefits under employee share purchase agreements are valued and recognised appropriately for different-sized employers.

Clause 58 amends *section CX 6*, to ensure that *subpart DE* is used if there is an election to use *subpart DE* for shareholder-employee motor vehicles instead of the FBT rules.

Clause 59 amends *section CX 17*, to give an election to use *subpart DE* for shareholder-employee motor vehicles instead of the FBT rules.

Clause 60 amends *section DB 7*, to ensure that *subpart DE* is used for interest deductions if there is an election to use *subpart DE* for shareholder-employee motor vehicles instead of the FBT rules.

Clause 61 amends *section DB 8*, to ensure that *subpart DE* is used for interest deductions if there is an election to use *subpart DE* for shareholder-employee motor vehicles instead of the FBT rules.

Clause 62 inserts a *new section DB 18AA*, to provide a square metre rate method to determine the amount of a deduction for a building that is used partly for business and partly for other purposes.

Clause 63 amends *section DE 1*, as part of providing an election to use *subpart DE* for shareholder-employee motor vehicles instead of the FBT rules.

Clause 64 amends *section DE 2*, as part of providing an election to use a kilometre rate method for business motor vehicle use deductions. Also, the amendments ensure that interest in relation to shareholder-employee motor vehicles is subject to *subpart DE*, if there has been an election to use *subpart DE* for shareholder-employee motor vehicles instead of the FBT rules.

Clause 65 inserts a *new section DE 2B*, to provide an election to use a kilometre rate method for business motor vehicle use deductions.

Clause 66 amends *section DE 3*, consequential to providing an election to use a kilometre rate method for business motor vehicle use deductions.

Clause 67 amends *section DE 4*, consequential to providing an election to use a kilometre rate method for business motor vehicle use deductions.

Clause 68 replaces the *heading before section DE 12* and *section DE 12*, to provide a kilometre rate method for business motor vehicle use deductions.

Clause 69 amends *section DF 4*, as part of providing an election to not apply the unpaid expenditure rules to shareholder-employee expenditure.

Clause 70 amends *section EA 4*, as part of providing an election to not apply the unpaid expenditure rules to shareholder-employee expenditure.

Clause 71 amends *section EE 49*, to turn off depreciation recovery income for a motor vehicle for which a person has used the kilometre rate method for business motor vehicle use deductions.

Clause 72 amends *section LA 6*, to enable companies under the proposed provisional tax attribution regime to transfer excess tax credits to shareholders who are provisional tax attributors.

Clause 73 replaces *section LB 2*, to provide for tax credit transfers to a shareholder who is a provisional tax attributor from a company that has paid provisional tax under the proposed provisional tax attribution regime.

Clause 74 amends *section LB 7*, to correct cross-references consequential to providing tax rate options for deductions from schedular payments.

Clause 75 amends *section LB 8*, to correct cross-references consequential to providing tax rate options for deductions from schedular payments.

Clause 76 amends *section MD 9*, to correct cross-references consequential to providing tax rate options for deductions from schedular payments.

Clause 77 inserts a *new section OB 33B*, to ensure that a company's imputation credit account is debited for a tax credit transfer to a shareholder from the company, under the proposed provisional tax attribution regime.

Clause 78 amends *table O2*, to ensure that a company's imputation credit account is debited for a tax credit transfer to a shareholder from the company, under the proposed provisional tax attribution regime.

Clause 79 amends *section RC 3*, to turn off the provisional tax rules for shareholders that attribute enough provisional tax to a company under the proposed provisional tax attribution regime.

Clause 80 amends *section RC 5*, to prevent standard method provisional taxpayers swapping to the estimate method for the last instalment of the year.

Clause 81 amends *table R1*, as a consequence of allowing a concession for use of money interest for standard method provisional taxpayers who meet their obligations during the year.

Clause 82 amends *section RC 10*, to calculate the amounts of provisional tax instalments for shareholders and companies under the proposed provisional tax attribution regime.

Clause 83 amends *section RD 3*, to correct cross-references consequential to providing tax rate options for deductions from schedular payments.

Clause 84 amends *section RD 6*, as a remedial matter, to ensure that benefits under employee share purchase agreements are valued and recognised appropriately for different-sized employers.

Clause 85 amends *section RD 7B*, as a remedial matter, consequential to ensuring that benefits under employee share purchase agreements are valued and recognised appropriately for different-sized employers.

Clause 86 amends *section RD 8*, consequential to providing tax rate options for deductions from schedular payments. Also, the amendments ensure that labour-hire entities' payments to companies are caught as schedular payments.

Clause 87 amends *section RD 10*, consequential to providing tax rate options for deductions from schedular payments.

Clause 88 inserts a *new section RD 10B*, to provide tax rate options for deductions from schedular payments. Also, the amendments provide that the tax rate for deductions from schedular payments may be set by the Commissioner for certain payees in certain circumstances.

Clause 89 repeals *section RD 18*, consequential to providing tax rate options for deductions from schedular payments.

Clause 90 amends *section RD 60* changes the close company annual FBT payment option threshold from “no more than \$500,000” to “no more than \$1,000,000”, allowing more people to use the option.

Clause 91 amends *section RD 61* changes the small business annual FBT payment option threshold from “no more than \$500,000” to “no more than \$1,000,000”, allowing more people to use the option.

Clause 92 amends *section YA 1. Subclauses (2) to (6)* amend relevant definitions to correct cross-references consequential to providing tax rate options for deductions from schedular payments. *Subclause (7)* inserts a new definition of *PAYE income payment form period*, as part of ensuring that benefits under employee share purchase agreements are valued and recognised appropriately for different-sized employers. *Subclause (8)* inserts a new definition of *provisional tax attributor*, as part of the proposed provisional tax attribution regime. *Subclause (9)* inserts a new definition of *shareholder attributed income*, as part of the proposed provisional tax attribution regime. *Subclause (10)* inserts a new definition of *shareholder attributed tax*, as part of the proposed provisional tax attribution regime.

Clause 93 amends *schedule 4*, consequential to providing tax rate options for deductions from schedular payments. Also, the amendments provide a *new part J*, to ensure that labour-hire agreements and entities are under the schedular payments rules. A *new part W* is provided, to allow deductions on account of voluntary schedular payments.

Subpart 2—Amendments to Tax Administration Act 1994

Clause 94 provides that *Part 3, subpart 2* amends the *Tax Administration Act 1994*.

Clause 95 amends *section 3(1)*. *Subclause (2)* inserts a new definition of *approved credit reporting agency*, as part of allowing the Commissioner to credit report some unpaid tax to third parties. *Subclause (3)* inserts a new definition of *credit report*, as part of allowing the Commissioner to credit report some unpaid tax to third parties. *Subclause (4)* inserts a new definition of *provisional tax interest avoidance arrangement* as part of allowing a concession for use of money interest for standard method provisional taxpayers who meet their obligations during the year. *Subclause (5)* inserts a new definition of *reportable unpaid tax*, as part of allowing the Commissioner to credit report some unpaid tax to third parties. *Subclause (6)* inserts a new definition of *standard method associate*, as part of allowing a concession for use of money interest for most standard method provisional taxpayers who meet their obligations during the year.

Clause 96 inserts a *new heading and a new section 15Y*, to provide the criteria that a shareholder must meet to use the proposed provisional tax attribution regime.

Clause 97 amends *section 24G*, consequential to providing tax rate options for deductions from schedular payments.

Clause 98 amends *section 24L*, to provide notice provisions in relation to the proposed tax rate options for deductions from schedular payments.

Clause 99 inserts *new sections 24LB and 24LC*. *New section 24LB* provides the election mechanism and thresholds in relation to the proposed tax rate options for deductions from schedular payments. *New section 24LC* provides the mechanism and thresholds in relation to allowing the Commissioner to set the tax rate for deductions from schedular payments for certain payees in certain circumstances

Clause 100 amends *section 24M*, to ensure that labour-hire agreements and entities are under the schedular payments rules and may not get an exemption.

Clause 101 amends *section 32H*, to ensure that RWT exemption certificates do not constantly need to be renewed.

Clause 102 inserts a *new section 45E*, to provide a tax reconciliation statement for the proposed provisional tax attribution regime.

Clause 103 amends *section 81*, to provide exemptions from secrecy for credit reporting some unpaid tax to third parties and reporting some offences under the *Companies Act 1993* to the Registrar of Companies.

Clause 104 inserts *new sections 85M and 85N*. *New section 85M* provides an exemption from secrecy for reporting some offences under the *Companies Act 1993* to the Registrar of Companies. *New section 85N* provides an exemption from secrecy for credit reporting some unpaid tax to third parties.

Clause 105 amends *section 113A*, to increase the threshold below which minor errors may be corrected in subsequent returns, from \$500 to \$1,000.

Clause 106 amends *section 120C*, to clarify the date interest starts under the use of money interest rules for GST refunds and GST overpayments.

Clause 107 further amends *section 120C*, as part of allowing concessionary use of money interest treatment for most standard method provisional taxpayers.

Clause 108 amends *section 120KB*, as part of allowing concessionary use of money interest treatment for failed instalments for most standard method provisional taxpayers.

Clause 109 inserts a new *section 120KBB*, as part of allowing concessionary use of money interest treatment for most standard method provisional taxpayers.

Clause 110 amends *section 120KE*, as part of allowing concessionary use of money interest treatment for most standard method provisional taxpayers. The use of money interest safe harbour is increased from \$50,000 to \$60,000 and companies may take advantage of it. The safe harbour is not available to persons involved in a provisional tax interest avoidance arrangement.

Clause 111 amends *section 120L*, to provide adjustments for use of money interest purposes for shareholders and companies under the proposed provisional tax attribution regime.

Clause 112 amends *section 138E*, to ensure that the Commissioner's proposed discretion to ignore tax types when determining late payment penalties while there are 2 Inland Revenue software platforms is not a disputable decision.

Clause 113 amends *section 139B*, to give the Commissioner a discretion to ignore tax types when determining late payment penalties while there are 2 Inland Revenue software platforms. Also, the amendments ensure that the Commissioner's proposed power to set a new collection date, and to allow a concession from that date while there are 2 Inland Revenue software platforms, is correctly accounted for in the late payment penalties regime.

Clause 114 further amends *section 139B*, to remove incremental late payment penalties for most taxpayers. Also the amendments ensure that the unpaid tax for the late payment penalties regime is the same as the unpaid tax given by the concessionary use of money interest treatment for failed instalments for most standard method provisional taxpayers.

Clause 115 amends *section 139BA*, to ensure that the Commissioner's proposed power to set a new collection date, and to allow a concession from that date while there are 2 Inland Revenue software platforms, is correctly accounted for in the late payment penalties regime.

Clause 116 amends *section 139C*, to ensure that the Commissioner's proposed power to set a new collection date, and to allow a concession from that date while there are 2 Inland Revenue software platforms, is correctly accounted for in the late payment penalties regime.

Clause 117 amends *section 142A*, to provide the Commissioner a power to set a new collection date, and to allow a concession from that date while there are 2 Inland Revenue software platforms.

Clause 118 amends *section 142B*, to ensure that the Commissioner's proposed power to set a new collection date, and to allow a concession from that date while there are 2 Inland Revenue software platforms, is correctly accounted for in the shortfall penalties regime.

Clause 119 amends *section 173L*, to ensure that a transfer of excess tax to another period or tax type of the taxpayer is not in excess of the amount of tax payable or in dispute for the requested period or tax type. Also, the amendments clarify the transfer date of GST refunds and GST overpayments.

Clause 120 amends *section 173M*, to ensure that a transfer of excess tax to a tax period or tax type of another taxpayer is not in excess of the amount of tax payable or in dispute for the requested period or tax type.

Subpart 3—Amendment to other enactment

Clause 121 amends *section 27E(3)(b) of the Student Loan Scheme Act 2011*, to correct a fault of expression.

Schedule 1

New schedule 2 inserted

Schedule 1 contains *new schedule 2 of the Tax Administration Act 1994*, which lists amendments to the version of the CRS standard published by the Organisation for Economic and Cultural Development, for the purposes of determining the requirements for persons and entities under the CRS applied standard and the Act.

Hon Michael Woodhouse

Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill

Government Bill

Contents

		Page
1	Title	7
2	Commencement	7
Part 1		
Exchange of information		
Subpart 1—Amendments to Income Tax Act 2007		
3	Income Tax Act 2007 amended	8
4	Section BH 1 amended (Double tax agreements)	8
5	Section HC 26 amended (Foreign-sourced amounts: resident trustees)	8
6	Section YA 1 amended (Definitions)	8
Subpart 2—Amendments to Tax Administration Act 1994		
7	Tax Administration Act 1994 amended	8
8	Section 3 amended (Interpretation)	9
9	Section 22 amended (Keeping of business and other records)	11
10	Section 59B replaced (Disclosure of foreign trust particulars)	11
	59B Foreign trust with resident trustee: registration and disclosure	11
	59C Time limits for registration and disclosure of changes	12
	59D Annual return for foreign trust	13
	59E Fees: regulations	14
11	Section 81 amended (Officers to maintain secrecy)	14
12	New heading and sections 91AAU to 91AAW inserted	14

**Taxation (Business Tax, Exchange of Information, and
Remedial Matters) Bill**

<i>Determinations relating to foreign account information-sharing agreements</i>			
	91AAU	Participating jurisdictions for CRS applied standard	14
	91AAV	Suspension of reportable jurisdictions for CRS applied standard	15
	91AAW	Non-reporting financial institutions and excluded accounts for CRS applied standard	15
13		New sections 142H and 142I inserted	15
	142H	Failures of financial institutions to meet requirements under Part 11B and CRS applied standard	15
	142I	Failures to meet requirements under Part 11B to provide information or self-certifications	16
14		Section 143 amended (Absolute liability offences)	17
15		Section 143A amended (Knowledge offences)	17
16		Section 185E amended (Purpose)	17
17		New heading inserted after section 185E	18
18		Section 185F amended (Permitted choices in relation to foreign account information-sharing agreements)	18
19		Section 185G amended (Obligations related to foreign account information-sharing agreements: registration)	18
20		Section 185H amended (Obligations related to foreign account information-sharing agreements: due diligence)	18
21		Section 185I amended (Obligations related to foreign account information-sharing agreements: information for NZ competent authority)	18
22		Section 185J amended (Obligations related to foreign account information-sharing agreements: information for third parties)	18
23		Section 185L repealed (Foreign account information-sharing agreements: anti-avoidance)	19
24		New headings and sections 185N to 185R inserted	19
<i>Multilateral convention and CRS standard</i>			
	185N	Requirements for financial institution	19
	185O	Application of Common Reporting Standard	20
<i>Foreign account information-sharing agreements generally</i>			
	185P	Requirements for persons to provide information to financial institution	21
	185Q	Requirements and penalties for entities that are not persons	21
	185R	Foreign account information-sharing agreements: anti-avoidance	22
25		New section 226D inserted (Reportable jurisdictions for CRS standard and Part 11B)	22

**Taxation (Business Tax, Exchange of Information, and
Remedial Matters) Bill**

	226D	Reportable jurisdictions for CRS standard and Part 11B	22
26		New schedule 2 inserted (Application of CRS standard)	23
Part 2			
Business tax: AIM provisional tax method			
Subpart 1—Amendments to Income Tax Act 2007			
27		Income Tax Act 2007 amended	23
28		Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)	23
29		Section RA 14 amended (Payment dates for provisional tax)	23
30		Section RC 1 amended (What this subpart does)	24
31		Section RC 5 amended (Methods for calculating provisional tax liability)	24
32		New section RC 7B inserted (AIM method)	25
	RC 7B	AIM method	25
33		Section RC 9 amended (Provisional tax payable in instalments)	26
34		New section RC 10B inserted (Calculating amount of instalment for periods using AIM method)	27
	RC 10B	Calculating amount of instalment for periods using AIM method	27
35		Section RC 24 amended (Calculating instalments in transitional years: GST ratio method)	27
36		New section RM 6B inserted (Refunds for overpaid AIM method instalments)	27
	RM 6B	Refunds for overpaid AIM method instalments	27
37		Section RP 17 amended (Tax pooling intermediaries)	28
38		Section RP 17B amended (Tax pooling accounts and their use)	28
39		Section RP 19B amended (Transfers for certain expected tax liabilities)	28
40		Section YA 1 amended (Definitions)	28
41		Schedule 3 amended (Payment of provisional tax and terminal tax)	29
Subpart 2—Amendments to Tax Administration Act 1994			
42		Tax Administration Act 1994 amended	31
43		Section 3 amended (Interpretation)	31
44		New heading and sections 15U to 15X inserted	31
<i>Approved AIM providers</i>			
	15U	Approval of approved AIM providers	31
	15V	Revocation of approval of AIM providers: Commissioner	32
	15W	Revocation of approval of AIM providers: provider	32
	15X	Publication of approval, revocation, etc	32
45		New sections 45, 45B, 45C, and 45D inserted	33
	45	AIM method information: taxpayers	33
	45B	AIM method information: approved AIM providers	33

**Taxation (Business Tax, Exchange of Information, and
Remedial Matters) Bill**

	45C	AIM method: approval of large business AIM-capable system	33
	45D	AIM method: approval of person over \$5,000,000	33
46		New heading and sections 91AAX and 91AAY inserted	33
	<i>Determinations relating to AIM method</i>		
	91AAX	Accounting determinations relating to AIM method	34
	91AAY	Class of taxpayers that must not use AIM method	34
47		Section 119 amended (Commissioner may determine amount of provisional tax)	34
48		New section 120KBC inserted (Interest for AIM method provisional taxpayers)	35
		120KBC Interest for AIM method provisional taxpayers	35
49		Section 120KC amended (Residual income tax of new provisional taxpayer)	35
50		Section 120KE amended (Provisional tax and rules on use of money interest)	36
51		New section 120LB inserted (Meaning of unpaid tax and overpaid tax for tax credit transferees under AIM method)	36
	120LB	Meaning of unpaid tax and overpaid tax for tax credit transferees under AIM method	36
52		New section 120VB inserted (Interest on overpaid AIM method provisional tax)	36
	120VB	Interest on overpaid AIM method provisional tax	37
53		Section 141 amended (Tax shortfalls)	37
54		Section 141B amended (Unacceptable tax position)	37

Part 3

Business tax and remedial matters

Subpart 1—Amendments to Income Tax Act 2007

55		Income Tax Act 2007 amended	37
56		Section CD 32 amended (Employee benefits)	37
57		Section CE 2 amended (Value and timing of benefits under share purchase agreements)	38
58		Section CX 6 amended (Private use of motor vehicle)	38
59		Section CX 17 amended (Benefits provided to employees who are shareholders or investors)	38
60		Section DB 7 amended (Interest: most companies need no nexus with income)	39
61		Section DB 8 amended (Interest: money borrowed to acquire shares in group companies)	39
62		New section DB 18AA inserted (Square metre rate method)	40
	DB 18AA	Square metre rate method	40
63		Section DE 1 amended (What this subpart does)	41

Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill

64	Section DE 2 amended (Deductions for business use)	41
65	New section DE 2B inserted (Election to use kilometre rate method or costs method)	42
	DE 2B Election to use kilometre rate method or costs method	42
66	Section DE 3 amended (Methods for calculating proportion of business use)	42
67	Section DE 4 amended (Default method for calculating proportion of business use)	42
68	Heading and section DE 12 replaced	43
	<i>Kilometre rates</i>	
	DE 12 Kilometre rate method	43
69	Section DF 4 amended (Payments for social rehabilitation)	43
70	Section EA 4 amended (Deferred payment of employment income)	44
71	Section EE 49 amended (Amount of depreciation recovery income when item partly used for business)	44
72	Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)	44
73	Section LB 2 replaced (Tax credits for provisional tax payments)	44
	LB 2 Tax credits for provisional tax payments	45
74	Section LB 7 amended (Tax credits related to personal service rehabilitation payments: providers)	45
75	Section LB 8 amended (Tax credits related to personal service rehabilitation payments: payers)	45
76	Section MD 9 amended (Fifth requirement: full-time earner)	45
77	New section OB 33B inserted (ICA transfer of provisional tax credit)	46
	OB 33B ICA transfer of provisional tax credit	46
78	Table O2 amended (Imputation debits)	46
79	Section RC 3 amended (Who is required to pay provisional tax?)	46
80	Section RC 5 amended (Methods for calculating provisional tax liability)	47
81	Table R1 amended (Summary of instalment dates and calculation methods for provisional tax)	47
82	Section RC 10 amended (Calculating amount of instalment under standard and estimation methods)	47
83	Section RD 3 amended (PAYE income payments)	49
84	Section RD 6 amended (Certain benefits and payments)	49
85	Section RD 7B amended (Treatment of certain benefits under employee share agreements)	49
86	Section RD 8 amended (Schedular payments)	50
87	Section RD 10 amended (Amounts of tax for PAYE income payments)	50
88	New section RD 10B inserted (Amounts of tax for schedular payments)	50

**Taxation (Business Tax, Exchange of Information, and
Remedial Matters) Bill**

	RD 10B Amounts of tax for schedular payments	50
89	Section RD 18 repealed (Schedular payments without notification)	51
90	Section RD 60 amended (Close company option)	51
91	Section RD 61 amended (Small business option)	51
92	Section YA 1 amended (Definitions)	51
93	Schedule 4 amended (Rates of tax for schedular payments)	52
	Subpart 2—Amendments to Tax Administration Act 1994	
94	Tax Administration Act 1994 amended	53
95	Section 3 amended (Interpretation)	53
96	New heading and new section 15Y inserted	54
	<i>Provisional tax attribution</i>	
	15Y Provisional tax attributor	54
97	Section 24G amended (Use of incorrect tax codes)	54
98	Section 24L amended (Schedular notification)	55
99	New sections 24LB and 24LC inserted	55
	24LB Schedular tax rate elected by payee	55
	24LC Schedular tax rate prescribed by Commissioner	56
100	Section 24M amended (Exemption certificates for schedular payments)	56
101	Section 32H amended (Providing RWT exemption certificate when person meets requirements)	56
102	New section 45E inserted (Provisional tax attribution reconciliation statement)	57
	45E Provisional tax attribution reconciliation statement	57
103	Section 81 amended (Officers to maintain secrecy)	57
104	New sections 85M and 85N inserted	57
	85M Disclosure of information relating to some offences to the Registrar of Companies	57
	85N Disclosure of information to approved credit reporting agencies	58
105	Section 113A amended (Correction of minor errors in subsequent returns)	61
106	Section 120C amended (Definitions)	61
107	Section 120C amended (Definitions)	61
108	Section 120KB amended (Provisional tax instalments and due dates generally)	61
109	New section 120KBB inserted (Interest for most standard method provisional taxpayers)	61
	120KBB Interest for most standard method provisional taxpayers	61
110	Section 120KE amended (Provisional tax and rules on use of money interest)	63
111	Section 120L amended (Meaning of unpaid tax and overpaid tax for provisional tax purposes)	63

112	Section 138E amended (Certain rights of challenge not conferred)	65
113	Section 139B amended (Late payment penalty)	65
114	Section 139B amended (Late payment penalty)	65
115	Section 139BA amended (Imposition of late payment penalties when financial relief sought)	66
116	Section 139C amended (Late payment penalty and provisional tax)	66
117	Section 142A amended (New due date for payment of tax that is not a penalty)	66
118	Section 142B amended (Due date for shortfall penalties)	68
119	Section 173L amended (Transfer of excess tax within taxpayer's accounts)	68
120	Section 173M amended (Transfer of excess tax to another taxpayer)	68
	Subpart 3—Amendment to other enactment	
121	Section 27E of Student Loan Scheme Act 2011 amended (Commissioner may remove entity's listing as charity)	69
	Schedule 1	70
	New schedule 2 inserted	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act **2016**.

2 Commencement

5

(1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.

(2) **Section 4** is treated as coming into force on 21 October 2013.

(3) **Section 121** is treated as coming into force on 14 May 2016.

(4) **Sections 6, 8(1) to (7), 9(1), (2), and (3), 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 26** come into force on 1 July 2017. 10

(5) **Sections 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 74, 75, 76, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92(2), (3), (4), (5), (6), and (7), 93, 95, 97, 98, 99, 100, 101, 103, 104, 105, 107, 108, 109, 110, 114, and 116** come into force on 1 April 2017. 15

(6) **Part 2 and sections 72, 73, 77, 78, 79, 82, 92(8), (9), and (10), 96, 102, and 111** come into force on 1 April 2018.

Part 1

Exchange of information

Subpart 1—Amendments to Income Tax Act 2007

- 3 Income Tax Act 2007 amended**
This subpart amends the Income Tax Act 2007. 5
- 4 Section BH 1 amended (Double tax agreements)**
In section BH 1(1)(b)(i), replace “the government of any territory” with “1 or more governments of territories”.
- 5 Section HC 26 amended (Foreign-sourced amounts: resident trustees)**
- (1) In section HC 26(1)(b)(ii), replace “year.” with “year); and”. 10
- (2) After section HC 26(1)(b), insert:
- (c) for a foreign trust, the trust is registered before the income is derived and the trustee complies with the trustee’s requirements under sections 22, **59B, and 59C** of the Tax Administration Act 1994 for the income year.
- (3) Repeal section HC 26(2), (3), and (4). 15
- 6 Section YA 1 amended (Definitions)**
In section YA 1, replace the definition of **foreign account information-sharing agreement** with:
- foreign account information-sharing agreement** means a double tax agreement that facilitates the automatic exchange by the parties of information relating to financial accounts, including— 20
- (a) the *Agreement between the Government of New Zealand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA* brought into force for New Zealand by the Double Tax Agreements (United States of America—FATCA) Order 2014 (LI 2014/209), as amended from time to time: 25
- (b) the multilateral *Convention on Mutual Administrative Assistance in Tax Matters, as amended by 2010 Protocol* which was brought into force for New Zealand by the Double Tax Agreements (Mutual Administrative Assistance) Order 2013 (SR 2013/437), as amended from time to time 30

Subpart 2—Amendments to Tax Administration Act 1994

- 7 Tax Administration Act 1994 amended**
This subpart amends the Tax Administration Act 1994.

8 Section 3 amended (Interpretation)

(1) This section amends section 3(1).

(2) Insert, in appropriate alphabetical order:

CRS applied standard means the CRS standard as modified by **section 1850** for the determination of requirements under this Act

5

CRS publication means the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, published by the Organisation for Economic and Cultural Development

CRS standard means the *Common Standard on Reporting and Due Diligence for Financial Account Information*, as amended from time to time, which is a standard—

10

(a) developed by the Organisation for Economic and Cultural Development and the Group of Twenty countries, to govern the application of the MCMAA convention and the MCA agreement to accounts that are financial accounts as defined; and

15

(b) agreed by the Council for the Organisation for Economic and Cultural Development on 15 July 2014; and

(c) contained in Part IIB of the CRS publication

(3) Insert, in appropriate alphabetical order:

FATCA agreement means the *Agreement between the Government of New Zealand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA*, which was brought into force for New Zealand by the Double Tax Agreements (United States of America—FATCA) Order 2014 (LI 2014/209), as amended from time to time

20

(4) Insert, in appropriate alphabetical order:

25

maintain, for a financial institution to which the CRS applied standard or the FATCA agreement applies in relation to a financial account, includes,—

(a) if the financial account is a custodial account, holding custody over the assets in the financial account, including by holding assets in street name for an account holder in the financial institution:

30

(b) if the financial account is a depository account, having an obligation to make payments with respect to the financial account, other than as agent for another financial institution:

(c) if the financial account is an equity or debt interest, being the financial institution in which the interest is held:

35

(d) if the account is a cash value insurance contract or an annuity contract, having an obligation to make payments with respect to the contract

(5) Insert, in appropriate alphabetical order:

- MCA agreement** means the *Multilateral Competent Authority Agreement*, which was signed under Article 6 of the MCMAA convention for the New Zealand competent authority on 3 June 2015 and provides a mechanism for a competent authority of a territory to exchange routinely with other competent authorities the information collected under the MCMAA convention, as amended from time to time 5
- (6) Insert, in appropriate alphabetical order:
- MCMAA convention** means the multilateral *Convention on Mutual Administrative Assistance in Tax Matters, as amended by 2010 Protocol*, which was brought into force for New Zealand by the Double Tax Agreements (Mutual Administrative Assistance) Order 2013 (SR 2013/437), as amended from time to time 10
- (7) Insert, in appropriate alphabetical order:
- passive income**, in the application of the FATCA agreement or the CRS applied standard to a person or entity for a period, means an amount that is not income from a transaction entered into in the ordinary course of the business of a dealer in financial assets and that is— 15
- (a) a dividend:
 - (b) interest:
 - (c) income equivalent to interest: 20
 - (d) rent or a royalty, other than rent or a royalty derived in the active conduct of a business conducted, partly or wholly, by employees of the person or entity:
 - (e) an annuity:
 - (f) for financial assets that give rise to amounts included under **paragraphs (a) to (e)**, the amount by which gains from the sales or exchanges of the financial assets in the period exceed losses from the sales or exchanges: 25
 - (g) the amount by which gains from the transactions in financial assets in the period exceed losses from the transactions: 30
 - (h) the amount by which gains from the foreign currency transactions in the period exceed losses from the transactions:
 - (i) the amount by which gains from the swaps in the period exceed losses from the swaps:
 - (j) an amount received under a cash value insurance contract 35
- (8) Repeal the definition of **qualifying resident foreign trustee**.
- (9) Insert, in appropriate alphabetical order:
- taxpayer identification number**, for a person who is (without taking into account any double tax agreement that would otherwise apply) treated as tax resi-

dent in a jurisdiction other than New Zealand, means the equivalent of the person's tax file number in that jurisdiction

9 Section 22 amended (Keeping of business and other records)

- (1) In section 22(2), paragraph (fc), replace “Act,—” with “Act:”.
- (2) After section 22(2)(fc), insert: 5
 - (fd) must meet requirements under Part 11B, including requirements expressed as being imposed on an entity other than a person, of—
 - (i) a financial institution, as defined in the FATCA agreement:
 - (ii) a financial institution, as defined in the CRS applied standard,—
- (3) After section 22(2)(lc), insert: 10
 - (ld) a failure by the person to obtain a self-certification as required by the CRS applied standard; and
- (4) Repeal section 22(7)(d)(i) and (ii).

10 Section 59B replaced (Disclosure of foreign trust particulars)

Replace section 59B with: 15

59B Foreign trust with resident trustee: registration and disclosure

- (1) The Commissioner may register a foreign trust if the foreign trust has a resident trustee and a trust deed and a trustee pays the prescribed fee.
- (2) Resident trustees of a foreign trust having a trust deed must apply to the Commissioner for registration of the foreign trust and pay the prescribed fee. 20
- (3) A trustee applying for registration of a foreign trust (the **applicant trustee**) must provide, with the application and fee, all that is relevant to the trust of—
 - (a) the name and other identifying particulars of the trust:
 - (b) the date and detail of each settlement on the trust:
 - (c) the name, email address, residential address, country of tax residence, and taxpayer identification number of: 25
 - (i) each settlor:
 - (ii) each person with a power under the trust deed to control the dismissal or appointment of a trustee, to amend the trust deed, or to add or remove a beneficiary: 30
 - (iii) each person with a power under the trust deed to control a trustee in the administration of the trust:
 - (iv) each trustee:
 - (v) for a fixed trust, each beneficiary and nominee for an underlying beneficiary: 35

- (d) for a discretionary trust, details of each class of beneficiary sufficient for the Commissioner to determine, when a distribution is made under the trust or when rights apparently vested under the trust are exercised, whether a person is a member of the class:
- (e) a copy of the trust deed. 5
- (4) The applicant trustee must provide with the application a signed declaration that each person referred to in **subsection (3)(c)(i) to (iv)** has been informed of, and has agreed to provide the information necessary for compliance with, the requirements relating to the provision of information imposed by all of—
- (a) the Tax Administration Act 1994: 10
- (b) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009:
- (c) the regulations made under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
- (5) A resident trustee must provide to the Commissioner the details of an alteration to a particular to which **subsection (3)** refers. 15
- 59C Time limits for registration and disclosure of changes**
- (1) A resident trustee of a foreign trust who becomes required to register the foreign trust under **section 59B**—
- (a) on the date of enactment of this section, is required to apply for the registration by 30 June 2017, except if **subsection (3)** applies: 20
- (b) after the date of enactment of this section, is required to apply for the registration within 30 days after the day on which the liability commences, except if **subsection (3)** applies.
- (2) A resident trustee who is required by **section 59B(5)** to provide information to the Commissioner, must provide the information within 30 days after becoming aware of the alteration, except if **subsection (3)** applies. 25
- (3) A period for the meeting of a requirement that would otherwise be given by **subsection (1) or (2)** for a trustee is given by **subsection (4)** for the trustee if— 30
- (a) the trustee is a natural person who was appointed a trustee of the foreign trust before becoming a New Zealand resident; and
- (b) the trustee becomes a New Zealand resident on or after 1 October 2006; and
- (c) the trustee is not in the business of providing trustee services; and 35
- (d) the trustee has not been resident in New Zealand on any day in the period of 5 years that ends immediately before the trustee becomes a New Zealand resident; and

- (e) the end of the period of 2 years and 30 days beginning with the date on which the trustee becomes a New Zealand resident (the **grace period**) occurs after the period that would otherwise be given by **subsection (1) or (2)**.
- (4) If **subsection (3)** applies for a requirement imposed on a trustee, the trustee must meet the requirement within the grace period. 5
- 59D Annual return for foreign trust**
- (1) A resident trustee of a foreign trust must provide to the Commissioner a return for the foreign trust, and the prescribed fee, for each year that—
- (a) includes a period during which the foreign trust is registered or **section 59B** requires a resident trustee to register the foreign trust; and 10
- (b) ends with—
- (i) a date (the **balance date**) for which the foreign trust prepares financial statements; or
- (ii) a 31 March if the foreign trust does not prepare financial statements; and 15
- (c) begins after 31 March 2017, if a resident trustee is liable to register the foreign trust on the date of enactment of this section; and
- (d) if the resident trustee has a grace period referred to in **section 59C(3)**, ends after the grace period. 20
- (2) A return must be in the prescribed form and include—
- (a) each change during the year to information that is required to be provided when the trust is registered:
- (b) the financial statements for the trust and the year:
- (c) the date and nature of each settlement made on the trust in the year: 25
- (d) the name, email address, residential address, country of tax residence, and taxpayer identification number of each settlor making the settlement:
- (e) the date and amount of each distribution made by the trustee of the trust in the year: 30
- (f) the name, email address, residential address, country of tax residence, and taxpayer identification number of each beneficiary to which the distribution is made.
- (3) A return and the prescribed fee for a foreign trust and a year must be provided by a resident trustee to the Commissioner by— 35
- (a) the date that is 3 months after the balance date for the trust and the year, if the trust has a balance date; or
- (b) the 30 June following the end of the year, if the trust does not have a balance date.

59E Fees: regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations prescribing both—
- (a) the fee for an application for the registration of a foreign trust: 5
 - (b) the fee for an annual return for a foreign trust.
- (2) A regulation made under **subsection (1)** may set out the period for which a fee prescribed by the regulations is to apply.
- (3) Until the commencement of the first regulation made under **subsection (1)**,—
- (a) the prescribed fee for an application for the registration of a foreign trust is \$270: 10
 - (b) the prescribed fee for an annual return for a foreign trust and a year is \$50.
- (4) **Subsection (3)** and this subsection are repealed when that first regulation commences.

11 Section 81 amended (Officers to maintain secrecy) 15

After section 81(4)(y), insert:

- (z) communicating to a person who is a member of the New Zealand Police or an officer, employee, or agent of the Department of Internal Affairs any information relating to a registration, or absence of registration, for a foreign trust that the person is authorised by the Commissioner of Police or the chief executive of the Department of Internal Affairs to receive. 20

12 New heading and sections 91AAU to 91AAW inserted

After section 91AAT, insert:

Determinations relating to foreign account information-sharing agreements

91AAU Participating jurisdictions for CRS applied standard 25

- (1) The Commissioner may determine that a territory outside New Zealand is a participating jurisdiction for the purposes of the CRS applied standard and Part 11B.
- (2) The determination may set out the period for which it is to apply, which must begin after 31 March 2017. 30
- (3) The determination may provide for the change, extension, limitation, suspension, or cancellation of an earlier determination.
- (4) Within 30 days of issuing, changing, extending, limiting, suspending, or cancelling a determination under this section, the Commissioner must publish in a publication chosen by the Commissioner— 35
- (a) the determination:

- (b) details of a changed, extended, limited, suspended, or cancelled determination.

91AAV Suspension of reportable jurisdictions for CRS applied standard

- (1) The Commissioner may make a determination, relating to a territory outside New Zealand that has been provided by an Order in Council to be a reportable jurisdiction for the purposes of the CRS applied standard and requirements imposed by Part 11B, that the territory is not to be treated as a reportable jurisdiction. 5
- (2) The determination must set out the period for which it is to apply, which must begin after 31 March 2017 and end no more than 3 months after the date of the determination. 10
- (3) Within 30 days of issuing a determination under this section, the Commissioner must publish the determination in a publication chosen by the Commissioner.

91AAW Non-reporting financial institutions and excluded accounts for CRS applied standard

- (1) The Commissioner may determine that, for the purposes of the CRS applied standard and requirements under Part 11B,— 15
 - (a) a financial institution, or type of financial institution, is a non-reporting financial institution:
 - (b) a financial account, or type of financial account, is an excluded account. 20
- (2) The determination may set out the period for which it is to apply, which must begin after 31 March 2017.
- (3) The determination may provide for the change, extension, limitation, suspension, or cancellation of an earlier determination.
- (4) Within 30 days of issuing, changing, extending, limiting, suspending, or cancelling a determination under this section, the Commissioner must publish in a publication chosen by the Commissioner— 25
 - (a) the determination:
 - (b) details of a changed, extended, limited, suspended, or cancelled determination. 30

13 New sections 142H and 142I inserted

After section 142G, insert:

142H Failures of financial institutions to meet requirements under Part 11B and CRS applied standard

- (1) If a financial institution fails to meet a requirement under Part 11B and the CRS applied standard for financial accounts maintained by the financial institution, other than a requirement referred to in **subsection (3)**, the financial in- 35

stitution is liable to pay a penalty of \$300 for each failure to which subsection (2) does not apply.	
(2) A financial institution is not liable to pay a penalty under subsection (1) for a failure that occurs before 1 April 2019 if the Commissioner is satisfied that the financial institution makes reasonable efforts to meet the requirement and reasonable efforts to correct the failure within a reasonable period after the financial institution becomes aware of the failure.	5
(3) If a financial institution fails to meet a requirement under Part 11B and the CRS applied standard to obtain self-certifications when opening a financial account, the financial institution is liable to pay a penalty of \$300 for each account if subsection (4) does not apply to the failure.	10
(4) A financial institution is not liable to pay a penalty under subsection (3) for a failure that occurs before 1 April 2019 for an account if the Commissioner is satisfied that the financial institution makes reasonable efforts to meet the requirement and makes reasonable efforts to correct the failure for the account within a reasonable period after the financial institution becomes aware of the failure.	15
(5) If a financial institution fails to take reasonable care to meet a requirement of a financial institution under Part 11B and the CRS applied standard for financial accounts, the financial institution is liable to pay a penalty of—	20
(a) \$20,000 for the first failure:	
(b) \$40,000 for each further failure.	
142I Failures to meet requirements under Part 11B to provide information or self-certifications	
(1) This section applies to a person or entity (the information provider) required under Part 11B to provide information, or a self-certification, relating to a person or entity for a financial account.	25
(2) The information provider is liable to pay a penalty of \$1,000 if the information provider—	
(a) provides false information relating to the information provider:	30
(b) signs or otherwise affirms a false self-certification for the information provider:	
(c) provides false information relating to another person or entity:	
(d) provides a false self-certification for another person or entity:	
(e) fails to provide information relating to the information provider within a reasonable time after receiving a request for which the information is required to be provided:	35
(f) fails to sign, or otherwise affirm, and provide a self-certification relating to the information provider within a reasonable time after receiving a request for which the self-certification is required to be provided:	40

<p>(g) fails to provide information relating to another person or entity within a reasonable time after receiving a request for which the information is required to be provided:</p> <p>(h) fails to provide a self-certification relating to another person or entity within a reasonable time after receiving a request obliging the self-certification to be provided:</p> <p>(i) after providing a person or entity with a self-certification or information, fails to inform the person or entity of a material change in the circumstances relating to the self-certification or information within a reasonable time after the information provider becomes aware of the change.</p> <p>(3) An information provider is not liable to pay a penalty under subsection (2) for a failure to provide information, or a self-certification, within the control of the information provider, if the Commissioner is satisfied that the failure occurred through no fault of the information provider.</p> <p>(4) An information provider is not liable to pay a penalty under subsection (2) for a failure to provide information, or a self-certification, relating to another person or entity and not within the control of the information provider, if the Commissioner is satisfied that the information provider makes reasonable efforts to meet the requirement.</p>	<p>5</p> <p>10</p> <p>15</p>
<p>14 Section 143 amended (Absolute liability offences)</p> <p>After section 143(2B), insert:</p> <p>(2C) No person may be convicted of an offence against subsection (1) if the requirement with which the person fails to comply is a requirement under the CRS applied standard and Part 11B.</p>	<p>20</p>
<p>15 Section 143A amended (Knowledge offences)</p> <p>(1) After section 143A(1)(ab), insert:</p> <p style="padding-left: 20px;">(ac) knowingly fails to provide a self-certification to another person when required to do so under Part 11B; or</p> <p>(2) In section 143A(2), words before paragraph (a),—</p> <p style="padding-left: 20px;">(a) after “offence against”, insert “subsection (1)(ac) for knowingly failing to provide a self-certification to another person or against”:</p> <p style="padding-left: 20px;">(b) delete “by the Commissioner”.</p>	<p>25</p> <p>30</p>
<p>16 Section 185E amended (Purpose)</p> <p>In section 185E, insert as subsections (2) to (4):</p> <p>(2) Sections 185F to 185M impose requirements on a person relating to information that is the subject of the FATCA agreement.</p> <p>(3) Sections 185N and 185O impose requirements on a person relating to information that is the subject of the CRS applied standard.</p>	<p>35</p>

- (4) **Sections 185P to 185R** impose requirements on a person relating to either of the FATCA agreement and the CRS applied standard.
- 17 New heading inserted after section 185E**
After section 185E, insert as a heading “*FATCA agreement*”.
- 18 Section 185F amended (Permitted choices in relation to foreign account information-sharing agreements)** 5
- (1) In section 185F, heading, replace “**foreign account information-sharing agreements**” with “**FATCA agreement**”.
- (2) In section 185F(1), replace “a foreign account information-sharing agreement” with “the FATCA agreement”. 10
- 19 Section 185G amended (Obligations related to foreign account information-sharing agreements: registration)**
- (1) In section 185G, heading, replace “**foreign account information-sharing agreements**” with “**FATCA agreement**”.
- (2) In section 185G, replace “a foreign account information-sharing agreement” with “the FATCA agreement”. 15
- 20 Section 185H amended (Obligations related to foreign account information-sharing agreements: due diligence)**
- (1) In section 185H, heading, replace “**foreign account information-sharing agreements**” with “**FATCA agreement**”. 20
- (2) In section 185H, replace “a foreign account information-sharing agreement” with “the FATCA agreement”.
- 21 Section 185I amended (Obligations related to foreign account information-sharing agreements: information for NZ competent authority)**
- (1) In section 185I, heading, replace “**foreign account information-sharing agreements**” with “**FATCA agreement**”. 25
- (2) In section 185I(1), replace “a foreign account information-sharing agreement” with “the FATCA agreement”.
- 22 Section 185J amended (Obligations related to foreign account information-sharing agreements: information for third parties)** 30
- (1) In section 185J, heading, replace “**foreign account information-sharing agreements**” with “**FATCA agreement**”.
- (2) In section 185J(1), replace “a foreign account information-sharing agreement” with “the FATCA agreement”.

23 Section 185L repealed (Foreign account information-sharing agreements: anti-avoidance)

Repeal section 185L.

24 New headings and sections 185N to 185R inserted

- (1) After section 185M, insert: 5

Multilateral convention and CRS standard

185N Requirements for financial institution

- (1) A financial institution must comply with this section for a period in which the financial institution is— 10
- (a) resident in New Zealand under the CRS applied standard;
 - (b) a branch located in New Zealand under the CRS applied standard.
- (2) For the purposes of **subsection (1)**, the requirements for a financial institution that is resident in New Zealand do not include requirements for a branch of the financial institution that is not located in New Zealand.
- (3) The financial institution must, for each reporting period,— 15
- (a) perform the due diligence procedures required by the CRS applied standard for each financial account that is maintained by the financial institution in the reporting period; and
 - (b) obtain the documents and information, for each financial account, that the CRS applied standard requires the financial institution to obtain; and 20
 - (c) obtain, as part of the due diligence procedures for each new financial account, for each account holder or controlling person identified by the financial institution as being a resident of a foreign jurisdiction,— 25
 - (i) the date of birth for an individual; and
 - (ii) the taxpayer identification number (**TIN**), if the foreign jurisdiction issues a TIN and has domestic law requiring that the TIN be collected; and
 - (d) give to the Commissioner a report of the information that this Part requires the financial institution to provide to the competent authority.
- (4) The report by the financial institution for a reporting period must be given to the Commissioner by the 30 June following the 31 March that is the end of the reporting period, except as given by **subsection (5)**. 30
- (5) The first report by the financial institution for information with respect to a financial account that is maintained by a financial institution in a reportable period must be given to the Commissioner by— 35
- (a) 30 June 2018, if the financial account is identified before that date as a reportable account that is a pre-existing individual account and a high value account:

- (b) 30 June 2019, if the financial account is identified before that date as a reportable account that is a pre-existing entity account or that is a pre-existing individual account and a lower value account.
- (6) In determining the aggregate balance or value of financial accounts, the financial institution must apply the rules in Section VII, subparagraph C(1) to (3) of the CRS applied standard. 5
- (7) The financial institution may choose that the reporting requirements given by the CRS applied standard for financial accounts held or controlled by a resident of a reportable jurisdiction apply to all financial accounts maintained by the financial institution and held or controlled by a resident of a foreign jurisdiction. 10
- (8) A financial institution that makes the election referred to in **subsection (7)** must make reports that are consistent with the chosen reporting requirements.
- (9) A financial institution that chooses to review all pre-existing entity accounts must complete the review by the date given in Section V, subparagraph D(1) of the CRS applied standard for completion of the review of pre-existing entity accounts with the specified aggregate account balance or value. 15
- (10) A financial institution that chooses to treat a discretionary beneficiary of a trust as not being a controlling person for the trust until the beneficiary receives a distribution must have reasonable safeguards and procedures for identifying when a distribution is made to the beneficiary. 20
- (11) The financial institution is not permitted to choose for a report—
 - (a) to use a reporting period other than a period ending with a 31 March:
 - (b) to give the average balance of a financial account for a reporting period as being the balance for the financial account for the reporting period.
- (12) The report must be in the prescribed electronic format. 25

1850 Application of Common Reporting Standard

- (1) This section provides for the application of the CRS standard in determining the requirements for a person or entity under the Inland Revenue Acts.
- (2) The CRS standard is modified for the purposes of determining the requirements for a person or entity under the Inland Revenue Acts in the ways specified in **schedule 2**. 30
- (3) The CRS standard is treated as applying at a time—
 - (a) as modified by **subsection (2)**; and
 - (b) consistently with the Commentary on the CRS standard contained in Part IIIB of the CRS publication, as amended at the time. 35
- (4) In the application of the CRS standard at a time, a term defined in the CRS standard or the MCMAA convention and used in the Inland Revenue Acts has the meaning that it has at the time under the CRS standard or the MCMAA convention, as modified by **subsection (2)**.

- (5) A person or entity may make an election that is expressed as being available to a person or entity, if the election is not contrary to this Act and not otherwise contrary to the law of New Zealand.

Foreign account information-sharing agreements generally

185P Requirements for persons to provide information to financial institution 5

- (1) This section applies to a person or entity associated with a financial account if the financial institution that maintains the financial account is required under the FATCA agreement or CRS applied standard (the **account requirements**) to perform due diligence for the financial account.
- (2) When a financial institution requests a person or entity (the **institution contact**) to provide information or a self-certification that the financial institution is required to obtain under the account requirements for the financial account, the institution contact must—
- (a) provide to the financial institution the required information or self-certification for the institution contact; and 15
- (b) make reasonable efforts to obtain the required information or self-certification for each other person or entity associated with the financial account, and provide the information and self-certifications to the financial institution.
- (3) When a person or entity associated with the financial account (the **secondary contact**) is asked by an institution contact or other person or entity (the **requesting person**) to provide information or self-certifications related to the financial account and referred to in **subsection (2)(b)**, the secondary contact must—
- (a) provide the requesting person with the required information or self-certification for the secondary contact; and 25
- (b) make reasonable efforts to obtain the required information or self-certification for each other person or entity associated with the financial account and the secondary contact, and provide the information and self-certifications to the requesting person. 30
- (4) If a person or entity provides information or a self-certification to another person or entity as required by this section, the person or entity must inform the other person or entity of any material change in circumstances affecting that information or self-certification within a reasonable time of becoming aware of the material change. 35

185Q Requirements and penalties for entities that are not persons

- (1) If the FATCA agreement or CRS applied standard, or a related provision in this Act, is expressed as imposing a requirement or penalty on an entity that is not a person, the meeting of the requirement or the payment of the penalty for the entity is treated as being a joint and several requirement,— 40

<ul style="list-style-type: none"> (a) if the entity is a trust, for each trustee: (b) if the entity is a partnership, for each partner: (c) if the entity is a joint venture, for each member of the joint venture: (d) if the entity is a legal relationship between persons or entities that is not referred to in paragraphs (a) to (c), for each person or entity in the relationship. 	5
<ul style="list-style-type: none"> (2) If the FATCA agreement or CRS applied standard, or a related provision in this Act is expressed as requiring information to be provided to an entity that is not a person, the requirement is treated as being to provide the information to the persons given for the entity by subsection (1)(a) to (d). 	10
185R Foreign account information-sharing agreements: anti-avoidance	
<ul style="list-style-type: none"> (1) If a main purpose of a person in entering an arrangement is to avoid a requirement under this Part, the arrangement is treated as having no effect in relation to the person's requirements under this Part. (2) The person has the requirements under this Part that the Commissioner considers to be appropriate in the absence of the arrangement. 	15
<ul style="list-style-type: none"> (2) Subsection (1) applies for arrangements affecting the requirements of a person under this Part for a reporting period ending after 31 March 2017. 	
25 New section 226D inserted (Reportable jurisdictions for CRS standard and Part 11B)	
After section 226C, insert:	
226D Reportable jurisdictions for CRS standard and Part 11B	
<ul style="list-style-type: none"> (1) The Governor-General may from time to time, by Order in Council, make regulations providing that a territory outside New Zealand is a reportable jurisdiction for the purposes of the CRS applied standard. (2) A regulation may set out the period for which it is to apply, which must begin after 31 March 2017. (3) A regulation may provide for the change, extension, limitation, suspension, or cancellation of an earlier regulation. (4) Within 30 days of the making of a regulation under this section, the Commissioner must publish in a publication chosen by the Commissioner— <ul style="list-style-type: none"> (a) the new or changed regulation: (b) details of the extension, limitation, suspension, or cancellation of the regulation. (5) The effect of a regulation providing that a territory outside New Zealand is a reportable jurisdiction may be suspended by a determination made by the Commissioner under section 91AAV. 	20 25 30 35

26 New schedule 2 inserted (Application of CRS standard)

After the schedule in the Tax Administration Act 1994, insert the schedule 2 set out in **schedule 1** of this Act.

Part 2

Business tax: AIM provisional tax method

5

Subpart 1—Amendments to Income Tax Act 2007

27 Income Tax Act 2007 amended

This subpart amends the Income Tax Act 2007.

28 Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)

10

(1) After section LA 6(2)(d), insert:

(db) sixth, if the person is a company and uses the AIM method for provisional tax, transfer a tax credit to a shareholder of the company of the amount described in **subsection (2C)**. The amount transferred does not give rise to a tax credit, but is treated as a transferred amount for the shareholder for the purposes of Part 7 of the Tax Administration Act 1994, for the tax year that the tax credit relates to, as provided by **section 120LB** of that Act. The amount is also treated as a refund of income tax paid to the company for the purposes of section OB 32 (ICA refund of income tax):

15

20

(2) In section LA 6(2)(e), replace “fifth” with “seventh”.

(3) Before section LA 6(3), insert:

AIM method amount

(2C) The amount must not be more than the least of the following:

- (a) the amount chosen by the company; and
- (b) the amount of the shareholder’s tax credit under **section LB 2** for the tax year less the shareholder’s residual income tax for the tax year, treating a negative amount as zero; and
- (c) the amount of the company’s tax credit under **section LB 2** for the tax year less its residual income tax for the tax year, treating a negative amount as zero.

25

30

(4) In section LA 6, in the list of defined terms insert “company”, “income tax”, “residual income tax”, and “shareholder”.

29 Section RA 14 amended (Payment dates for provisional tax)

(1) In section RA 14, replace “F” with “F1”.

35

(2) This section applies for the 2018–19 and later income years.

30 Section RC 1 amended (What this subpart does)

- (1) In section RC 1(2) replace “the letters A to F” with “the alphanumeric designations A to F1”.
- (2) This section applies for the 2018–19 and later income years.

31 Section RC 5 amended (Methods for calculating provisional tax liability) 5

- (1) After section RC 5(5), insert:

AIM method

- (5B) A person must use the AIM method under **section RC 7B** to determine their provisional tax liability for the tax year (the **current tax year**) if the person—
 - (a) has chosen to use the AIM method for the current tax year before the first instalment date for them under the AIM method; and 10
 - (b) has an AIM-capable accounting system that is up-to-date for tax law for the corresponding income year and for determinations under **section 91AAX** of the Tax Administration Act 1994 for the corresponding income year; and 15
 - (c) has—
 - (i) annual gross income of \$5,000,000 or less for the tax year before the current tax year;
 - (ii) annual gross income of \$5,000,000 or less for the first tax year for which the person used the AIM method, and the Commissioner has approved under **section 45D** of the Tax Administration Act 1994 the person’s continued use of an AIM-capable accounting system for tax years in which the person has annual gross income of more than \$5,000,000; 20
 - (iii) a large business AIM-capable system; and 25
 - (d) has not been liable, in 1 of the last 4 tax years before the current tax year, for a shortfall penalty in relation to their use of the AIM method and an approved AIM provider’s AIM-capable accounting system; and
 - (e) has not consistently and systematically returned tax liabilities using the AIM method that are inaccurate assessments of their tax liabilities; and 30
 - (f) is not a member of a class of taxpayers that the Commissioner has determined, under **section 91AAY** of the Tax Administration Act 1994, must not use the AIM method; and
 - (g) for the current tax year, has not failed more than twice to give the Commissioner information in the prescribed form, as provided by **section 45** of the Tax Administration Act 1994. 35

AIM method: exception

- (5C) A person who does not meet the requirements of **subsection (5B)** can not use the AIM method for the current tax year. If they can not use the AIM method

for the current year because part-way through the corresponding income year the person stops meeting the requirements of **subsection (5B)**, the person is treated as using the estimation method for the whole of the current tax year.

- (2) In section RC 5, in the list of defined terms, insert “AIM-capable accounting system”, “annual gross income”, “instalment date”, “large business AIM-capable system”, “shortfall penalty”, and “taxpayer”. 5
- (3) This section applies for the 2018–19 and later income years.

32 New section RC 7B inserted (AIM method)

- (1) After section RC 7, insert:

RC 7B AIM method 10

When this section applies

- (1) This section applies to—
 - (a) a person who meets the requirements of **section RC 5(5B)**; and
 - (b) the calculation of the amount of provisional tax payable for a tax year under the AIM method. 15

AIM method

- (2) A person must use an AIM-capable accounting system for the calculation of provisional tax payable for a tax year.

Meaning of AIM-capable accounting system

- (3) **AIM-capable accounting system** means a double-entry accounting system that is an approved AIM provider’s product, and uses a core software package from an approved AIM provider, if the system has the following features: 20
 - (a) a core software accounting package that provides the ability to—
 - (i) generate and keep comprehensive financial accounts, including accounting income and expenditure, ledger accounts, trial balances, bank account reconciliations, and journals, on an on-demand basis, in accordance with good accounting and tax practice; and 25
 - (ii) calculate tax liabilities for the tax year using tax adjustments for the financial accounts, in accordance with a determination under **section 91AAX** of the Tax Administration Act 1994; and 30
 - (iii) for amounts not covered by a determination under **subparagraph (ii)**, calculate tax liabilities for the tax year using tax adjustments for the financial accounts that result in reasonably accurate assessments of tax liabilities for a person; and
 - (iv) recalculate all financial accounts and tax liabilities, if retrospective adjustments are required for the year to date; and 35
 - (v) produce reports and other information as required by the Commissioner, in formats prescribed by the Commissioner; and

<p>(b) electronic communication facilities for—</p> <p style="padding-left: 20px;">(i) giving information in the form prescribed by the Commissioner; and</p> <p style="padding-left: 20px;">(ii) sending and receiving messages and notifications; and</p> <p>(c) help documentation for end-users and their tax agents on the use of the package, with ongoing support provided by the approved AIM provider on the use of the package.</p> <p>Defined in this Act: AIM-capable accounting system, approved AIM provider, Commissioner, person, provisional tax, tax agent, tax year</p>	<p>5</p>																					
<p>(2) This section applies for the 2018–19 and later income years.</p>	<p>10</p>																					
<p>33 Section RC 9 amended (Provisional tax payable in instalments)</p>																						
<p>(1) After section RC 9(4)(b), insert:</p> <p style="padding-left: 20px;">(bb) to a person that uses the AIM method for the tax year:</p>																						
<p>(2) After section RC 9(4), insert:</p> <p><i>AIM method</i></p>	<p>15</p>																					
<p>(4B) A person liable to pay provisional tax who uses the AIM method for the current tax year must pay provisional tax—</p> <p style="padding-left: 20px;">(a) if the person is not registered for GST, or has a 6-month taxable period under section 15 of the Goods and Services Tax Act 1985, on the 6 instalment dates in the months set out in schedule 3, part A, columns A, B, C, D, E, and F for their balance date. The amount of each instalment is provided by section RC 10B; or</p> <p style="padding-left: 20px;">(b) if the person has a 2-month taxable period under section 15 of the Goods and Services Tax Act 1985, on the group of 6 instalment dates in the months set out in either schedule 3, part A, columns A, B, C, D, E, and F or in schedule 3, part A, columns A1, B1, C1, D1, E1, and F1 that corresponds to the due dates for their GST returns. The amount of each instalment is provided by section RC 10B; or</p> <p style="padding-left: 20px;">(c) if the person has a 1-month taxable period under section 15 of the Goods and Services Tax Act 1985, on the 12 instalment dates in the months set out in schedule 3, part A, columns A to F1 for their corresponding income year. The amount of each instalment is provided by section RC 10B.</p>	<p>20</p> <p>25</p> <p>30</p>																					
<p>(3) In section RC 9(6), replace “columns A to F” with “columns A, B, C, D, E, and F”.</p>	<p>35</p>																					
<p>(4) In section RC 9, in table R1, after the row labelled “Estimation RC 5(5)”, insert the following row:</p>																						
<table border="0" style="width: 100%;"> <tr> <td style="padding-right: 10px;">AIM</td> <td style="padding-right: 10px;">2 month</td> <td style="padding-right: 10px;">RC 7B</td> <td style="padding-right: 10px;">6: RC</td> <td style="padding-right: 10px;">A, B, C, D, E,</td> <td style="padding-right: 10px;">RC 10B</td> <td style="padding-right: 10px;">120K</td> </tr> <tr> <td style="padding-right: 10px;">RC 5(5B)</td> <td style="padding-right: 10px;">1 month</td> <td style="padding-right: 10px;">RC 7B</td> <td style="padding-right: 10px;">9(4B)(a)</td> <td style="padding-right: 10px;">and F</td> <td style="padding-right: 10px;">RC 10B</td> <td style="padding-right: 10px;">BC</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td style="padding-right: 10px;">A to F1</td> <td></td> <td></td> </tr> </table>	AIM	2 month	RC 7B	6: RC	A, B, C, D, E,	RC 10B	120K	RC 5(5B)	1 month	RC 7B	9(4B)(a)	and F	RC 10B	BC					A to F1			
AIM	2 month	RC 7B	6: RC	A, B, C, D, E,	RC 10B	120K																
RC 5(5B)	1 month	RC 7B	9(4B)(a)	and F	RC 10B	BC																
				A to F1																		

	12: RC 9(4B)(b)	120K BC
(5)	In section RC 9, in table R1, in the row labelled “GST ratio RC 5(6)”, replace “A to F” with “A, B, C, D, E, and F” in both places in which it appears.	
(6)	This section applies for the 2018–19 and later income years.	
34	New section RC 10B inserted (Calculating amount of instalment for periods using AIM method)	5
(1)	After section RC 10, insert:	
	RC 10B Calculating amount of instalment for periods using AIM method	
	For a person who uses the AIM method, the amount of provisional tax payable on an instalment date for a tax year is the amount calculated using an AIM-capable accounting system for the 2-monthly or monthly period given by schedule 3, part AB (Payment of provisional tax and terminal tax) for the applicable instalment date.	10
	Defined in this Act: AIM-capable accounting system, instalment date, person, provisional tax	
(2)	This section applies for the 2018–19 and later income years.	
35	Section RC 24 amended (Calculating instalments in transitional years: GST ratio method)	15
(1)	In section RC 24(2), replace “instalments A to F” with “instalments A, B, C, D, E, and F”.	
(2)	This section applies for the 2018–19 and later income years.	
36	New section RM 6B inserted (Refunds for overpaid AIM method instalments)	20
(1)	Before section RM 7, insert:	
	RM 6B Refunds for overpaid AIM method instalments	
	<i>Refund</i>	
(1)	The Commissioner must refund to a person the amount given by the formula in subsection (2) , if the person uses the AIM method for a tax year and gives the Commissioner the required information in the form prescribed under section 45 of the Tax Administration Act 1994 (the form).	25
	<i>Formula</i>	
(2)	For the purposes of subsection (1) the refund amount is—	30
	AIM payments year to date – AIM year to date.	
	<i>Definition of items in formula</i>	
(3)	In the formula—	

(a)	AIM payments year to date means the amount of provisional tax paid by the person for the tax year on and before the last day of the instalment period that the form relates to:	
(b)	AIM year to date means the amount of provisional tax liability that the person would have if the AIM method was applied for the period starting at the beginning of the tax year and finishing on the last day of the instalment period that the form relates to.	5
Defined in this Act: Commissioner, instalment date, provisional tax, tax year		
(2)	This section applies for the 2018–19 and later income years.	
37	Section RP 17 amended (Tax pooling intermediaries)	10
(1)	In section RP 17(1)(a), replace “provisional tax” with “provisional tax other than under the AIM method”.	
(2)	This section applies for the 2018–19 and later income years.	
38	Section RP 17B amended (Tax pooling accounts and their use)	
(1)	In section RP 17B(2)(a), replace “provisional tax” with “provisional tax other than under the AIM method”.	15
(2)	In section RP 17B(4), in the words before the paragraphs, replace “provisional tax” with “provisional tax other than under the AIM method”.	
(3)	This section applies for the 2018–19 and later income years.	
39	Section RP 19B amended (Transfers for certain expected tax liabilities)	20
(1)	In section RP 19B(1)(a), replace “provisional tax liability” with “provisional tax liability other than under the AIM method”.	
(2)	This section applies for the 2018–19 and later income years.	
40	Section YA 1 amended (Definitions)	
(1)	This section amends section YA 1.	25
(2)	Insert, in appropriate alphabetical order: AIM-capable accounting system is defined in section RC 7B (AIM method)	
(3)	Insert, in appropriate alphabetical order: approved AIM provider means a person that the Commissioner has approved as an approved AIM provider under section 15U of the Tax Administration Act 1994, if the approval has not been revoked under section 15V of that Act	30
(4)	Insert, in appropriate alphabetical order: large business AIM-capable system means an AIM-capable accounting system approved by the Commissioner under section 45C of the Tax Administration Act 1994 for use by an approved class of taxpayers with annual gross income of more than \$5,000,000	35

41 Schedule 3 amended (Payment of provisional tax and terminal tax)

- (1) In schedule 3, in the shoulder references, insert “**RC 10B**”.
- (2) In schedule 3, part A, replace the table with:

Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill

Part 2 cl 41

Month of balance date	A	A1	B	B1	C	C1	D	D1	E	E1	F	F1	G	H
October	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	Sep	Nov
November	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	Oct	Dec
December	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	Nov	Jan
January	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	Dec	Feb
February	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	Jan	Mar
March	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	Feb	Apr
April	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	Feb	Apr
May	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	Feb	Apr
June	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	Feb	Apr
July	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	Feb	Apr
August	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	Feb	Apr
September	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	Feb	Apr

(3) In schedule 3, after part A, insert:

Part AB
Calculation periods for AIM method

Instalment date	6 instalments: 2-monthly period	12 instalments: monthly period
15 Jan	Oct, Nov	Nov
28 Jan	Nov, Dec	Dec
28 Feb	Dec, Jan	Jan
28 Mar	Jan, Feb	Feb
7 May	Feb, Mar	Mar
28 May	Mar, Apr	Apr
28 Jun	Apr, May	May
28 Jul	May, Jun	Jun
28 Aug	Jun, Jul	Jul
28 Sep	Jul, Aug	Aug
28 Oct	Aug, Sept	Sept
28 Nov	Sept, Oct	Oct

How to use this table:
Find the applicable instalment date in the first column, and use the period for that instalment in the second column if **section RC 9(4B)(a)** applies or use the period in the third column if **section RC 9(4B)(c)** applies.

- (4) This section applies for the 2018–19 and later income years.

Subpart 2—Amendments to Tax Administration Act 1994

42 Tax Administration Act 1994 amended 5

This subpart amends the Tax Administration Act 1994.

43 Section 3 amended (Interpretation)

- (1) In section 3(1), in the definition of **tax position**, after paragraph (k), insert:
(kb) the use of the AIM method for provisional tax and the software product of an approved AIM provider: 10

- (2) This section applies for the 2018–19 and later income years.

44 New heading and sections 15U to 15X inserted

- (1) After section 15T, insert:

Approved AIM providers

15U Approval of approved AIM providers 15

The Commissioner may approve a person as an approved AIM provider in relation to 1 or more of the person’s AIM-capable accounting systems (the **products**), if approving the person would not negatively affect the integrity of the tax system and the person makes a statutory declaration of the following matters and gives it to the Commissioner, namely a declaration: 20

- (a) specifying the name of the products; and

- (b) declaring that the product is updated regularly, to reflect changes in tax law or Commissioner's requirements (for example: the software is updated to reflect a change in a determination by the Commissioner under **section 91AAX**); and
- (c) declaring any other matters required by the Commissioner to be declared for the purposes of assuring the Commissioner that the person's product accurately calculates and communicates, in accordance with the Commissioner's requirements, tax liabilities that are reasonably accurate assessments of tax liabilities for the relevant accounting income and expenditure. 5
10
- 15V Revocation of approval of AIM providers: Commissioner**
- (1) The Commissioner's approval of a person as an approved AIM provider under **section 15U** is revoked if—
- (a) anything in their statutory declaration under **section 15U** is not true, or does not continue to be true after it is made; or 15
- (b) revoking the approval positively affects the integrity of the tax system.
- (2) A revocation under **subsection (1)** does not take effect until the tax year after the tax year in which the Commissioner has notified the approved AIM provider of the revocation.
- (3) The Commissioner must consult the approved AIM provider before the approval is revoked. 20
- (4) The Commissioner may reverse a revocation before it takes effect, if the circumstances that gave rise to the revocation have been remedied by the approved AIM provider and there are no other circumstances requiring revocation under **subsection (1)**. 25
- 15W Revocation of approval of AIM providers: provider**
- (1) The Commissioner's approval of a person as an approved AIM provider under **section 15U** is revoked if the person notifies the Commissioner of the person's choice to revoke the Commissioner's approval.
- (2) A revocation under **subsection (1)** does not take effect until the tax year after the tax year in which the Commissioner has received notification of the revocation. 30
- (3) A person who has given notice under **subsection (1)** must immediately give notice of their choice to revoke to all end-users of the person's products that will be affected by the revocation. 35
- 15X Publication of approval, revocation, etc**
- The Commissioner may publish a notice in a publication chosen by the Commissioner in relation to any matter in **sections 15U, 15V, and 15W**.
- (2) This section applies for the 2018–19 and later income years.

45 New sections 45, 45B, 45C, and 45D inserted

- (1) After section 44D, insert:

45 AIM method information: taxpayers

A person that uses the AIM method as described in **section RC 5(5B)** of the Income Tax Act 2007 must give to the Commissioner on or before an instalment date, information required by the Commissioner in relation to the instalment, the person's use of the AIM method, and their use of an approved AIM provider's AIM-capable accounting system, and any other information required by the Commissioner in the form prescribed by the Commissioner, even if the amount to pay for the instalment date is zero or a refund. 5
10

45B AIM method information: approved AIM providers

- (1) An approved AIM provider must give to the Commissioner information required by the Commissioner in relation to their AIM-capable accounting system products, end-user's use of the products for a tax year, and any other matters relevant to the AIM method for the tax year, in the form prescribed by the Commissioner. 15
- (2) The Commissioner must not require taxpayer-specific information under this section.
- (3) The form must be given to the Commissioner within 6 months of the end of the tax year. 20

45C AIM method: approval of large business AIM-capable system

For the purposes of **section RC 5(5B)(c)(iii)** and the definition of **large business AIM-capable system** in **section YA 1** of the Income Tax Act 2007, the Commissioner may approve an AIM-capable accounting system for use by a class of taxpayers with annual gross income of more than \$5,000,000, if the Commissioner decides that there is minimal risk that the approval will result in less net revenue collectable from the class of taxpayers over time. 25

45D AIM method: approval of person over \$5,000,000

For the purposes of **section RC 5(5B)(c)(ii)** of the Income Tax Act 2007, the Commissioner may approve a person's continued use of an AIM-capable accounting system for tax years in which the person has annual gross income of more than \$5,000,000, if the Commissioner decides that there is minimal risk that the approval will result in less net revenue collectable from the person over time. 30

- (2) This section applies for the 2018–19 and later income years. 35

46 New heading and sections 91AAX and 91AAY inserted

- (1) Before Part 5A, insert:

*Determinations relating to AIM method***91AAX Accounting determinations relating to AIM method**

- (1) The Commissioner may determine, for the purposes of **section RC 7B(3)(iv)** of the Income Tax Act 2007, tax adjustments for accounting income and expenditure under the AIM method. 5
- (2) In making a determination the Commissioner must have regard to—
- (a) the accuracy of assessments of tax liabilities that would result from the use of the tax adjustments:
 - (b) the compliance costs incurred by taxpayers:
 - (c) the resources available to approved AIM providers. 10
- (3) A determination may set out the tax year or years for which it is to apply, or a date from which it is to apply (the **implementation date**).
- (4) A determination (a **later determination**) may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination. The Commissioner must give at least 120 days notice of the implementation date of that later determination, in a publication chosen by the Commissioner. 15
- (5) All determinations under this section must be published within 30 days of the making of the determination, in a publication chosen by the Commissioner. The implementation date must not be retrospective.

91AAY Class of taxpayers that must not use AIM method 20

- (1) The Commissioner may determine, for the purposes of **section RC 5(5B)(f)** of the Income Tax Act 2007, that a class of taxpayers must not use the AIM method.
- (2) In making a determination the Commissioner must have regard to the risk that allowing the class of taxpayers to use the AIM method will result in less net revenue collectable from the class of taxpayers over time. 25
- (3) A determination may set out the tax year or years for which it is to apply, or a date from which it is to apply (the **implementation date**).
- (4) A determination (a **later determination**) may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination. The Commissioner must give at least 120 days notice of the implementation date of that later determination, in a publication chosen by the Commissioner. 30
- (5) All determinations under this section must be published within 30 days of the making of the determination, in a publication chosen by the Commissioner.
- (2) This section applies for the 2018–19 and later income years. 35

47 Section 119 amended (Commissioner may determine amount of provisional tax)

- (1) After section 119(1)(c), insert:

- (cb) the taxpayer is using the AIM method and the approved AIM provider’s product that they are using calculates tax liabilities that are not reasonably accurate assessments of tax liabilities for the relevant income and expenditure; or
- (2) This section applies for the 2018–19 and later income years. 5
- 48 New section 120KBC inserted (Interest for AIM method provisional taxpayers)**
- (1) Before section 120KC, insert:
- 120KBC Interest for AIM method provisional taxpayers**
- (1) This section applies if, for a tax year,— 10
- (a) a person is liable to pay provisional tax for the tax year and uses the AIM method described in **section RC 5(5B)** of the Income Tax Act 2007; and
- (b) there is no provisional tax interest avoidance arrangement in relation to the person. 15
- (2) If the person pays the amount of all 6 or 12 instalments, as applicable, on the instalment dates for the tax year in accordance with **sections RC 9 and RC 10B** of the Income Tax Act 2007, then, despite section 120KB(2) of this Act,—
- (a) the person’s residual income tax for the tax year is not due and payable as set out in **section RC 9** of the Income Tax Act 2007; and 20
- (b) the amount of their residual income tax minus the total amount paid in relation to the instalments for the tax year is due and payable in 1 instalment on their terminal tax date.
- (3) If the person fails to pay the amount of an instalment on the relevant instalment date for the tax year (a **failed instalment**) in accordance with **sections RC 9 and RC 10B** of the Income Tax Act 2007, then, despite **section 120KB(2)** of this Act, the person’s residual income tax for the tax year is not due and payable as set out in **section RC 9** of the Income Tax Act 2007 for the instalment date. 25 30
- (2) This section applies for the 2018–19 and later income years.
- 49 Section 120KC amended (Residual income tax of new provisional taxpayer)**
- (1) In section 120KC(2) replace “the letters A to F” with “the alphanumeric designations A to F1”. 35
- (2) This section applies for the 2018–19 and later income years.

50 Section 120KE amended (Provisional tax and rules on use of money interest)

(1) After section 120KE(1)(c), insert:

(cb) they have not used the AIM method under **section RC 7B** of that Act in the tax year to determine the amount of provisional tax payable for the tax year; and 5

(2) In section 120KE(8) replace “the letters A to F” with “the alphanumeric designations A to F1”.

(3) This section applies for the 2018–19 and later income years.

51 New section 120LB inserted (Meaning of unpaid tax and overpaid tax for tax credit transferees under AIM method) 10

After section 120L, insert:

120LB Meaning of unpaid tax and overpaid tax for tax credit transferees under AIM method

(1) For the purposes of determining amounts of unpaid tax, overpaid tax, and interest under a provision of this Part in relation to an instalment date for a tax year, for a person that is a provisional taxpayer for the year,— 15

(a) the total amounts transferred to them for the year as a shareholder under **section LA 6(2)(db)** of the Income Tax Act 2007 (the **total transferred amounts**), are pro-rated against all instalments for the year; and 20

(b) if there is an amount of overpaid or underpaid tax under a provision for the instalment, the pro-rated amount for the instalment is subtracted from the underpaid tax amount or added to the overpaid tax amount under the provision; and

(c) to the extent to which **paragraph (b)** does not apply for the pro-rated amount for the instalment, the amount is overpaid tax under the provision for an instalment. 25

(2) If **section 120KBB(2)** applies to the person, **subsection (1)** does not apply, and—

(a) if there is an amount of overpaid or underpaid tax under **section 120KBB** for the third instalment, the person’s total transferred amounts are subtracted from the underpaid tax amount or added to the overpaid amount under section 120KBB; and 30

(b) to the extent to which **paragraph (a)** does not apply for the total transferred amounts, the amounts are overpaid tax under section 120KBB(2) for the third instalment. 35

52 New section 120VB inserted (Interest on overpaid AIM method provisional tax)

(1) After section 120V, insert:

120VB Interest on overpaid AIM method provisional tax

No interest shall be payable by the Commissioner under section 120D(3) on an amount of AIM method provisional tax described in **section RM 6B(2)** of the Income Tax Act 2007.

- (2) This section applies for the 2018–19 and later income years. 5

53 Section 141 amended (Tax shortfalls)

- (1) In section 141(14), in the words before paragraph (a), replace “provisional taxpayer,” with “provisional taxpayer other than a date and taxpayer using the AIM method.”.

- (2) This section applies for the 2018–19 and later income years. 10

54 Section 141B amended (Unacceptable tax position)

- (1) After section 141B(1D), insert:

(1E) A taxpayer does not take an unacceptable tax position merely by using the AIM method and an approved AIM provider’s AIM-capable accounting system. 15

- (1F) **Subsection (1E)** does not apply for a taxpayer that—

- (a) is approved under section 45D:
- (b) uses a large business AIM-capable system.

- (2) This section applies for the 2018–19 and later income years.

Part 3 20

Business tax and remedial matters

Subpart 1—Amendments to Income Tax Act 2007

55 Income Tax Act 2007 amended

This subpart amends the Income Tax Act 2007.

56 Section CD 32 amended (Employee benefits) 25

- (1) Replace section CD 32(1), other than the heading, with:

(1) A benefit provided to an employee is not a dividend if—

- (a) it is a fringe benefit subject to fringe benefit tax; or
- (b) it would be a fringe benefit subject to fringe benefit tax if an election had not been made under **section CX 17(4B)** (Benefits provided to employees who are shareholders or investors). 30

- (2) In section CD 32, in the list of defined terms, insert “employee”.

- (3) This section applies for the 2017–18 and later income years.

- 57 Section CE 2 amended (Value and timing of benefits under share purchase agreements)**
- (1) Replace section CE 2(11), other than the heading, with:
- (11) The employee is treated as deriving employment income in relation to the benefit in the PAYE income payment form period after the 1 in which they receive the benefit. 5
- (2) In section CE 2, in the list of defined terms, insert “PAYE income payment form period”.
- (3) This section applies for the 2017–18 and later income years.
- 58 Section CX 6 amended (Private use of motor vehicle)** 10
- (1) After section CX 6(2), insert:
- Exclusion: election by close company*
- (2B) Subsection (1) does not apply if the employee is a shareholder-employee of a close company and the close company made an election under **section CX 17(4B)** to apply subpart DE (Motor vehicle expenditure) instead of the FBT rules. 15
- (2) In section CX 6, in the list of defined terms, insert “close company”, “FBT rules”, and “shareholder-employee”.
- (3) This section applies for the 2017–18 and later income years.
- 59 Section CX 17 amended (Benefits provided to employees who are shareholders or investors)** 20
- (1) In the title to section CX 17(3), replace “*Exclusion*” with “*Exclusion: benefit provided to non-executive director*”.
- (2) After section CX 17(4), insert:
- Exclusion: election by close company* 25
- (4B) Despite subsection (4), subsection (2) does not apply and the benefit is neither a fringe benefit nor a dividend in an income year if—
- (a) the benefit—
- (i) arises when a close company makes a motor vehicle available to a shareholder-employee for their private use; and 30
- (ii) would, in the absence of **this subsection**, be a fringe benefit arising under section CX 6; and
- (b) the total benefits the close company provides to all shareholder-employees in the income year are 1 or 2 of the benefits described in **paragraph (a)**; and 35
- (c) the close company chooses to apply subpart DE (Motor vehicle expenditure) for the motor vehicle and the shareholder-employee instead of the FBT rules.

<i>When election may be made</i>	
(4C) An election by a close company under subsection (4B) may be made for the income year which includes the day on which the close company—	
(a) acquires the motor vehicle; or	
(b) first starts using the motor vehicle for business use.	5
<i>Election continues to apply</i>	
(4D) An election under subsection (4B) applies for the income year described in subsection (4C) , and continues to apply until the end of the income year that includes the earlier of—	
(a) the day on which the close company stops using the motor vehicle for business use; or	10
(b) the day on which the close company disposes of the motor vehicle.	
(3) In the title to section CX 17(5), replace “election” with “election under subsection (2)”.	
(4) After section CX 17(5), insert:	15
<i>Notice of election under subsection (4B)</i>	
(5B) The close company must give notice to the Commissioner of an election referred to in subsection (4B) in the time allowed for filing a return of income for the income year in which the election was made.	
(5) In section CX 17, in the list of defined terms, insert “business use”, “close company”, “income year”, “motor vehicle”, “return of income”, and “shareholder-employee”.	20
(6) This section applies for the 2017–18 and later income years.	
60 Section DB 7 amended (Interest: most companies need no nexus with income)	25
(1) After section DB 7(6), insert:	
<i>Relationship with subpart DE</i>	
(6BA) Subpart DE (Motor vehicle expenditure) overrides this section for expenditure to which that subpart relates, if a company is a close company that has chosen to apply that subpart instead of the FBT rules, in accordance with section CX 17(4B)(c) (Benefits provided to employees who are shareholders or investors).	30
(2) In section DB 7, in the list of defined terms, insert “close company” and “FBT rules”.	
(3) This section applies for the 2017–18 and later income years.	35
61 Section DB 8 amended (Interest: money borrowed to acquire shares in group companies)	
(1) After section DB 8(6), insert:	

<i>Relationship with subpart DE</i>	
(6BA) Subpart DE (Motor vehicle expenditure) overrides this section for expenditure to which that subpart relates, if a company is a close company that has chosen to apply that subpart instead of the FBT rules, in accordance with section CX 17(4B)(c) (Benefits provided to employees who are shareholders or investors).	5
(2) In section DB 8, in the list of defined terms, insert “close company” and “FBT rules”.	
(3) This section applies for the 2017–18 and later income years.	
62 New section DB 18AA inserted (Square metre rate method)	10
(1) Before section DB 18A, insert:	
DB 18AA Square metre rate method	
<i>When this section applies</i>	
(1) A person may choose to apply this section to determine the amount of a deduction, in an income year, for the proportion of business use of a building (the premises) that is used partly for business purposes and partly for other purposes.	15
<i>Amount of deduction</i>	
(2) The amount of the deduction allowed in an income year for the business use of the premises is calculated using the formula—	20
(total premise costs × business proportion) + (business square metres × square metre rate).	
<i>Definition of items in formula</i>	
(3) In the formula,—	
(a) total premise costs is the total amount of actual mortgage interest, rates, and rent that the person has paid with respect to the premises in the income year:	25
(b) business proportion is determined by dividing business square metres by the total area of the premises in square metres:	
(c) business square metres is the total area, in square metres, of any separately identifiable parts of the premises that are used primarily for business purposes:	30
(d) square metre rate is the applicable square metre rate that is published by the Commissioner.	
<i>No other deductions allowed</i>	
(4) A person who makes an election to apply this section under subsection (1) is not entitled to claim any other deductions for the business use of the premises.	35

Setting square metre rates

- (5) For the purposes of this section, the Commissioner must from time to time set and publish square metre rates.

Defined in this Act: amount, business use, Commissioner, deduction, income year

- (2) This section applies for the 2017–18 and later income years. 5

63 Section DE 1 amended (What this subpart does)

- (1) Replace section DE 1(2)(a) with:

- (a) to a company, unless the company is a close company to which **section CX 17(4B)(b) and (c)** (Benefits provided to employees who are shareholders or investors) applies: 10

- (2) After section DE 1(2), insert:

Application of subpart to close companies

- (3) When this subpart applies to a close company to which **section CX 17(4B)(b) and (c)** (Benefits provided to employees who are shareholders or investors) applies, business use of a motor vehicle by a shareholder-employee of the close company is treated as being business use by the close company. 15

- (3) In section DE 1, in the list of defined terms, insert “close company”.

- (4) This section applies for the 2017–18 and later income years.

64 Section DE 2 amended (Deductions for business use)

- (1) After section DE 2(1)(a), insert: 20

- (ab) interest on amounts used to fund, directly or indirectly, expenditure the person incurs for the business use of a motor vehicle, if the person is a close company that has chosen to apply this subpart instead of the FBT rules, in accordance with **section CX 17(4B)(c)** (Benefits provided to employees who are shareholders or investors): 25

- (2) After section DE 2(1), insert:

Costs method or kilometre rate method

- (1B) A person can choose under **section DE 2B** to calculate the total amount of the deduction described in subsection (1)—

- (a) under subsections (2) and (4) (the **costs method**) by adding together— 30
- (i) a deduction amount for expenditure, calculated under subsection (2); and
 - (ii) a deduction amount for depreciation loss, calculated as described in subsection (4); or

- (b) by using the kilometre rate method described in section DE 12. 35

- (3) In section DE 2(3), replace “DE 3 to DE 12” with “DE 3 to DE 11”.

- (4) In section DE 2(6)(b), replace “DE 3 to DE 12” with “DE 3 to DE 11”.

- (5) In section DE 2(12)(b), replace “DE 3 to DE 12” with “DE 3 to DE 11”.
- (6) This section applies for the 2017–18 and later income years.
- 65 New section DE 2B inserted (Election to use kilometre rate method or costs method)**
- (1) After section DE 2, insert: 5
- DE 2B Election to use kilometre rate method or costs method**
- Election to use kilometre rate method*
- (1) A person may, in their return of income for an income year, choose to apply the kilometre rate method described in section DE 12 to calculate a deduction for the business use of a motor vehicle and for the income year that includes the latest of— 10
- (a) 1 April 2017, unless the person disposes of the motor vehicle in that income year:
- (b) the day on which they acquire the motor vehicle:
- (c) the day on which they first start using the motor vehicle for business purposes. 15
- Election to use costs method*
- (2) If a person does not make an election under **subsection (1)**, they are treated as making an election in the return of income to use the costs method for the corresponding income year. 20
- Election cannot be revoked*
- (3) An election made under **subsection (1) or (2)** in relation to a particular motor vehicle cannot be revoked, and applies for all subsequent income years until the end of the income year that includes the day on which the person disposes of the motor vehicle. 25
- Defined in this Act: business, business use, deduction, income year, motor vehicle, return of income
- (2) This section applies for the 2017–18 and later income years.
- 66 Section DE 3 amended (Methods for calculating proportion of business use)**
- (1) In section DE 3, before paragraph (a), replace “3 methods” with “2 methods”. 30
- (2) In section DE 3(b), replace “DE 11.” with “DE 11.”
- (3) Repeal section DE 3(c).
- (4) This section applies for the 2017–18 and later income years.
- 67 Section DE 4 amended (Default method for calculating proportion of business use)** 35
- (1) Replace section DE 4(1)(c) with:

(c) the person has not elected to use the kilometre rate method for the motor vehicle.

(2) This section applies for the 2017–18 and later income years.

68 Heading and section DE 12 replaced

(1) Replace the heading before section DE 12 and section DE 12 with: 5

Kilometre rates

DE 12 Kilometre rate method

When this section applies

(1) This section applies for the purposes of calculating a deduction for the business use of a motor vehicle under section DE 2(1) if a person made an election under **section DE 2B** to apply this section. 10

Amount of deduction

(2) The amount of the deduction allowed for the business use of the vehicle in an income year is the sum of the amounts calculated under the following formula for each applicable kilometre rate for the vehicle for the income year: 15

$$\text{kilometre rate} \times \text{kilometres travelled} \times \text{business proportion.}$$

Definition of items in formula

- (3) In the formula,—
- (a) **kilometre rate** is the applicable kilometre rate that is published by the Commissioner: 20
 - (b) **kilometres travelled** is the total number of kilometres the vehicle has travelled, for both business purposes and other purposes, to which the applicable kilometre rate applies:
 - (c) **business proportion** is the proportion of business use of the vehicle for the income year, calculated using a method described in sections DE 5 to DE 11, and expressed as a decimal. 25

Setting kilometre rates

(4) For the purposes of this section, the Commissioner must from time to time set and publish kilometre rates. 30

Defined in this Act: amount, business, business use, Commissioner, deduction, income year, motor vehicle.

(2) This section applies for the 2017–18 and later income years.

69 Section DF 4 amended (Payments for social rehabilitation)

Replace section DF 4(3)(b) with:

(b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under **section RD 10B** (Amounts of tax for schedular payments). 35

- 70 Section EA 4 amended (Deferred payment of employment income)**
- After section EA 4(1)(b)(i), insert:
- (ib) the income year, if they choose, in a return of income, to not use paragraph (i) or (ii); or
- 71 Section EE 49 amended (Amount of depreciation recovery income when item partly used for business)** 5
- (1) After section EE 49(2), insert:
- No depreciation recovery income*
- (2B) Despite subsections (1) and (2), there is no depreciation recovery income under this section for a motor vehicle which is dealt with under subpart DE if the person has made an election under **section DE 2B(1)** (Election to use kilometre rate method or costs method) to use the kilometre rate method described in section DE 12 (Kilometre rate method) for that vehicle. 10
- (2) This section applies for the 2017–18 and later income years.
- 72 Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)** 15
- (1) After section LA 6(2)(c), insert:
- (cb) fourth, if the person is a company that has 1 or more provisional tax attributors, transfer a tax credit of the amount described in **subsection (2B)**. The amount transferred is treated as tax credit for the relevant attributor under **section LB 2** for the tax year that the tax credit relates to, and is also treated as a refund of income tax paid to the company for the purposes of section OB 32 (ICA refund of income tax): 20
- (2) In section LA 6(2)(d), replace “fourth” with “fifth”.
- (3) After section LA 6(2), insert: 25
- Tax credits for provisional tax attributors*
- (2B) For the purposes of **subsection (2)(cb)**, the amount for a provisional tax attributor is the portion of the tax credit that is equal to the proportion of the attributor’s residual income tax arising from shareholder attributed income (**shareholder RIT**) to the total of all attributors’ shareholder RITs. However, the maximum amount for a provisional tax attributor is their shareholder RIT. 30
- (4) This section applies for the 2018–19 and later income years.
- 73 Section LB 2 replaced (Tax credits for provisional tax payments)**
- (1) Section LB 2 is replaced with:

LB 2 Tax credits for provisional tax payments

Tax credit

(1) A person has a tax credit for a tax year equal to the amount of provisional tax for the tax year paid by—

- (a) the person; or 5
- (b) an agent of the person, if the agent is liable to pay provisional tax on behalf of the person.

Additional tax credit for provisional tax attributors

(2) A person who is a provisional tax attributor for a company also has a tax credit for the tax year equal to the amount transferred to them— 10

- (a) by the company for the tax year, as provided in a reconciliation statement under **section 45C** of the Tax Administration Act 1994;
- (b) under **section LA 6(2)(cb)** (Remaining refundable credits: PAYE, RWT, and certain other items).

Subtraction of tax credits transferred to provisional tax attributors 15

(3) A person that is a company that has 1 or more provisional tax attributors must subtract from its tax credit under **subsection (1)** the total amount transferred by it to its provisional tax attributors for the tax year, as described in **subsection (2)(a)**.

Defined in this Act: agent, amount, company, pay, provisional tax, provisional tax attributor, tax credit, tax year 20

(2) This section applies for the 2018–19 and later income years.

74 Section LB 7 amended (Tax credits related to personal service rehabilitation payments: providers)

Replace section LB 7(4)(b) with: 25

- (b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under **section RD 10B** (Amounts of tax for schedular payments).

75 Section LB 8 amended (Tax credits related to personal service rehabilitation payments: payers) 30

Replace section LB 8(3)(c) with:

- (c) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under **section RD 10B** (Amounts of tax for schedular payments).

76 Section MD 9 amended (Fifth requirement: full-time earner) 35

Replace section MD 9(2)(d)(i) with:

- (i) by a person (the **claimant**), who receives a personal service rehabilitation payment from which an amount of tax has been with-

held at a rate specified in **section RD 10B** (Amounts of tax for schedular payments); and

77 New section OB 33B inserted (ICA transfer of provisional tax credit)

- (1) After section OB 33, insert:

OB 33B ICA transfer of provisional tax credit

5

Debit

- (1) An ICA company has an imputation debit for the total amount of tax credit transferred by the company to its provisional tax attributors, as described in **section LB 2(3)** (Tax credits for provisional tax payments).

Table reference

10

- (2) The imputation debit in **subsection (1)** is referred to in table O2: imputation debits, row 5B (ICA transfer of provisional tax credit).

Debit date

- (3) The debit date is the day the company gives the Commissioner a reconciliation statement under **section 45C** of the Tax Administration Act 1994 for the transfer.

15

Defined in this Act: Commissioner, ICA company, imputation debit, provisional tax attributor, tax credit

- (2) This section applies for the 2018–19 and later income years.

78 Table O2 amended (Imputation debits)

20

In table O2, after row 5, insert:

5B	ICA transfer of provisional tax credit	set out in section OB 33B	section OB 33B
----	--	----------------------------------	-----------------------

79 Section RC 3 amended (Who is required to pay provisional tax?)

- (1) After section RC 3(3), insert:

No obligation: provisional tax attributor

- (4) A person has no obligation to pay provisional tax for a tax year if they are a provisional tax attributor and the following amount is \$2,500 or less:

25

residual income tax – shareholder attributed.

Definition of items in formula

- (5) In the formula—

(a) **residual income tax** is the person’s residual income tax for the preceding tax year:

30

(b) **shareholder attributed** is, if the person is a provisional tax attributor for 1 or more companies, the total of the person’s shareholder attributed tax for the companies for the preceding tax year.

- (2) In section RC 3, in the list of defined terms, insert “provisional tax attributor” and “shareholder attributed tax”.
- (3) This section applies for the 2018–19 and later income years.
- 80 Section RC 5 amended (Methods for calculating provisional tax liability)**
- (1) In section RC 5(1), replace “subsections (2) to (7).” with “subsections (2) to (7). However, a person who pays amounts of provisional tax for the first 2 instalments of the tax year equal to the amounts given by section RC 10 for the standard method can not choose the estimation method for the tax year.” 5
- (2) This section applies for the 2017–18 and later income years.
- 81 Table R1 amended (Summary of instalment dates and calculation methods for provisional tax)** 10
- (1) In table R1, in the row labelled “Standard RC 5(2), (3)”, replace “120KE(1), (2)” with “120KBB, 120KE(1), (2)”.
- (2) This section applies for the 2017–18 and later income years.
- 82 Section RC 10 amended (Calculating amount of instalment under standard and estimation methods)** 15
- (1) In section RC 10(2), in the words before the formula, replace “The amount of an instalment of provisional tax” with “The amount of an instalment of provisional tax for a person that is neither a provisional tax attributor nor a company with 1 or more shareholders that are provisional tax attributors”. 20
- (2) In section RC 10(3), replace “In the formula” with “In the formula in subsection (2)”.
- (3) After section RC 10(3) insert:
- Calculation*
- (3B) The amount of an instalment of provisional tax for a person that is a provisional tax attributor or that is a company and 1 or more shareholders is a provisional tax attributor is calculated using the formula— 25
- ((residual income tax – shareholder attributed + company attributed) ×
instalment number ÷ total instalments) – provisional tax.
- Definitions of items in formula* 30
- (3C) In the formula in **subsection (3B)**—
- (a) **residual income tax** is a person’s residual income tax, as applicable—
- (i) for the preceding tax year, uplifted by 5% (modified as applicable by sections RZ 5 (Calculating amounts under standard method: 2010–11 to 2012–13 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities); or 35
- (ii) for the tax year before the preceding tax year, uplifted by 10% (modified as applicable by sections RZ 5 and RZ 5D); or

(iii)	the amount estimated by them:	
(b)	shareholder attributed is, if the person is a provisional tax attributor, the total of the following amounts for the relevant companies in relation to which the person is an attributor, as applicable:	
(i)	the person's shareholder attributed tax for the relevant company for the preceding tax year, uplifted by 5%; or	5
(ii)	the person's shareholder attributed tax for the relevant company for the tax year before the preceding tax year, uplifted by 10%; or	
(iii)	the person's estimate of their shareholder attributed tax for the relevant company:	10
(c)	company attributed is, if the person is a company with 1 or more shareholders that are provisional tax attributors, the total of the following amounts for the attributors, as applicable:	
(i)	the relevant attributor's shareholder attributed tax for the person for the preceding tax year, uplifted by 5%; or	15
(ii)	the relevant attributor's shareholder attributed tax for the person for the tax year before the preceding tax year, uplifted by 10%; or	
(iii)	the relevant attributor's estimate of the amount of tax payable by them for their shareholder attributed income:	
(d)	instalment number is the number of the instalment for the tax year, whether first, second, or third:	20
(e)	total instalments is the total number of the instalment for the tax year:	
(f)	provisional tax is the amount of a person's provisional tax liabilities for the tax year to date.	
	<i>Consistency</i>	25
(3D)	For the purposes of the formula in subsection (2) , a shareholder attributed amount for a provisional tax attributor in relation to a company must be the same as the company attributed amount for the company in relation to the provisional tax attributor.	
(4)	After section RC 10(4), insert:	30
	<i>Meaning of provisional tax attributor</i>	
(5)	Provisional tax attributor means a person who is a shareholder of a company, if the company is a provisional taxpayer, and the company and the shareholder meet the requirements of section 15Y of the Tax Administration Act 1994.	
	<i>Meaning of shareholder attributed income</i>	35
(6)	Shareholder attributed income means, for a company and an income year, amounts paid to a shareholder of the company in their capacity as employee of the company, to the extent to which the amounts are income other than from a PAYE income payment.	

Meaning of shareholder attributed tax

- (7) **Shareholder attributed tax** means, for a company and a tax year,—
- (a) 28% of a shareholder’s shareholder attributed income for the corresponding income year; or
 - (b) the shareholder’s residual income tax for the tax year minus the amount that would be their residual income tax for the tax year if their shareholder attributed income for the corresponding income year were ignored. 5
- (5) In section RC 10, in the list of defined terms, insert “company”, “PAYE income payment”, “provisional tax attributor”, “shareholder attributed income”, and “shareholder attributed tax”. 10
- (6) This section applies for the 2018–19 and later income years.

83 Section RD 3 amended (PAYE income payments)

Replace section RD 3(1)(b)(iii) with:

- (iii) an amount paid or benefit provided, by a person (the **claimant**), who receives a personal service rehabilitation payment from which an amount of tax has been withheld at a rate specified in **section RD 10B**. 15

84 Section RD 6 amended (Certain benefits and payments)

- (1) Replace sections RD 6(3)(a), (ab), and (b) with: 20
- (a) for a benefit referred to in subsection (1)(d),—
 - (i) for an employer described in section CE 2(10) (Value and timing of benefits under share purchase agreements), on the first day of the PAYE income payment form period in which the employee derives the benefit under **section CE 2(11)** (Value and timing of benefits under share purchase agreements); or 25
 - (ii) for employers not described in section CE 2(10), on the date the benefit vests in the employee:
 - (b) for a benefit referred to in subsection (1)(a) to (c) that constitutes the only salary or wages of the employee, on the last day of the pay period: 30
 - (c) for a benefit that paragraphs (a) and (b) do not apply to, when the last amount of salary or wages for the pay period is paid.
- (2) In section RD 6, in the list of defined terms, insert “PAYE income payment form period”. 35
- (3) This section applies for the 2017–18 and later income years.

85 Section RD 7B amended (Treatment of certain benefits under employee share agreements)

- (1) In section RD 7B(3)(c), replace “RD 6(3)(ab)” with “**RD 6(3)(a)**”.

(2) This section applies for the 2017–18 and later income years.

86 Section RD 8 amended (Schedular payments)

(1) In section RD 8(1)(a)(i), replace “Rates of tax for schedular payments” with “Standard rates of tax for schedular payments”.

(2) In section RD 8(1)(b)(iii), after “non-resident entertainer,” insert “a company that receives a payment described in **schedule 4, part J**,”. 5

87 Section RD 10 amended (Amounts of tax for PAYE income payments)

Replace section RD 10(3)(a) with:

(a) under **section RD 10B**; and

88 New section RD 10B inserted (Amounts of tax for schedular payments) 10

After section RD 10, insert:

RD 10B Amounts of tax for schedular payments

When this section applies

(1) This section applies to determine the amount of tax for a schedular payment for the purposes of **section RD 10(3)(a)**. 15

Rate when no notification of tax file number

(2) The person making the schedular payment must withhold, as tax, 45% of the schedular payment if the person has not been notified of the payee’s name and tax file number under **section 24L** of the Tax Administration Act 1994. 20

Basic rates

(3) If the person making the schedular payment has been notified of the payee’s name and tax file number under **section 24L** of the Tax Administration Act 1994, the tax rate that applies to a schedular payment is—

(a) the payee’s elected rate under **section 24LB** of the Tax Administration Act 1994, if the payee chooses an elected rate under that section and **paragraph (c)** of this subsection does not apply: 25

(b) the relevant rate set out in **schedule 4** (Standard rates of tax for schedular payments), if the payee does not choose an elected rate under **section 24LB** of the Tax Administration Act 1994 and **paragraph (c)** of this subsection does not apply: 30

(c) if the Commissioner has provided the payee with a special tax rate certificate under section 24N of the Tax Administration Act 1994, the tax rate set out in the certificate.

Commissioner prescribed tax rate and deduction amount

(4) Despite **subsection (3)**, if the person making the schedular payment has been notified of an applicable tax rate prescribed by the Commissioner under **section 24LC(1)** of the Tax Administration Act 1994, the person must use that 35

prescribed and notified tax rate for the payment. The person must also deduct or extract from schedular payments payable to the payee, the amount prescribed under **section 24LC(2)** of that Act and pay it to the Commissioner.

Non-resident entertainer rate

- (5) Despite **subsections (2), (3), and (4)**, the tax rate, if the payee is a non-resident entertainer, is 0.20. 5

Defined in this Act: amount of tax, non-resident entertainer, notify, pay, schedular payment, tax, tax file number

89 Section RD 18 repealed (Schedular payments without notification)

Repeal section RD 18. 10

90 Section RD 60 amended (Close company option)

- (1) In section RD 60(1)(a), replace “\$500,000; or” with “\$1,000,000; or”.
 (2) This section applies for the 2017–18 and later income years.

91 Section RD 61 amended (Small business option)

- (1) In section RD 61(1)(a), replace “\$500,000; or” with “\$1,000,000; or”. 15
 (2) This section applies for the 2017–18 and later income years.

92 Section YA 1 amended (Definitions)

- (1) This section amends section YA 1.
 (2) In the definition of **agricultural, horticultural, or viticultural company**, replace “Rates of tax for schedular payments” with “Standard rates of tax for schedular payments”. 20
 (3) In the definition of **contract payment**, paragraph (c), replace “Rates of tax for schedular payments” with “Standard rates of tax for schedular payments”.
 (4) In the definition of **employee**, in paragraph (c)(ii), replace “parts A and I (Rates of tax for schedular payments)” with “parts A, I, and W (Standard rates of tax for schedular payments)”. 25
 (5) In the definition of **employer**, paragraph (c)(ii), replace “parts A and I (Rates of tax for schedular payments)” with “parts A, I, and W (Standard rates of tax for schedular payments)”.
 (6) In the definition of **Part F activity**, replace “Rates of tax for schedular payments” with “Standard rates of tax for schedular payments”. 30
 (7) Insert, in appropriate alphabetical order:
PAYE income payment form period means the payment period for which an employer must provide a PAYE income payment form under section RD 22(2) (Returns for amounts of tax paid to Commissioner) 35
 (8) Insert, in appropriate alphabetical order:

- provisional tax attributor** is defined in **section RC 10(5)** (Calculating amount of instalment under standard and estimation methods)
- (9) Insert, in appropriate alphabetical order:
shareholder attributed income is defined in **section RC 10(6)** (Calculating amount of instalment under standard and estimation methods) 5
- (10) Insert, in appropriate alphabetical order:
shareholder attributed tax is defined in **section RC 10(7)** (Calculating amount of instalment under standard and estimation methods)
- 93 Schedule 4 amended (Rates of tax for schedular payments)**
- (1) Replace the heading to schedule 4 with “**Standard rates of tax for schedular payments**”. 10
- (2) In schedule 4, part A, clause 1, replace “0.15 rate of tax” with “standard rate of tax of 0.15”.
- (3) In schedule 4, part B, clause 1, replace “0.33 rate of tax” with “standard rate of tax of 0.33”. 15
- (4) In schedule 4, part B, clause 1B, replace “0.33 rate of tax” with “standard rate of tax of 0.33”.
- (5) In schedule 4, part C, clause 1, replace “0.15 rate of tax” with “standard rate of tax of 0.15”.
- (6) In schedule 4, part D, clause 1, replace “0.20 rate of tax” with “standard rate of tax of 0.20”. 20
- (7) In schedule 4, part D, clause 2, replace “0.15 rate of tax” with “standard rate of tax of 0.15”.
- (8) In schedule 4, part E, clause 1, replace “0.20 rate of tax” with “standard rate of tax of 0.20”. 25
- (9) In schedule 4, part F, clause 1, replace “0.25 rate of tax” with “standard rate of tax of 0.25”.
- (10) In schedule 4, part F, clause 2, replace “0.20 rate of tax” with “standard rate of tax of 0.20”.
- (11) In schedule 4, part F, clause 3, replace “0.20 rate of tax” with “standard rate of tax of 0.20”. 30
- (12) In schedule 4, part F, clause 4, replace “0.20 rate of tax” with “standard rate of tax of 0.20”.
- (13) In schedule 4, part F, clause 5, replace “0.20 rate” with “standard rate of tax of 0.20”. 35
- (14) In schedule 4, part F, clause 6, replace “0.15 rate” with “standard rate of tax of 0.15”.

- (15) In schedule 4, part G, clause 1, replace “0.20 rate of tax” with “standard rate of tax of 0.20”.
- (16) In schedule 4, part H, clause 1, replace “0.25 rate of tax” with “standard rate of tax of 0.25”.
- (17) In schedule 4, part H, clause 2, replace “0.25 rate of tax” with “standard rate of tax of 0.25”.
- (18) In schedule 4, part I, clause 1, replace “0.105 rate of tax” with “standard rate of tax of 0.105”.
- (19) In schedule 4, after part I, insert:

	Part J	10
	Payments under labour-hire arrangements	
1	A payment by an entity to a person (the payee) has a standard rate of tax of 0.20 for each dollar of the payment if—	
	(a) 1 of the entity’s main activities is the business of arranging for a person or persons to perform work or services directly for clients of the entity; and	15
	(b) the payment is made under an arrangement the performance of which, in whole or in part, involves the performance of work or services by the payee directly for a client of the entity, or directly for a client of another entity described in paragraph (a) .	20
	Part W	
	Voluntary schedular payments	
1	A payment to a person is treated as a schedular payment (a voluntary schedular payment) and has a standard rate of tax of 0.20 for each dollar of the payment if—	25
	(a) there is no obligation to withhold an amount from the payment under this Act or under the Tax Administration Act 1994; and	
	(b) the payer and the payee have agreed that the payment is a voluntary schedular payment, and have recorded their agreement in a document.	

Subpart 2—Amendments to Tax Administration Act 1994 30

94 Tax Administration Act 1994 amended

This subpart amends the Tax Administration Act 1994.

95 Section 3 amended (Interpretation)

- (1) This section amends section 3(1).
- (2) Insert, in appropriate alphabetical order: 35

- approved credit reporting agency** is defined in **section 85N** for the purposes of Part 4
- (3) Insert, in appropriate alphabetical order:
credit report is defined in **section 85N** for the purposes of Part 4
- (4) Insert, in appropriate alphabetical order: 5
provisional tax interest avoidance arrangement is defined in **section 120KBB(4)** for the purposes of Part 7
- (5) Insert, in appropriate alphabetical order:
reportable unpaid tax is defined in **section 85N** for the purposes of Part 4
- (6) Insert, in appropriate alphabetical order: 10
standard method associate is defined in **section 120KBB(4)** for the purposes of Part 7
- 96 New heading and new section 15Y inserted**
- (1) Before Part 3, insert:
- Provisional tax attribution* 15
- 15Y Provisional tax attributor**
- (1) A person is a provisional tax attributor for a company and a tax year if—
- (a) the person is a natural person; and
- (b) the person is a shareholder of the company on the first day of the company's income year corresponding to the tax year; and 20
- (c) the person and the company agree that the person is a provisional tax attributor for the company; and
- (d) the company is a provisional taxpayer; and
- (e) the company has given the Commissioner notice of the agreement described in **paragraph (c)** before the company's first provisional tax instalment date for the tax year, in the form prescribed by the Commissioner. 25
- (2) A person ceases to be a provisional tax attributor for a company and a tax year if the Commissioner receives notice from the company of the cancellation of an agreement under **subsection (1)** before the company's first provisional tax instalment date for the tax year in the form prescribed by the Commissioner. 30
- (2) This section applies for the 2018–19 and later income years.
- 97 Section 24G amended (Use of incorrect tax codes)**
- (1) In the title to section 24G, after “**tax codes**”, insert “**or tax rates**”.
- (2) In section 24G(1), after “tax code”, insert “or tax rate”. 35

- (3) In section 24G(2), replace “incorrect code and provide the tax code” insert “incorrect code or tax rate, and provide the correct tax code and tax rate, as required.”.
- (4) In section 24G(3), replace “tax code” with “tax code or tax rate”, in each place where it appears. 5

98 Section 24L amended (Schedular notification)

Replace section 24L(2) with:

- (2) Before the person (the **payee**) receives the schedular payment, the payee must give the person making the payment a notice that states—
 - (a) the tax rate that the payee has elected under **section 24LB** to be applied to the schedular payment; or 10
 - (b) if the Commissioner has notified the payee that a different tax rate applies to the schedular payment, as provided by **section 24LC**, that different tax rate.

99 New sections 24LB and 24LC inserted 15

After section 24L, insert:

24LB Schedular tax rate elected by payee

- (1) A person who is entitled to receive a schedular payment (the **payee**) may choose the tax rate to be applied to the payment for the purposes of **section RD 10B(3)(a)** of the Income Tax Act 2007 (the **elected rate**). 20
- (2) The elected rate must be a minimum of—
 - (a) 15% if the payee is—
 - (i) a non-resident:
 - (ii) a holder of a temporary entry class visa as defined in section 4 of the Immigration Act 2009; or 25
 - (b) 10% for all other payees.
- (3) Despite **subsection (1)**, if the payee has notified a person making a schedular payment (the **payer**) of two different elected rates within 12 months of each other, then the last notified rate is the elected rate, and the payee may not choose another elected rate in relation to the payer within a 12 month period of the first notified rate. 30
- (4) Despite **subsection (3)**, the payee may choose another elected rate under **subsection (1)** in relation to the payer in the 12 month period and notify it to the payer, if the payer and the payee agree that the payee may choose and notify that other rate. 35

24LC Schedular tax rate prescribed by Commissioner

- (1) Where a person who is entitled to receive a schedular payment (a **payee**) has not met a liability under the Inland Revenue Acts, the Commissioner may prescribe the tax rate to be applied to the payee's schedular payments by notifying the rate to— 5
- (a) the payee; or
 - (b) the payee and a person (a **payer**) making a schedular payment to the payee.
- (2) The Commissioner may also prescribe and notify, at the same time as prescribing and notifying a tax rate under **subsection (1)**, a percentage of the payee's schedular payments that payers must— 10
- (a) deduct or extract from schedular payments payable to the payee; and
 - (b) pay to the Commissioner.
- (3) The tax rate prescribed under **subsection (1)** and the percentage prescribed under **subsection (2)** must not total more than 60%. 15
- (4) An amount received by the Commissioner under **subsection (2)** is to the credit of the payee's liabilities under the Inland Revenue Acts and is not a tax credit under part L of the Income Tax Act 2007.
- (5) The Commissioner may revoke or prescribe and notify a new tax rate under **subsection (1)** and percentage under **subsection (2)** from time to time. 20
- (6) The Commissioner does not have to notify the payee under **subsection (1)(b)**, if, after making reasonable inquiries, the Commissioner does not have a valid address for the payee.

100 Section 24M amended (Exemption certificates for schedular payments)

Replace section 24M(2) with: 25

- (2) Subsection (1) does not apply to a payment—
- (a) to a non-resident entertainer;
 - (b) that is a payment described in **schedule 4, part J** of the Income Tax Act 2007.

101 Section 32H amended (Providing RWT exemption certificate when person meets requirements) 30

- (1) In section 32H(2), replace “The certificate is valid from the starting date set out in the certificate.” with “The certificate is valid on and after the starting date set out in the certificate, and is valid for an unlimited period if no end date is specified under subsection (3).” 35
- (2) Replace section 32H(3) with:
- (3) An end date—

<p>(a) must be set out in the certificate by the Commissioner if the person is described in section 32E(2)(j):</p> <p>(b) may be set out in the certificate by the Commissioner in exceptional circumstances.</p>	<p>5</p>
<p>102 New section 45E inserted (Provisional tax attribution reconciliation statement)</p>	
<p>(1) Before section 46, insert:</p>	
<p>45E Provisional tax attribution reconciliation statement</p>	
<p>A company that has one or more shareholders who are provisional tax attributors for the company and a tax year must give the Commissioner and each provisional tax attributor the following information, in the form prescribed by the Commissioner, at the time the company files its annual return of income:</p> <p>(a) the name and tax file number of each shareholder who is a provisional tax attributor for the tax year; and</p> <p>(b) the amount of provisional tax paid by the company for the tax in relation to each provisional tax attributor for the tax year under section RC 10 of the Income Tax Act 2007; and</p> <p>(c) the amount of tax credit that is transferred from the company to each provisional tax attributor for the purposes of section LB 2(2) of the Income Tax Act 2007.</p>	<p>10</p> <p>15</p> <p>20</p>
<p>(2) This section applies for the 2018–19 and later income years.</p>	
<p>103 Section 81 amended (Officers to maintain secrecy)</p>	
<p>After section 81(4)(s), insert:</p>	
<p>(sb) communicating, for the purpose of section 85M, information relating to some offences under the Companies Act 1993 to the Registrar of Companies:</p> <p>(sc) communicating, for the purpose of section 85N, information relating to a taxpayer and reportable unpaid tax to an approved credit reporting agency:</p>	<p>25</p>
<p>104 New sections 85M and 85N inserted</p>	
<p>After section 85L, insert:</p>	
<p>85M Disclosure of information relating to some offences to the Registrar of Companies</p>	
<p>(1) The purpose of this section is to facilitate the exchange between the Commissioner and the Registrar of Companies (the Registrar) of information for the purpose of preventing, detecting, investigating, or providing evidence of, some</p>	<p>35</p>

- offences under the Companies Act 1993 that have been, are being, or will be committed.
- (2) The Commissioner may communicate the information only if—
- (a) the Commissioner or the Registrar reasonably suspects that—
 - (i) an offence under section 138A(1), 377, 382(4), 383(6), 385(9), 385AA(9), or 386A(2) of the Companies Act 1993 has been, is being, or will be committed; and 5
 - (ii) the information is relevant for the purposes of preventing, detecting, investigating, or providing evidence of, the offence; and
 - (b) the Commissioner is satisfied that the information is readily available, that it is reasonable and practicable to communicate the information, and that communication of the information is in the public interest. 10
- 85N Disclosure of information to approved credit reporting agencies**
- (1) The purpose of this section is to facilitate the exchange between the Commissioner and approved credit reporting agencies of information relating to a taxpayer's reportable unpaid tax. 15
- (2) This section applies when—
- (a) a taxpayer has an amount of reportable unpaid tax; and
 - (b) the Commissioner has formally notified the taxpayer that—
 - (i) the taxpayer has reportable unpaid tax; and 20
 - (ii) the Commissioner may give an approved credit reporting agency information in relation to the taxpayer and any amount of reportable unpaid tax under this section; and
 - (c) the Commissioner has made reasonable efforts to recover reportable unpaid tax from the taxpayer before the day on which the taxpayer is formally notified under **paragraph (b)**; and 25
 - (d) 30 days after the formal notification under **paragraph (b)**, —
 - (i) the taxpayer has an amount of reportable unpaid tax that is—
 - (A) greater than \$150,000; but
 - (B) if the Governor-General has prescribed an amount by Order in Council for the purposes of this section, greater than that prescribed amount: 30
 - (ii) the taxpayer has an amount of reportable unpaid tax that has been unpaid for a year, and, in the Commissioner's judgement, the proportion of the unpaid amount to the taxpayer's income for the year is 30% or more. 35
- (3) This section also applies when—
- (a) a taxpayer has an amount of reportable unpaid tax; and

- (b) the Commissioner has formally notified the taxpayer that—
 - (i) the taxpayer has reportable unpaid tax; and
 - (ii) the Commissioner may give an approved credit reporting agency information in relation to the taxpayer and any amount of reportable unpaid tax under this section; and 5
- (c) the Commissioner has formally notified the taxpayer under **subsection (2)(b)** twice in the year before the notice in **paragraph (b)** of this subsection; and
- (d) the Commissioner has made reasonable efforts to recover an amount of reportable unpaid tax from the taxpayer before the day on which the taxpayer is formally notified under **paragraph (b)**; and 10
- (e) but for amounts paid to the Commissioner in the 2 periods of 30 days after the days on which the Commissioner has formally notified the taxpayer under **subsection (2)(b)**, this section would have applied, as provided by **subsection (2)**, 30 days after both of those notices. 15
- (4) The Commissioner may communicate to an approved credit reporting agency information relating to the taxpayer and any amount of reportable unpaid tax for the purposes of—
 - (a) enabling the approved credit reporting agency to include information in the taxpayer’s credit report; and 20
 - (b) evidencing and maintaining the accuracy of the credit report in relation to the information.
- (5) The Commissioner may also communicate to an approved credit reporting agency information for the purposes described in **subsection (4)** if—
 - (a) the information relates to the taxpayer and any amount that would be reportable unpaid tax if it was not subject to an instalment arrangement requested by the taxpayer and entered into by the Commissioner (the **instalment arrangement**); and 25
 - (b) the instalment arrangement was entered into by the Commissioner after the Commissioner has communicated to an approved credit reporting agency information relating to the taxpayer under **subsection (4)**. 30
- (6) The Commissioner may not communicate to an approved credit reporting agency until the Commissioner has finished considering an application under section 177 or 183H, if the application was made in the 30 days after the day on which the taxpayer is formally notified under **subsection (2)(b)**. 35
- (7) The Commissioner must publish annually, in a publication chosen by the Commissioner, the following:
 - (a) the number of taxpayers that the Commissioner has formally notified under this section in the previous tax year; and

- (b) the number of taxpayers in relation to which the Commissioner has given information to an approved credit reporting agency in the previous year; and
- (c) the number of taxpayers that have ceased having reportable unpaid tax in the previous year and which had been formally notified under this section at some time; and 5
- (d) any other matter relating to the Commissioner's use of this section that the Commissioner decides it is appropriate to publish.
- (8) The Commissioner may approve, or revoke the approval of, an organisation described in **subsection (9)(a)** for the purposes of the definition in that subsection, if the approval or revocation positively affects the integrity of the tax system. 10
- (9) For the purposes of this Part, **approved credit reporting agency** means an organisation that—
- (a) carries on a business of reporting to other organisations, for payment, information relevant to the assessment of a person's creditworthiness; and 15
- (b) has been approved by the Commissioner under **subsection (8)**; and
- (c) the Commissioner has published the name of, in a publication chosen by the Commissioner.
- (10) For the purposes of this Part, **credit report** means credit information about a person that is disclosed by an approved credit reporting agency. 20
- (11) For the purposes of this Part, **reportable unpaid tax**—
- (a) means, for a taxpayer, unpaid tax—
- (i) that results from liability for or refunds of income tax, excluding refunds under section MF 5 or MF 6 of the Income Tax Act 2007, or is otherwise the overpayment or over-crediting of WFF tax credits; and 25
- (ii) that results from liability for or refunds of GST, amounts required to be deducted under the PAYE rules, amounts required to be deducted under the Student Loan Scheme Act 2011, amounts required to be deducted under the Child Support Act 1991, ESCT, RSCT, or any tax credits under Part L of the Income Tax Act 2007 excluding tax credits under section LB 4 of that Act; and 30
- (iii) that is not subject to a dispute or challenge under Part 4A or 8A of this Act; and 35
- (iv) that is not subject to an instalment arrangement requested by the taxpayer and entered into by the Commissioner; and
- (b) includes, for a taxpayer, unpaid interest under Part 7 and unpaid civil penalties, to the extent to which they relate to an amount of reportable unpaid tax described in **paragraph (a)**. 40

105	Section 113A amended (Correction of minor errors in subsequent returns)	
	In section 113A(1)(c), replace “\$500 or less.” with “\$1,000 or less.”	
106	Section 120C amended (Definitions)	
	In section 120C(1), in the definition of date interest starts ,—	
	(a) in paragraph (b), in the words before the subparagraphs, replace “GST” with “a GST refund provided by section 19C(8) or 20(5) of the Goods and Services Tax Act 1985,”:	5
	(b) in paragraph (c), in the words before the subparagraphs, replace “a GST refund” with “a GST refund provided by section 19C(8) or 20(5) of the Goods and Services Tax Act 1985”:	10
	(c) repeal paragraph (c)(iii).	
107	Section 120C amended (Definitions)	
	(1) After section 120C(2), insert:	
	(2B) Despite subsection (2), for some standard method provisional taxpayers who fail to pay the amount of 1 or both of the first 2 instalments on the relevant instalment dates for the tax year (a failed instalment), the amount of unpaid tax for a failed instalment is given by section 120KBB(3) .	15
	(2) This section applies for the 2017–18 and later income years.	
108	Section 120KB amended (Provisional tax instalments and due dates generally)	20
	(1) In section 120KB(4), replace “120KC” with “ 120KBB ”.	
	(2) This section applies for the 2017–18 and later income years.	
109	New section 120KBB inserted (Interest for most standard method provisional taxpayers)	
	(1) After section 120KB, insert:	25
	120KBB Interest for most standard method provisional taxpayers	
	(1) This section applies if, for a tax year that is not a transitional year for a provisional taxpayer (the person), the person is not a new provisional taxpayer, and—	
	(a) section 120KE does not apply for the person for the tax year (<i>for example</i> : a person does not make a required payment, so section 120KE does not apply); and	30
	(b) the person is liable to pay provisional tax for the tax year and uses 1 of the standard methods described in section RC 5(2) or (3) of the Income Tax Act 2007 for the tax year; and	35
	(c) all standard method associates of the person that are liable to pay provisional tax use, for the tax year, either the GST ratio method described in	

- section RC 5(6) of that Act or 1 of the standard methods described in section RC 5(2) or (3) of that Act; and
- (d) there is no provisional tax interest avoidance arrangement in relation to the person.
- (2) If the person pays the amount of the first 2 instalments on the first 2 instalment dates for the tax year in accordance with **sections RC 9 and RC 10** of the Income Tax Act 2007, then, despite section 120KB(2) of this Act,— 5
- (a) the person’s residual income tax for the tax year is not due and payable as set out in **section RC 9** of the Income Tax Act 2007 for those first 2 instalment dates; and 10
- (b) the amount of their residual income tax minus the total amount of the first 2 instalments for the tax year is due and payable on the third instalment date for the tax year. A negative amount is treated as overpaid tax on the third instalment date, with nothing due and payable on the date.
- (3) If the person fails to pay the amount of 1 or both of the first 2 instalments on the relevant instalment dates for the tax year (a **failed instalment**) in accordance with **sections RC 9 and RC 10** of the Income Tax Act 2007, then, despite section 120KB(2) of this Act,— 15
- (a) the person’s residual income tax is not due and payable as set out in **section RC 9** of the Income Tax Act 2007 for the failed instalment; and 20
- (b) the amount of unpaid tax that a person has in relation to a failed instalment is equal to the lesser of the following amounts, treating a negative amount as zero:
- (i) one-third of their residual income tax minus the amount paid in relation to the failed instalment: 25
- (ii) the amount they are liable to pay in accordance with **sections RC 9 and RC 10** of the Income Tax Act 2007 in relation to the failed instalment date minus the amount paid in relation to the failed instalment date; and
- (c) one-third of the person’s residual income tax is due and payable as set out in **section RC 9** of the Income Tax Act 2007 for an instalment date that is not a failed instalment. 30
- (4) In this Part,—
- (a) **provisional tax interest avoidance arrangement** means an arrangement involving the manipulation of 1 or more amounts of residual income tax, including a zero amount of residual income tax, with the purpose or effect of defeating the intent and application of this Part: 35
- (b) **standard method associate** means, for a person (**person A**),—
- (i) if person A is a company, another company in the same wholly-owned group of companies as person A: 40

<ul style="list-style-type: none"> <li style="margin-left: 40px;">(ii) if person A is a company, another person that is associated with person A under section YB 3 of the Income Tax Act 2007, treating section YB 3 as requiring 50% voting interests and market value interests instead of 25%: <li style="margin-left: 40px;">(iii) if person A is not a company or is a company acting as a trustee, 	<p>5</p> <p>5</p>
<p>(2) This section applies for the 2017–18 and later income years.</p>	
<p>110 Section 120KE amended (Provisional tax and rules on use of money interest)</p>	<p>10</p>
<p>(1) Replace section 120KE(1)(a) with:</p> <ul style="list-style-type: none"> <li style="margin-left: 20px;">(a) they have paid all 3 instalments on the instalment dates for the tax year in accordance with sections RC 9 and RC 10 of the Income Tax Act 2007; and 	<p>15</p>
<p>(2) In section 120KE(1)(b), replace “\$50,000” with “\$60,000”.</p>	
<p>(3) After section 120KE(1)(d), insert:</p> <ul style="list-style-type: none"> <li style="margin-left: 20px;">(db) there is no provisional tax interest avoidance arrangement in relation to the person; and 	
<p>(4) This section applies for the 2017–18 and later income years.</p>	<p>20</p>
<p>111 Section 120L amended (Meaning of unpaid tax and overpaid tax for provisional tax purposes)</p> <p>After section 120L(1), insert:</p>	
<p>(1B) For the purposes of determining amounts of unpaid tax, overpaid tax, and interest under a provision of this Part for an instalment date for a tax year,—</p> <ul style="list-style-type: none"> <li style="margin-left: 20px;">(a) for a provisional tax attributor that is a provisional taxpayer for the year,— <ul style="list-style-type: none"> <li style="margin-left: 20px;">(i) the total shareholder attributed amounts for the year, described in section RC 10(3C)(b) of the Income Tax Act 2007, are pro-rated against all instalments for the year; and <li style="margin-left: 20px;">(ii) if there is an amount of overpaid or underpaid tax under a provision for the instalment, the pro-rated amount for the instalment is subtracted from the underpaid tax amount or added to the overpaid tax amount under the provision; and <li style="margin-left: 20px;">(iii) to the extent to which subparagraph (ii) does not apply for the pro-rated amount for the instalment, the amount is overpaid tax under the provision for an instalment: <li style="margin-left: 20px;">(b) for a company that has 1 or more shareholders who are provisional tax attributors,— 	<p>25</p> <p>30</p> <p>35</p>

- (i) the total company attributed amounts for the year, described in **section RC 10(3C)(c)** of the Income Tax Act 2007, are pro-rated against all instalments for the year; and
- (ii) if there is an amount of overpaid or underpaid tax under a provision for the instalment, the pro-rated amount for the instalment is added to the underpaid tax amount or subtracted from the overpaid tax amount under the provision; and 5
- (iii) to the extent to which **subparagraph (ii)** does not apply for the pro-rated amount for the instalment, the amount is underpaid tax under the provision for an instalment. 10
- (1C) If **section 120KBB(2)** applies to a provisional tax attributor, **subsection (1B)(a)** does not apply, and—
- (a) if there is an amount of overpaid or underpaid tax under **section 120KBB** for the third instalment, the attributor's total shareholder attributed amounts are subtracted from the underpaid tax amount or added to the overpaid amount under section 120KBB; and 15
- (b) to the extent to which **paragraph (a)** does not apply for total shareholder attributed amounts, the amounts are overpaid tax under **section 120KBB(2)** for the third instalment.
- (1D) If **section 120KBB(2)** applies to a company that has 1 or more shareholders who are provisional tax attributors, **subsection (1B)(b)** does not apply, and— 20
- (a) if there is an amount of overpaid or underpaid tax under **section 120KBB** for the third instalment, the company's total company attributed amounts are added to the underpaid tax amount or subtracted from the overpaid tax amount under **section 120KBB**; and 25
- (b) to the extent to which **paragraph (a)** does not apply for total shareholder attributed amounts, the amounts are underpaid tax under **section 120KBB(2)** for the third instalment.
- (1E) For the purposes of determining the amounts of unpaid tax or overpaid tax for an instalment for a tax year, the residual income tax for the year of a company that has a shareholder who is a provisional tax attributor is increased by the amount of that shareholder's residual income tax for the year, if— 30
- (a) the shareholder is not a provisional taxpayer because **section RC 3(4)** of the Income Tax Act 2007 applies; and
- (b) the shareholder's residual income tax for the year is \$60,000 or more for the year. 35
- (1F) If **subsection (1E)** applies for a company and a shareholder, the company's company attributed amount for the year relating to the shareholder is excluded from the company's total company attributed amounts for the year under **subsection (1B)(b)(i)**. 40

112 Section 138E amended (Certain rights of challenge not conferred)

In section 138E(1)(e)(iv), replace “138N” with “138N, **139B**”.

113 Section 139B amended (Late payment penalty)

(1) In section 139B(1), replace “the due date (the **default date**)” with “the default date”. 5

(2) In section 139B(1)(b), replace “the taxpayer has failed to pay on time” with “the Commissioner determines that the taxpayer has failed to pay on time”.

(3) In section 139B(1)(c), replace “the taxpayer has paid on time all amounts” with “the Commissioner determines that the taxpayer has paid on time amounts”.

(4) After section 139B(1), insert: 10

(1B) When determining whether a person has paid amounts of tax on time or failed to pay amounts of tax on time under **subsection (1)(b) or (c)**, the Commissioner has a discretion to ignore any failure to pay tax on time for any tax type that the Commissioner decides it is appropriate to ignore. The discretion may only be exercised if— 15

(a) it is necessary because of resource constraints imposed on the Commissioner during the period of co-existence of 2 Inland Revenue Department software platforms; and

(b) it does not impose a penalty greater than that which the person would otherwise be liable for in the absence of this subsection. 20

(5) Before section 139B(6)(a), insert:

(aa) the term **default date** means, for an amount of tax,—

(i) its due date; or

(ii) its collection date, described in **section 142A(6)**, if the amount has a new due date set under **section 142A(5)**: 25

114 Section 139B amended (Late payment penalty)

(1) After section 139B(2), insert:

(2B) Despite subsection (2)(b), a taxpayer is not liable to pay an incremental late payment penalty to the extent to which the relevant tax to pay is—

(a) GST for a GST return period ending within 7 days of 31 March 2017: 30

(b) GST for a GST return period ending after 31 March 2017:

(c) provisional tax or income tax for the 2017–18 or later income years:

(d) described in section MF 5 or MF 6 of the Income Tax Act 2007, or is otherwise the overpayment or over-crediting of WFF tax credits, and relates to the 2017–18 or later income years. 35

(2) In section 139B(3B), replace “section 157 of this Act” with “**section 24LC(2)** or 157 of this Act”.

- (3) In section 139B(5A), replace “section 157 of this Act” with “**section 24LC(2)** or 157 of this Act”.
- (4) After section 139B(6)(b), insert:
- (bb) for a person that **section 120KBB** applies to, the term **unpaid tax** includes, for a failure to pay 1 or both of the first 2 instalments of provisional tax on the relevant instalment dates for the tax year, the amount of unpaid tax given by **section 120KBB(3)** for the date: 5
- (5) **Subsection (4)** applies for the 2017–18 and later income years.
- 115 Section 139BA amended (Imposition of late payment penalties when financial relief sought)** 10
- (1) In section 139BA(1), replace “due date” with “default date”.
- (2) In section 139BA(2), replace “due date” with “default date”.
- 116 Section 139C amended (Late payment penalty and provisional tax)**
- (1) In section 139C(1), replace “Subsection (1B) overrides this subsection” with “Subsection (1B) overrides this subsection and **subsection (1D)** modifies this subsection” 15
- (2) After section 139C(1C), insert:
- (1D) Despite subsection (1), for a person that **section 120KBB** applies to, the only amount of unpaid tax for a failure to pay 1 or both of the first 2 instalments of provisional tax on the relevant instalment dates for the tax year is amount of unpaid tax given by **section 120KBB(3)(b)** for the date. 20
- (3) This section applies for the 2017–18 and later income years.
- 117 Section 142A amended (New due date for payment of tax that is not a penalty)**
- (1) In section 142A(1), replace “This section applies” with “Subsection (2) applies for a transfer concession tax type” 25
- (2) Replace section 142A(5) with:
- (4) **Subsections (5), (6), and (7)** apply for a tax type that is not a transfer concession tax type if the Commissioner makes for a taxpayer, other than by an assessment (an **electronic default assessment**) made in the absence of a return and to which section 106(2) applies,— 30
- (a) an assessment (the **new assessment**) of tax for the taxpayer, if the taxpayer has not been assessed earlier for the tax, except by an electronic default assessment:
- (b) an amended assessment (the **increased assessment**)— 35
- (i) to which **paragraph (a)** does not apply; and
- (ii) of an amount of tax exceeding the amount for which the taxpayer is liable immediately before the increased assessment; and

- (iii) made less than 30 days before, or on or after, the due date for the tax for which the taxpayer is liable immediately before the increased assessment.
- (5) The date of the notice of the relevant assessment is the due date for the payment of— 5
 - (a) the tax under a new assessment:
 - (b) the increase of tax under an increased assessment.
- (6) Despite **subsection (5)**,—
 - (a) the Commissioner must fix a date (the **collection date**) before which the Commissioner must not require payment of the tax or increased tax; and 10
 - (b) the collection date must be 30 or more days after the due date set under **subsection (5)**; and
 - (c) the Commissioner must not take any action to collect the tax or increased tax before the collection date, other than under section RM 10(3) of the Income Tax Act 2007 or section 46(6) of the Goods and Services Tax Act 1985. 15
- (7) The Commissioner must give notice, in the notice of assessment, of the collection date and that—
 - (a) the Commissioner does not require payment of the tax or increased tax before the collection date; but 20
 - (b) despite the collection date, any refund of tax that the taxpayer is entitled to may be credited against the tax or increased tax before the collection date, under section RM 10(3) of the Income Tax Act 2007 or section 46(6) of the Goods and Services Tax Act 1985.
- (8) **Subsections (5), (6), and (7)** do not apply— 25
 - (a) to any provisional tax that remains unpaid on an instalment date; or
 - (b) if the Commissioner has notified the taxpayer before the due date for the payment of the tax that **subsections (5), (6), and (7)** will not apply in respect of the tax as calculated by the taxpayer, or in respect of an amount of tax estimated by the taxpayer; or 30
 - (c) if the Commissioner considers that setting a collection date may prejudice the Commissioner's ability to recover the tax or increased tax.
- (9) In this section,—
 - (a) **transfer concession tax type** means a tax type for which the Commissioner decides it is appropriate to allow a concession from **subsection (4)**, and the concession is necessary because of resource constraints imposed on the Commissioner during the period of co-existence of 2 Inland Revenue Department software platforms: 35
 - (b) **tax** does not include a civil penalty.

118 Section 142B amended (Due date for shortfall penalties)

Replace section 142B(1)(a)(ii) with:

- (ii) which has a new due date set under section 142A(2), on the due date for the payment of the unpaid tax; or
- (iii) which has a new due date set under **section 142A(5)**, on the collection date, described in **section 142A(6)**, for the unpaid tax: 5

119 Section 173L amended (Transfer of excess tax within taxpayer's accounts)

(1) Replace section 173L(1) with:

- (1) A taxpayer or their agent may request that the Commissioner transfer an amount of the excess to another period or another tax type of the taxpayer. If the date chosen under **subsection (2)** is after the start of the requested period for the taxpayer, the maximum amount that the Commissioner may transfer is the total of— 10
 - (a) debt owing by the taxpayer to the Commissioner for the requested period at the date chosen under **subsection (2)**; and 15
 - (b) the taxpayer's deferrable tax for the requested period at the date chosen under **subsection (2)**.

(2) In section 173L(2), in the words before the paragraphs, replace "all or part of the excess" with "the amount".

(3) In section 173L(2)(a), replace "GST refund" with "GST refund provided by section 19C(8) or 20(5) of the Goods and Services Tax Act 1985". 20

120 Section 173M amended (Transfer of excess tax to another taxpayer)

(1) Replace section 173M(1) with:

- (1) A taxpayer or their agent may request that the Commissioner transfer an amount of the excess to another taxpayer. If the date chosen under **subsection (4)** is after the start of the requested period for the other taxpayer, the maximum amount that the Commissioner may transfer is the total of— 25
 - (a) debt owing by that other taxpayer to the Commissioner at the date chosen under **subsection (4)** for the requested period; and
 - (b) the other taxpayer's deferrable tax at the date chosen under **subsection (4)** for the requested period. 30

(2) Replace section 173M(3) with:

- (3) A taxpayer, being a trustee of a family trust, may request a transfer to a beneficiary of the trust. If the date chosen under **subsection (4)** is after the start of the requested period for the beneficiary, the maximum amount that the Commissioner may transfer is the total of— 35
 - (a) debt owing by the beneficiary to the Commissioner at the date chosen under **subsection (4)** for the requested period; and

- (b) the beneficiary’s deferrable tax at the date chosen under **subsection (4)** for the requested period.
- (3) In section 173M(4), in the words before the paragraphs, replace “all or part of the excess” with “the amount”.

Subpart 3—Amendment to other enactment

5

121 Section 27E of Student Loan Scheme Act 2011 amended (Commissioner may remove entity’s listing as charity)

In section 27E(3)(b) of the Student Loan Scheme Act 2011, replace “applicant” with “entity”.

Schedule 1
New schedule 2 inserted

s 26

Schedule 2
Application of CRS standard

5

s 1850

Items modifying CRS standard

- | | | |
|----|---|----|
| 1 | The terms reporting period and calendar year or other appropriate reporting period mean a 12-month period ending with 31 March, unless the context requires a different interpretation. | 10 |
| 2 | Sections I to VII are replaced by the Sections I to VII included in Annex 5 (Wider Approach to the Common Reporting Standard) of the CRS publication, as amended from time to time, modified by items 3 to 12 . | |
| 3 | In Section I, paragraph C, the words “or with respect to each Financial Account that is opened prior to becoming a Reportable Account” are disregarded. | 15 |
| 4 | Section I, paragraph F is disregarded. | |
| 5 | In Section III, subparagraph C(6), the date reference is replaced by 30 June 2017. | |
| 6 | In Section III, paragraph D, the date reference is replaced by the words “30 June 2018, for pre-existing individual accounts that are high value accounts, or 30 June 2019 for pre-existing individual accounts that are lower value accounts”. | 20 |
| 7 | In Section V, paragraph A, the date reference is replaced by 30 June 2017. | |
| 8 | In Section V, paragraph B, the date references are replaced by 30 June 2017. | |
| 9 | In Section V, subparagraph D(1), the first date reference is replaced by 30 June 2017 and the second date reference is replaced by 30 June 2019. | 25 |
| 10 | In Section V, subparagraph D(2), the date reference is replaced by 30 June 2017. | |
| 11 | In Section VII, paragraph B, the alternative procedures under the special due diligence rules include the procedure given in paragraph 13 of the Commentary on Section VII. | 30 |
| 12 | Under Section VII, subparagraph C(4), an entity has the option of treating all dollar amounts referred to in the CRS standard as being in New Zealand dollars. | |
| 13 | In Section VIII, subparagraph B(1)(c), the term Non-Reporting Financial Institution includes a person or entity determined by the Commissioner to be a | 35 |

	non-reporting financial institution for the purposes of the CRS applied standard.	
14	In Section VIII, subsubparagraph B(8)(b), the date reference is replaced by 1 July 2017.	
15	In Section VIII, subsubparagraph B(9)(a), the date reference is replaced by 30 June 2017.	5
16	In Section VIII, subsubparagraph B(9)(d), the date reference is replaced by 30 June 2018.	
17	In Section VIII, subparagraph C(9), the definition of the term Preexisting Account is the replacement definition given in paragraph 82 of the Commentary on Section VIII, with the date reference in subsubparagraph (a) of the replacement definition being 30 June 2017.	10
18	In Section VIII, subparagraph C(10), the definition of the term New Account is—	
	New Account means a Financial Account maintained by a Reporting Financial Institution that is not a Pre-existing Account.	15
19	In Section VIII, subparagraph C(14), the date reference is replaced by 30 June 2017.	
20	In Section VIII, subparagraph C(15), the date reference is replaced by 30 June 2017.	20
21	In Section VIII, subsubsubparagraph C(17)(f)(ii), the date reference is replaced by 1 July 2017.	
22	In Section VIII, subparagraph C(17)(g), the term Excluded Account includes an account determined by the Commissioner to be an excluded account for the purposes of the CRS applied standard.	25
23	In Section VIII, paragraph D(4), the term Reportable Jurisdiction means a jurisdiction identified as a reportable jurisdiction by the Governor-General by Order in Council and not subject at the time to a suspension under an Order in Council or a determination of the Commissioner.	
24	In Section VIII, paragraph D(5), the term Participating Jurisdiction includes New Zealand in addition to jurisdictions determined by the Commissioner to be participating jurisdictions.	30
25	In Section VIII, subparagraph E(4), the definition of the term Related Entity is the replacement definition given in paragraph 82 of the Commentary on Section VIII.	35